



**THE CASE FOR CHANGE:  
JUSTICE ACCESS INITIATIVE  
COVID-19  
IMPACT REPORT**

**APPENDIX**

**SUBMITTED JANUARY 25, 2021**



## TABLE OF CONTENTS

	<u>PAGE</u>
<b>APPENDIX.....</b>	<b>1</b>
• Phase I Report Org Chart .....	3
• Bar Blast & Feedback .....	5
• Agendas for Crisis Team Mtg (including pre-crisis team meetings) .....	14
• Team Leader letter .....	99
• FAQs .....	103
• Chief Justice Orders .....	111
• Local Chief Judge Orders .....	200
• July 7, 2020 Field Guidance from AOC .....	251
• July 10, 2020 26 <sup>th</sup> Judicial District TCA Memo .....	298
• Change Without Fear Webinar slide deck .....	387
• Selected Articles .....	410





# PHASE I REPORT ORGANIZATION CHART

## JusticeAccessInitiatives 2020

### Phase One Report: Organizational Chart

MCB “Teams Communication Platform with Zoom” (2)

President Health Gilbert (1)

Co-Chairs: Kathi Lucchesi – Hon. Chase Saunders (2)

JAI Crisis Core Team (14)

Team Liaisons (7)

#### Criminal Ecosystem (3)

#### Civil Sector Teams (4)

##### State – Federal Executive Participants

###### Interface

1. DA
2. PD
3. Federal Court Clerks
4. State Court Judges
5. State Clerk of Court
6. Probation
7. Sheriff
8. Magistrates
9. Defense Bar

##### Civil Sector Teams (10)

1. Magistrates/Evictions/
2. Judgments/Defaults/Collections
3. Clerks/Estates/Foreclosures/SP
4. Family Law
5. Real Estate/locations/titles/ROD
6. Litigation
7. Dispute Resolution/Evic/Space
8. Pro Se – Indigent
9. Immigration
10. TechEd/Webinars/ChatBot

###### Interface

##### State/County Planning Exec Networks

1. Key Court Officials
2. Trial Court Administrator
3. Clerk of Court
4. Facilities Committee
5. Remote Proceedings Committee
6. Pro Se Center
7. Chief Judges of Sup/Dist Ct.s
8. Register of Deeds
9. Chief Justice
10. Administrative Office of Courts
11. Dispute Resolution Commission
12. County
13. City

##### TimeLine

Launch Date: August 3<sup>rd</sup>

Reports Due Date: Mid October 10-11 reports

Report Submission to MCB: November 1

Publication of Report: TBD

Use in preparation of Phase I Implementation Phase: TBD

Requisite public-private partnership Needs Confirmation Survey: TBD

Development of ongoing Team-Interface Group communications platform: TBD

Development of ongoing Educational/chatbot communications group: TBD



## **BAR BLAST & FEEDBACK**

**From:** [MeckBar](#)  
**To:** [Shelby Benson](#)  
**Subject:** MCB's Justice Access Initiative Kicks Off  
**Date:** Monday, July 27, 2020 7:34:12 AM

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### **MCB's Justice Access Initiative**

At the May 21, 2020, MCB Annual Meeting, now MCB President Heath Gilbert announced the creation of the Justice Access Initiative to prepare recommendations on how to move the legal profession forward and provide meaningful access to justice in a post-pandemic world.

#### **JAI Purpose Statement:**

An accessible justice system is required if a community is to be healthy. The Justice Access Initiative is a platform for the development of the innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system we must rapidly implement to provide access to the justice system ecosystem with a consideration on all of its sectors and specialties.

The Justice Access Initiative is commissioned to facilitate the legal community's development of an action plan to address the effects of the pandemic on those using and seeking legal services. An examination of problems, solutions, enabling technologies, education, implementation and training strategies will be examined. A multi-sector report will be issued within 90 days of program launch to the Mecklenburg County Bar.

The work of the JAI has been divided into a Criminal Sector & a Civil Sector. A Technology-Education Sector relates to both of those sectors.

#### **Criminal Sector:**

This sector will examine the impact on defendants, counsel, citizens, law enforcement and the administration of justice at the state & federal levels.

#### **Civil Sector:**

This sector has been divided into several smaller teams by either functionality or area of practice. The teams and their focus are as follows:

- **Clerk's Practice:** Filings, defaults, judgments & collections, foreclosures,

estates, executions, & guardianships

- **District/Superior Court Practice:** Motions hearings/bench trials, jury trials, discovery/subpoenas/releases, & filings
- **Magistrate's Practice:** Evictions, small claims, & filings
- **Dispute Resolution:** Arbitration & Mediation
- **Family Law**
- **Real Estate:** Notary, Commercial, & Residential
- **Immigration**
- **Indigent Services/Administrative Matters:** Pro Se, Social Security, & Veteran's Affairs

### **Technology-Education/Cybersecurity:**

This sector will examine the technologies, such as remote hearing and trial technologies, associated with the online delivery of justice-related services. The educational requirements associated with the changes of adoption and adaptation to new ways of accessing and providing justice is also a topic. Cybersecurity is a critical part of a consideration of new technology and education.

**The JAI welcomes input from all members of the MCB. This is your chance to provide a lasting impact on the future of the legal profession. If you have thoughts or ideas you want to share, [please click here](#) to fill out the JAI input form and your information will be shared with the appropriate team leader(s).**

The Justice Access Initiative is co-chaired by the Hon. Chase Saunders and Kathi Lucchesi. Thanks to the following MCB members for serving on the JAI: Hon. Carla Archie, Courtney Ballard, Brian Cromwell, Jim Gronquist, Prof. Susan Luck, Rick McDermott, Emon Northe, Anne Tompkins, Hon. Elizabeth Trosch & Assistant Clerk Mandana Vidwan.

### **Mecklenburg County Bar & Foundation Center**

2850 Zebulon Avenue  
Charlotte, NC 28208

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## Justice Access Initiative Input Form

Please select the applicable sector for your feedback and your response will be shared with that sector's team leader. Please provide your contact information in the event the team leader needs to follow up.

Name

First

Last

Firm/Organization

Email

Phone Number

 -  - 

###

###

####

Please select the applicable sector for your comments/suggestions: \*

If you selected Other, what topic/issue does your input address?

Problems/Issues to Consider:

Proposed Solution(s): Please identify the proposed solution(s) as immediately doable, intermediately doable or goal to work toward. Be specific and include any budget considerations, if applicable.

Additional Comments/Feedback:

Submit

**From:** [Wufoo](#)  
**To:** [Leah Campbell](#); [Shelby Benson](#)  
**Subject:** Justice Access Initiative Input Form [#3]  
**Date:** Tuesday, July 28, 2020 1:25:32 PM

---

Name Amy L. Cox Gruendel

Firm/Organization Resolution Mediation Services, LLC

Email [amy@ResolutionMediationServices.net](mailto:amy@ResolutionMediationServices.net)

Please select the applicable sector for your comments/suggestions: \* Civil: Dispute Resolution (Arbitrations, Mediations)

If you selected Other, what topic/issue does your input address? 7615 Colony Road, Suite 210

Problems/Issues to Consider:

COVID caused a massive backlog of cases at all levels of Court, with particularly hard hit to Small Claims and District Court. Consider the situation in District Court:

1. At the time the courts reopened, there were approximately 160 summary ejectment appeals and trials de novo (appeals after entry of an arbitration award) pending in the Civil District Court. Trials in these matters are not expected to resume before September.
2. As of July 20, hearings have resumed on the 1800 cases that were pending in Small Claims at the time courts reopened June 1. The majority of these cases are summary ejectment cases that will be appealed to the District Court directly. Others are Small Claims matters that will first be appealed to non-binding arbitration, then granted a trial de novo in District Court. The point is, the number of appeals filed in District Court will be higher than normal as Small Claims Court works through its own backlog of cases. If existing trials are not being scheduled until September, we can only guess as to when appeals being filed now will be heard in District Court.
3. Additionally, a whole new batch of evictions will be filed when the protections afforded by the CARES Act expire. The CARES Act suspended all eviction actions for nonpayment of rent through July, then required a 30 day notice period. Come September, an avalanche of eviction actions is expected. This onslaught will eventually filter its way to District Court as tenants appeal eviction orders to buy themselves more time. Given that the District Court must first schedule trials in cases currently pending, then move to appeals filed between July 20 and September before it can get to the deluge of appeals filed post-CARES Act, it could easily be well into 2021 before these District Court trials are set.

Proposed Solution(s): Please identify the proposed solution(s) as immediately doable, intermediately doable or goal to work toward. Be specific and include any budget considerations, if applicable.

A project that offers a solution to the District Court's woes is immediately doable. In fact, it's already underway. It just needs funding.

The Dispute Resolution Hotline was created by two Dispute Resolution Professionals – both certified mediators selected to serve on the Dispute Resolution Council – as a pro bono effort to reduce the case backlog in Civil District Court cases. Over the last several months, project creators Amy Cox Gruendel and Salim Uqdah have poured over 400 hours of their time and effort into the Hotline. The

Hotline is now a fully formed program with a full project description (including budget needs) available upon request.

Hotline founders began working with local attorneys, community groups, and courthouse personnel as part of a Mediation Working Group within the Civil District Courts Committee. This Committee was charged with the responsibility of developing a plan for the Civil District Court to transition to operations in a post-COVID world. Efforts quickly focused on the use of mediation conferences to give litigants a chance to resolve their disputes without the need for a trial.

Under the plan developed, the Hotline will provide services for up to 100 District Court cases per month. Simple nonpayment cases will be referred to community partners to qualify for rental assistance that can help them avoid eviction and resolve their case. Litigants in cases involving actual legal

controversies will be offered a 90-minute remote mediation conference with a skilled mediator accustomed to handling civil matters involving attorneys as well as pro se mediators. All mediators working with the Hotline program will be certified Superior Court mediators who have graciously agreed to provide their services pro bono.

The Hotline program has the support of the North Carolina Bar Association's Dispute Resolution Section and has received the attention of local non-profits and business leaders. The District Court plans to implement the Hotline in August.

Despite the interest in, support behind, and planned use of the program, unfortunately, the Hotline is not yet funded. The Hotline will move forward even without funding, but the services offered will be far less robust than the program we could offer if funded. Hotline creators are seeking funding from a variety of sources and will likely end up creating a patchwork of funding support, so any amount provided would be greatly appreciated.

Additional Comments/Feedback:	We have put so much time and effort into the Dispute Resolution Hotline project and know it will be a great success. It is EXACTLY aligned with Justice Access Initiative. We would love to share more information with you. Please feel free to contact Amy Cox Gruendel at 704.604.0371.
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**From:** [Wufoo](#)  
**To:** [Leah Campbell](#); [Shelby Benson](#)  
**Subject:** Justice Access Initiative Input Form [#4]  
**Date:** Monday, August 10, 2020 2:05:14 PM

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Name	Mark Henriques
Firm/Organization	Womble Bond Dickinson
Email	<a href="mailto:mark.henriques@wbd-us.com">mark.henriques@wbd-us.com</a>
Phone Number	(704) 331-4912
Please select the applicable sector for your comments/suggestions: *	Civil: Magistrate's Practice (Evictions, Small Claims, Filings)
Problems/Issues to Consider:	Delays in in-person proceedings before magistrates.
Proposed Solution(s): Please identify the proposed solution(s) as immediately doable, intermediately doable or goal to work toward. Be specific and include any budget considerations, if applicable.	<p>British Columbia developed an on-line dispute system to handle small property and condo disputes. It is entirely on-line has worked well.</p> <p>Here is a link explaining the system: <a href="https://www.legalevolution.org/2019/06/is-access-to-justice-a-design-problem-099/">https://www.legalevolution.org/2019/06/is-access-to-justice-a-design-problem-099/</a></p>
Additional Comments/Feedback:	Happy to discuss. I chair a NC State Bar Committee looking at Regulatory Reform and Bill Henderson, author of the Legal Evolution site, shared the British Columbia solution with is.

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**From:** [Wufoo](#)  
**To:** [Leah Campbell](#); [Shelby Benson](#)  
**Subject:** Justice Access Initiative Input Form [#2]  
**Date:** Monday, July 27, 2020 1:11:15 PM

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Name	Claire Shapack
Firm/Organization	Legal Aid of NC, Inc.
Email	<a href="mailto:claires@legalaidnc.org">claires@legalaidnc.org</a>
Phone Number	(704) 594-8687
Please select the applicable sector for your comments/suggestions: *	Civil: District/Superior Court (Motion Hearings, Jury Trials, Discovery, Subpoenas, Releases, Filings)
If you selected Other, what topic/issue does your input address?	Also affects Magistrates and Technology
Problems/Issues to Consider:	The poor and elderly have limited technology equipment and capability. There are a lot of poor litigants.
Proposed Solution(s): Please identify the proposed solution(s) as immediately doable, intermediately doable or goal to work toward. Be specific and include any budget considerations, if applicable.	Intermediately doable: In-person option and/or rooms in courthouse with public access to computers and other necessary equipment.
Additional Comments/Feedback:	Even the WebEx JSCs in District Court prevented some clients from participating.

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**From:** Wufo  
**To:** Leah Campbell; Shelby Benson  
**Subject:** Justice Access Initiative Input Form [#5]  
**Date:** Tuesday, September 15, 2020 1:28:08 PM

Name	Thomas Westmoreland
Firm/Organization	Westmoreland Legal, PA
Email	<a href="mailto:thomas@westmorelandlegalnc.com">thomas@westmorelandlegalnc.com</a>
Phone Number	(704) 334-1221
Please select the applicable sector for your comments/suggestions:	Technology/Cybersecurity
If you selected Other, what topic/issue does your input address?	10934 Back Ridge Rd
Problems/Issues to Consider:	The electronic filing/ court interaction technology is confusing and not user friendly at best (JI) and just useless at worst.
Proposed Solution(s): Please identify the proposed solution(s) as immediately doable, intermediately doable or goal to work toward. Be specific and include any budget considerations, if applicable.	<a href="https://www.bizjournals.com/charlotte/news/2019/07/29/nc-signs-85m-contract-for-electronic-court-filing.html#:~:text=NC%20signs%20%2485M%20contract%20for%20electronic%20court%20filing%20system&amp;text=The%20N.C.%20Administrative%20Office%20of,for%20the%20state's%20court%20system.">https://www.bizjournals.com/charlotte/news/2019/07/29/nc-signs-85m-contract-for-electronic-court-filing.html#:~:text=NC%20signs%20%2485M%20contract%20for%20electronic%20court%20filing%20system&amp;text=The%20N.C.%20Administrative%20Office%20of,for%20the%20state's%20court%20system.</a> <a href="https://www.nccourts.gov/assets/documents/publications/Civil-eFiling-Fact-Sheet-2018-19.pdf?TQCifjlmNSTgx1Or25Me5a6r7oHpZrOTI">https://www.nccourts.gov/assets/documents/publications/Civil-eFiling-Fact-Sheet-2018-19.pdf?TQCifjlmNSTgx1Or25Me5a6r7oHpZrOTI</a>
Additional Comments/Feedback:	This should be the biggest focus due to the limited physical access to the courts for COVID and those without dependable transportation resources. Additionally, we are one of the largest bar's in the state, it is a little embarrassing how far behind other counties we are regarding technology. Thanks.

