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Administrative Office of the Courts

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Directive #06-21

[Questions or comments may be directed to the Office of the Administrative Director (609) 376-3000]

TO: **Assignment Judges**
Presiding Judges – All

FROM: **Glenn A. Grant, J.A.D.**

SUBJ: **COVID-19 – Protocol for Matters that Cannot Proceed in a Remote Format Without Consent – In Furtherance of the Supreme Court's Orders Dated April 20, 2020 and February 22, 2021**

DATE: **February 23, 2021**

This directive provides a protocol to support consistent management of cases that require the consent or lack of objection of all parties to proceed in a remote format during the temporary modifications necessitated by the ongoing COVID-19 pandemic, and for so long as court operations are not conducted primarily in person. It sets forth a series of steps (1) to memorialize on the record a party's objection to proceeding remotely, or the inability of counsel to ascertain a party's position; (2) to provide notice to the parties, attorneys, and other participants when a matter is scheduled for an in-person court event based on an objection to proceeding remotely; and (3) to provide an opportunity for participants to request individual adjustments and accommodations that will enable the scheduled court event to proceed. This protocol is applicable to the trial divisions of the Superior Court and to the Municipal Courts, subject to limited exceptions as noted.

Court Events That Only Can Proceed Remotely if Parties do not Object

The Supreme Court in its April 20, 2020 Order affirmed the Judiciary's commitment to continuing court operations in a remote format during the COVID-

19 crisis. That April 20, 2020 Order carved out limited exceptions for particularly serious matters, which would proceed remotely only with the consent of all parties. The Court in its November 19, 2020 Order amended the provisions of the April 20, 2020 Order to provide that "the consent of the parties shall not be required for Family quasi-criminal (FO) matters to proceed remotely."

The Court's February 22, 2021 Order refined the language of the April 20, 2020 Order to avoid unintended delays in cases in which an attorney is unable to communicate with their client and to ascertain their position to proceeding remotely or in person. Accordingly, the Court's February 22, 2021 Order provides:

1. The following matters will be conducted remotely using video and/or phone options only with the consent of all parties:

    a. Sentencing hearings in Criminal, Family Juvenile Delinquency (FJ), and Municipal matters;

    b. Juvenile delinquency adjudications;

    c. Evidentiary hearings and bench trials in Criminal matters;

    d. Evidentiary hearings and trials in Municipal matters that involve a reasonable likelihood of a jail sentence or loss or suspension of license;

    e. Termination of parental rights trials; and

    f. Hearings for an adjudication of incapacity and appointment of a permanent guardian.

2. For matters listed in paragraph 1, the consent of a party will not be required if the party is absent and unreachable. If, despite diligent efforts, an attorney cannot communicate with a client and therefore cannot advise the court of the client's position as to proceeding remotely or in person, the court will determine whether to proceed remotely or in person. In making that determination, the court will consider all relevant factors, including the positions of other parties.

Court Operations During the COVID-19 Pandemic

The Court entered its April 20, 2020 Order when court locations essentially were physically closed to the public. Limited in-person court events followed in "Phase 2" of the Court's Post-Pandemic Plan, starting on June 22, 2020. As court buildings reopened, some matters proceeded to in-person hearings. In other cases, parties who previously had withheld consent changed their position and agreed to proceed remotely.

Throughout the ongoing COVID-19 pandemic, the Judiciary has continued to expand remote operations, including by increasing the numbers and types of events that are conducted using remote technologies. More than 145,000 remote events involving more than 1,800,000 participants have been conducted in the state courts. More than 1,200,000 additional cases have been scheduled for virtual hearings in the Municipal Courts.

At the same time, in-person court operations have waxed and waned based on COVID-19 trends and resource availability. Notwithstanding earlier brief interruptions, all state courts at present are supporting some degree of on-site presence and in-person operations, including for those matters that cannot be conducted remotely without consent. Additionally, Municipal Courts are regularly holding virtual hearings, with most municipal courts also able to schedule limited in-person hearings.

Those limited in-person events are being conducted in compliance with critical public health precautions. Consistent with the Court's June 9, 2020 Order, all people who enter or occupy court facilities must wear masks or other face coverings, subject to narrow exceptions. Those requirements extend to individuals in courtrooms, subject to the discretion afforded judges to permit an individual to lower or remove their mask when other safeguards are in place, as described in the Judiciary's September 22, 2020 notice.

