NOTICE TO THE BAR

COVID-19 – UPDATE ON RESUMPTION OF CRIMINAL AND CIVIL JURY TRIALS; NEXT STEPS

The COVID-19 pandemic forced the New Jersey courts to suspend jury trials in mid-March 2020. Since the onset of the public health crisis, the Supreme Court has authorized temporary modifications to jury operations in order to safely resume criminal and civil jury trials as necessary to protect the rights of the people of New Jersey. This notice provides a comprehensive update on the rollout of hybrid jury trials, which will include primarily virtual selections and socially distanced in-person trials, and answers questions posed by attorneys and jurors.

Summoning Jurors

Modified juror summonses are being issued for petit (trial) jury selections. As adjusted during COVID-19, the summonses inform prospective jurors of the virtual aspects of jury service, noting that the Judiciary will provide electronic devices (with internet capacity as necessary) and assistance to jurors who require technology in order to participate.

Qualification

Jurors still are encouraged to qualify online using the eResponse Juror Portal, which enables responses to the standard questionnaire regarding eligibility to serve as a juror in general and availability to serve as scheduled. Jurors who do not timely respond online receive a hard copy questionnaire that can be completed and returned by mail. Consistent with pre-COVID-19 trends, more than 70% of responding jurors thus far have qualified using the online option. Early data suggests a juror yield similar to pre-pandemic jury pools.

Pre-Reporting Disqualifications and Excusals

Jurors who do not meet the qualification criteria established by N.J.S.A. 2B:20-1 are required to contact the court and substantiate disqualification. Jurors who seek to be excused for any of the grounds set forth by N.J.S.A. 2B:20-10 also must contact the Jury Management Office and supply documentation as necessary

to substantiate their claim. Consistent with N.J.S.A. 2B:20-9 and pre-COVID-19 practices, pre-reporting excusals are handled by the Assignment Judge or designee.

COVID-19 Prescreening

Jury Management staff is communicating with all confirmed jurors to provide information about reporting in a virtual format, explain the health and safety precautions implemented in courthouses, and reiterate COVID-19 screening questions applicable to all persons who report to or occupy Judiciary facilities.

During COVID-19, jurors complete a supplemental questionnaire, which asks if they have tested positive for COVID-19 in the past 21 days; if they have any reason to believe that they or anyone in their household has contracted COVID-19; if they have been in close proximity to anyone who has tested positive or been quarantined for COVID-19; and if they have traveled outside of New Jersey in the past 21 days. Staff also asks each juror if they have any reason why they cannot report for service, whether related directly to COVID-19 (e.g., current diagnosis with the virus) or indirectly (e.g., underlying condition causing an elevated risk of exposure).

Any juror who claims a medical inability to report for service, whether based on COVID-19 or another condition, is required to submit a note from a healthcare provider (without any confidential medical information).

Technology Prescreening and Support

As detailed in the Supreme Court's Plan for Resuming Jury Trials, the first phases of jury selection are being conducted using virtual technology. Accordingly, court staff contacts each juror before the selection date to ask the following questions:

1. Do you have private, uninterrupted access to the internet via a computer or tablet for a few hours each day of the week you are summoned to report?
2. Do you have a functional electronic device (desktop computer, laptop, tablet, or smartphone)?
3. Does your electronic device have a functional web camera, microphone, and speakers?
4. Do you have experience with web conferencing platforms such as Zoom?
5. If known, who is your internet provider?

6. Do you have any limitations on your data or internet plan?

For the virtual phase of petit jury selection, the Judiciary provides technology and assistance to jurors who otherwise could not participate. Jury management staff schedules an appointment to bring a tablet (with Broadband if necessary) to the juror's home. Jurors alternatively may request to pick up technology at the courthouse if they prefer.

Selection of Cases for Trial

Consistent with the Court's July 22, 2020 Order, the first jury trials will be criminal cases involving detained defendants. Jury selections and trials are scheduled in the first three counties: Bergen (September 21, 2020); Atlantic (September 28, 2020); and Cumberland (October 5, 2020).

