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Comments on the Future of Court Operations

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VIA EMAIL: Comments.Mailbox@njcourts.gov

Dear Chief Justice Rabner and Honorable Justices of the Supreme Court,

Thank you for the opportunity to comment on the recommendations set forth in the recent correspondence regarding the Future of Court Operations – Remote and In-Person Proceedings. I am a Municipal Court Judge in a Joint Court known as Cumberland Salem Regional (CS Regional) which consists of 10 municipalities from 2 counties. This court is an outstanding example of how municipal government can achieve the goal of “regionalization” independently. It is a well-run Court as evidenced by pre-pandemic reports, and the exceptional staff I am fortunate to work with have gone above and beyond to adapt to the virtual court process. I have had the opportunity to participate in the remote court experiment for more than a year now. I understand that necessity required the extreme measures taken to convert court sessions to an “all virtual” format. However, I respectfully suggest that with specific regard to Municipal Court operations, which are dramatically different from Superior Court, Appellate Court and Supreme Court matters, the virtual format is deficient and grossly neglects most (if not all) of the core values espoused by the New Jersey Courts. Simply because you can do something, does not mean you should.

As you are aware, the Municipal Courts handle an extraordinary number of cases in a year, far more than any other level of the court system. In fact, some Municipal Courts hear hundreds of cases in a single day. The sheer volume of cases creates many complications for a successful virtual experience for multiple reasons, which I will set forth below. While the argument can be made that the volume creates complications while holding court in-person, the statistics on the number of cases heard and length of time it takes to adjudicate a matter have skyrocketed in the time we have been handling matters remotely.

TECHNOLOGICAL ISSUES

In an ideal world, all participants would have the equipment and expertise needed to participate in a virtual court session. In reality, many people do not have access or simply are not able to master the technology. Approximately 20% of participants are dialing in with a landline (many of whom do not speak English or are elderly) and have no ability to see or be seen by the Judge, witnesses, officers, or court personnel. In addition to those participants, there is another percentage that either refuse to turn their video on or have technical issues with the equipment that prevents them from being seen. Finally, I have seen participants set their phone or computer up so that all that can be

seen is a ceiling fan, or a dark room with a shadowy figure, which ultimately is not conducive to garnering any information about body language or credibility when interfacing with the party or taking testimony.

Another common issue on the Zoom platform relates to audio functions. A segment of the population has had difficulty in accessing audio when using their smart phone or computer. These devices have multiple features for turning audio on and off, and muting and unmuting when audio is activated. Participants regularly unmute themselves, inadvertently (or intentionally), and can be heard disrupting court proceedings. Every time this happens, someone on court staff has to identify and locate the offending participant and manually mute them. Alternatively, if a participant is muted, there are numerous times during every session that the Judge or court staff have to request the party unmute themselves. This exercise can take several minutes for each person having difficulty and it brings the session to a screeching halt when there are dozens of other defendants and witnesses waiting to be addressed. Finally, in some cases when a participant cannot figure out how to use their device, court staff have used written notes placed in front of the camera in an attempt to communicate with them, which is not always successful and even when it is, certainly not the best use of time or resources for anyone in the virtual court.

In some cases, a participant can fully access and control their device and is voluntarily proceeding with their case – and their connection is interrupted. Defendants and other parties are continually losing their WiFi connectivity and dropping out of the court session, sometimes in the middle of a plea or just before sentencing on a serious charge. These kinds of technological issues are not outlier events, they are persistent problems that cause significant disruption in holding a court session and after a year of holding court in Zoom, there does not appear to be a noticeable improvement on any of these issues. With tens of thousands of cases a year, these seemingly minor difficulties cause significant delay and complication in the aggregate.

DOMESTIC VIOLENCE

After years of training with respect to a victim's rights in domestic violence related matters, transitioning to Virtual Court has presented numerous predicaments. No longer can a Judge, prosecutor or domestic violence counselor liaison confirm that a victim is alone and safe, or in need of assistance, because of some of the technological issues cited above, but also because commonly the accused is in the same household as the victim. There is no way to sequester a victim from the accused and there is very little chance to observe body language when questioning the parties about the incident. I have found it difficult to assess whether a victim is being coerced or is otherwise under duress when all I can see is a small frame, many times obstructed or with poor lighting, and no way confirm the victim is in a separate location from a defendant. As a Judge, I am increasingly uncomfortable with the virtual process in regards to domestic violence matters. The prolonged isolation of people from each other led to an increase in domestic violence incidents and continuing to deny victims physical access to the courts seems counterintuitive to providing them the protections they need from their abusers.