In addition to the requirements to wear masks and maintain social distancing, state courthouses and all courtrooms are subject to reduced occupancy limits, rearrangement and removal of furniture, installation of sanitizing stations, and integration of plexiglass barriers, which steps are designed to minimize risks of disease transmission. Through these interlocking steps, the Judiciary is continuing to provide a safe forum for the adjudication of disputes, including those conducted in person in state court facilities. The Judiciary also is ensuring compliance with Supreme Court protocols that extend to courtrooms in Municipal Courts and is

continuing to support municipalities that are responsible for areas outside of courtrooms.

Commitment to Continuing Court Access and Case Resolution

The Court more than 10 months ago recognized the need to continue the administration of justice to the greatest extent possible even during an unprecedented public health crisis. At the same time, the Court acknowledged that in certain matters with potentially serious or permanent consequences or penalties, parties should have the right to appear in person before a judge, even when it would be technologically feasible to conduct the matter using remote technologies. The Court entered its February 22, 2021 Order to ensure that critical court events could proceed in an appropriate way, consistent with due process protections.

At this time, the courts are operating remotely to the greatest extent practicable. For those specific matters listed in the Court's February 22, 2021 Order, three options are readily available:

1. A remote hearing can be held with the consent of all parties; or
2. If one or more parties object to proceeding remotely, the matter can be scheduled for an in-person hearing; or
3. Where a party's position is unknown because, despite diligent efforts, their attorney cannot communicate with them to ascertain their position as to proceeding remotely or in person, the court may proceed either remotely or in person, taking into consideration all relevant factors, including the positions of other parties.

Establishing Party Position as to Remote vs. In-Person Proceedings; Template Order Scheduling In-Person Hearing

Effective immediately, for those court events listed in the Court's February 22, 2021 Order, attorneys will be required to file a certification that their client does not consent to proceed remotely or that they are unable to communicate with their client and thus cannot advise the court of their preference. A template certification is provided as Attachment A. In matters involving self-represented litigants, the court may require a similar certification or may conduct a colloquy on the record as to the party's position as to proceeding remotely or in person. A template certification for a party who is self-represented is provided as Attachment B.

The judge at a case management conference or earlier hearing may rely on an attorney's representation that their client does not consent to a remote proceeding for the purpose of scheduling an in-person hearing date. In that situation, the attorney will be required to file the certification no later than the next business day.

If and as necessary, the court will enter an Order for In-Person Hearing.[1] That order will schedule the in-person hearing and specify how notice will be served on all parties, attorneys, and other participants. To the extent practicable, the order will direct how other participants, including witnesses, will appear. It also will advise the parties, attorneys, and other participants of the availability to request an individual adjustment (e.g., use of a technology room to participate in a hearing from a separate courthouse location). The order will provide direction about how to direct any request for an accommodation pursuant to the Americans with Disabilities Act. Importantly, the order will advise the parties of the consequences of not appearing for the scheduled in-person hearing. A template order is provided as Attachment C[2].

Conclusion and Questions

It is axiomatic that justice delayed can be justice denied. In the context of significant court events that affect public safety, the welfare of children, and the protection of incapacitated persons, the Judiciary must not permit the COVID-19 pandemic to serve as a basis for indefinite delay. Accordingly, this directive provides a protocol to ensure that matters proceed consistent with the framework

[1] The attached exemplar order is optional, not mandatory and should be used as appropriate. The intent is not to require multiple court orders. In Criminal and other matters with standard scheduling orders, judges simply should ensure that relevant content – including the consequences for a failure to appear – is addressed in the scheduling order. The template also could be customized as an Order or Notice for use by Municipal Courts.

[2] The attached order is appropriate for situations in which a party has communicated directly or through counsel that they do not consent to a remote hearing. It is not appropriate for a situation in which an attorney is unable despite diligent efforts to ascertain or advise the court of their client's position. In that latter situation, the scheduling order should state how the hearing will be conducted (remotely or in person), which, as noted above, is left to the discretion of the court after considering the positions of other parties.

established by the Court's April 20, 2020 Order and refined by the Court's February 22, 2021 Order.

Questions on this Directive may be directed to the Office of the Administrative Director of the Courts.

cc: Chief Justice Stuart Rabner
Surrogates
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Clerks of Court
Special Assistants to the Administrative Director
Division Managers (Civil, Criminal, Family, Municipal, Operations, Probation)

Attachment A

Certification of Counsel – Lack of Consent or Unknown Position as to Proceeding Remotely

Plaintiff ***Plaintiff*** ***-vs-*** Defendant ***Defendant***	SUPERIOR COURT OF NEW JERSEY Example County **DOCKET NO.:** ***Civil Action*** **Certification – Lack of Consent or Unknown Position as to Proceeding Remotely**

I, _____, an attorney at law of the State of New Jersey, certify as follows:

1. I represent _____ in the above matter.

2. The court on _____ proposed to schedule a remote proceeding in the above matter, which pursuant to the Supreme Court's February 22, 2021 Order cannot proceed remotely without the consent of all parties.

