NOTICE TO THE BAR AND PUBLIC

COVID-19 – STATEWIDE POLICY REGARDING COVID-19 EXPOSURE RISKS IN JUDICIARY FACILITIES

The New Jersey courts are committed to following public health guidance and supporting the health and safety of attorneys, litigants, members of the public, judges, court staff, and all persons in Judiciary facilities. To that end, the Judiciary has established a statewide policy for handling COVID-19 exposure risks in courthouses and court facilities. This notice is being issued on behalf of the Chief Justice and the Administrative Director. The policy set forth herein applies to the Supreme Court, Appellate Division, Tax Court, and trial divisions of the Superior Court. For Municipal Courts, the municipality has responsibility for enforcing public health protocols regarding COVID-19 cases.

A. The Judiciary has implemented and will continue to enforce policies that minimize risks of potential exposure to COVID-19 in court facilities.

- According to public health authorities, risk of COVID-19 exposure increases with close contact.

The Centers for Disease Control and Prevention (CDC) guidelines on community-related exposures provide that individuals are at risk of COVID-19 exposure if they have **close contact** with someone who is confirmed positive for the virus. Close contact is defined as being closer than 6 feet for 15 minutes or longer. [That 15-minute threshold applies generally. A shorter time may present a risk if, for example, a person comes into direct physical contact with someone who is COVID-19 positive. Out of an abundance of caution, the Court has endorsed a shorter 10-minute threshold for defining close contact in Judiciary facilities.] A contact that is closer than 6 feet for 10 minutes or longer is considered a close contact whether or not either person was wearing a mask or other face covering.

- Contact that is not close does not increase risk of COVID-19 exposure.

According to the CDC and the New Jersey Department of Health (NJ DOH) brief or distant contacts – such as passing by someone in a hallway, sharing an elevator for a few minutes, or being briefly in a courtroom with social distancing – do not increase the risk of contracting COVID-19. Those types of interactions are like other daily life events, such as shopping at a grocery store or entering a restaurant to pick up carryout food. Provided appropriate health precautions are maintained, CDC and NJ DOH guidance indicates that those interactions do not pose an increased risk of contracting COVID-19.

- Judiciary policies are designed to prevent close contact between court users (including judges, court employees, attorneys, litigants, jurors, and others) while in court facilities.

Court users should rarely if ever have close contact with judges, court staff, and others. Consistent with the Supreme Court's June 9, 2020 Order, individuals in community settings and common areas must wear masks and maintain social

distancing, as is required for all occupants in shared areas of government buildings pursuant to Executive Order 163 (issued July 8, 2020). Minimizing close contact and following health and safety protocols – including not coming to court facilities if symptomatic, frequently washing hands, wearing masks, and maintaining social distance – should limit exposure risks in Judiciary facilities.

B. Public health departments are responsible for investigating COVID-19 cases and performing contact tracing to identify and inform individuals who are or may be at heightened risk of developing COVID-19. The Judiciary will cooperate in all contact tracing efforts by the CDC, NJ DOH, and/or local health departments.

Contact tracing is a process used to identify those individuals who have come into contact with persons who have tested positive for a contagious disease, including COVID-19. The State of New Jersey is using contact tracing to identify individuals who have had contact with individuals who test positive for COVID-19. When a person tests positive for COVID-19, the testing lab loads the test data onto the State's secure epidemiological surveillance system, the Communicable Disease Reporting and Surveillance System (CDRSS). The positive case is then shared with the individual's local health department, which will call the positive individual to determine the names of those who they were in close contact with for a specific number of days. Notification of those individuals (the close contacts of the COVID-19 case) is handled by the applicable health department.

The Judiciary will continue to cooperate with public health authorities regarding potential exposures in court facilities, including for purposes of contact tracing and to request additional cleaning of court facilities if recommended by health authorities. The Judiciary also will continue to enforce internal policies that require employees to inform Human Resources if they test positive for COVID-19 (or if they develop symptoms consistent with the virus) and to submit negative test results before reporting to work.

