

## **NOTICE TO THE BAR**

### **COVID-19 – UPDATED GUIDANCE ON REMOTE PROCEEDINGS IN THE TRIAL COURTS; OPTIONS FOR OBSERVING COURT EVENTS AND OBTAINING VIDEO AND AUDIO RECORDS; COURT AUTHORITY TO SUSPEND THE COMMENCEMENT OF CERTAIN CUSTODIAL TERMS**

The Supreme Court has issued comprehensive updated guidance regarding remote proceedings in the trial courts during the COVID-19 pandemic. A copy of the Court's April 20, 2020 Order is attached.

#### **Most Proceedings to Continue Using Remote Options – Consent Required Only for Certain Matters**

The Order reinforces that most court events that can be conducted using video or phone options will proceed, even over the objection of an attorney or party. However, the following court matters will proceed remotely only with the consent of all parties: (a) sentencing hearings in Criminal, Family, 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. The Court's Order comports with current practice and supports the continuity of routine as well as emergent court functions during the COVID-19 crisis.

#### **Livestreaming Technology Primarily Allocated for Criminal Matters**

Over the past month, the New Jersey courts have leveraged technology to enable remote proceedings in all divisions of the trial courts as well as in the Supreme Court, Appellate Division, and Tax Court. Our utilization of technology to advance the work of the courts is considered to be a national model. Nevertheless, our resources are finite, and the Court has determined to prioritize livestreaming for most criminal matters and to permit livestreaming for court events in other divisions based on an individualized determination.

#### **Real-Time Access to Court Events Available in All Divisions**

The April 20 Order provides that interested persons may request real-time access to observe events that are not livestreamed (so long as those events are not proscribed from public access). Requests to observe an event that is not livestreamed should be directed to the judge handling the matter. Requests should be submitted in advance by email if possible. An individual permitted to observe a court event in real-time must comply with the Supreme Court Guidelines on Electronic Devices in the Courts and other applicable Judiciary policies that prohibit the unauthorized

transmission of video, audio, or photographic records absent specific written permission of the Assignment Judge or designee.

### Additional Options for Obtaining Audio or Video Records of Court Events

Records of remote court proceedings will continue to be available according to longstanding Judiciary policies. Requests for an audio record on a CD should be submitted to the vicinage transcript office along with the required \$10.00 fee.

In addition to this established process, the Order provides that individuals may obtain a video or an audio record of a remote court event, and the timeframe for providing that record will be expedited for victims. The Administrative Director will promulgate a form for individuals to request an electronic (video or audio) file of a court event, free of charge. Requests and responses will be submitted using email, and the requesting party will receive a password to access the electronic file. Individuals who obtain a video or audio record of a court event conducted remotely must comply with all applicable Judiciary policies, again including the Supreme Court Guidelines on Electronic Devices in the Courts.

### Events Guidance for All Divisions

The Court has delegated to the Administrative Director responsibility to develop and maintain lists of typical events in each division of the trial courts (Civil, Criminal, Family, and Municipal) with information as to the remote options (Zoom, Scopia, Microsoft Teams, phone) that may be used for those events. A first iteration of this detailed events guidance will be posted in the attorney and self-help sections of the Judiciary's public website.

The lists are intended to provide guidance to attorneys and parties as to whether their court matter likely or possibly will be livestreamed, in part so that requests to livestream (or not livestream) can be addressed in advance. The lists also will assist attorneys in determining whether to request use of a particular technology, including to accommodate interpreting needs or other issues. The events guidance will be refined in the coming weeks, and court users should consult the Judiciary's website for the most current version.

### Authority to Stay the Commencement of Certain Custodial Terms

The Court previously has recognized the harms attendant to detention in jails and other facilities during the COVID-19 pandemic. To that end, the April 20 Order authorizes judges to stay the commencement of certain custodial terms in Criminal, Family, and Municipal matters, as well as to stay adjudications to secure placements in juvenile delinquency matters. The Order requires detailed notice to victims to ensure an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding.

Next Steps and Questions

In addition to posting the initial Events Guidance Lists, we will be issuing a directive that implements the provisions of the Court's April 20 Order.

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



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

Dated: April 20, 2020

## **SUPREME COURT OF NEW JERSEY**

In response to the ongoing COVID-19 coronavirus pandemic, the New Jersey Judiciary is implementing all available measures to apply social distancing in court operations, consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control. At the same time, courts throughout the state are endeavoring to meet their responsibilities to the people and the State of New Jersey. To that end, the Judiciary has transitioned on an emergent and temporary basis to a court system in which most, if not all, matters that are presently being conducted are proceeding via video or telephone. As a result, for the past month, many matters at all levels of the court system have been conducted and resolved through virtual proceedings. Based on current information, the need to use this alternate approach will continue for a number of months.