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**AGENDAS FOR  
CORE CRISIS TEAM MEETINGS  
(INCLUDING PRE-CRISIS  
TEAM MEETINGS)**

### **AGENDA FOR MEETING – CREATION OF AN ORGANIC PLATFORM MIRRORING THE JAI**

1. Introduction – cv exchange
  - a. KL – background, education, family, practice, civic activity, adm. Interest, goals
  - b. CBS – same information
  - c. Folks in the loop: Kozlowski, Bridges, Luck, Upton, Betz, Worthy, Wright, Marvel, Bush, DeVore,
2. Debrief of meeting with Heath and Leah
  - a. Impressions
  - b. To do list
  - c. Setting up comms platform with Leah
3. When you receive your first email from somebody who hears Heath's address?????
4. Discussion of Platform
  - a. Online Justice
  - b. Program Office
5. COMMS PLATFORM
6. Critical next meetings
  - a. Comms
  - b. Team leaders
  - c. Justice execs
7. Critical documents re effort
  - a. Gilbert address

### **ONLINE JUSTICE – Justice Moves to the Cloud**

**5.20.20**

Everything has changed since COVID19 escaped from Pandora's Box. For every kind of human activity, an existential imperative requires rapid innovation. As this relates to the legal system, access to justice has been reduced. The path forward requires action. "Here are seven ways the legal system has permanently changed as a result of COVID19 ( Robert Ambrogi [www.abovethelaw.com](http://www.abovethelaw.com) )."

1. **Lawyers no longer see technology as something to be feared.**
2. **Lawyers will no longer see innovation as a threat to the guild.**
3. **Regulatory reform will accelerate.**
4. **Courts will accelerate innovation and online services.**
5. **More legal services will be delivered remotely and online.**
6. **Law firms will reduce their physical footprints.**
7. **Legal education will be revamped.**

Here is the model for the development of an innovative, systemic strategy:

1. Establish a small working group
2. Involve judges
3. Identify case types
4. Involve sector specialists
5. Create an implementation task force including a project champion
6. Liberate the task force
7. Set deadlines for a final report – 90 days
8. Creates a wild animal group – no bad ideas
9. Build a MVP = minimal viable product
10. Make it mandatory – THE ONLINE PROCESS IS THE DEFAULT PROCESS
11. With off ramps
12. Make it the system
13. Test it, look for metrics,
14. Pilot the program and test it

The skeletal infrastructure for an implementation plan requires three things:

1. A COMMUNICATIONS platform
2. A TECHNOLOGY platform
3. An EDUCATION platform

## **DRAFT Project Introduction (updated this date)**

This is a draft project description of a proposed MCB post COVID access to justice initiative for discussion by the President and Executive Committee of the Mecklenburg County Bar.

The MCB needs to determine the scope and personnel commitment before the project begins in order to ensure that expectations do not exceed performance capability. For instance, at least two staffers will need to be assigned fulltime to performing the tasks and duties described herein.

I recommend a six months project with a review at the end of that time. I expect to spend several hundred hours on this project in that time. Tens of thousands of hours will be expended by the attorneys volunteering and participating in this project. Hundreds of video-assisted meetings and calls will be required.

It is critically important to get a clear understanding of what MCB staff and resources can do for me to successfully chair of this initiative. This work cannot have a low priority. It must be “on demand”.

The work can only be as good as the quality of the documentation and communications and, once poor products are released, you can't get them back. Quality, clarity, professionalism on Day One! Should there be the need to bring in organizational professionals to set this up, I have a recommendation.

## **Program Office Description – the Platform**

**Name:** The MCB Justice Access Initiative ( JAI )

a virtual program office

**Mission:** Develop and implement a 22<sup>nd</sup> Century, post COVID19 user-responsive, accessible justice system  
- moving the justice system to the cloud

**Qualities:** broadly-based, transparent, technology-assisted, data driven,

**Tasks:**

- Establish a program office to administer the initiative
- Develop and respond to the challenges posed by the COVID pandemic
- Implement strategies for greater access to justice in a post pandemic world
- Creation of a healthy justice system
- Exploration of alternatives to current procedures, engagements and practices
- Focus on developing a justice system responsive to the needs of its users
- Applications of modern technologies to assist in the delivery of legal services by attorneys and community partners
- Encourage transformative ideas and technologies to revolutionize the delivery of legal services
- Expand the justice system definition to include all sectors of the economy
- Reduce increasing inequities in access
- Focus on adaptive strategies to free up court time for cases mandating court appearances
- VAC, VAP, VAT, VAM Technology and technology education as accelerators of team reforms
- Develop a series of sector action plans into a functional justice ecosystem
- Deliver a collective summary of team work products within 120 days

**Program Office:** The MCB will administer and staff a Communications and Project Platform as a priority.

**MCB Communications Platform:**

- **A Communication and Project Platform** - This platform encompasses coordination and dedication of resources required to ensure disciplined, outcome-oriented work, including project management resources, calendars and timelines, research and reports, status updates and progress reports, and participant and stakeholder access (transparency). It connects the overarching SOI to the allocation of responsibilities among work groups and ensures discrete work groups see the work of their peers. It prevents duplication and promotes teamwork and consolidation of overlapping ideas. It provides a clear view of tasks and progress-to-task in understandable form. It is a destination (web page/work bench) for stakeholders as a tool for orientation to the work and a pathway to engagement and raising questions. It limits speculation and interpretation by providing consistent messages and status.
- The MCB will provide the staff and technical expertise resources to administrate the Initiative
- One of the positions will an MCB Project Coordinator.

- One of the positions will have duties for scheduling hundreds of zconferences
- One of the positions will be technical support updating the website concerning this initiative and sending out communications, conducting surveys, etc.
- The MCB will prepare a task timeline and monitor the timeline for compliance
- The MCB uses the zoom platform and will be providing technical support re meeting scheduling
- The MCB will manage the communications platform and documents management system
- The MCB will serve as the data aggregator, publisher,
- The MCB will serve as the information collector and disseminator
- The MCB will be able to multiple team meeting scheduling
- The development of a survey to the members of the MCB to gain insights is a priority
- At least full

#### Phases Deadlines:

- Identification of Rudder Team
- Development of Program office and rudder team within 30 days
- Launch of Phase I
- Phase I--Developmental survey/action plan – WHAT DO WE NEED TO DO ? ( 6 months )
- At the end of 6 months, the project will be reviewed.
- Phase II--Implementation action plan – HOW ARE WE GOING TO DO IT ?

**Participants:** members of the legal, business, and academic communities

**MCB leadership:** The Executive Committee of the MCB ( **name all the members** ) commissions the formation of The MCB Access to Justice COVID Initiative

**Entity model:** The MCB Access to Justice COVID Initiative will be organized following the model of a “team of teams” - TOT

#### Team of Teams- TOT - structure:

- Identify multiple topics of study for team task development
- Commission multiple teams to focus on the problem, technology, and training to fix it
- Teams to address the multiplicity of issues facing the justice system caused by the pandemic
- Teams’ work will include a focus on how to improve service delivery to every legal sector including those in specialized courts
- Designate multiple team chairs
- The teams will meet “virtually” and are responsible for reporting
- The teams will prepare a report concerning the issues and action plans to be combined with the work of other teams
- The teams will work under a deadline
- Teams will engage in brainstorming and the use of surveys to identify problems to solve
- Multiple teams will engage in concurrent tasks with a managed timeline
- Video-assisted conferencing will be used to expedite and facilitate team meetings

#### Team and Team Leader Identification:

- Team leaders will be designated in the next three weeks so that work can begin ASAP



- Team leader instructions will be prepared
- The MCB has commissioned Chase Saunders, a former Mecklenburg County Senior Resident Superior Court Judge and Chief District Court Judge currently practicing in dispute resolution to Chair The MCB Access to Justice COVID Initiative

Team Category	Team Leader/s	Problem Description	Solution Description	Requirements
MCB Co chairs	Saunders/Lucchesi			
MCB Communications				
Technology	Demian Betz WFC Earl Roberts MSFT			
Education/Training				
Debtor Creditor	Heather Culp			
Estates Division	Holly Norvell			
Evictions/Foreclosure				
Guardianship				
Judicial Sales				
Magistrates Courts	Chris Bazzle			
District Courts	Judge Marvel			
Superior Courts				
Register of Deeds				
Federal Court				
Sheriff				
Legal Services				
TCA - MCB Interface				
Family Law	Tom Bush			
Plaintiff's Bar				
Defense Bar	Jack Wright			
Civil Motions				
Civil Trials				
Corporate Counsel				
Managing Partners				
Mediation	Sarah Kromer			
Arbitration				
Real Property				
Federal Court				
Dispute Resolution	Ketan Soni			

**501(c)(3) Revenue Conduit Partner:** The MCBF is the perfect vehicle to accept funds to be used to further the objectives of the initiative

**TOT: Team leader appointment and categories associated w/ MCB committees and practice areas :**

- CLE ( umbrella entity implementing training across all teams in the platform in the new model )
- Courts and court-related organizations
- Corporate counsel
- Managing partners organization
- Debtor-Creditor
- Defense bar
- Dispute resolution
- Estates department
- Evictions
- Family Law
- Federal bar
- Foreclosures
- Guardianship
- Managing partners
- Plaintiff's bar
- Real Property
- TCA – MCB Interface
- Technology
- Collaborative Partners – MCB Interface ( Chief Justice Committee, NCBA )

**The MCB Access to Justice COVID Initiative Survey**

**( Fillable returnable form )**

Now is your chance to have your voice heard!

Now and post corona, your practice is and will continue to change for we are in a transformational moment.... If it is a repetitive task, software can do it and somewhere, someone will figure out how to do it. Telework. Telemed. Telelaw. Remote videoconferencing in the new “low touch economy” will become the norm. The expansion and creative use of the technology will sweep the legal business. The legal counseling, relationship counseling using tools to enhance “high touch” with your clients and other lawyers have sustainable value. As we all adapt to the future, our interactions and the functioning of the court system, we must find solutions in order to serve our clients and the public. Please take this practice survey to answer these two questions:

Question One: How can videoconferencing and other technology be used to provide better access, accountability, and economy in a best practices court system?

Question Two: What administrative rules could be implemented which would expedite the disposition of legal business?

Question Two: How can the practicing lawyer economically provide services to the expanding population needing affordable advocacy access?

The purpose of the practice survey is to gather information about problems which need to be solved.

1. As to each member of the bar, practice specialist, or provider of legal support services
2. As to each court: Clerk of Superior Court, Magistrates, District and Superior Court
3. Identify reforms which need to be made, i.e. where the problems are;
4. Propose solutions to those problems with a focus on technology solutions such as videoconferencing. This would include considering solutions in use by global countries which are using video processes to conduct activities such as judicial sales, etc.
5. Identify the technology and training associated with technology solutions;
6. Identify the enabling process, i.e. what you need to do in order to affect change; and,
7. Identify the party who can make change happen including: clerks and judges through local rules, the Chief Justice through judicial codes of conduct and rules, and/or the Legislature.

The following spreadsheet contains information fields. This is a way to gather information concerning how to improve operations in areas such as: estates processing, small claims and summary ejectment hearings, motions practice in the District and Superior Court, family law deadlines, videoconferencing hearings, etc. Now is a time for collaborative action and the DRC is positioned to provide a convening voice in a necessary conversation.

Clerk of Court Clerk, Magistrate, District, Superior	Practice Focus Description of practice area which would benefit from changes	Practice Solution Description of how the problem can be solved and implemented	Technology/Training Identify any technology which can be used to solve the problem; eg. Expanded use of videoconferencing	Enabling Process
<b>Clerk</b> Estates Records Extensions Hearings Judicial sales Other				
<b>Magistrate</b> Small Claims Ejectments Collections Other				
<b>District</b> Motions Discovery practice Entries of Default Remote witnesses Family Court Other				
<b>Superior</b> Civil motions Video depositions Remote witnesses Unavailable witnesses Other				

Register of Deeds Filing Recordation				
Notaries Video notarization				
Other areas				

**Fill out the form online or scan and email to:**

---

**Thank you for your participation!**

---

Heath Gilbert, President  
Mecklenburg County Bar 2019 - 2020

### **Notes and Platform Draft**

#### **5/12/20 Notes re Gilbert, Upton, Saunders ZC:**

1. Architecture for transformation
2. Platform
  - a. How do we open the courts
  - b. Find people who might be interested
  - c. Funding around healthy communities, social justice, and equity
3. I suggest that once you have a statement of intent
  - a. Goals of success within some period of time
  - b. Allows bar to lead, while acknowledging long-simmering perceptions

- c. Lead in a way to get national attention
4. Need discipline
  - a. Who the hell do they think they are
  - b. Need a statement of intent
  - c. Build a process for that
  - d. There is a general map of a gateway
  - e. How do I get involved
  - f. How do I measure it
  - g. Gateways and go – no go
  - h. Transparency
  - i. Let them know up front what you want
  - j. Final note – awareness of issues
  - k. They want to hear justice, equity, transparency, technology
  - l. IT follow strategy; realistic assessment of organizational bandwidth
5. Work groups own the process and have a responsibility
  - a. Everybody is responsible for doing their job
  - b. Doing a report
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6. We need to design a system which permits access to justice
7. We need make that available; and utilized for enhanced perception of the Bar
8. We are going to be hard pressed to have counsel
9. Domestic arena
10. Standing policy team – team 1 **TYPES OF TEAMS: Policy, Productivity, Practice Section, Tech/Ed**
11. Productivity team – team 2

#### Concept brainstorming

- Healthy justice community
- The Great Reassessment
- Healthy law firms –
  - a. ( Zoom CLE ) transitioning in each sector to the pandemic economy
  - b. ( Zoom CLE ) for each of the groups
  - c. ( Zoom CLE ) virtual conferencing
- FOMO – FOGO
- Remote readiness
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- Triage
- VAC, VAP, VAM, VAT,
- VADR = video assisted dispute resolution team: develop best practice guide for arbitration and mediation in collaboration with the NCDRC and national dispute resolution organizations such as the AAA, JAMS, etc.

#### Potential Teams associated with MCB committees and practice areas in alpha order

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- Defense bar
- Dispute resolution
- Estates department
- Evictions
- Family Law
- Federal bar
- Foreclosures
- Guardianship
- Managing partners
- Plaintiff's bar
- Real Property
- TCA – MCB Interface
- Technology

## **REMARKS BY MCB PRESIDENT Heath Gilbert – NEWS RELEASE PREP**

**A Call to Action by the MCB:** Now is the time for all attorneys to come to the aid of justice in their community. As a part of that effort, the MCB announces the....

**There are decades when nothing happens - There re weeks when decades happen.....Lenin**

## 5.22.20 Notes: ZC with Lucchesi/Luck/Saunders

### AGENDA FOR MEETING

1. Introductions
2. Mission of JAI
3. Structure/Tasks/Deadlines

### **MCB POST PANDEMIC: JAI = Justice Access Initiative ORGANIZATIONAL-TASK-TIMELINE FLOW CHART**

PHASE I ORGANIZATIONAL DEADLINE	TASKS	DEADLINE
<p>PROGRAM OFFICE</p> <ol style="list-style-type: none"> <li>1. Communications platform               <ol style="list-style-type: none"> <li>a. Rudder Team interface</li> <li>b. Internal External communications</li> <li>c. Scheduling</li> <li>d. Interaction with teams</li> <li>e. Uploading Team data</li> </ol> </li> <li>2. RUDDER TEAM               <ol style="list-style-type: none"> <li>a. MCB President Heath Gilbert</li> <li>b. MCB Director Leah Campbell</li> <li>c. Co-Chairs Lucchesi/Saunders</li> <li>d. Jim Gronquist</li> <li>e.</li> <li>f.</li> <li>g.</li> </ol> </li> </ol>	<p>Address and Charge Key Official contacts Develop Comms Platform Prepare organizational chart Approve JAI initiative news to Bar Develop JAI new to Public with CC Comms Platform Comms: Internal/External Rudder team buildout Prep. Team leader charge Facilitate/Coordinate/Support Prepare JAI information for MCB Prepare JAI information for public Develop surveys Interface with NCCSC Collect sector reports Prepare report for submission</p> <p>Crim. Justice Sectors Coordinator</p> <p>Recording Secretary Meeting scheduling coordinator Data uploader</p>	<p>May 21.2020</p> <p>June 30</p>
TEAM OF TEAMS SECTOR STRUCTURE		

1. TEAM LEADER a. Charge to Team Members 2. TEAM MEMBERS 3. TEAM TASKS a. Study b. Identify problems c. Identify solutions i. Minimal viable option ii. Interim goals iii. Optimal goals d. Identify technology required e. Identify education required f. Propose rules and forms g. Identify implementation strategy h. Compile report i. Submit report	Sector channel study/report	
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5.21.20 Notes: ZC with Lucchesi/Saunders

#### **AGENDA FOR MEETING – CREATION OF AN ORGANIC PLATFORM MIRRORING THE JAI**

1. Introduction – cv exchange
  - a. KL – background, education, family, practice, civic activity, adm. Interest, goals
  - b. CBS – same information IOC, MHA, JI, TOH, CIAS, CRSI, CMECK,
  - c. Folks in the loop: Kozlowski, Bridges, Luck, Upton, Betz, Worthy, Wright, Marvel, Bush, DeVore,
2. Debrief of meeting with Heath and Leah
  - a. Impressions
  - b. To do list
  - c. Setting up comms platform with Leah
3. When you receive your first email from somebody who hears Heath's address?????
4. Discussion of Platform
  - a. Online Justice
  - b. Program Office
5. COMMS PLATFORM
6. Critical next meetings
  - a. Comms
  - b. Team leaders
  - c. Justice execs
7. Critical documents re effort
  - a. Gilbert address





"Today I issued new emergency orders about court operations across North Carolina. The orders extend some filing deadlines, postpone jury trials until July 31 and require in-person court operations to take place with some defined restrictions to ensure safety protocols like social distancing and routine cleaning take place.