DECORUM

Perhaps the most frustrating devolution of the Municipal Court experience since going remote is the increasing lack of respect shown by just about everyone. There are, of course, many instances of civilized transactions and events, however, the number of uncivilized events has exploded beyond what can be rationalized as acceptable. The standards of decorum have vanished and basic decency is even in question in some circumstances. I find it impossible to believe that many of the things we witness in virtual court could or would come to fruition in a regular in-person setting. The “keyboard courage” of some is greatly increased and in other cases, it is perhaps the relaxation of the rules that has allowed them to behave in ways that a year ago would have been worthy of sanctions. The following is a list of actual events witnessed in various Municipal Zoom sessions, and without a doubt, many of them are repeated regularly:

- Defendants driving while on zoom for their court appearance
- Defendants lying in bed
- Defendants not wearing clothes
- Defendants in a towel immediately out of the shower
- Defendants in the bathroom (actively using the facilities)
- Defendants smoking and blowing the smoke into the camera screen
- Defendants drinking alcohol
- Defendants on the beach and roaming around outside
- Defendants burping into the microphone
- Defendants cursing
- Attorneys wearing t-shirts, polo shirts, and other casual clothing
- Attorneys attending multiple zoom sessions simultaneously, causing delays in whichever court they are not appearing in
- Attorneys driving while appearing on zoom for their client’s case
- Domestic Violence liaisons not using cameras when speaking to victims
- Defendants with children screaming in the background, contractors hammering in the house, heavy machinery in use
- Defendant appearing via zoom for trial for speeding, while driving his car on the Pennsylvania Turnpike and when told to pull over, requesting time to find an exit because he was late for his helicopter pilot lesson, while the Judge, Prosecutor and Officer were ready to begin.

Remote court sessions have reduced proceedings to a litany of reality TV moments that can only be believed if they are witnessed in real time. There is no question that for those people participating and abiding the standard rules of decency, these events are startling, embarrassing, disappointing and demoralizing. When holding court in-person, having security personnel available and requiring people to be in the presence of others imposes a certain sense of accountability and civility that is most certainly lost when allowed to appear on screen without any real sense of importance.

GENERAL PROCEDURE

Some general procedures that take place on a great scale due to the volume of cases heard in the municipal court are made much more difficult in a virtual setting. Simply requesting a Public Defender becomes a multi-week, sometimes multi-month event if we are expected to follow the correct procedure in having a Defendant complete a 5A Financial Questionnaire. What was once a simple 10-minute form that could be completed and reviewed in the same session has now become a process of the Defendant either being mailed or emailed, or downloading the form, filling it out remotely, then mailing or dropping it off back to the court (or not), and then the Court reviewing and scheduling the Defendant back for clarification or decision. The amount of work and time taken for this simple, necessary and commonly requested appointment has tripled. The number of indigent defendants who qualify for and need the assistance of the Public Defender is substantial with a majority of 2C Disorderly Persons complaints necessitating representation.

Interpreter matters have become quite a challenge in virtual court and typically take a significantly longer time due to the logistics of 'moving' parties between the virtual rooms and delays in zoom. A Title 39:4-50, Driving Under the Influence plea with a non-English speaking defendant now takes 30-40 minutes on zoom which is double the time it takes in person.

During virtual trials, there is no way to sequester witnesses when they are in the same room or on zoom together. There is no way to unmute a Defendant when they mute themselves to talk to witnesses in the room with them. There is no way to manually turn a defendant's camera back on if they go dark during a colloquy or trial. With the volume of municipal court, there will inherently be a certain percentage of cases requiring trials and not all of them have consequences of magnitude. Speeding tickets, careless driving with an accident and witnesses, and a host of other charges may not seem significant to an outside observer, but they are most certainly important to the defendant and parties involved in the case, and they deserve a fair hearing without the frustrations and impediments of remote proceedings.