Courts are notifying attorneys in cases that might proceed to trial soon, and judges are scheduling conferences and walk-throughs in preparation for trials. Judges also are addressing any COVID-19 issues on a case-by-case basis (e.g., current COVID-19 diagnosis of an attorney, party, or witness). Preparations in some counties already have expanded to civil cases, which will quickly follow the first criminal trials.

Locations for Jury Proceedings

Criminal and civil jury trials will be conducted on-site in a courtroom large enough to accommodate all trial participants with social distancing. Courtrooms in each county were selected based on a rigorous review to confirm that jurors and all trial participants could be seated, with appropriate sightlines, with at least six feet of social distancing.

During in-person socially distanced trials, all jurors will be in the same courtroom as the judge and attorneys. Additional locations in the courthouse may be used for sidebar communications, juror breaks, and real-time viewing by family, friends, media, and public observers.

Courthouse Screening

All persons seeking entry to or occupancy of court facilities are screened for COVID-19, with many court locations using thermal scanning as part of that point-of-entry screening process. Individuals – including jurors, attorneys, and other trial participants – who are symptomatic for COVID-19 or otherwise at risk of spreading the virus are not permitted to enter or remain in court facilities.

In addition to the COVID-19 information posted on the Judiciary's Jurors webpage and covered during juror orientation, jurors scheduled to report for the in-person phase of selection and in-person trials also will receive a text message reminding them not to report if they may be exposed to or at risk of transmitting the virus.

Face Masks

The Supreme Court's June 9, 2020 Order requires face masks and social distancing by all persons in non-private areas of court facilities. Signage is posted in lobbies, elevators, hallways, and courtrooms reminding court users of those universal requirements, which are subject to limited exceptions for medical need. Within courtrooms, judges also may temporarily remove or lower their mask, or direct other participants to do so, as may be necessary for audibility and appropriate when other precautions (e.g., plexiglass barriers) are used.

The Judiciary has procured clear face masks that will be provided to all trial jurors and certain other trial participants, including criminal defendants. Jurors will store the mask they are wearing when they report to the courthouse. While participating in trial, they will wear the clear mask, which will be discarded at the end of each day. Jurors will then wear their own stored masks when leaving the courthouse.

Social Distancing

All trial participants are required to avoid close contact, meaning that individuals never will be situated with less than six feet of social distance for more than 10 minutes. Alternative precautions, such as plexiglass barriers, may be used to support brief conversations between attorneys and clients, or between judges and attorneys, in closer proximity (again, for under 10 minutes).

Breaks

Jurors and other trial participants are required to follow public health recommendations and Judiciary safety protocols even during approved breaks. Jurors will enter and leave courtrooms on staggered schedules, with appropriate staff to escort them as necessary, to avoid bottlenecks in shared spaces. To maximize comfort during in-person trials, judges may provide more frequent breaks.

Alternates

As typical for lengthier trials before COVID-19, judges may determine to empanel additional alternate jurors in case some jurors develop conflicts during trial.

Arrangement of the Courtroom

Courtrooms have been reconfigured for jury trials to ensure unobstructed views of participants, including jurors. In many counties, counsel tables have been rearranged to support clear sight lines of jurors who will be seated in the gallery (rather than in the jury box).

Public Access

The Court's July 22, 2020 Order reiterates that public access will be provided for jury trials, including through livestreaming the first Criminal jury trials. Public access also may be provided to interested parties, family, friends, media, and members of the public via live feed to an alternate location in the courthouse. Individuals seeking to observe jury selection should request access in advance, as provided by the Court's April 20, 2020 Order and Directive #12-20, which may be provided by individual invitation to the virtual session or in-person selection phase.

Public access to virtual proceedings is intended to parallel access during pre-COVID-19 in-person operations, meaning, for example, that an observer viewing a virtual jury selection will be permitted access to the main jury room but will not have access to private sidebar questioning conducted in a virtual breakout room.

Sidebars

Sidebar communications can be supported in a number of ways depending on the layout of the courtroom, the duration of the discussion, and other factors. A separate September 11, 2020 notice details options for sidebar communications conducted in courtrooms, in chambers, and in alternate courthouse locations.