My orders over the last two months put much of the work of the courts on pause. Those delays, while difficult, were necessary to reduce the risk of illness for our court personnel and for the public.

Even so, our courts are open, they have been open, and they will remain open. Even with dramatically reduced staff and limited resources, local courts have handled more than 20,000 cases a week all across North Carolina since the pandemic began.

And, local leaders have spent the last two months taking as much of their work as possible online, to include court hearings conducted by teleconference, while carefully planning new strategies to continue the work of our courts as fully as possible while keeping the public and our personnel safe.

Next month, we will begin to hear more of the cases that have been postponed, but we will do so with your health and safety as our primary concern.

I want to be very clear – until this public health threat has passed, it cannot be business as usual for our court system. Calling together large groups of people for crowded sessions of court risks the health of our court personnel and every member of the public who is summoned to appear.

Court is going to look different for a while. Dockets will be smaller. Cases will be heard online. We're going to have to socially distance in the courthouse.

North Carolinians are resilient and resourceful, and we approach our challenges with a spirit of cooperation and innovation that I know will carry us through the challenging days ahead.

In service,

Cheri Beasley,  
Chief Justice

P.S. Visit [NCcourts.gov](https://nccourts.gov) for updates on the Judicial Branch's COVID-19 response. Please follow the guidance of Governor Cooper, DHHS and the CDC. Additional information on COVID-19 in North Carolina can be found at [ncdhhs.gov/covid-19](https://ncdhhs.gov/covid-19).

Everything has changed since COVID19 escaped from Pandora's Box. For every kind of human activity, an existential imperative requires rapid innovation. As this relates to the legal system, access to justice has been reduced. The path forward requires action. "Here are seven ways the legal system has permanently changed as a result of COVID19 ( Robert Ambrogi [www.abovethelaw.com](http://www.abovethelaw.com) )."

1. Lawyers no longer see technology as something to be feared.
2. Lawyers will no longer see innovation as a threat to the guild.
3. Regulatory reform will accelerate.
4. Courts will accelerate innovation and online services.
5. More legal services will be delivered remotely and online.
6. Law firms will reduce their physical footprints.
7. Legal education will be revamped.

Here is the model for the development of an innovative, systemic strategy:

1. Establish a small working group
2. Involve judges
3. Identify case types
4. Involve sector specialists
5. Create an implementation task force including a project champion
6. Liberate the task force
7. Set deadlines for a final report – 90 days
8. Creates a wild animal group – no bad ideas
9. Build a MVP = minimal viable product
10. Make it mandatory – THE ONLINE PROCESS IS THE DEFAULT PROCESS
11. With off ramps
12. Make it the system
13. Test it, look for metrics,
14. Pilot the program and test it

The skeletal infrastructure for an implementation plan requires three things:

1. A COMMUNICATIONS platform
2. A TECHNOLOGY platform
3. An EDUCATION platform

## **DRAFT Project Introduction (updated this date**

This is a draft project description of a proposed MCB post COVID access to justice initiative for discussion by the President and Executive Committee of the Mecklenburg County Bar.

The MCB needs to determine the scope and personnel commitment before the project begins in order to ensure that expectations do not exceed performance capability. For instance, at least two staffers will need to be assigned fulltime to performing the tasks and duties described herein.

I recommend a six months project with a review at the end of that time. I expect to spend several hundred hours on this project in that time. Tens of thousands of hours will be expended by the attorneys volunteering and participating in this project. Hundreds of video-assisted meetings and calls will be required.

It is critically important to get a clear understanding of what MCB staff and resources can do for me to successfully chair of this initiative. This work cannot have a low priority. It must be “on demand”.

The work can only be as good as the quality of the documentation and communications and, once poor products are released, you can't get them back. Quality, clarity, professionalism on Day One! Should there be the need to bring in organizational professionals to set this up, I have a recommendation.

## **Program Office Description – the Platform**

**Name:** The MCB Justice Access Initiative ( JAI )

a virtual program office

**Mission:** Develop and implement a 22<sup>nd</sup> Century, post COVID19 user-responsive, accessible justice system moving the justice system to the cloud

**Qualities:** broadly-based, transparent, technology-assisted, data driven,

**Tasks:**

- Establish a program office to administer the initiative
- Develop and respond to the challenges posed by the COVID pandemic
- Implement strategies for greater access to justice in a post pandemic world
- Creation of a healthy justice system
- Exploration of alternatives to current procedures, engagements and practices
- Focus on developing a justice system responsive to the needs of its users
- Applications of modern technologies to assist in the delivery of legal services by attorneys and community partners
- Encourage transformative ideas and technologies to revolutionize the delivery of legal services
- Expand the justice system definition to include all sectors of the economy
- Reduce increasing inequities in access
- Focus on adaptive strategies to free up court time for cases mandating court appearances
- VAC, VAP, VAT, VAM Technology and technology education as accelerators of team reforms
- Develop a series of sector action plans into a functional justice ecosystem
- Deliver a collective summary of team work products within 120 days

**Program Office:** The MCB will administer and staff a Communications and Project Platform as a priority.

**MCB Communications Platform:**

- **A Communication and Project Platform** - This platform encompasses coordination and dedication of resources required to ensure disciplined, outcome-oriented work, including project management resources, calendars and timelines, research and reports, status updates and progress reports, and participant and stakeholder access (transparency). It connects the overarching SOI to the allocation of responsibilities among work groups and ensures discrete work groups see the work of their peers. It prevents duplication and promotes teamwork and consolidation of overlapping ideas. It provides a clear view of tasks and progress-to-task in understandable form. It is a destination (web page/work bench) for stakeholders as a tool for orientation to the work and a pathway to engagement and raising questions. It limits speculation and interpretation by providing consistent messages and status.
- The MCB will provide the staff and technical expertise resources to administrate the Initiative
- One of the positions will be an MCB Project Coordinator.
- One of the positions will have duties for scheduling hundreds of zoom conferences
- One of the positions will be technical support updating the website concerning this initiative and sending out communications, conducting surveys, etc.
- The MCB will prepare a task timeline and monitor the timeline for compliance
- The MCB uses the zoom platform and will be providing technical support re meeting scheduling
- The MCB will manage the communications platform and documents management system
- The MCB will serve as the data aggregator, publisher,
- The MCB will serve as the information collector and disseminator
- The MCB will be able to manage multiple team meeting scheduling
- The development of a survey to the members of the MCB to gain insights is a priority
- At least full

**Phases Deadlines:**

- Identification of Rudder Team
- Development of Program office and rudder team within 30 days
- Launch of Phase I
- Phase I--Developmental survey/action plan – WHAT DO WE NEED TO DO ? ( 6 months )
- At the end of 6 months, the project will be reviewed.
- Phase II--Implementation action plan – HOW ARE WE GOING TO DO IT ?

**Participants:** members of the legal, business, and academic communities

**MCB leadership:** The Executive Committee of the MCB ( **name all the members** ) commissions the formation of The MCB Access to Justice COVID Initiative

**Entity model:** The MCB Access to Justice COVID Initiative will be organized following the model of a “team of teams” - TOT

**Team of Teams- TOT - structure:**

- Identify multiple topics of study for team task development
- Commission multiple teams to focus on the problem, technology, and training to fix it
- Teams to address the multiplicity of issues facing the justice system caused by the pandemic
- Teams’ work will include a focus on how to improve service delivery to every legal sector including those in specialized courts
- Designate multiple team chairs
- The teams will meet “virtually” and are responsible for reporting
- The teams will prepare a report concerning the issues and action plans to be combined with the work of other teams
- The teams will work under a deadline
- Teams will engage in brainstorming and the use of surveys to identify problems to solve
- Multiple teams will engage in concurrent tasks with a managed timeline
- Video-assisted conferencing will be used to expedite and facilitate team meetings

**Team and Team Leader Identification:**

- Team leaders will be designated in the next three weeks so that work can begin ASAP
- Team leader instructions will be prepared
- The MCB has commissioned Chase Saunders, a former Mecklenburg County Senior Resident Superior Court Judge and Chief District Court Judge currently practicing in dispute resolution to Chair The MCB Access to Justice COVID Initiative

Team Category	Team Leader/s	Problem Description	Solution Description	Requirements
MCB Co chairs	Saunders/Lucchesi			
Rudder Team	Lucchesi, Cromwell, Gronquist, Leah Campbell Ann Tompkins Heath Gilbert Dedicated employee YLD secretary			
MCB Communications				
Criminal System	Jim Gronquist			
DA	SpencerMerriweather			
PD	Kevin Tully			
Technology: hardware, software, cybersecurity	Clark Walton Demian Betz WFC Earl Roberts MSFT			
Education/Training				
Cybersecurity	Clark Walton			

No Limits Tech Team	Earle Roberts/Demian Betz			
Debtor Creditor	Heather Culp			
Estates Division	Holly Norvell			
Evictions/Foreclosure				
Guardianship				
Judicial Sales				
Magistrates Courts	Chris Bazzle			
District Court Rep				
District Ct Family Law	Judge Marvel			
Superior Courts	Judge Trosch			
Register of Deeds				
Federal Court				
Sheriff				
Legal Services (ODS) Advocates	Ken Schorr/Cathy Patton LANC			
TCA - MCB Interface				
Family Law	Tom Bush			
Plaintiff's Bar				
Defense Bar	Jack Wright			
Civil Motions				
Civil Trials				
Corporate Counsel				
Managing Partners				
Mediation	Sarah Kromer			
Arbitration				
Real Property				
Federal Court				
Dispute Resolution	Ketan Soni			

**501(c )(3) Revenue Conduit Partner:** The MCBF is the perfect vehicle to accept funds to be used to further the objectives of the initiative

**TOT: Team leader appointment and categories associated w/ MCB committees and practice areas :**

- CLE ( umbrella entity implementing training across all teams in the platform in the new model )
- Courts and court-related organizations
- Corporate counsel
- Managing partners organization
- Debtor-Creditor
- Defense bar
- Dispute resolution
- Estates department
- Evictions
- Family Law
- Federal bar
- Foreclosures

- Guardianship
- Managing partners
- Plaintiff's bar
- Real Property
- TCA – MCB Interface
- Technology
- Collaborative Partners – MCB Interface ( Chief Justice Committee, NCBA )

## **The MCB Access to Justice COVID Initiative Survey**

**( Fillable returnable form )**

Now is your chance to have your voice heard!

Now and post corona, your practice is and will continue to change for we are in a transformational moment.... If it is a repetitive task, software can do it and somewhere, someone will figure out how to do it. Telework. Telemed. Telelaw. Remote videoconferencing in the new “low touch economy” will become the norm. The expansion and creative use of the technology will sweep the legal business. The legal counseling, relationship counseling using tools to enhance “high touch” with your clients and other lawyers have sustainable value. As we all adapt to the future, our interactions and the functioning of the court system, we must find solutions in order to serve our clients and the public. Please take this practice survey to answer these two questions:

Question One: How can videoconferencing and other technology be used to provide better access, accountability, and economy in a best practices court system?

Question Two: What administrative rules could be implemented which would expedite the disposition of legal business?

Question Two: How can the practicing lawyer economically provide services to the expanding population needing affordable advocacy access?

The purpose of the practice survey is to gather information about problems which need to be solved.

1. As to each member of the bar, practice specialist, or provider of legal support services
2. As to each court: Clerk of Superior Court, Magistrates, District and Superior Court
3. Identify reforms which need to be made, i.e. where the problems are;
4. Propose solutions to those problems with a focus on technology solutions such as videoconferencing. This would include considering solutions in use by global countries which are using video processes to conduct activities such as judicial sales, etc.
5. Identify the technology and training associated with technology solutions;
6. Identify the enabling process, i.e. what you need to do in order to affect change; and,
7. Identify the party who can make change happen including: clerks and judges through local rules, the Chief Justice through judicial codes of conduct and rules, and/or the Legislature.

The following spreadsheet contains information fields. This is a way to gather information concerning how to improve operations in areas such as: estates processing, small claims and summary ejectment hearings, motions practice in the District and Superior Court, family law deadlines, videoconferencing hearings, etc. Now is a time for collaborative action and the DRC is positioned to provide a convening voice in a necessary conversation.

Clerk of Court Clerk, Magistrate, District, Superior	Practice Focus Description of practice area which would benefit from changes	Practice Solution Description of how the problem can be solved and implemented	Technology/Training Identify any technology which can be used to solve the problem; eg. Expanded use of videoconferencing	Enabling Process
<b>Clerk</b> Estates Records Extensions Hearings Judicial sales Other				
<b>Magistrate</b> Small Claims Ejectments Collections Other				
<b>District</b> Motions Discovery practice Entries of Default Remote witnesses Family Court Other				
<b>Superior</b> Civil motions Video depositions Remote witnesses Unavailable witnesses Other				
<b>Register of Deeds</b> Filing Recordation				
<b>Notaries</b> Video notarization				
<b>Other areas</b>				

**Fill out the form online or scan and email to:** \_\_\_\_\_



**Thank you for your participation!**

---

Heath Gilbert, President  
Mecklenburg County Bar 2019 - 2020

**Notes and Platform Draft**

**5/12/20 Notes re Gilbert, Upton, Saunders ZC:**

1. Architecture for transformation
2. Platform
  - a. How do we open the courts
  - b. Find people who might be interested
  - c. Funding around healthy communities, social justice, and equity
3. I suggest that once you have a statement of intent
  - a. Goals of success within some period of time
  - b. Allows bar to lead, while acknowledging long-simmering perceptions
  - c. Lead in a way to get national attention
4. Need discipline
  - a. Who the hell do they think they are
  - b. Need a statement of intent
  - c. Build a process for that
  - d. There is a general map of a gateway
  - e. How do I get involved
  - f. How do I measure it
  - g. Gateways and go – no go
  - h. Transparency
  - i. Let them know up front what you want
  - j. Final note – awareness of issues
  - k. They want to hear justice, equity, transparency, technology
  - l. IT follow strategy; realistic assessment of organizational bandwidth

5. Work groups own the process and have a responsibility
  - a. Everybody is responsible for doing their job
  - b. Doing a report
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6. We need to design a system which permits access to justice
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“the agenda as the minutes”

