NOTICE TO THE BAR

COVID-19 – NINTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE – EXPANDING GRAND JURIES; EXCLUDABLE TIME; RELAXING PRE-INDICTMENT DISCOVERY; PROVISIONAL NEW PRE-INDICTMENT HEARING

The Supreme Court has issued the attached Ninth Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic.

This October 8, 2020 Ninth Omnibus Order continues certain adjustments necessitated during the COVID-19 period, including the prioritization of remote proceedings and permission for electronic signatures, remote or socially distanced depositions, and electronic service on the State of New Jersey. It also includes substantive changes designed to ensure that defendants detained without indictment promptly will have their cases presented to grand juries. To that end, the October 8, 2020 Ninth Omnibus Order includes the following new or updated provisions:

- Reinforcing that grand juries will be selected virtually, and confirming that before December 1, 2020 all counties will have the capacity for virtual grand juries;

- Permitting in-person grand juries, either in court locations, or, if court locations are not available, then in non-court locations as coordinated by the County Prosecutor, with court approval;

- Concluding pre-indictment excludable time in phases, starting with defendants who were arrested and committed to jail before the onset of COVID-19;

- Effective November 1, 2020, relaxing Rule 3:13-3(a) on a temporary basis so that defendants detained more than 90 days are provided discovery sooner; and

- Provisionally adopting new Rule 3:4-7 ("Pre-Indictment Hearing"), to provide a hearing involving the presentation of at least one witness, without adding excludable time attributable to the defendant.

Questions about this notice or the Court's Ninth Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: October 8, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various adjustments to court operations as set forth in a series of Omnibus Orders (March 27, 2020 First Omnibus Order; April 24, 2020 Second Omnibus Order; May 28, 2020 Third Omnibus Order; June 11, 2020 Fourth Omnibus Order; June 25, 2020 Fifth Omnibus Order; July 9, 2020 Sixth Omnibus Order; July 24, 2020 Seventh Omnibus Order; and September 17, 2020 Eighth Omnibus Order).

Those Omnibus Orders detail the significant changes implemented by the New Jersey courts over the past six months, from the abrupt transition from in-person to remote court operations to the ongoing, incremental resumption of in-person events at court facilities. Consistent with guidance issued by the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH), the New Jersey courts have adopted a "remote first" approach to court events, with most proceedings being handled using virtual technologies. At the same time, based on updated health recommendations, additional events are being handled in person. With the first jury trials having resumed in late September 2020, the Judiciary is in the process of resuming those critical in-person proceedings in a manner consistent with public health guidance.

For more than six months, the Court has continued the suspension of in-person grand jury selections and sessions while requiring virtual selections of new

grand jury panels and permitting virtual grand jury sessions. Based on the unavailability of ready grand juries in all counties, the Court also has extended pre-indictment excludable time through October 11, 2020.

More than 2,700 defendants currently are detained in county jails without indictment and without the possibility of indictment (except in those counties with virtual grand juries). That number of unindicted detained defendants will continue to grow unless grand juries are established in all counties and enabled to perform their critical function effectively, efficiently, and consistent with public health requirements.

To that end, this Order announces a comprehensive plan to ensure that all counties have a grand jury panel equipped and ready to convene in a virtual format, and that in addition to those virtual grand juries all counties may convene in-person grand juries if possible consistent with public health recommendations and Judiciary policies. This Order also sets forth a series of steps designed to expedite resolution in cases involving defendants arrested and committed to county jails before or during COVID-19, including by gradually ending pre-indictment excludable time and by allowing eligible defendants detained for more than 90 days to promptly obtain discovery.

Accordingly, it is ORDERED that the following provisions are effective immediately except as otherwise stated herein:

(1) GRAND JURIES

a. In-person grand jury selections remain suspended until further notice;

b. Jurors in all counties have been summoned for new grand jury selections, which will be conducted in a virtual format;

c. Existing grand jury panels also may continue to convene for virtual sessions;

d. On or before December 1, 2020, all counties will have new grand jury panels equipped and ready to convene in a virtual format (with all participants using remote technology);

e. In addition to new virtual grand jury panels, Assignment Judges and County Prosecutors are authorized to convene in-person grand jury panels in court facilities consistent with social distancing and other health precautions (including as to wearing face masks);

f. County Prosecutors also may submit a proposal to conduct grand jury sessions in a non-Judiciary location where (a) there is no reasonable or sufficient Judiciary location available or (b) use of Judiciary facilities would reduce capacity for handling jury trials or other court proceedings. Consistent with those criteria, it is expected that Bergen, Burlington, Camden, Cumberland, Essex, Gloucester, Hunterdon, Morris, Passaic, Salem, Sussex, and Warren Counties may pursue use of non-court locations for grand jury meetings. Any proposal to

convene an in-person grand jury panel in a non-Judiciary location must be approved by the Assignment Judge and the Administrative Director of the Courts; and

(2) CRIMINAL

a. With the empanelment of grand juries in every county on or before December 1, 2020, and the requirement that all counties have at least one virtual grand jury panel and that counties also may have one or more in-person grand jury panels:

(i) For those eligible defendants who have not yet been indicted and were committed to the county jail before March 16, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until January 15, 2021, at which time that extension will end;

(ii) For those eligible defendants who have not yet been indicted and were committed to the county jail on or after March 16, 2020 through May 31, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until February 14, 2021, at which time that extension will end;

(iii) For those eligible defendants who have not yet been indicted and were committed to the county jail on or after June 1, 2020 through October 11, 2020, the provisions of the Court's prior orders regarding excludable are extended until March 14, 2021, at which time that extension will end; and

(iv) For those eligible defendants who have not yet been indicted and are committed to the county jail on or after October 12, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until March 30, 2021.

b. In the calculation of the time period for the commencement of trial for an eligible defendant detained in the county jail, the additional period from October 12, 2020 through January 15, 2021, shall be excluded due to exceptional circumstances, pursuant to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, the statewide limited capacity for jury trials, which period shall be attributable to the court;

c. Pursuant to N.J. Const. Art. VI, sec. 2, par. 3, effective November 1, 2020, and until further order, Rule 3:13-3(a) ("Pre-Indictment

Discovery") of the Rules Governing the Courts of the State of New Jersey is supplemented and relaxed so as to require the prosecutor to provide defense counsel, within seven business days of receipt of a written request for discovery, for an eligible defendant who has not been indicted and has been detained in the county jail for more than 90 days, all available relevant material that would be discoverable at the time of indictment, except as set forth in that paragraph. Notwithstanding the exceptions, any exculpatory information or material shall be provided to defense counsel;

d. The Court here provisionally adopts new Rule 3:4-7 ("Pre-Indictment Hearing") as attached to this Order, pursuant to which an eligible defendant detained without indictment would have the right to a hearing at which the State would be required to produce at least one witness and establish probable cause to support the criminal charges. At the new pre-indictment hearing, the defendant would be afforded the right to cross-examine witnesses who appear at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. The Court will consider any public comments submitted through October 23, 2020, and may make modifications before formally adopting the new Rule; and

(3) JURY TRIALS

a. Jury selection will continue to be conducted in a hybrid manner with *voir dire* questioning primarily in a virtual format, with technology provided by the Judiciary as needed, and some follow-up questioning and the exercise of peremptory challenges in person. As provided by the September 17, 2020 Order, judges also may approve fully virtual *voir dire* questioning with the consent of all attorneys and parties; and

(4) OTHER MATTERS.

The following provisions of the Court's September 17, 2020 Eighth Omnibus Order remain in full force and effect:

- 3b -- Search warrants and communication data warrants
- 4a -- Landlord/tenant proceedings
- 4b -- Courtesy copies in civil matters
- 4c -- Relaxation of Rule 4:64-8(b) for certain foreclosures
- 5a -- Courtesy copies in family matters
- 6 -- Tax Court
- 7 -- Municipal Court
- 8a -- Remote and socially distanced depositions
- 8b -- Electronic service of process on the State of New Jersey
- 8c -- Electronic signatures
- 9 -- Disciplinary matters and fee arbitration

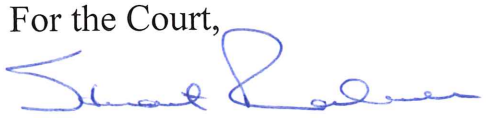
- 10 -- Board of Bar Examiners
- 11 -- Appellate Division

(5) Requests for extensions of time in individual cases, based on specific circumstances, may continue to be submitted by letter in lieu of a formal motion; and

(6) In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice; and

(7) Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,



Chief Justice

Dated: October 8, 2020

Provisional New Rule 3:4-7 ("Pre-Indictment Hearing")

3:4-7. Pre-Indictment Hearing

(a) Eligible Defendant. The court shall conduct a pre-indictment hearing for an eligible defendant, as defined in N.J.S.A. 2A:162-15, who has been charged with an indictable offense, has not been indicted, and is detained.

(b) Scheduling. The court shall schedule the hearing to occur before the expiration of the 90-day period for the return of the indictment pursuant to N.J.S.A. 2A:162-22, adjusted for excludable time, and not earlier than 15 calendar days before that expiration date.

(c) Discovery. Unless previously provided, the prosecutor shall provide to the defendant all available relevant material pursuant to R. 3:13-3(a) no later than three business days prior to the hearing date.

(d) Hearing and Finding. At the hearing, the State must establish probable cause to support the criminal charges. To meet that burden, the State must present oral testimony from at least one witness. The defendant shall be afforded the right to cross-examine any witness who appears at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. Hearsay testimony is permissible. The hearing shall be held remotely unless the court finds good cause to conduct the hearing in-person.

(1) Probable Cause. If from the evidence presented by the prosecutor, the court finds probable cause to believe the offense has been committed and the defendant

committed it, the court may allocate an additional period of time, not to exceed 20 days, in which the return of an indictment shall occur.

(2) No Probable Cause. If from the evidence presented by the prosecutor, the court does not find probable cause, the court shall dismiss the complaint and discharge the defendant. A discharge does not preclude the prosecutor from filing a new complaint and prosecuting the defendant for the same offense.

(e) Return of Indictment. The hearing shall not be held if an indictment has been returned against the defendant.