Accordingly, it is ORDERED that during the pendency of the COVID-19 public health emergency:

1. All court proceedings, including but not limited to Central Judicial Processing (CJP) hearings and pretrial detention hearings, will continue to be conducted remotely using video and/or phone options to the greatest extent possible. Excluded from this provision are (a) jury trials and petit and grand jury selections, which will not be

conducted remotely, and (b) matters listed in paragraph 2 of this order, which will be conducted only with the consent of all parties.

2. 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, 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.

3. The provisions of this order shall apply to all trial courts in the State of New Jersey, including the Municipal Courts, the Tax Court, and the Superior Court (Civil, Criminal, Family, General Equity, Probate, and Special Civil).

4. The Court delegates to the Administrative Director of the Courts the authority to identify the particular video and/or phone technology

options that should be used for the different events that may be conducted remotely. That information will be made readily available to attorneys and the public, and may be updated periodically.

5. (a) Because the Judiciary's ability to livestream court events that are conducted remotely will be limited by the availability of finite resources, Civil, Family, General Equity, Probate, Special Civil Part, and Municipal matters will not be livestreamed absent a showing of good cause, with the court to make that determination.

(b) Certain categories of proceedings should not be livestreamed because of risks in a virtual setting that may not exist in the same way or to the same degree in an in-person forum, for example, the risk of inadvertent disclosure of confidential information in a civil commitment hearing or of information about the location of a party in a hearing on domestic violence or for other protective orders.

(c) Interested persons, including members of the public and the media, may request real-time access to observe events that are not livestreamed but are not proscribed from public access. Such access will be permitted, subject to resource limitations, as determined by the court.

6. Records of all events that are not livestreamed will be preserved on CourtSmart or other Judiciary approved recording systems and, except for closed proceedings, will be accessible to the public, as follows:
  - a. Video or audio records of events that are not livestreamed will be available within 48 hours after conclusion of the event, except that such records will be available to victims or persons with an individualized compelling interest as soon as possible and no later than within 24 hours. Those timeframes may be extended only in exceptional circumstances.
  - b. Written transcripts will be available as provided by N.J.S.A. 2B:7-4 and Rule 2:5-3.
7. Consistent with the following guidelines and the limitation set forth above that sentencing hearings will proceed remotely only with the consent of all parties, the court may stay the commencement of the custodial portion of a sentence because of risks attendant to the COVID-19 public health emergency, as follows:
  - a. In Criminal matters, the court may stay the commencement of the custodial portion of a sentence that consists of a county jail term of 364 days or less. If the custodial term is a condition of probation, the defendant shall report to Probation as directed

notwithstanding the stay of the commencement of that custodial term.

- b. In Family quasi-criminal (FO) matters, the court may stay the commencement of the custodial portion of a sentence that consists of a county jail term of 180 days or less. If the custodial term is a condition of probation, the defendant shall report to Probation as directed notwithstanding the stay of the commencement of that custodial term.
- c. In Municipal Court matters, the court may stay the commencement of the custodial portion of the sentence that includes a term of incarceration.
- d. To determine whether to stay the commencement of a custodial term because of the ongoing public health emergency, judges should consider whether a stay would pose a risk to the safety of the public or the defendant. In that regard, judges must consider and make findings on the risk of danger to the public, the risk of flight, and the seriousness of the offense, among other factors relevant to public safety. Judges should also consider the positions of the defendant, the prosecution, and any victims.



- e. The court shall state reasons on the record for immediately commencing or staying the start of a custodial term.
  - f. Unless the court orders otherwise or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, no-contact orders, Megan's Law registration obligations, and driver's license suspensions will commence upon sentencing regardless of whether a stay is ordered.
8. Consistent with the principles set forth in paragraph 7, in Family juvenile delinquency (FJ) matters, the court may stay the custodial portion of a disposition to a secure placement for a term of 60 days or less. If the disposition to a secure placement is a condition of probation, the juvenile shall report to Probation as directed notwithstanding the stay of the commencement of the secure placement term.
9. Implementation of the provisions of this order, including (a) the determination of whether an event should be livestreamed, (b) the availability of timely access to records of court proceedings, and (c) the right to participate in sentencing, including on the issue of whether to stay commencement of a custodial term, shall take into

consideration the rights of the victims in each such matter. In that regard, County Prosecutors and other law enforcements agencies shall, to the extent applicable, provide notice to victims of the scheduling of the sentencing hearing, including how the hearing is proposed to be conducted and whether the court will consider staying the commencement of the custodial portion of a sentence on application of the defendant or on the court's own motion. Victims shall have an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding.

10. This order is intended to be implemented in tandem with the Court's previous orders addressing the COVID-19 pandemic.

11. 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: April 20, 2020