Agenda Item	Person	Clock
1. Convening and time keeping	Chase	10 seconds
2. Roll call of attendees	Chase	30 seconds
3. Reports		
4. President’s Report <ul style="list-style-type: none"> <li>a. Feedback on speech</li> <li>b. Contacts with justice officials</li> <li>c. Next steps</li> </ul>	Heath	5 minutes
5. Explanation of ORIENTATION TASK DEADLINE chart: Program Office	Chase	5 minutes
6. RUDDER TEAM or Plan B team development <ul style="list-style-type: none"> <li>a. Purpose</li> <li>b. Number of members</li> <li>c. Focus areas <ul style="list-style-type: none"> <li>i. Communications – functionality, transparency, frequency <ul style="list-style-type: none"> <li>A. System</li> <li>B. Record keeping ( minutes/uploads/research )</li> <li>C. Training</li> <li>D. Corporate memory</li> <li>E. Bar team and general membership reports</li> <li>F. Other</li> </ul> </li> <li>ii. Diplomacy <ul style="list-style-type: none"> <li>A. Relationships with justice system executives</li> <li>B. Relationships with other entities studying issues</li> <li>C. Instate and out of state relations</li> <li>D. Other</li> </ul> </li> <li>iii. Technology <ul style="list-style-type: none"> <li>A. Technology to serve the platform</li> <li>B. Technology to advance the team reports</li> <li>C. Technology in use in other jurisdictions</li> <li>D. New Tech to create a new system</li> <li>E. New system software/hardware/forms design</li> <li>F. Other</li> </ul> </li> <li>iv. Training <ul style="list-style-type: none"> <li>A. Re use of platform communications software</li> <li>B. Re current technology ( e.g. use of video platforms )</li> <li>C. Re necessary training to implement sector changes</li> <li>D. Re ongoing organic training</li> <li>E. Other</li> </ul> </li> <li>v. Education <ul style="list-style-type: none"> <li>A. Development of interface with national legal platforms</li> <li>B. Development of programs-webinars</li> <li>C. Development of training materials</li> <li>D. Other</li> </ul> </li> <li>vi. Civil System Liaison <ul style="list-style-type: none"> <li>A. Civil system team and team member leader</li> </ul> </li> </ul> </li> </ul>	Kathleen	30 minutes

<ul style="list-style-type: none"> <li>vii. Criminal System Liaison <ul style="list-style-type: none"> <li>A. Criminal system team and team leader</li> <li>B. Other</li> </ul> </li> <li>viii. Operations <ul style="list-style-type: none"> <li>A. Ongoing application of system and patches</li> <li>B. Other</li> </ul> </li> <li>ix. Program Development <ul style="list-style-type: none"> <li>A. Development and direction of system and changes</li> <li>B. Other</li> </ul> </li> <li>d. Written description of Focus Areas responsibilities <ul style="list-style-type: none"> <li>i. For use by Rudder Team</li> <li>ii. For use by Team Leaders</li> <li>iii. For use by Team member or Channels</li> <li>iv. Other</li> </ul> </li> <li>e. Identification of Rudder Team members to lead Focus Areas</li> <li>f. Finalization of Rudder Team membership</li> <li>g. Assignment of Rudder Team members to a Focus Area</li> </ul>		
7. Introduction of MCB JAI PROGRAM OFFICE document	Chase	5 minutes
8. Explanation of Team of Teams model <ul style="list-style-type: none"> <li>a. Concept</li> <li>b. Rudder Team oversight</li> <li>c. Current justice system SECTOR CHART</li> <li>d. Team leader per Sector identification ( TL ) <ul style="list-style-type: none"> <li>I. Identified team leaders</li> <li>II. Categories</li> <li>III. Deadline for designations</li> <li>IV. Need to develop "Charge" or mission package for TLs</li> <li>V. Team leader interface with assigned RT member</li> <li>VI. Other</li> </ul> </li> </ul>	Kathleen	20 minutes
9. NEXT STEPS <ul style="list-style-type: none"> <li>a. Set next three RUDDER TEAM meeting dates</li> <li>b. Establish Communications Platform within 10 days <ul style="list-style-type: none"> <li>I. Written explanation</li> <li>II. Exchange contact information all around</li> <li>III. Set up training model to ensure Rudder Team compliance</li> </ul> </li> <li>c. Homework for Rudder Team members <ul style="list-style-type: none"> <li>I. Make connections with MCB Communications Platform</li> <li>II. Reflect on this model</li> <li>III. Consider which FOCUS AREA/S are of interest</li> <li>IV. Reflect on how to refine this model understanding that it can be used by your Team Leaders</li> </ul> </li> </ul>	Chase	2 minutes
10. End		

# June 2, 2020 Gilbert zc

## Agenda/notes

1. Takeaways from NCSC meeting
  - a. Out of the box thinking
    - i. Use of theatres as courtrooms
    - ii. Use of government space in surrounding towns
    - iii. Virtual collections
2. Crisis nerve center - communications operations
  - a. Susan Luck Report
    - i. Survey team development and execution
    - ii. Need for statistician
    - iii. Slack platform and use model
    - iv. Webinar menu – democratization of organizational technologies
      - I. Managing change strategies
      - II. How to use video tools with your clients
      - III. Sector zoom meetings recordation policy
      - IV. Sector webinars
3. Center for Legal Advocacy email
4. Invitation to ZC with IOWA State TCA on Thursday
5. Team Leader letter completion for use this week in recruitment
6. Team Sector identification
7. Other agenda items for Crisis Core Team
8. Judge Marvel
9. Objectives by June 5<sup>th</sup>
  - a. Approve Team Leader letter
  - b. Identify candidates for the Crisis Team
10. Objectives by June 12<sup>th</sup>
  - a. Confirm Crisis Team Members
  - b. Identify sectors
  - c. Identify Team Sector Leaders
11. Objectives by June 19<sup>th</sup>
  - a. Confirm Sector Team Leaders
  - b. Confirm Crisis Team Sector liaisons
  - c. Confirm transmission of Team Leader Package
12. Objectives by June 26<sup>th</sup>
  - a. Initiate Sector Team Leader recruitment of Sector Team Members
  - b. Begin expanding the lists
13. Identify Crisis Team
14. Note from Lawyer Mastermind Webinar Series – 11 week old forum
  - a. -90 days ago = THEN = 100% = HISTORIC PEAK of internet usage
  - b. +90 days = NOW = 70% over PEAK internet usage
  - c. +90 days = NOW = 40% video increase over PEAK usage

## June 2, 2020 Lucchesi zc

### Agenda

1. Takeaways from NCSC meeting
2. Discussion of items from Gilbert conference
3. Approval of Team Leader letter for use this week
4. Team Leader contacts
5. Team Sector discussion
6. Survey implementation
7. Agenda items for Crisis Core Team

## May 31, 2020

### Gilbert Letter

All,

The below is what I am proposing to send to Judge Bell, Judge Trosch, Madam Clerk Elisa Chinn-Gary and Charleston Carter to ask for their indulgence and help with our efforts so that we can put together the committee and hit the ground running officially on 7/1. Please let me know of anything you want to add or subtract.

Dear Judge/Madam Clerk/TCA Carter,

I hope you and your staff continue to be well during this pandemic. As you may well know by now, during the annual meeting for the MCB and in my remarks, I announced the creation of a study to examine and make recommendations for how we as a professional community are to move forward and practice law during and after the COVID-19 pandemic. I have asked Chase Saunders and Kathi Lucchesi to lead these efforts. Right now, the working title is the MCB Post Pandemic Justice Access Initiative ("Initiative").

In the last few weeks, a number of us have been following and taking part in viewing the Judicial Branch COVID-19 Task Force meetings as well as the National Center for State Courts programming that has addressed this public health crisis and how we move forward. I am certain that you have also been equally focused on the same with your staff, your fellow judges and others in your administrative roles. First, I want to reassure you and convey to you what the Initiative is **not**. This is not designed and is not even remotely intended to suggest, infer or provide comment on how things are or should be handled in our system of Justice. We would not presume to do this at any time. In fact, our intentions are quite the opposite. It is our hope to provide support for the changes that which you have had to employ and that which you will invariably have to employ in order to move forward. To be candid, we hope to discover and provide tangible evidence to support the changes that you are having to make. We know that Chief Justice Beasley has recently charged each one of you with having to implement new strategies that were not present as early as March 1<sup>st</sup> of this year.

This study is also not planning to address current changes that have been in the works for some time such as electronic filing. The Honorable Elisa Chinn-Gary has provided the MCB leadership an update on the electronic filing initiative. As practitioners, we appreciate these changes, however, such changes have been studied long and hard and don't need further comment at this time. The intent of this study is to compliment the creative designs for Court proceedings that which your offices are employing and that are being suggested by the Covid-19 Task Force. Moreover, the study is charged to be macro and look more at our global practice processes regardless of the administrative structures at our disposal. Because all areas of practice have been caught up by this pandemic, I have been very clear that I want our initiative to focus on transactional practices as well as courtroom practices. One example of this is whether one can continue to use a notary via video for real estate closings when electronic notarization is employed. All areas of practice have been effected by COVID-19 and if we desire for the practice of law to continue, we must find a way forward.

Additionally, my hope is that these suggestions and recommendations from practitioners will provide insight into lawyer tolerance levels of change so that those that make the rules have a base line understanding of sacrifices and attitudes towards change from practitioners all of which have a vested interest in moving their profession forward. We want to answer the inquiry as to “whether lawyers will agree to this”. It is our hope to perform that level of research for those in administrative and legislative roles so that they have some empirical evidence of lawyer tolerance of change.

I have asked Kathi Lucchesi and Former Superior Court Judge Chase Saunders to co-chair the Initiative. It will be very important for this committee to have the perspective of your offices and your position so that this group is acutely aware of their parameters. They need to know the limitations that which you and those you administrate have to work in your office. Conversely, they also need to be aware of the needs, desires and visions that you have for your offices so that they can be supportive of that in their examination.

In order to do this, every area or administrative component for the practice of law in our community is being asked to assemble a Team and Team leader to help the Initiative with their study. For this study to have any legitimacy and any efficacy, it is not only critical to have Court involvement, it is critical that the Court system and your offices provide this initiative critical, grounded and circumspect observations throughout this process.

I ask if you would be willing to either individually serve or appoint someone from those that you administrate as the Team Leader to communicate with the Initiative. In your case, the “Team” would be those that which you administrate. The “Team” would be called upon to help generally identify and provide evidence of problems that which COVID-19 has created so that the Initiative can be better informed. The Initiative also asks that the “Team” provide suggestions of solutions that would address such problems, even if such solutions are not currently employed in your area or even in this jurisdiction or even this state.

It is my hope that once the Initiative completes their survey, that they can put together a report that which can be utilized as a resource by those that make decisions regarding the future of the practice of law and the administrative of justice. Thank you in advance for your service to our community and your help with this important project.

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## May 30, 2020

### McKinsey & Company – Using a crisis nerve center to help reopen the economy

Using a crisis nerve center to help reopen the economy

*Open interactive popup*



To manage the next phase of responses to the COVID-19 pandemic, government leaders can consider the skills needed to lead and contribute to the effort.

## Downloadable Resources

*Open interactive popup*

1. [Article \(PDF-313KB\)](#)

## Most Popular Insights

1. [COVID-19: Implications for business](#)
2. [The future is not what it used to be: Thoughts on the shape of the next normal](#)
3. [From surviving to thriving: Reimagining the post-COVID-19 return](#)
4. [Digital strategy in a time of crisis](#)
5. [The Restart](#)

**When the COVID-19 pandemic erupted**, some national and subnational—provincial, state, and municipal—governments around the world created crisis nerve centers to address the urgent issues the crisis had spawned. Now attention has turned to what comes next: How should government leaders organize to guide the **reopening and recovery** of their nations, regions, and municipalities?

Crisis nerve centers are agile bodies that bring together crucial skills and capabilities across traditional organizational lines to provide senior government leaders with the speed, structure, and organizational clarity required to mount an effective response to the crisis. The first versions of nerve centers or other crisis task forces focused largely on immediate responses, such as dealing with hospital supplies, staffing, and other capacity issues, developing economic intervention packages, and taking steps to support vulnerable populations.

Whether or not a government has previously set up a crisis center, it must now meet the challenge of developing, executing, and rapidly adjusting strategies to reopen the economy. And it must be done in an environment of great uncertainty that is likely to extend for many months. This substantial undertaking requires a new set of teams and skills. In this article, we lay out best practices for a governmental reopening nerve center, including who might lead it, who should be part of it, and the skills it will require.

**Several factors underpin the need for this kind of crisis nerve center:**

- Government officials and staffers have been running hard for months to address the pandemic's immediate effects. The fatigue indicates the need for a more sustainable operating model.
- Many governments have seen that their existing decision-making processes cannot keep pace with the volume and speed that decision making requires now. The progression of the crisis has underscored the need for enhanced, integrated decision-making processes. This is an essential element of the nerve center concept.
- We are entering an era without obvious answers. The next 12 to 18 months will be a time of difficult and often ambiguous trade-offs, where fast design, learning, and adjustment will be the critical factors for success.

Opening a nerve center offers governments an operating model that places a premium on the agility they will need to address the crisis over the next 12 to 18 months.

### **The unique challenges of managing reopening**

The impact of the pandemic is far more widespread than that of traditional health emergencies or economic downturns, affecting every industry and country around the globe. It is likely to require governments to operate on a crisis footing for an extended period of time. Effective responses require unprecedented cooperation and coordination among national and subnational governments, companies, and social-sector organizations.

As a result, this situation benefits from unusually agile and coordinated decision making, bringing together parties that traditionally do not collaborate so intimately. Leaders need the ability to quickly test new approaches, adjust, and shift gears in response to new data and information about the effectiveness of approaches.

The optimal design of a nerve center enables all these activities to occur over an extended period and provides strong support to leaders who must make critical decisions in conditions of high uncertainty. The center is a forum for bringing together all the skills, capabilities, and content expertise required, regardless of traditional lines of organization. It offers senior stakeholders and policy makers clear chains of accountability for cross-functional issues. And it integrates disparate data collection and analysis in one place, providing a single source of truth for leaders and teams.

May 29, 2020

Day 8

Nora Sydow ZC – Natl Center State Courts Zoom Conference

Notes

1. The National Center of State Courts is a Washington-based think tank established to assist Chief Justices and Chief Judges.
2. It is an active forum where the innovative judges and trial court administrators are conferencing and implementing justice system solutions in real time.
3. It is holding webinars with justice system leaders on a weekly basis which we are attending.
4. The NCSC forum is posting its findings and conferencing to develop new strategies on a daily basis.
5. Within the past 120 days, its conferences have grown from several hundred judges and attorneys to over 3,000 per session meetings using the Zoom platform.
6. It has become the de facto center of justice system change planning in the United States in a matter of weeks. ( This is how fast things are moving. )
7. The leading states which are pro-active in adapting new strategies are Florida, Texas, Michigan, Rhode Island, and Iowa ( former Charlotte TCA Todd Nuccio is now the TCA for the State of Iowa). They are opening up their courts and addressing issues concerning triage, distancing, PPE, etc. Some states are addressing all justice related issues, others have limited their scope of inquiry.
8. The leading local bar association taking action is in Dallas, Texas which created a survey intended to address macro issues. It was sent out to their entire bar. From a huge response, they prepared a report in less than 60 days. Their survey model will be rolled out across the state of Texas. \*
9. The NCSC put us on their list to attend its ongoing zoom conferences, provided us with the names of leading innovators, and is willing to work with us as we move forward.

10. The NCSC was immediately responsive to our inquiries re the contact information for leading national innovators.
11. The NCSC has used zoom breakout rooms to facilitate simultaneous, multisector brainstorming systems in separate, online rooms to maximize interaction among small groups from a mass conference.
12. States and locales are slowly planning their responsive strategies but other jurisdictions are not waiting for others to bring solutions to them. There are transformative and innovative leaders who are actively changing as we speak. They are working for the benefit of the people in their communities. We were impressed with how fast planning and implementation efforts are being taken by active jurisdictions.

\* A copy of the sector survey will be sent to you. We should assess the survey model and consider setting up a survey committee to develop a sector survey. We need technology to make it an online survey and some talent to develop the questions and compilation assessment and publication. The data gather from the surveys could be of value to the team leaders. Perhaps this is something in which the Trial Court Administrator's Office could participate if they have polling and data capture programs. We need to reach out to the Dallas bar association to learn how they did it and what they are planning to do with it.