Confidential Attorney-Client Communications

The Judiciary will support confidential attorney-client communications in all Criminal and Civil jury trials (and in other virtual and in-person proceedings). Attorneys may speak quietly with their clients while wearing masks and separated by plexiglass barriers or may use available technological options for private communications. Judges will work closely with attorneys to identify one or more acceptable options for communications during trial (and during jury selection) in advance.

Exhibits/Evidence

Depending on courtroom layout and seating arrangements, various technological options may be used to support juror views of witnesses and evidence. Large display screens, individual tablets, and other alternatives will be integrated as necessary. Judges will consult with attorneys and parties before trial to select and implement technological solutions as necessary.

Food

Empaneled jurors will use designated eating areas and will have the option to bring and store their lunch. Court staff also will facilitate ordering and delivery of food to courthouse locations.

Cleaning

The Judiciary has implemented enhanced cleaning protocols for all court facilities, including frequent cleaning of high-traffic and high-touch areas. All areas used by jurors and trial participants – including courtrooms, lunch and break areas, and restrooms – will be cleaned regularly. Hand sanitizer and sanitizing wipes also will be readily available in courtrooms and other shared locations to support as-needed cleaning throughout the day. In the event of any confirmed or

potential COVID-19 exposure in a court facility, the Judiciary will coordinate with the building owner for specialized cleaning as necessary.

Notification of Potential Exposure

The Judiciary recognizes the possibility that a trial participant may be diagnosed or develop symptoms consistent with the COVID-19 virus. In the event of an actual or potential exposure – whether confirmed or unconfirmed – the Judiciary will take appropriate steps to safeguard the privacy of individuals with COVID-19 while providing notice to close contacts and arranging for cleaning.

In the context of jury trials, additional precautions also apply, including existing agreements with the Department of Corrections and County Jails to ensure regular testing of inmates scheduled to appear for in-person court events.

As emphasized in the August 3, 2020 notice, the Judiciary always will prioritize the physical and psychological safety of trial participants, rather than moving forward with a trial despite risk of exposure to COVID-19. If a trial participant discloses a positive COVID-19 test result or advises the court or displays symptoms of COVID-19, the judge will suspend the trial and will not resume until it is safe to do so. Jurors will be informed of notification protocols during the virtual orientation process. Judges also will reiterate COVID-19 restrictions and notification protocols at the start of trial and periodically as necessary.

Future Trials

As established by the Court's July 22, 2020 Order, the first jury trials will be criminal cases involving a single detained defendant. Civil trials will follow shortly thereafter in the first counties (Atlantic, Bergen, and Cumberland). All counties are on target to select juries for criminal trials by the end of the calendar year, and most counties will proceed with civil trials (and multiple criminal trials) in 2020. Ongoing trial frequency will vary by county based on overall volume and resources.

The Supreme Court is committed to prioritizing trials for detained defendants. Notwithstanding the benefits of an initial straightforward trial, the expectation is for subsequent criminal trials to involve multiple defendants and lengthier terms as necessary.

Ongoing Oversight

The Court continues to solicit input from attorneys and others regarding jury trials and all aspects of COVID-19 court operations. As one method of supporting ongoing feedback, the Judiciary has established a new Working Group on COVID-19 Jury Operations ("Working Group").

The Working Group brings together judges, attorneys, and court staff with expertise and involvement in both longstanding and COVID-19 focused groups, including the Supreme Court Working Group on Remote Grand Jury Operations, the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials, and the Supreme Court Committee on Jury Selection in Civil and Criminal Trials. It includes representatives of stakeholder organizations, including the Office of the Attorney General, the Office of the Public Defender, the New Jersey State Bar Association, the County Prosecutors Association of New Jersey, the Association of Criminal Defense Lawyers of New Jersey, the New Jersey Association for Justice, the Garden State Bar Association, the Hispanic Bar Association, the American Civil Liberties Union, and private attorneys.

Going forward, the Working Group will serve as one vehicle for suggesting potential refinements and additional options for exploration. It will provide an avenue for stakeholders to offer real-time commentary regarding virtual and in-person jury operations. The Working Group will consider issues including, but not limited to, technology, health/safety precautions, courtroom protocols, and juror concerns.

The Judiciary will continue to provide information about jury trials and all court operations, including on its public website njcourts.gov. Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 11, 2020