
From: Kersten Kortbawi <kkortbawi@greenbaumlaw.com>
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Subject: [External]FUTURE OF COURT OPERATIONS – REMOTE AND IN-PERSON PROCEEDINGS
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Dear Judge Grant,

I write in response to your July 16, 2021, request for comments on the Future of Court Operations Notice to the Bar and Public. My comments address a portion of Item 6(a) – Motion arguments in all trial divisions of the Superior Court and the Municipal Courts.

With respect to motion arguments, I suggest that such hearings should, in general, be held in-person and should proceed remotely upon consent from all parties. There are four basis for my recommendation.

First, the ability to argue a motion, especially one involving complex questions of law or intricate facts, is inherently challenging when conducted remotely. When the hearing is conducted by telephone, the orator is unable to visibly observe the court and the adversary, impeding her ability to adjust the argument in response to their non-verbal reactions. For the same reason, attorneys are impeded in their ability to advise their clients as to whether the court found an argument or position persuasive. Regardless of whether the hearing is conducted by telephone or videoconference, it can be challenging to determine when a speaker (be it the court or another attorney) has concluded their statement. Remote proceedings also prohibit attorneys from observing the motion judge hearing other motions, such that they cannot ascertain what issues or facts a particular judge finds compelling or insignificant in a given issue. There is also a requisite inspiration for the attorney that is derived by sitting at counsel table, before the court, when advocating for her client. Indeed, the inherent value of arguing motions in person was recognized in the Notice to the Bar given that hearings before the Supreme Court and the Appellate Division of the Superior Court will primarily be conducted in person.

There is also something to be said for having the attorneys on one case to be in the same room together. It is not uncommon for an issue to be resolved, a discovery event to be scheduled, or a case to be moved closer to settlement when the attorneys see each other face to face, without having to pick up the telephone to commence a meet and confer. Similarly, during these and other discussions, attorneys can learn valuable information about their case, including what their adversaries think about a particular issue or whether they believe that a jury could make a finding of liability. Conducting motion hearings remotely forecloses this valuable avenue for obtaining intangible information that can benefit clients, attorneys, and the court.

Third, the quality of the transcript of the motion hearing is jeopardized when the arguments are conducted remotely. Background noise, feedback, and poor internet connections hamper the transcriber's ability to prepare an accurate transcript. For an exercise that undoubtedly relies on the words that are spoken in support of or in opposition to an argument, accurately transcribing the proceedings is a paramount concern.

Finally, and perhaps most importantly, motion hearings are where many young lawyers begin to develop their skills in the courtroom. In addition to learning the way of the courtroom (e.g. which counsel table belongs to the defendant or how to speak on the record), motion hearings provide young lawyers with the best opportunity to watch other, more senior attorneys, perform at oral argument. So often, young lawyers benefit from observing their more experienced colleagues by watching how they approach an issue or address the court. Generally eliminating the opportunity for

professional enrichment afforded by conducting motion hearings in person would be a disservice to the next generation of litigators who will likely have to wait for their chance to second chair a trial before they can speak on their feet in court.

Notwithstanding the foregoing, I recognize the convenience that hearing motions remotely provides to the court and to attorneys. Certainly, the inevitable quandary of an attorney having to argue a motion in Passaic County and Camden County on the same day can easily be resolved through remote proceedings. Likewise, counsel appearing pro hac vice can avoid booking a plane ticket to argue a motion, thereby saving the client thousands of dollars. However, these conveniences should not cause the court to automatically rely upon remote motion hearings. Rather, in-person motion hearings should be the default rule, with remote hearings being held if counsel and the court agree that the circumstances of a particular case are amenable.

Thank you for your consideration.

Respectfully,

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