*2019-2020 Heath Gilbert, President*

## JusticeAccessInitiative (JAI) Organizational Chart

### JAI – Post Pandemic COMMITTEE

Co-Chair Chase Saunders - Judge, Ret'd  
Co-Chair Kathleen Lucchesi - Attorney

### CRISIS NERVE CENTER

#### CRISIS CORE TEAM – PLAN B

- Communications
- Recordation - Data
- Program Development
- Sector Development
- Technology Liaison
- Cybersecurity Liaison
- Civil Sector Team Liaison
- Criminal Sector Team Liaison
- Team Leader Liaison
- Education
- Phase I: Issuance of a Report

**TEAM SECTORS [ LIST ]**

**SECTOR TEAM LEADERS [ LIST ]**

**SECTOR TEAM MEMBERS [ LIST ]**

**Purpose:** A healthy and accessible justice system is required if a community is to be healthy. The Justice Access Initiative is a platform for the development of the innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system we must rapidly implement to provide access to the justice system ecosystem with a consideration on all of its sectors and specialties.

The Justice Access Initiative is commissioned to facilitate the legal community's development of an action plan to address the effects of the pandemic on those using and seeking legal services. An examination of problems, solutions, enabling technologies, education, training and implementation strategies will be examined. A multi-sector report will be issued within 90 days of program launch.



To: \_\_\_\_\_,

From: Justice Access Initiative (JAI) – Co-Chairs Judge Chase Saunders (retd)/Kathi Lucchesi

Re: JAI Team Leader Sector Package

Date:

Dear \_\_\_\_\_:

Thank you for agreeing to serve as the Team Leader for the \_\_\_\_\_ Sector of the Justice Access Initiative team which is charged with preparing a report for submission to Heath Gilbert, President of the Mecklenburg County Bar by \_\_\_\_\_ date.

The report of your team will be aggregated with those of \_\_\_\_\_ other teams into a Justice Access Initiatives Report. Your portion of that Report will serve as the action plan for moving us forward in the wake of the COVID19 pandemic which has imposed an existential burden on the old system and all law practice sectors. The compilation report will conclude Phase I of our Initiative. Phase II will focus on implementation.

We are building a 22<sup>nd</sup> Century justice access system. That term is defined as the ecosystem of all of the legally-related services associated with that system. Your team will consider options and practices, rules, technology, training/educational models which were not within contemplation six months ago. Moving as much of the court system and related services online has been approved by the Chief Justice. As we do this, we are freeing the court system to handle the matters they are prioritizing.

Identifying the protocols, procedures, and technology to achieve this is your mission. The development of an innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system in response to the pandemic is your mission.

As a Team Leader, you are asked to do the following things:

1. Work with the JAI Program team and the sector liaison to select members of your team.
2. Work with the JAI – MCB Comms team who will assist you in setting up meetings with your team.
3. Meet with your practice sector team.
4. Study, discuss, and prepare a report answering these questions:
  - i. What are the problems facing your practice sector?
  - ii. For each problem what are solutions including necessary rule and protocol changes
    - a. Which solution is immediately implementable
    - b. Which solution is doable in the interim
    - c. Which solution is a goal
  - iii. For each solution, identify other jurisdictions, forms, and models currently in use
  - iv. For each problem what are the technology needs?
    - a. Hardware and software
    - b. One time costs
    - c. Training and education.
  - v. What are the educational and training needs associated with each solution
    - a. Immediate needs assessment
    - b. Sustainable needs assessment
  - vi. Describe the implementation strategy
    - a. Administrative rule
    - b. Legislation
    - c. Grants and funding sources
  - vii. Prepare a JAI SECTOR REPORT following a uniform template which will be sent to all Sector Team Leaders.
  - viii. Submit the report with any supporting documents within 90 days of the program launch.

You and your team are encouraged to develop a model for discussing and preparing a report using video-assisted technologies. The JAI Program Team will be inviting you and your team to online conferences as we use available tools to develop new ways to practice and provide access to the system for our clients and the community. Think big and out of the box!

Initiative operational materials are ATTACHED. They include:

1. President Gilbert's 2020 Commission of the Justice Access Initiative
2. The JAI Operational Plan
3. The JAI Organization Chart and Contact List
4. JAI – MCB Communications Platform
5. The JAI Team of Teams Leader Contact List
6. Your MCB contact person \_\_\_\_\_

## 7. May Chief Justice Email

Thank you for your willingness to serve your profession and the community! If you have any questions, please contact either of us at the designated email.

---

Chase B. Saunders, JAI Program Co-Chair  
[chase@chasesaunders.com](mailto:chase@chasesaunders.com)

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Kathleen Lucchesi, JAI Program Co-Chair  
[Kathleen.lucchesi@lincolnderr.com](mailto:Kathleen.lucchesi@lincolnderr.com)

cc: Heath Gilbert, President of the Mecklenburg County Bar

**JAI Purpose:** A healthy and accessible justice system is required if a community is to be healthy. The Justice Access Initiative is a platform for the development of the innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system we must rapidly implement to provide access to the justice system ecosystem with a consideration on all of its sectors and specialties.

The Justice Access Initiative is commissioned to facilitate the legal community's development of an action plan to address the effects of the pandemic on those using and seeking legal services. An examination of problems, solutions, enabling technologies, education, implementation and training strategies will be examined. A multi-sector report will be issued within 90 days of program launch.

To: Justice Access Initiative R Program Plan B Team Members

From: Chase Saunders

Re: Organizational Chart and Summary of May 27, 2020 Meeting

Date: May 28, 2020

Welcome!

When you are asked by your friends, relatives, children, or grandchildren what you did during the pandemic, will your response be "I hunkered down, rode my Peloton, ordered in, and didn't do much?" or will it be "I participated in one of the coolest things ever, the creation of a 22<sup>nd</sup> Century legal system to reinvent and transform how justice was accessed and provided in Mecklenburg County in a way, way different from that done in the 20<sup>th</sup> Century !"

Summary of ZConference of 5.27.20

1. Attendees: Gilbert, Campbell, Lucchesi, Cromwell, Gronquist, Saunders ( conflicted: Luck, Tompkins )
2. Reports were made by all attendees re the development of the Program Office, Communications platform, Team Sectors, and Team of Team Leaders.
3. Incoming President Gilbert provided an update on his vision for the Initiative.
4. The attached organizational chart is descriptive of the platform and its components.
5. One facet to note is that of the role of "liaisons". Program Plan B Team members will be assigned to lead Team Leaders as they develop the teams to address the issues in their sector or channel.
6. Brian Cromwell and Jim Gronquist will confer and discuss the criminal justice system and the relevant sectors and how the liaison process can work with that sector.

7. Heath, Kathleen, and have scheduled a conference call with the National Center of State Courts to explore mutual opportunities and get the latest information re what other jurisdictions are already doing and what resources are available to us.
8. Tomorrow you will receive notice of the next meeting
9. Agenda items to think about from the materials you have already received are these:
  - a. Building out the Program Plan B Team
  - b. Identifying the Legal Sectors for which we will need Team Leaders
  - c. Proposing names of Team Leaders for the Team of Teams
  - d. Other items TBA

Regards,

Chase and Kathleen

## 5.27.2020 Agenda

### MCB – JAI = Justice Access Initiative Agenda for May 27, 2020

**DAY 6**

“agendas as minutes and action plans”

Agenda Item	Person	Clock
1. Convening and time keeping 2. Roll call of attendees 3. Role of Program Plan B Team <ol style="list-style-type: none"> <li>a. What we do: envision and innovate in response to the pandemic</li> <li>b. What we do not do</li> <li>c. Envision, Lead, Supervise, Compile/edit, Engage change agents</li> <li>d. Create a 22<sup>nd</sup> C accessible justice platform responsive to this crisis</li> </ol>	Chase	3 minutes
4. Roll call of attendees	Chase	30 seconds
5. Reports		
6. President’s Report <ol style="list-style-type: none"> <li>a. Feedback on speech</li> <li>b. Contacts with justice officials</li> <li>c. Next steps</li> </ol>	Heath	5 minutes
7. Explanation of ORIENTATION TASK DEADLINE chart: Program Office	Chase	10 minutes
8. Plan B team development <ol style="list-style-type: none"> <li>a. Purpose</li> <li>b. Number of members</li> </ol>	Kathleen	15 minutes

<p>c. Focus areas ( broad strokes of explanation )</p> <ul style="list-style-type: none"> <li>i. <b>Communications</b> – functionality, transparency, frequency <ul style="list-style-type: none"> <li>A. System</li> <li>B. Record keeping ( minutes/uploads/research )</li> <li>C. Training</li> <li>D. Document library/library development</li> <li>E. Corporate memory</li> <li>F. Bar team and general membership reports</li> <li>G. Bar reach out tools</li> <li>H. Other</li> </ul> </li> <li>ii. <b>Diplomacy</b> <ul style="list-style-type: none"> <li>A. Relationships with justice system executives</li> <li>B. Relationships with innovation centers <ul style="list-style-type: none"> <li>i. Administrative Office of Courts</li> <li>ii. Trial Court Administrator</li> <li>iii. Justice Initiatives</li> <li>iv. National Center State Courts</li> <li>v. Institute of Government</li> <li>vi. ABA</li> </ul> </li> <li>C. Develop strategic partnerships and data sharing</li> <li>D. Other</li> </ul> </li> <li>iii. <b>Technology</b> <ul style="list-style-type: none"> <li>A. Technology to serve the platform</li> <li>B. Technology to advance the team reports</li> <li>C. Technology in use in other jurisdictions</li> <li>D. New Tech to create a new system</li> <li>E. New system software/hardware/forms design</li> <li>F. Other</li> </ul> </li> <li>iv. <b>Training</b> <ul style="list-style-type: none"> <li>A. Re use of platform communications software</li> <li>B. Re current technology ( e.g. use of video platforms )</li> <li>C. Re necessary training to implement sector changes</li> <li>D. Re ongoing organic training</li> <li>E. Other</li> </ul> </li> <li>v. <b>Education</b> <ul style="list-style-type: none"> <li>A. Development of interface with national legal platforms</li> <li>B. Development of programs-webinars</li> <li>C. Development of training materials</li> <li>D. Other</li> </ul> </li> <li>vi. <b>Civil System Liaison</b> <ul style="list-style-type: none"> <li>A. Civil system team and team member leader</li> </ul> </li> <li>vii. <b>Criminal System Liaison</b> <ul style="list-style-type: none"> <li>A. Criminal system team and team leader</li> <li>B. Other</li> </ul> </li> <li>viii. <b>Operations</b> <ul style="list-style-type: none"> <li>A. Ongoing application of system and patches</li> <li>B. Outreach to the NCSC RESOURCE – Nora Sydow</li> <li>C. Other</li> </ul> </li> <li>ix. <b>Program Development</b> <ul style="list-style-type: none"> <li>A. Development and direction of system and changes</li> </ul> </li> </ul>		
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<p>B. Other</p> <p>d. Written description of Focus Areas responsibilities</p> <p>i. For use by Program Plan B Team</p> <p>ii. For use by Team Leaders</p> <p>iii. For use by Team member or Channels</p> <p>iv. Other</p> <p>e. Identification of Program Plan B Team members to lead Focus Areas</p> <p>f. Finalization of Team membership</p> <p>g. Assignment of Team members to a Focus Area</p>		
9. Introduction of MCB JAI PROGRAM OFFICE document	Chase	10 minutes
<p>10. Explanation of Team of Teams model</p> <p>a. Concept</p> <p>b. Program Plan B Team oversight</p> <p>c. Current justice system SECTOR CHART</p> <p>d. Team leader per Sector identification ( TL )</p> <p>I. Identified team leaders</p> <p>II. Categories</p> <p>III. Deadline for designations</p> <p>IV. Need to develop "Charge" or mission package for TLs</p> <p>V. Team leader interface with assigned RT member</p> <p>VI. Other</p>	Kathleen	10 minutes
<p>11. NEXT STEPS</p> <p>a. Set next three Program Plan B Team meeting dates</p> <p>b. Establish Communications Platform within 10 days</p> <p>I. Written explanation</p> <p>II. Exchange contact information all around</p> <p>III. Set up training model to ensure Team compliance</p> <p>c. Homework for Program Plan B Team members</p> <p>I. Make connections with MCB Communications Platform</p> <p>II. Reflect on this model</p> <p>III. Consider which FOCUS sector areas are of interest</p> <p>IV. Reflect on how to refine this model understanding that it can be used by your Team Leaders</p> <p>d. Meeting 3 Items</p> <p>A. Build out Program Plan B Team</p> <p>B. Confirm Organizational Chart and chain of command</p> <p>C. Identify Sectors for Team Leadership</p> <p>D. Identify Team Leaders for TOT initiative</p> <p>e. Meeting 4 items: a written plan is worth a thousand words....</p> <p>A. Confirm/train on Comms Platform</p> <p>B. Confirm Team leaders</p> <p>C. Discuss Role/interaction with Team leaders ( liasons )</p> <p>D. Sector Interest Survey?</p> <p>E. Agree upon a uniform and focused team instructions package</p> <p>F. Program Plan B Team interface with Team leaders</p> <p>G. Assignment of Program Plan B Team members to sector teams</p>	D	3 minute
12. Final word from President	Heath	1 minute
END		

Agenda for telconf with HeathGilbert

1. HG Feedback
2. KL making connections with 4 new members of R Program Plan B Team team
3. HG Meeting
  - a. Organizational protocol
  - b. Contact list of ecosystem members
  - c. Planning ZC or VAC conferences
    - A. Program Plan B Team
    - B. Team Leaders
    - C. Justice Access Innovation Forum webinars ( 30,000 feet )
      1. Conference participants and sources of speakers
        - A. AOC – TCA ( report to Program Plan B Team re what is going on )
        - B. NCSC
        - C. ABA
        - D. Business Courts
        - E. Law Schools
        - F. Sen. Johns
      2. Conference topics: TBA ( ground level )
        - A. Post Covid and the big firm
        - B. Post Covid and the small firm
        - C. Covid technologies for the law office
        - D. National Virtual Court Initiatives
        - E. Brainstorming sessions for each team open to all
      3. Conference audiences ( legal community )
        - A. Justice system executives
        - B. Team leaders and teams
        - C. All members of the Bar
  - d. Comms – Luck/others
  - e. Instructions and forms – One and done
    - a. Team Sector Leader administrative instructions
    - b. Team members
  - f. Agendas: KL reviewing AGENDA for Wednesday p.m. prior to routing to you
  - g. Board of Editors of Charlotte Observer – post TOT chart

Next steps

**5.25.20**

**WHAT DO YOU TELL THE TEAM LEADERS?**



To:

From: Justice Access Initiative – Co-Chairs Judge Chase Saunders(retd)/Kathy Lucchesi  
Re: Team Leader Sector Package  
Date:

Dear \_\_\_\_\_:

Thank you for agreeing to serve as the Team Leader for the \_\_\_\_\_ Sector of the leadership team which is charged with preparing a report for submission to HeGilbert, President of the Mecklenburg County Bar by \_\_\_\_\_ date.

The report of your team will be aggregated with those of \_\_\_\_\_ other teams into a Justice Access Initiatives Report. Your portion of that Report will serve as the action plan for moving us forward in the wake of the COVID19 pandemic which has imposed an existential burden on the old system and all law practice sectors. The compilation report will conclude Phase I of our Initiative. Phase II will be the implementation phase.

We are building a 22<sup>nd</sup> Century justice access system. That term is defined as the ecosystem of all of the legally-related services associated with that system. We must consider options and practices, rules, technology, training and educational models which were not within contemplation six months ago. We must act immediately. Moving as much of the court system and related services online, or into the cloud is a solution approved by the NC Chief Justice. The means and methods by which we do this is up you as a member of the legal community.