3. **[ ] Option 1:** I have advised my client that pursuant to the Supreme Court's February 22, 2021 Order, this matter cannot proceed remotely over their objection.

    a. I have further advised my client that in the absence of consent to proceed remotely, the court will schedule this matter for an in-person hearing.

b. I have informed my client of (a) the options for participating in remote court events, including through use of technology provided by the Judiciary; and (b) the public health precautions implemented by the Judiciary to prevent exposure to the COVID-19 coronavirus.

c. I have advised my client that even for an in-person hearing, the court will determine how other participants, including witnesses, will participate (including whether they will be required to appear in person or to participate remotely).

d. My client, _____, has advised me that my client does not consent to proceed remotely and understands that based on that lack of consent this matter will be conducted in person.

[ ] Option 2: Despite diligent efforts, including _____ _____, I have been unable to communicate with my client. Accordingly, I cannot advise the court of my client's position about proceeding remotely or in person.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Date: _____ Signature: _____

Name: _____

Attachment B

Certification of Party – Lack of Consent to Proceed Remotely

Plaintiff ***Plaintiff*** ***-vs-*** Defendant ***Defendant***	SUPERIOR COURT OF NEW JERSEY Example County **DOCKET NO.:** ***Civil Action*** **Certification – Lack of Consent to Proceed Remotely**

I, _____, certify as follows:

1. I am the _____.

2. The court on _____ proposed to schedule a remote proceeding in the above matter.

3. I understand that pursuant to the Supreme Court's February 22, 2021 Order, this matter cannot proceed remotely over my objection.

    a. I understand that in the absence of consent to proceed remotely, the court will schedule this matter for an in-person hearing.

    b. I have been informed of (a) the options for participating in remote court events, including through use of technology provided by the Judiciary; and (b) the public health precautions implemented by the Judiciary to prevent exposure to the COVID-19 coronavirus.

c. I understand that even for an in-person hearing, the court will determine how other participants, including witnesses, will participate (including whether they will be required to appear in person or to participate remotely).

4. I do not consent to proceed remotely. I understand that based on my lack of consent this matter will be conducted in person.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Date: _____ Signature: _____

Name: _____

Attachment C

Model Order Scheduling In-Person Hearing

Plaintiff ***Plaintiff*** ***-vs-*** Defendant ***Defendant***	SUPERIOR COURT OF NEW JERSEY Example County **DOCKET NO.:** ***Civil Action*** **Order Scheduling In-Person Hearing**

This matter is opened to this court on its own motion. Pursuant to the Supreme Court's February 22, 2021, this matter cannot be conducted remotely if a party objects to the remote format. [If applicable: The court has considered the certifications of _____ or has questioned _____ orally on the record regarding consent to proceed remotely.] At this time, one or more parties has objected to proceeding remotely.

Accordingly, IT IS on this ____ day of _____, 2021; ORDERED as follows:

1. This matter is scheduled for an in-person hearing at the _____ courthouse on _____, 2021 at _____.

2. The parties, attorneys, and all participants in the hearing are subject to the Supreme Court's June 9, 2020 Order requiring face masks and social distancing, subject to narrow limitations, including for temporary removal of face masks in a courtroom if directed by a judge based on the availability of other safeguards.

3. Notice of the in-person hearing shall be served on the parties as follows:

[Insert appropriate option(s), which may include service by certified and regular mail at the last known address of a party who has not appeared or participated in earlier proceedings.]

4. Notice of the in-person hearing shall be served on other participants in the hearing as follows:

   [Insert appropriate option(s)]

5. Although the hearing will be conducted with the parties appearing in person, the court has determined that the following participants may participate using appropriate remote technology:

   [Insert appropriate individuals, including witnesses]

6. Consistent with the Supreme Court's COVID-19 Omnibus Orders, the court will accommodate the legitimate needs of parties, attorneys, and all court users, including, as appropriate, by adjusting the manner in which individuals participate in court events. Any request for an adjustment, including to use technology provided by the Judiciary to participate from a technology room within the court facility, must be submitted by _____ _____, 2021. Such requests must not include confidential medical information.

7. Any request for an accommodation pursuant to the Americans with Disabilities Act must be directed to _____.

8. The court may supplement this order if and as necessary. Absent further court order, the matter will proceed as scheduled. Failure to appear for the in-person hearing may result in [insert appropriate options].

_____

Hon. _____, J.S.C.