C. Where the Judiciary (rather than a health department) is aware of an actual or suspected case of COVID-19 in court facilities, the Judiciary will notify court users who are or may be at risk.

In some situations, the Judiciary may become aware of a suspected or confirmed COVID-19 case involving a judge, court employee, or other court user. In those cases, the Judiciary will take appropriate next steps, which may include additional cleaning and notification to court users.

- The Judiciary requires judges and employees to disclose if they test positive for COVID-19 or develop symptoms consistent with the virus without other explanation. If a judge or employee has or is suspected of having COVID-19, the Judiciary will provide notice to all close contacts. Notice will be provided as promptly as possible, meaning that the first notification could be by phone, email, or text message. Formal written notice will be provided as soon as possible.

  In the event the Judiciary becomes aware of a <u>potential</u> COVID-19 exposure or a situation that requires notification even in the absence of close contact, all

appropriate steps will be taken, which may include requiring anyone symptomatic to leave the courthouse; suspending any affected court proceedings; appropriate cleaning of the affected area of the court facility; and immediately notifying all individuals currently or recently in the affected area.

- The Judiciary cannot require individuals other than judges and employees to disclose (to the Judiciary) a COVID-19 diagnosis or symptoms. If an attorney, litigant, juror, or other court user who has been in a Judiciary facility discloses that they have or may have COVID-19, the Judiciary will take appropriate next steps based on the situation, which may include arranging for additional cleaning of affected areas; suspending court proceedings; rescheduling in-person court events as virtual proceedings; and providing appropriate notice to judges, court employees, litigants, jurors, and others.

    - **Example #1**: An empaneled juror contacts the court to advise that they cannot report as scheduled because they have symptoms consistent with COVID-19 without other explanation. In this situation, there should be no actual risk to other trial participants based on compliance with health protocols, including wearing masks, maintaining social distancing, and practicing good hygiene by washing hands or using hand sanitizer. However, from a psychological safety perspective, it is reasonable to expect that other jurors would have difficulty feeling comfortable and focusing on the trial based on fear of potential exposure. In general, it would be appropriate for the judge to suspend trial proceedings for 14 days (the quarantine period for asymptomatic individuals with a potential COVID-19 exposure) and then resume with or without the one juror after that period. The court would promptly notify all trial participants using available phone, text, and email options (including, for jurors, through the Jury Management System) of the possible COVID-19 case, the minimal actual risk to them, and the extra steps that the Judiciary is taking to support their safety. The notice would not disclose the name of the symptomatic juror.

    - **Example #2**: An empaneled juror contacts the court to advise that they are not reporting because their spouse has been exposed to COVID-19, and although the spouse is asymptomatic, just to be safe the entire household is self-quarantining for 14 days. In this case, there is no actual risk to the trial participants and no reason that the trial cannot continue without the absent juror. The judge would give an instruction to the jury similar to any other case in which a juror becomes unavailable midtrial.

    - **Example #3**: An attorney contacts the court the day after appearing for an hourlong in-person hearing to advise that although they do not have symptoms, they just tested positive for COVID-19. The attorney reports that they wore a face mask and had no close contact with the judge, other counsel, their client, or other court users. In this situation, there is no increased risk to other court users. Regular cleaning of the courtroom and common areas of the courthouse already would have been conducted. The Judiciary would not provide notice (since there are no close contacts).

Conclusion and Questions

All court users are required to follow Judiciary policies and guidelines issued by the CDC and NJ DOH, including not visiting court facilities when sick, washing hands, wearing masks, and maintaining social distance. By doing so, the risk of exposure to COVID-19 in Judiciary facilities will remain very low. 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.

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

Chief Justice Stuart Rabner

Hon. Glenn A. Grant, J.A.D.

Dated: August 3, 2020