Initiative operational materials are ATTACHED. They include:

8. President Gilbert's Commission of the Justice Access Initiative
9. The JAI operational plan
10. The JAI organizational chart
11. The JAI leadership contact list
12. The JAI Team of Teams Leader Contact List
13. The Team Leader Task List descriptive of the nature of the Sector Report
14. Your contact person 24/7 if you have any questions is \_\_\_\_\_
15. Chief Justice Email
16. Other

Thank you for your willingness to serve your profession and the community!

---

cc: Heath Gilbert, President of the Mecklenburg County Bar

## Shutdown may change the courts

BY THE EDITORIAL BOARD

Since the start of the pandemic, the state's courtrooms have been mostly empty. The conveyor belt of justice – an endless flow of cases civil and criminal, serious and petty – has slowed to a crawl.

As the court system comes back in the next several months, it should come back changed. North Carolina courts should not return to courtrooms overflowing with defendants waiting for hours to have a minute before a judge. It was never right. Now social distancing won't allow it.

Just as businesses are discovering efficiencies as their employees work from home, the courts are seeing what could change for good in how they operate. More can be done, and it can be done faster by using electronic filing and video technology. Court dockets can be trimmed to cases that truly require a judge and a presence in court.

State Rep. Joe John, D-Wake, is a former judge and prosecutor and head of the North Carolina Courts Commission, a panel of legislators, citizens, lawyers, judges and district attorneys that evaluates the state's court system and makes recommendations to the General Assembly. He thinks the disruption of the court system has already accelerated technological changes in how courts function. "Across the board we will never return to the normal as we once knew it," he told the Editorial Board.

With court proceedings reduced to only what is essential, it is clear how much may not be necessary at all. Normal caseloads are bloated – often by procedural rather than criminal violations – and many visits to court could be eliminated by handling the matters administratively or remotely.

"Just because we've done things one way for 200 years doesn't mean we have to do it that way for the next 200 years when there is a more efficient and effective way," John said.

The jolt of this crisis should also break loose proposed reforms that have long been stuck. Pre-trial release procedures should be eased to have fewer defendants for minor crimes waiting in jail. The ever-growing fees for court services and court-ordered programs should be eliminated, or at least reduced for those who can't afford the expense and end up in more legal trouble for non-payment. More civil and family court cases can be resolved by mediation in video conferences.

Big changes will require an increase in funding for the court system. Although the judiciary is one of three co-equal branches of state government, it receives only about 2 percent of the state budget. As it is, the court system contributes more money in fees and fines to the state's general fund than it receives back in state funding.

Now the courts need immediate help. Court-related payments have dropped sharply during the hiatus in most legal proceedings. Meanwhile expenses will rise as the system starts to process a surge of delayed cases while meeting social distancing requirements.

John expects to file legislation Tuesday seeking \$20 million in emergency funding for the courts. He knows the request will be competing with many others. "Everyone is going to need more and there is substantially less," he said.

But even in a time of scarce state revenue, court funding should be a top priority. Adequate and consistent funding would encourage the system to expand its use of technology and move away from fees. A system that relies on excessive and regressive fees is by its nature unjust.

It would be true justice if the adjustments forced by the pandemic lead to lasting changes that will make the court system both more efficient and less unfair.

## 5.22.20 Notes: ZC with Lucchesi/Luck/Saunders

### AGENDA FOR MEETING

1. Introductions
2. Mission of JAI
3. Structure/Tasks/Deadlines
4. UX design analysis – working backward

### MCB POST PANDEMIC: JAI = Justice Access Initiative ORGANIZATIONAL-TASK-TIMELINE FLOW CHART

PHASE I ORGANIZATIONAL DEADLINE	TASKS	DEADLINE
PROGRAM OFFICE	Program Plan B Team	
<ol style="list-style-type: none"> <li>1. Communications platform               <ol style="list-style-type: none"> <li>a. Program Plan B Team interface</li> <li>b. Internal External communications</li> <li>c. Scheduling</li> <li>d. Interaction with teams</li> <li>e. Uploading Team data</li> <li>f. UX – user experience design                   <ol style="list-style-type: none"> <li>i. Working back from goal</li> <li>ii. Simplifying sentences</li> <li>iii. Shop, Sale, Now</li> </ol> </li> </ol> </li> <li>2. Plan B Team : Chain of Command               <ol style="list-style-type: none"> <li>a. MCB President Heath Gilbert</li> <li>b. MCB Director Leah Campbell</li> <li>c. Co-Chairs Lucchesi/Saunders</li> <li>d. Professor Susan Luck - UX</li> <li>e. Jim Gronquist</li> <li>f.</li> </ol> </li> </ol>		<p>May 21.2020</p> <p>June 30</p>

g. h.		
<p>TEAM OF TEAMS SECTOR STRUCTURE</p> <ol style="list-style-type: none"> <li>1. TEAM LEADER <ol style="list-style-type: none"> <li>a. <b>Charge to Team Members</b></li> </ol> </li> <li>2. TEAM MEMBERS</li> <li>3. TEAM TASKS <ol style="list-style-type: none"> <li>a. Study</li> <li>b. Identify problems</li> <li>c. Identify solutions <ol style="list-style-type: none"> <li>i. Minimal viable option</li> <li>ii. Interim goals</li> <li>iii. Optimal goals</li> </ol> </li> <li>d. Identify technology required</li> <li>e. Identify education required</li> <li>f. Propose rules and forms</li> <li>g. Identify implementation strategy</li> <li>h. Compile report</li> <li>i. Submit report</li> </ol> </li> </ol>	Sector channel study/report	

## 5.21.20 Notes: ZC with Lucchesi/Saunders

### **AGENDA FOR MEETING – CREATION OF AN ORGANIC PLATFORM MIRRORING THE JAI**

1. Introduction – cv exchange
  - a. KL – background, education, family, practice, civic activity, adm. Interest, goals
  - b. CBS – same information IOC, MHA, JI, TOH, CIAS, CRSI, CMECK,
  - c. Folks in the loop: Kozlowski, Bridges, Luck, Upton, Betz, Worthy, Wright, Marvel, Bush, DeVore,
2. Debrief of meeting with Heath and Leah
  - a. Impressions
  - b. To do list
  - c. Setting up comms platform with Leah
3. When you receive your first email from somebody who hears Heath's address?????
4. Discussion of Platform
  - a. Online Justice
  - b. Program Office
5. COMMS PLATFORM
6. Critical next meetings
  - a. Comms
  - b. Team leaders
  - c. Justice execs

7. Critical documents re effort
  - a. Gilbert address

## ORDER OF THE CHIEF JUSTICE

5.21.2020



“Today I issued new emergency orders about court operations across North Carolina. The orders extend some filing deadlines, postpone jury trials until July 31 and require in-person court operations to take place with some defined restrictions to ensure safety protocols like social distancing and routine cleaning take place.

My orders over the last two months put much of the work of the courts on pause. Those delays, while difficult, were necessary to reduce the risk of illness for our court personnel and for the public.

Even so, our courts are open, they have been open, and they will remain open. Even with dramatically reduced staff and limited resources, local courts have handled more than 20,000 cases a week all across North Carolina since the pandemic began.

And, local leaders have spent the last two months taking as much of their work as possible online, to include court hearings conducted by teleconference, while carefully planning new strategies to continue the work of our courts as fully as possible while keeping the public and our personnel safe.

Next month, we will begin to hear more of the cases that have been postponed, but we will do so with your health and safety as our primary concern.

I want to be very clear – until this public health threat has passed, it cannot be business as usual for our court system. Calling together large groups of people for crowded sessions of court risks the health of our court personnel and every member of the public who is summoned to appear.

Court is going to look different for a while. Dockets will be smaller. Cases will be heard online. We’re going to have to socially distance in the courthouse.

North Carolinians are resilient and resourceful, and we approach our challenges with a spirit of cooperation and innovation that I know will carry us through the challenging days ahead.

In service,

Cheri Beasley,  
Chief Justice

P.S. Visit [NCcourts.gov](https://nccourts.gov) for updates on the Judicial Branch’s COVID-19 response. Please follow the guidance of Governor Cooper, DHHS and the CDC. Additional information on COVID-19 in North Carolina can be found at [ncdhhs.gov/covid-19](https://ncdhhs.gov/covid-19).

## ONLINE JUSTICE – Justice Moves to the Cloud

5.20.20

Everything has changed since COVID19 escaped from Pandora's Box. For every kind of human activity, an existential imperative requires rapid innovation. As this relates to the legal system, access to justice has been reduced. The path forward requires action. "Here are seven ways the legal system has permanently changed as a result of COVID19 ( Robert Ambrogi [www.abovethelaw.com](http://www.abovethelaw.com) )."

1. Lawyers no longer see technology as something to be feared.
2. Lawyers will no longer see innovation as a threat to the guild.
3. Regulatory reform will accelerate.
4. Courts will accelerate innovation and online services.
5. More legal services will be delivered remotely and online.
6. Law firms will reduce their physical footprints.
7. Legal education will be revamped.

Here is the model for the development of an innovative, systemic strategy:

1. Establish a small working group
2. Involve judges
3. Identify case types
4. Involve sector specialists
5. Create an implementation task force including a project champion
6. Liberate the task force
7. Set deadlines for a final report – 90 days
8. Creates a wild animal group – no bad ideas
9. Build a MVP = minimal viable product
10. Make it mandatory – THE ONLINE PROCESS IS THE DEFAULT PROCESS
11. With off ramps
12. Make it the system
13. Test it, look for metrics,
14. Pilot the program and test it

The skeletal infrastructure for an implementation plan requires three things:

1. A COMMUNICATIONS platform
2. A TECHNOLOGY platform
3. An EDUCATION platform

**DRAFT Project Introduction (updated this date**



This is a draft project description of a proposed MCB post COVID access to justice initiative for discussion by the President and Executive Committee of the Mecklenburg County Bar.

The MCB needs to determine the scope and personnel commitment before the project begins in order to ensure that expectations do not exceed performance capability. For instance, at least two staffers will need to be assigned fulltime to performing the tasks and duties described herein.

I recommend a six months project with a review at the end of that time. I expect to spend several hundred hours on this project in that time. Tens of thousands of hours will be expended by the attorneys volunteering and participating in this project. Hundreds of video-assisted meetings and calls will be required.

It is critically important to get a clear understanding of what MCB staff and resources can do for me to successfully chair of this initiative. This work cannot have a low priority. It must be "on demand".

The work can only be as good as the quality of the documentation and communications and, once poor products are released, you can't get them back. Quality, clarity, professionalism on Day One! Should there be the need to bring in organizational professionals to set this up, I have a recommendation.

## **Program Office Description – the Platform**

**Name:** The MCB Justice Access Initiative ( JAI )

a virtual program office

**Mission:** Develop and implement a 22<sup>nd</sup> Century, post COVID19 user-responsive, accessible justice system moving the justice system to the cloud

**Qualities:** broadly-based, transparent, technology-assisted, data driven,

**Tasks:**

- Establish a program office to administer the initiative
- Develop and respond to the challenges posed by the COVID pandemic
- Implement strategies for greater access to justice in a post pandemic world
- Creation of a healthy justice system
- Exploration of alternatives to current procedures, engagements and practices
- Focus on developing a justice system responsive to the needs of its users
- Applications of modern technologies to assist in the delivery of legal services by attorneys and community partners
- Encourage transformative ideas and technologies to revolutionize the delivery of legal services
- Expand the justice system definition to include all sectors of the economy
- Reduce increasing inequities in access
- Focus on adaptive strategies to free up court time for cases mandating court appearances
- VAC, VAP, VAT, VAM Technology and technology education as accelerators of team reforms
- Develop a series of sector action plans into a functional justice ecosystem
- Deliver a collective summary of team work products within 120 days

**Program Office:** The MCB will administer and staff a Communications and Project Platform as a priority.

**MCB Communications Platform:**

- **A Communication and Project Platform** - This platform encompasses coordination and dedication of resources required to ensure disciplined, outcome-oriented work, including project management resources, calendars and timelines, research and reports, status updates and

progress reports, and participant and stakeholder access (transparency). It connects the overarching SOI to the allocation of responsibilities among work groups and ensures discrete work groups see the work of their peers. It prevents duplication and promotes teamwork and consolidation of overlapping ideas. It provides a clear view of tasks and progress-to-task in understandable form. It is a destination (web page/work bench) for stakeholders as a tool for orientation to the work and a pathway to engagement and raising questions. It limits speculation and interpretation by providing consistent messages and status.

- The MCB will provide the staff and technical expertise resources to administrate the Initiative
- One of the positions will be an MCB Project Coordinator.
- One of the positions will have duties for scheduling hundreds of zoom conferences
- One of the positions will be technical support updating the website concerning this initiative and sending out communications, conducting surveys, etc.
- The MCB will prepare a task timeline and monitor the timeline for compliance
- The MCB uses the zoom platform and will be providing technical support re meeting scheduling
- The MCB will manage the communications platform and documents management system
- The MCB will serve as the data aggregator, publisher,
- The MCB will serve as the information collector and disseminator
- The MCB will be able to multiple team meeting scheduling
- The development of a survey to the members of the MCB to gain insights is a priority
- At least full

#### Phases Deadlines:

- Identification of Program Plan B Team
- Development of Program office and Program Plan B Team within 30 days
- Launch of Phase I
- Phase I--Developmental survey/action plan – WHAT DO WE NEED TO DO ? ( 6 months )
- At the end of 6 months, the project will be reviewed.
- Phase II--Implementation action plan – HOW ARE WE GOING TO DO IT ?

**Participants:** members of the legal, business, and academic communities

**MCB leadership:** The Executive Committee of the MCB ( **name all the members** ) commissions the formation of The MCB Access to Justice COVID Initiative

**Entity model:** The MCB Access to Justice COVID Initiative will be organized following the model of a “team of teams” - TOT

#### Team of Teams- TOT - structure:

- Identify multiple topics of study for team task development
- Commission multiple teams to focus on the problem, technology, and training to fix it
- Teams to address the multiplicity of issues facing the justice system caused by the pandemic
- Teams’ work will include a focus on how to improve service delivery to every legal sector including those in specialized courts
- Designate multiple team chairs
- The teams will meet “virtually” and are responsible for reporting

- The teams will prepare a report concerning the issues and action plans to be combined with the work of other teams
- The teams will work under a deadline
- Teams will engage in brainstorming and the use of surveys to identify problems to solve
- Multiple teams will engage in concurrent tasks with a managed timeline
- Video-assisted conferencing will be used to expedite and facilitate team meetings

#### Team and Team Leader Identification:

- Team leaders will be designated in the next three weeks so that work can begin ASAP
- Team leader instructions will be prepared
- The MCB has commissioned Chase Saunders, a former Mecklenburg County Senior Resident Superior Court Judge and Chief District Court Judge currently practicing in dispute resolution to Chair The MCB Access to Justice COVID Initiative

Team Category	Team Leader/s	Problem Description	Solution Description	Requirements
MCB Co chairs	Saunders/Lucchesi			
Program Plan B Team	Kathi Lucchesi, Brian Cromwell, Jim Gronquist, Leah Campbell Ann Tompkins Heath Gilbert Dedicated employee YLD secretary Chase Saunders			
MCB Communications				
Criminal System	Jim Gronquist			
DA	SpencerMerriweather			
PD	Kevin Tully			
Technology: hardware, software, cybersecurity	Clark Walton David Warlick Demian Betz WFC Earle Roberts Charter			
Education/Training				
Cybersecurity	Clark Walton			
No Limits Tech Team	Earle Roberts/Demian Betz			
Debtor Creditor	Heather Culp			
Estates Division	Holly Norvell			
Evictions/Foreclosure				
Guardianship				
Judicial Sales				
Magistrates Courts	Chris Bazzle			
District Court Rep				
District Ct Family Law	Judge Marvel			
Superior Courts	Judge Trosch			
Federal Courts				

Register of Deeds				
Federal Court				
Sheriff				
Legal Services (ODS) Advocates	Ken Schorr/Cindy Patton LANC			
TCA - MCB Interface				
Family Law	Tom Bush			
Plaintiff's Bar				
Defense Bar	Jack Wright			
Civil Motions				
Civil Trials				
Corporate Counsel				
Managing Partners				
Mediation	Sarah Kromer			
Arbitration				
Real Property				
Federal Court				
Dispute Resolution	Ketan Soni			

**501(c )(3) Revenue Conduit Partner:** The MCBF is the perfect vehicle to accept funds to be used to further the objectives of the initiative

**TOT: Team leader appointment and categories associated w/ MCB committees and practice areas :**

- CLE ( umbrella entity implementing training across all teams in the platform in the new model )
- Courts and court-related organizations
- Corporate counsel
- Managing partners organization
- Debtor-Creditor
- Defense bar
- Dispute resolution
- Estates department
- Evictions
- Family Law
- Federal bar
- Foreclosures
- Guardianship
- Managing partners
- Plaintiff's bar
- Real Property
- TCA – MCB Interface
- Technology
- Collaborative Partners – MCB Interface ( Chief Justice Committee, NCBA )

**The MCB Access to Justice COVID Initiative Survey**

**( Fillable returnable form )**

Now is your chance to have your voice heard!

