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ROBERT ANZILOTTI
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To All Members of the Bergen County Bar

Re: Disposition of Criminal Cases During Covid-19 State of Emergency

Dear Members of the Bergen County Bar:

I hope that all of you and your loved ones are in good health and doing well during this health crisis. All of us are facing serious challenges in the practice of our profession, no matter what area of the law we are engaged in. However, criminal practitioners and their clients, particularly clients who are incarcerated awaiting disposition, face uniquely serious challenges. Many criminal cases have been delayed because of the health crisis and the uncertainty this presents to detained defendants adds to the common burdens all of us are sharing.

I would therefore like to encourage all attorneys engaged in the practice of criminal defense in Bergen County to evaluate the cases of their clients awaiting disposition in the Bergen County Jail and to contact their counterpart Bergen County assistant prosecutors to discuss resolution of these cases. I hope that together we can resolve some of these cases and relieve the uncertainty of your clients and the burden on the jail and jail population.

In this regard, our Assignment Judge has informed me that some members of the private bar are mistaken about my office's policy regarding conferencing cases with the judiciary. I would therefore like to take this opportunity to explain my office's policy.

As you all know, R. 3:9-3(c) provides that judges may only take part in plea discussions with the consent of counsel. The Attorney General has mandated strict adherence to that rule. See Attorney General Law Enforcement Directive ("A.G. Directive") No. 2016-6v2.0, Sec. 12.7. However, the A.G. Directive permits assistant prosecutors to consent to judicial participation in plea discussions with the approval of a supervising assistant prosecutor. *Id.* My office follows the A.G. Directive, as it must. It is and has been the policy of my office that in appropriate cases, with the consent of Section Chiefs or Trial Team Leaders, assistant prosecutors may conference cases with the court and defense counsel, provided the defendant has previously tendered a reasonable counter-offer to the state's plea offer, and has agreed to plead guilty to the counter-offer.



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I know that the state and defense will not always agree on what constitutes a reasonable plea offer or counter-offer, and that there may be disagreement with the Attorney General's escalating plea policy, which my office must also strictly follow. See *Id.* at Sec. 12.6. However, I believe that in most cases experienced criminal practitioners have a good understanding of the factors that inform productive plea negotiations and what constitutes a reasonable disposition of a criminal case. Both the state and defense counsel seek justice. I hope we can continue to work together to produce just resolutions in all Bergen County criminal cases.

In closing, I once again wish all of you and your loved ones the best of health and safety during this trying period.

Sincerely,



MARK MUSELLA
BERGEN COUNTY PROSECUTOR

MM/kk