NOTICE TO THE BAR

COVID-19 - First New Jury Trials - Additional Information on Statewide Schedule, Selection of Cases, and Options for Virtual Selection

The Supreme Court has provided additional guidance on the first new jury trials to resume since the mid-March suspension of trials resulting from the COVID-19 pandemic. As detailed in the Court's July 22, 2020 Order and appended Plan for Resuming Jury Trials, new jury trials will be conducted in a hybrid format involving primarily virtual selection followed by socially distanced in-person trials.

The Court's attached September 17, 2020 Order emphasizes that the resumption of jury trials is necessary to protect the rights of criminal defendants, including more than 2,500 indicted defendants who are detained awaiting trial, and for litigants in more than 9,000 ready civil cases. As with all aspects of COVID-19 court operations, the New Jersey courts will resume hybrid jury trials in a manner that supports the health and safety of all court users.

The Court's September 17, 2020 Order clarifies and supplements the provisions of the Court's July 22, 2020 Order as follows:

- Announcing the schedule for the first five jury selections and trials, which will proceed in Bergen, Atlantic, Cumberland, Mercer, and Passaic Counties;

- Reinforcing the prioritization of criminal matters involving detained defendants while providing that the Chief Justice in individual matters may authorize an initial trial not involving a detained defendant, if, for example, multiple cases identified for trial that involve detained defendants are resolved by plea shortly before the trial date, and no other detained cases can practically be prepared and scheduled;

- Permitting as an additional option fully virtual jury selection (rather than a hybrid process involving both virtual and in-person phases), with the consent of the attorneys and approval of the trial judge;

- Confirming that where jury selection is conducted in a hybrid format, judges may permit attorneys to ask limited follow-up questions during the final in-person phase of selection;

- Providing that individual juror responses to the supplemental COVID-19 questionnaire will be provided to attorneys upon request on the condition that those questionnaires must be kept confidential; and

- Clarifying that based on the significant public interest in the resumption of jury trials, the first several jury trials will be livestreamed, while public access going forward may be provided in other ways, including by allowing observers to view proceedings from within the courtroom with social distancing, from another court location with a video feed, or remotely by individual invitation to the Zoom proceeding (which would not be livestreamed).

Questions should be directed to the Office of the Administrative Director at (609) 376-3000.

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

Dated: September 17, 2020

SUPREME COURT OF NEW JERSEY

The Supreme Court in its July 22, 2020 Order authorized the incremental resumption of criminal and civil jury trials in a hybrid format, with primarily virtual jury selection followed by socially distanced in-person trials.

The decision to resume a limited number of jury trials is motivated by the ongoing restrictions of the rights of criminal defendants, including more than 2,500 defendants who have been indicted and are detained in jail awaiting trial, as well as the rights of victims of crime seeking access to the courts to complete a critical step in their recovery. In addition, the extended delay in the administration of civil justice, including more than 9,000 cases awaiting trial today, also compels the resumption of jury trials.

Jury trials are the catalyst for resolving cases, both in criminal and civil matters. This is true even though only a small percentage of cases ultimately are decided by a jury. The availability of a judge and jury ready to hear a case prompts pleas in criminal matters and settlements in civil cases. In contrast, the unavailability of jury trials removes the impetus for case resolution and stalls the wheels of justice. Countless individuals are adversely affected as a result.

For more than six months, the New Jersey courts have sustained court operations to the greatest extent possible without jury trials. During that time, public health authorities have confirmed that COVID-19 trends in New Jersey no

longer require all residents to stay at home, and those same authorities have issued guidance for how businesses, schools, and other institutions including the courts can safely resume some level of in-person activity. Guided by the public health experts and recognizing its duty to uphold the rule of law even when it is difficult to do so, the Court authorized the resumption of jury trials.

The Court's July 22, 2020 Order directed that trials would resume in a limited number of counties and gradually expand statewide. Additional details were provided in an accompanying Notice to the Bar and "Plan for Resuming Jury Trials" (which was updated on August 14, 2020).

Since the date of that Order, a great deal of preparation has taken place in the counties. As of today, jurors in several counties have received summonses and have completed qualification, prescreening, and onboarding for participation in virtual jury selection. Additionally, measures have been implemented in furtherance of safe socially distanced in-person trials.

As we approach the dates for the initial hybrid jury trials, this Order provides additional details about the schedule for new jury trials and clarifies certain requirements for initial and future trials. The information in this Order is consistent with the earlier Order and Plan. It is being issued in part in response to questions and suggestions from stakeholders, including the Judiciary Working Group on COVID-19 Jury Operations.

In furtherance of the incremental resumption of criminal and civil jury trials in a hybrid format, it is ORDERED that:

1. Virtual jury selections will begin first in Bergen County (week of September 21, 2020), Atlantic County (week of September 28, 2020), and Cumberland County (week of October 5, 2020); followed by Mercer County and Passaic County (week of October 19, 2020).
2. To the extent feasible, the first new jury trials in each of the above-listed counties will be criminal cases involving a single detained defendant. The basis for setting those criteria was twofold: one, to prioritize criminal cases involving detained defendants, and, two, to enable each county to gain experience with the hybrid jury trial process in relatively straightforward matters before proceeding to more complex cases. If those criteria cannot be met in in any particular county, the Chief Justice may permit limited adjustments. For example, if multiple cases identified for trial that involve detained defendants are resolved by plea shortly before the trial date, and no other detained cases can practically be prepared and scheduled for trial, trial of a non-detained defendant may be considered. The overall approach, however, will be for all counties to prioritize criminal cases involving detained defendants, while also expanding to civil cases.

3. In lieu of the jury selection process set forth in the Court's July 22, 2020 Order (primarily virtual but with an in-person component), attorneys may request and consent to select a jury in an entirely virtual format. Judges may authorize this fully virtual jury selection alternative with the consent of all attorneys and parties.
4. Where jury selection is conducted as set forth in the Court's July 22, 2020 Order (primarily virtual but with an in-person component), judges may permit attorneys to ask limited follow-up questions during the in-person phase of selection.
5. Attorneys may request and receive copies of the supplemental COVID-19 questionnaire completed by jurors who report for selection on the condition that those completed questionnaires shall be kept confidential and viewed only by the attorney and the client.
6. Because of widespread public interest in the resumption of jury trials, the first several socially distanced in-person jury trials will be livestreamed to the public. Thereafter, public access to particular jury trials may be supported through livestreaming or other options, including permitting observers to be physically present in the courtroom (if consistent with social distancing), or in another location in the courthouse (viewing the proceeding

by video), or via individual invitation to view a non-livestreamed Zoom event.

7. Except as set forth in this Order, all provisions of the Court's July 22, 2020 Order remain in full force and effect.

For the Court,

Chief Justice

Dated: September 17, 2020