Now and post corona, your practice is and will continue to change for we are in a transformational moment.... If it is a repetitive task, software can do it and somewhere, someone will figure out how to do it. Telework. Telemed. Telelaw. Remote videoconferencing in the new “low touch economy” will become the norm. The expansion and creative use of the technology will sweep the legal business. The legal counseling, relationship counseling using tools to enhance “high touch” with your clients and other lawyers have sustainable value. As we all adapt to the future, our interactions and the functioning of the court system, we must find solutions in order to serve our clients and the public. Please take this practice survey to answer these two questions:

Question One: How can videoconferencing and other technology be used to provide better access, accountability, and economy in a best practices court system?

Question Two: What administrative rules could be implemented which would expedite the disposition of legal business?

Question Three: How can the practicing lawyer economically provide services to the expanding population needing affordable advocacy access?

The purpose of the practice survey is to gather information about problems which need to be solved.

1. As to each member of the bar, practice specialist, or provider of legal support services
2. As to each court: Clerk of Superior Court, Magistrates, District and Superior Court
3. Identify reforms which need to be made, i.e. where the problems are;
4. Propose solutions to those problems with a focus on technology solutions such as videoconferencing. This would include considering solutions in use by global countries which are using video processes to conduct activities such as judicial sales, etc.
5. Identify the technology and training associated with technology solutions;
6. Identify the enabling process, i.e. what you need to do in order to affect change; and,
7. Identify the party who can make change happen including: clerks and judges through local rules, the Chief Justice through judicial codes of conduct and rules, and/or the Legislature.

The following spreadsheet contains information fields. This is a way to gather information concerning how to improve operations in areas such as: estates processing, small claims and summary ejectment hearings, motions practice in the District and Superior Court, family law deadlines, videoconferencing hearings, etc. Now is a time for collaborative action and the DRC is positioned to provide a convening voice in a necessary conversation.

Clerk of Court Clerk, Magistrate, District, Superior	Practice Focus Description of practice area which would benefit from changes	Practice Solution Description of how the problem can be solved and implemented	Technology/Training Identify any technology which can be used to solve the problem; eg. Expanded use of videoconferencing	Enabling Process
Clerk Estates Records Extensions Hearings Judicial sales Other				
Magistrate Small Claims Ejectments Collections Other				

District Motions Discovery practice Entries of Default Remote witnesses Family Court Criminal Cour Other				
Superior Civil motions Video depositions Remote witnesses Unavailable witnesses Criminal Court Other				
Register of Deeds Filing Recordation				
Federal Courts				
Notaries Video notarization				
Other areas				

**Fill out the form online or scan and email to:** \_\_\_\_\_

**Thank you for your participation!**

\_\_\_\_\_  
Heath Gilbert, President  
Mecklenburg County Bar 2019 - 2020

#### **Notes and Platform Draft**

#### **5/12/20 Notes re Gilbert, Upton, Saunders ZC:**

1. Architecture for transformation

2. Platform
  - a. How do we open the courts
  - b. Find people who might be interested
  - c. Funding around healthy communities, social justice, and equity
3. I suggest that once you have a statement of intent
  - a. Goals of success within some period of time
  - b. Allows bar to lead, **while acknowledging long-simmering perceptions**
  - c. Lead in a way to get national attention
4. Need discipline
  - a. Who the hell do they think they are
  - b. Need a statement of intent
  - c. Build a process for that
  - d. There is a general map of a gateway
  - e. How do I get involved
  - f. How do I measure it
  - g. Gateways and go – no go
  - h. Transparency
  - i. Let them know up front what you want
  - j. Final note – awareness of issues
  - k. They want to hear justice, equity, transparency, technology
  - l. IT follow strategy; realistic assessment of organizational bandwidth
5. Work groups own the process and have a responsibility
  - a. Everybody is responsible for doing their job
  - b. Doing a report
  - c. Uploading it
6. We need to design a system which permits access to justice
7. We need make that available; and utilized for enhanced perception of the Bar
8. We are going to be hard pressed to have counsel
9. Domestic arena
10. Standing policy team – team 1 **TYPES OF TEAMS: Policy, Productivity, Practice Section, Tech/Ed**
11. Productivity team – team 2

#### Concept brainstorming

- Healthy justice community
- The Great Reassessment
- Healthy law firms –
  - a. ( Zoom CLE ) transitioning in each sector to the pandemic economy
  - b. ( Zoom CLE ) for each of the groups
  - c. ( Zoom CLE ) virtual conferencing
- FOMO – FOGO
- Remote readiness
- Transparent Platform
- Triage
- VAC, VAP, VAM, VAT,
- VADR = video assisted dispute resolution team: develop best practice guide for arbitration and mediation in collaboration with the NCDRC and national dispute resolution organizations such as the AAA, JAMS, etc.

#### **Potential Teams associated with MCB committees and practice areas in alpha order**

- CLE ( umbrella entity implementing training for the new model )
- Courts and court-related organizations
- Corporate counsel
- Debtor-Creditor
- Defense bar
- Dispute resolution
- Estates department
- Evictions
- Family Law
- Federal bar
- Foreclosures
- Guardianship
- Managing partners
- Plaintiff's bar
- Real Property
- TCA – MCB Interface
- Technology

#### **REMARKS BY MCB PRESIDENT Heath Gilbert – NEWS RELEASE PREP**

**A Call to Action by the MCB:** Now is the time for all attorneys to come to the aid of justice in their community. As a part of that effort, the MCB announces the....

**There are decades when nothing happens - There are weeks when decades happen.....Lenin**



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 2

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, June 8 meeting at 10:00 a.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan

PLEASE HAVE YOUR PERSONAL CALENDARS AVAILABLE

Agenda Item	Person	Minutes
Welcome	Day 18	
1. Convening, roll call and timekeeping <ul style="list-style-type: none"> <li>a. Previous Attendees               <ul style="list-style-type: none"> <li>i. President Gilbert</li> <li>ii. MCB Director Leah Campbell</li> <li>iii. Co-Chair Kathi Lucchesi</li> <li>iv. Brian Cromwell</li> <li>v. James Gronquist</li> <li>vi. Chase Saunders</li> </ul> </li> </ul>	Chase	1
2. Message from MCB President Gilbert	Heath	5
3. Introductions of New Crisis Team Members <ul style="list-style-type: none"> <li>a. Susan Luck - 5 minute intro</li> <li>b. Anne Tompkins – 5 minute intro</li> <li>c. Emon Northe – 5 minute intro</li> <li>d. Cindy Ballard – 5 minute intro</li> </ul> 4. Introductions of Court System Representatives <ul style="list-style-type: none"> <li>a. Judge Karla Archie – Superior Court</li> <li>b. Assistant Clerk – Mandana D. Vidwan</li> </ul>	Kathi	20
5. Communications Platform and Protocol – First Order of Business <ul style="list-style-type: none"> <li>a. Need for a communications platform</li> <li>b. Description of Microsoft Teams Platform/archive/meetings</li> <li>c. Training for all participants on the use of the platform</li> <li>d. Recording secretary</li> <li>e. Path forward</li> <li>f. Contact information for Crisis Team</li> </ul>	Chase Leah	2 20+
6. Identifying and Closing Crisis Team Recruitment – Second OOB <ul style="list-style-type: none"> <li>a. Role of Crisis Team               <ul style="list-style-type: none"> <li>i. Post recruitment - Organization and Operations - surveys</li> <li>ii. Identification of Sectors for Team Leader selection</li> <li>iii. Recruitment of Sector Team Leaders with Leader letter</li> <li>iv. Serving as liasons to Sector Team Leaders                   <ul style="list-style-type: none"> <li>1. Team leader letter – Team of Teams approach</li> <li>2. Communication platform and training</li> </ul> </li> <li>v. Assisting in Team efforts to assemble and prep MCB report</li> <li>vi. Envision innovative approaches to recovery and reform</li> </ul> </li> <li>b. Discussion of Sectors</li> <li>c. Discussion of Sector Team leaders and the team leader letter</li> </ul>	Kathi	10
7. Pre-Launch Deadlines <ul style="list-style-type: none"> <li>a. Objectives by June 5<sup>th</sup> <ul style="list-style-type: none"> <li>i. Approval of Team Leader letter</li> <li>ii. Recruitment of new Crisis Team members</li> </ul> </li> <li>b. Objectives by June 12<sup>th</sup> <ul style="list-style-type: none"> <li>i. Confirm Crisis Team membership</li> <li>ii. Identify Sectors</li> </ul> </li> </ul>	Chase	2

<ul style="list-style-type: none"> <li>iii. Identify Sector Team Leaders</li> <li>c. Objectives by June 19<sup>th</sup> <ul style="list-style-type: none"> <li>i. Confirm Sector Team Leaders</li> <li>ii. Confirm Crisis Team liasons for Civil and Criminal Sectors</li> <li>iii. Send Team Leader instruction letter distribution confirmed</li> </ul> </li> <li>d. Objectives by June 26<sup>th</sup> <ul style="list-style-type: none"> <li>i. Initiate Team Member identification and recruitment</li> <li>ii. Team Leader and Member CommsPlatform education</li> </ul> </li> <li>e. Scheduling Next 3 Meetings</li> </ul>		3
<ul style="list-style-type: none"> <li>8. Launch <ul style="list-style-type: none"> <li>a. Week of July 1<sup>st</sup></li> <li>b. Interim dates – TBA</li> <li>c. Template for report preparation by Co-Chairs - TBA</li> <li>d. Reports and data delivery to Co-Chairs MCB – 90 days after launch</li> <li>e. Report to the MCB – 30 days after receipt from the sectors</li> </ul> </li> </ul>		
9. HOMEWORK	Kathi	5
10. SCHEDULING NEXT 3 HEARING DATES	Chase	3
11. FINAL WORDS	Heath	2
ADJOURN		

# June 15, 2020 Agenda

Day 25



To: MCB Justice Access Initiative Crisis Team Member Meeting No. 3

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, June 15 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan

Agenda Items	Person	Minutes
Setting an example of best practices		
Welcome to the JAI Crisis Team Member Meeting Day 25		
1. Convening, 2. Roll call and timekeeping for the CRISIS NERVE CENTER 3. Last Meeting Crisis Team Attendees President Gilbert, MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Anne Tompkins, Mandana Vidwan	Chase	2
4. Message from MCB President Gilbert a. Invitation to a statewide conference of Bar Districts announcement	Heath	3
5. Crisis Team Members a. Professor Susan Luck b. Anne Tompkins c. Brian Cromwell d. Jim Gronquist e. Emon Northe – Intro f. Courtney Ballard g. Rick McDermott h. Leah Campbell i. Introductions of Court System Representatives – Representatives: Judge Carla Archie – Superior Court Representatives: Judge Elizabeth Trosch – District Court Representatives: Assistant Clerk – Mandana D. Vidwan, Hrg. Officer	Kathi	3
6. Communications Platform and Protocol Reminder for New Crisis Team Members – Update on Teams Platform a. Description of Microsoft Teams Platform/archive/meetings b. Training for all participants on the use of the platform c. Recording Secretary – Shelby Benson – taking minutes d. Path forward – public record – 7 days' notice of meetings e. Contact information for Crisis Team	Leah	5
7. Identifying and Closing Crisis Team Recruitment – Second OOB	Kathi	25



c. Thinking about Technology and Procedures *		
12. FINAL WORDS	Heath	2
ADJOURN		



### JusticeAccessInitiative Organization Chart

Team Category	Team Leader/s	Problem Description	Solution Description	Requirements
JAI CO-CHAIRS	Saunders/Lucchesi			
JAI CRISIS TEAM	Kathi Lucchesi Brian Cromwell Jim Gronquist Leah Campbell Courtney Ballard Rick McDermott Anne Tompkins Heath Gilbert Shelby Benson Chase Saunders Emon Northe			
OPERATIONS PLANNING	Heath Gilbert Kathi Lucchesi Chase Saunders Leah Campbell Susan Luck			
COMMUNICATIONS	Leah Campbell Shelby Benson			
CIVIL LIAISON REPS				
CRIMINAL LIASON REPS	Anne Tompkins Brian Cromwell Jim Gronquist			
Technology: hardware, software, cybersecurity	Clark Walton David Warlick Demian Betz WFC Earle Roberts Charter			
Education/Training	Susan Luck			

Cybersecurity	Clark Walton			
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**\*UK Report – Survey May 2020 – Technical Issue Information re remote proceedings**

5.38 Many respondents shared suggestions for how technical issues could be better addressed in the immediate term.

Suggestions provided are summarized at Figure 19 below.