PHYSICAL AND MENTAL HEALTH CONCERNS

In a peer reviewed article, Stanford researchers confirmed what those of us using video-conferencing platforms have long known: "Zoom Fatigue" is very real. These "platforms have design flaws that exhaust the human mind and body," causing "psychological consequences and fatigue." The study explains that "just because you *can* use video doesn't mean you *have* to," and suggests mitigating the amount of use to avoid the negative consequences of prolonged video chats. The reasons why humans suffer adverse effects from prolonged video-conferencing (which is what Court employees have been tasked with for more than a year now) are the following:

1. Excessive amounts of close-up eye contact is highly intense (inducing stress and creating a false sense of intimacy);
2. Seeing yourself during video chats constantly in real-time is fatiguing (inducing stress and causing negative emotions);

3. Video chats dramatically reduce our usual mobility;
4. The cognitive load is much higher in video chats (nonverbal communication and cues are virtually lost in the video-conferencing world, and the brain has to work overtime to compensate and adjust for interpreting meaning).

Most of the suggestions for mitigation involve turning the camera off and moving around, integrating phone calls and in-person meetings when possible, and generally avoiding prolonged video-conferencing if you cannot implement these mitigation techniques. With respect to court operations, we do not have the ability to exercise any of these options. One or more staff members is required to be on the Zoom platform as a moderator for the entire length of the session, the prosecutor, public defender and Judge are all on the video session for prolonged periods (in the case of my joint court, it is an 8-hour day with a recess for lunch.) Some symptoms of “Zoom fatigue” include extreme exhaustion, headache, eye ache and anxiety, which are prevalent among the municipal court staffs and attorneys that I have personally interacted with during the pandemic.

* <https://news.stanford.edu/2021/02/23/four-causes-zoom-fatigue-solutions/>

* <https://tmb.apaopen.org/pub/nonverbal-overload/release/1>

ALTERNATIVES

The Judiciary has a long-standing system for accepting pleas absent an appearance by the Defendant, by way of the plea by mail. This form is still available and perhaps more widely used than ever before now. In 2020, the municipal court resolution portal was launched and offers a digital way to communicate and negotiate with the prosecutor (although this method also leaves something to be desired in that the Court has no opportunity to hear any facts about the case, ie. whether an accident occurred, whether injuries occurred, whether interested parties or victims were consulted, etc.) With these options as viable alternatives, it is, at minimum, worth exploring a hybrid approach of remote and in-person hearings, rather than a blanket adjustment to court operations.

CONCLUSION

The agenda of the Judiciary has been made clear in that regionalization of the municipal courts is the ultimate goal. With the utmost respect for the judicial system in the state of New Jersey and the humble experience of my 11 years working in this system, I believe a mostly remote system does not serve the needs of most of the participants who interface with the Municipal Courts and does a disservice to the standards that we in New Jersey have worked so hard to establish. There are some instances when offering a virtual or digital option makes sense out of fairness, such as when a party is out of state, but those instances can also be satisfied by one of the alternate methods now available through the portal. We are constantly reminded that the Municipal Courts are the front line for most citizen encounters with the judicial system, and yet this is the first time anyone has asked for comment from those of us in the Municipal Court. Morale is low, anxiety is high.

Participants in the zoom court process are annoyed and irritated and question when we will return to “normal.” Perhaps the benefits of convenience for a small portion of the population are outweighed by the complications and inconveniences for the many. Court calendars are further in backlog than they have ever been, average time to disposition for a case is far longer (even for minor matters), costs for administration of cases are higher, and the amount of work necessary to move cases in a remote fashion is drastically multiplied for staff. If the goals of integrity, fairness and quality customer service remain important, the model of fully remote operations should be examined further, with input from those working in the court.

CS Regional is a fully-functioning example of how independent regionalization is possible without the necessity of going remote.

Thank you for your consideration of these comments which are submitted for the purpose of achieving the most efficient and fair method of operating the Municipal Courts in New Jersey, for all stakeholders, from defendants and victims, to attorneys and court staff.

Very truly yours,



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