**Preparation**

- i.) Conduct dry runs to test the technology in advance of the hearing
- ii.) Provide sufficient notice of format so all participants can ensure suitable technology is in place
- iii.) Allocate more time before the start of each hearing to deal with connectivity issues
- iv.) Provide direct contact details of parties and judge in advance of hearing
- v.) Have a backup line of communication
- vi.) Vet the quality of e-bundles
- vii.) Give longer notice of which judge is going to hear the case and enable hard copy bundles to be delivered
- viii.) Allow parties to say whether they easily use the chosen platform or not

**Guidance**

- i.) Clearer guidance on e-bundles and filing
- ii.) Guidance drawing attention to technical incompatibility issues or prior software requirements
- iii.) Clearly specify who is responsible for setting up any remote hearing
- iv.) Provide more detailed guidance regarding how to connect to hearings and how to resolve

**common**

connection issues

**Technology**

- i.) Use more up-to-date platforms (many petitions for Zoom or Teams rather than Skype for Business)
- ii.) Use platforms compatible with both PCs and Macs
- iii.) Invest in remote access areas for clients with no access to technology and broadband
- iv.) Provide standardised AV package for judges, including high quality webcam, microphone and second screen
- v.) Ensure that all judges are equipped with a reliable internet connection
- vi.) Ensure all parties have more than one screen to participate in hearing and view documents

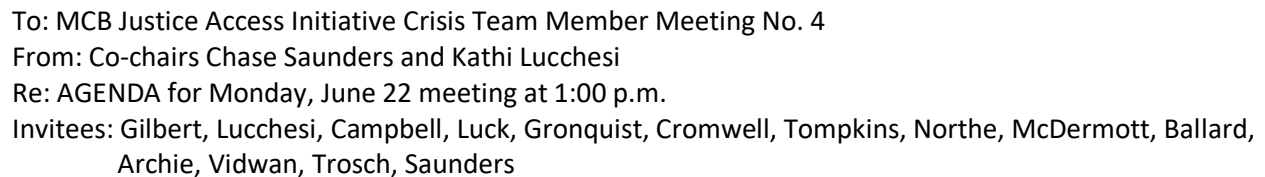
**Conduct of hearing**

- i.) Set ground rules at the start of the hearing
- ii.) Slow the pace of the hearing and allow parties to re-start submissions where connection is lost
- iii.) Develop consistent standards of etiquette to ensure parties do not speak over one another (and a standardised approach to muting participants)

**Assistance**

- i.) Provide a dedicated direct helpline for court users
- ii.) Provide contact number for a court officer

## Day 32

73

<ul style="list-style-type: none"> <li>iii. The Role of the Team Liaisons - Chase <ul style="list-style-type: none"> <li>1. The package: Speech. TL Letter. Org. Chart</li> </ul> </li> <li>iv. Envision innovative approaches to recovery and reform</li> <li>c. Reports on from Court Representatives re Status of the Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>	Chase	3
<ul style="list-style-type: none"> <li>7. Pre-Launch Objective Deadlines, 1:00 p.m. Mondays - YASNY <ul style="list-style-type: none"> <li>a. Objectives by June 22<sup>th</sup> <ul style="list-style-type: none"> <li>i. Identify Sectors &amp; Team Leaders – mostly done</li> <li>ii. Confirm Sector Team Leaders – work in process</li> <li>iii. Involve Bar Sector Leaders in identifying Team Leaders, etc.</li> <li>iv. Confirm Crisis Team liaisons for Civil and Criminal Sectors</li> <li>v. Send Team Leader instruction letter distribution confirmed</li> </ul> </li> <li>b. Objectives by June 26<sup>th</sup> <ul style="list-style-type: none"> <li>i. Identify Sector Team Leaders and activate</li> <li>ii. Initiate Team Member identification and recruitment</li> <li>iii. Team Leader and Member CommsPlatform education</li> </ul> </li> <li>c. Scheduling Next Meeting – Mondays at 1:00 p.m. <ul style="list-style-type: none"> <li>i. June 29</li> </ul> </li> </ul> </li> </ul>	Chase	5
<ul style="list-style-type: none"> <li>8. Launch <ul style="list-style-type: none"> <li>a. Week of July 1<sup>st</sup></li> <li>b. Interim dates – TBA</li> <li>c. Template for report preparation by Co-Chairs - TBA</li> <li>d. Reports and data delivery to Co-Chairs MCB – 90 days after launch</li> <li>e. Report to the MCB – 30 days after receipt from the sectors</li> </ul> </li> </ul>	Chase	2
<ul style="list-style-type: none"> <li>9. GRADING HOMEWORK <ul style="list-style-type: none"> <li>a. By end of June 26 identify and populate civil sector team leaders</li> <li>b. Collection of Team Leader Letter documents <ul style="list-style-type: none"> <li>I. President's address</li> <li>II. Team Leader letter &amp; Team Sector list</li> </ul> </li> <li>c. Review and make suggestions – Bar Sector Chairs</li> <li>d. We are a working group – add names, sectors, interests</li> </ul> </li> </ul>	Kathi	3
<ul style="list-style-type: none"> <li>10. NEW HOMEWORK <ul style="list-style-type: none"> <li>a. Reaching out to Team Leaders</li> <li>b. Recruiting Teams</li> <li>c. Thinking about Technology and Procedures *</li> </ul> </li> </ul>		
11. FINAL WORDS	Heath	2
ADJOURN		



# June 29, 2020 Agenda

Day 39



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 5

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, June 29 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders,

Agenda Items	Person	Minutes
Setting an example of best practices		
Welcome to the JAI Crisis Team Member Meeting Day 39		
1. Convening – Recovery, Reimagining, Reformation 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees President Gilbert, MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan	Chase	2
4. Minutes – Review and Approval	Kathi	3
5. Communications Platform and Protocol – on Teams Platform a. Update on Teams Platform b. Update on Organizational Chart – with contact information c. Connecting with Sector Team Leaders to inform them of resources d. Communication with the Bar regarding what we are doing e. Publication of Organizational chart to the bar and feedback f. The process of change – Technology Education Sector	Leah	7
6. Topical Discussions - a. Approval and use of Team Leader Letter b. Sector Reports a. Criminal Sector - Anne b. Civil Sector Kathi i. Report on Dispute Resolution Ecosystem Sector Chase ii. Report on Low Income – Pro Se Sector Emon iii. Report on Real Estate Chase iv. Including Tech-Ed Sector Susan a. Programs on how to change b. Programs on how to do it c. Discussion of Remaining Sectors Kathi/Leah	Kathi	40

<ul style="list-style-type: none"> <li>d. Envision innovative approaches to recovery and reform</li> <li>c. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>	2 2 2	
7. Pre-Launch Objective Deadlines 1:00 p.m. Mondays - <ul style="list-style-type: none"> <li>a. Objectives by July 3<sup>rd</sup> <ul style="list-style-type: none"> <li>i. Crisis Team existence – done</li> <li>ii. Communications platform - done</li> <li>iii. Team Leader Letter – done</li> <li>iv. FAQ Approval of Team Leader letter – done</li> <li>v. Organizational Chart <ul style="list-style-type: none"> <li>a. What remains to be done? Leah</li> <li>b. When will it be published?</li> </ul> </li> <li>vi. Sectors <ul style="list-style-type: none"> <li>a. What does the final categories look like? Kathi</li> <li>b. Who are the existing chairs?</li> <li>c. Who can we get to do the rest of it?</li> </ul> </li> </ul> </li> <li>B. Launch Discussion <ul style="list-style-type: none"> <li>a. When do we launch</li> <li>b. What does a launch look like</li> <li>c. Week of July 1<sup>st</sup></li> <li>d. Interim dates – TBA</li> <li>e. Template for report preparation by Co-Chairs - TBA</li> <li>f. Reports/data delivery to Co-Chairs – 90 days after launch</li> <li>c. Report to the MCB – 30 days after receipt from the sectors</li> </ul> </li> </ul>	Chase	4
8. HOMEWORK <ul style="list-style-type: none"> <li>a. Old Homework <ul style="list-style-type: none"> <li>i. Sector identification</li> <li>ii. Team leader completion</li> <li>iii. Organizational Chart</li> </ul> </li> <li>b. New Homework <ul style="list-style-type: none"> <li>i. Liaison outreach to identified Team Leaders</li> <li>ii. Identification and placement of new Team Leaders</li> <li>iii. Team Leader letter and FAQ use</li> <li>iv. Finalization of Organizational Chart</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE <ul style="list-style-type: none"> <li>i. WEEKLY UNTIL ORGANIZATIONAL CHART FILLED?</li> <li>ii. BIMONTHLY AFTER THAN</li> </ul> </li> </ul>	Kathi	3
ADJOURN		

# July 6, 2020 Agenda

Day 46



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 4

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, June 22 meeting at 10:00 a.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders,

Minutes	Agenda Items	Person	
	Setting an example of best practices		
	Welcome to the JAI Crisis Team Member Meeting Day 46		
	1. Convening – Recovery, Reimagining, Reformation 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Shelby Benson Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan	Chase	2
	4. Minutes – Review and Approval	Kathi	2
	5. Communications Platform and Protocol – on Teams Platform a. Update on Teams Platform b. Update on Organizational Chart – with contact information c. Connecting with Sector Team Leaders to inform them of resources d. Communication with the Bar regarding what we are doing e. Publication of Organizational chart to the bar and feedback	Leah	7
	6. Topical Discussions - a. Sector Development Reports a. Criminal Sector Liaison Team b. Civil Sector Liaison Team i. Report on Dispute Resolution Ecosystem Sector ii. Report on Low Income – Pro Se Sector iii. Report on Real Estate iv. Including Tech-Ed Sector v. Clerk’s Practice Area a. Filings b. Defaults and Extensions	Kathi Anne 3 Chase 1 Emon 2 Chase 2 Susan 2 Kathi	40

<ul style="list-style-type: none"> <li>c. Judgments and Collections</li> <li>d. Foreclosures</li> <li>e. Estates</li> <li>f. Executions</li> <li>g. Guardianships</li> <li>vi. Magistrate's Practice <ul style="list-style-type: none"> <li>a. Evictions</li> <li>b. Small claims</li> <li>c. Filings</li> </ul> </li> <li>vii. District/Superior <ul style="list-style-type: none"> <li>a. Motions/hearings/bench</li> <li>b. Jury</li> <li>c. Discovery/Subpoena/Releases</li> <li>d. Filings</li> </ul> </li> <li>viii. Immigration</li> <li>c. Envision innovative approaches to recovery and reform</li> <li>b. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> <li>iv. Clerk update email - Chase</li> </ul> </li> </ul>	2 2 2	
7. Pre-Launch Objective Deadlines 1:00 p.m. Mondays - <ul style="list-style-type: none"> <li>i. FAQ Approval of Team Leader letter – done</li> <li>ii. Team Leader Report Instructions document</li> <li>iii. Organizational Chart <ul style="list-style-type: none"> <li>a. What remains to be done? Leah</li> <li>b. When will it be published?</li> </ul> </li> <li>iv. Sectors <ul style="list-style-type: none"> <li>a. What does the final categories look like? Kathi</li> <li>b. Who are the existing chairs?</li> <li>c. Who can we get to do the rest of it?</li> </ul> </li> <li>B. Launch Discussion <ul style="list-style-type: none"> <li>a. When do we launch</li> <li>b. What does a launch look like</li> <li>c. Week of July 1<sup>st</sup></li> <li>d. Interim dates – TBA</li> <li>e. Template for report preparation by Co-Chairs - TBA</li> <li>f. Reports/data delivery to Co-Chairs – 90 days after launch</li> <li>c. Report to the MCB – 30 days after receipt from the sectors</li> </ul> </li> </ul>	Chase	4
8. HOMEWORK <ul style="list-style-type: none"> <li>a. Old Homework <ul style="list-style-type: none"> <li>i. Sector identification</li> <li>ii. Team leader completion</li> <li>iii. Organizational Chart</li> </ul> </li> <li>b. New Homework <ul style="list-style-type: none"> <li>i. Liaison outreach to identified Team Leaders</li> </ul> </li> </ul>	Kathi	3

<ul style="list-style-type: none"> <li>ii. Identification and placement of new Team Leaders</li> <li>iii. Team Leader letter and FAQ use</li> <li>iv. Finalization of Organizational Chart</li> </ul>		
<ul style="list-style-type: none"> <li>c. NEXT MEETING SCHEDULE DISCUSSION               <ul style="list-style-type: none"> <li>i. WEEKLY UNTIL ORGANIZATIONAL CHART FILLED?</li> <li>ii. BIMONTHLY AFTER THAN</li> </ul> </li> </ul>		
ADJOURN		

# July 13, 2020 Agenda

Day 53



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 6

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, July 13 meeting at 10:00 a.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders,

Minutes	Agenda Items	Person	
	Setting an example of best practices		
	Welcome to the JAI Crisis Team Member Meeting Day 53		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Shelby Benson Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan, Carla Archie, Chase Saunders	Chase	1
	4. Minutes – Review and Approval	Kathi	2
	5. Communications Platform and Protocol – Status Report a. Update on Teams Platform b. Update on Organizational Chart – with contact information c. Connecting with Sector Team Leaders to inform them of resources d. Communication with the Bar regarding what we are doing e. Publication of Organizational chart to the bar and feedback	Leah	5
	6. Topical Discussions - a. Sector Development Status Reports a. Criminal Sector Liaison Team Anne b. Civil Sector Liaison Team i. Report on Dispute Resolution Ecosystem Sector Chase ii. Report on Low Income – Pro Se Sector Emon iii. Report on Real Estate Chase iv. Including Tech-Ed Sector Susan v. Clerk’s Practice Area a. Single Team: Filings, Defaults and Extensions Chase	Kathi 3 1 2 1 2 2	40

<ul style="list-style-type: none"> <li>Judgments and Collections</li> <li>b. Foreclosures</li> <li>c. Estates</li> <li>d. Executions</li> <li>e. Guardianships</li> <li>vi. Magistrate's Practice <ul style="list-style-type: none"> <li>a. Evictions</li> <li>b. Small claims</li> <li>c. Filings</li> </ul> </li> <li>vii. District/Superior <ul style="list-style-type: none"> <li>a. Motions/hearings/bench</li> <li>b. Jury</li> <li>c. Discovery/Subpoena/Releases</li> <li>d. Filings</li> </ul> </li> <li>viii. Immigration</li> <li>ix. Administrative <ul style="list-style-type: none"> <li>a. SSI</li> <li>b. VA</li> <li>c. Worker's Comp?</li> </ul> </li> <li>c. Envision innovative approaches to recovery and reform</li> <li>b. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>		
<p>7. Pre-Launch Objective Deadlines 1:00 p.m. Mondays -</p> <ul style="list-style-type: none"> <li>i. Organizational Chart <ul style="list-style-type: none"> <li>a. What remains to be done? Leah</li> <li>b. When will it be published?</li> </ul> </li> <li>ii. Sectors <ul style="list-style-type: none"> <li>a. What does the final categories look like? Kathi</li> <li>b. Who are the existing chairs?</li> <li>c. Who can we get to do the rest of it?</li> </ul> </li> <li>iii. Team Leader Orientation session planning</li> <li>iv. Launch Discussion <ul style="list-style-type: none"> <li>a. When do we launch</li> <li>b. Preparation of the Launch Announcement</li> <li>c. Week of July 1<sup>st</sup></li> <li>d. Template for report preparation by Co-Chairs - TBA</li> <li>e. Reports/data delivery to Co-Chairs – 90 days after launch</li> <li>c. Report to the MCB – 30 days after receipt from the sectors</li> </ul> </li> <li>v. Confirmation of Crisis Team Liaisons matchup to Sectors</li> </ul>	Chase	4
<p>8. HOMEWORK</p> <ul style="list-style-type: none"> <li>a. Old Homework <ul style="list-style-type: none"> <li>i. Sector identification</li> <li>ii. Team leader completion</li> </ul> </li> </ul>	Kathi	8

<ul style="list-style-type: none"> <li>iii. Organizational Chart</li> <li>b. New Homework <ul style="list-style-type: none"> <li>i. Liaison outreach to identified Team Leaders</li> <li>ii. Identification and placement of new Team Leaders</li> <li>iii. Team Leader letter and FAQ use</li> <li>iv. Finalization of Organizational Chart</li> <li>v. Package for Team Leaders and Team Members</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE DISCUSSION <ul style="list-style-type: none"> <li>i. WEEKLY UNTIL ORGANIZATIONAL CHART FILLED?</li> <li>ii. BIMONTHLY AFTER THAN</li> </ul> </li> </ul>		
ADJOURN		



# July 27, 2020 Agenda

Day 67



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 7

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, July 27 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders,

Agenda Items	Person	Minutes
Setting an example of best practices – How & When Not IF		
Welcome to the JAI Crisis Team Member Meeting Day 67		
1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Shelby Benson Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan, Carla Archie, Chase Saunders 4. Completion of two Team Leader Meetings	Chase	2
5. Minutes – Review and Approval	Kathi	2
6. Communications Platform and Protocol – Status Report a. Update on Organizational Chart – with contact information b. Status of list and contact information re Team Leaders c. Status of list and contact information re Team Members d. Connecting with Sector Team Leaders to inform them of resources e. Publication of Organizational chart to the bar and feedback f. Educational programs for Team Leaders g. Team Leader Sector Forums Chase	Leah	3
7. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team <b>(Tompkins/Cromwell/Gronquist)</b> ii. Civil Sector Liaison Team Status Reports - CHECK IN REPORTS A. Report on Dispute Resolution <b>(Saunders)</b> B. Report on Indigent Services/Administrative Matters <b>(Northe)</b> C. Report on Real Estate <b>(Saunders)</b> D. Including Tech/Cybersecurity/Ed <b>(McDermott/Luck)</b> E. Clerk's Practice <b>(Ballard)</b> F. Magistrate's Practice <b>(Ballard)</b> G. District Court/Superior Court <b>(Lucchesi)</b>	Kathi 3 1	40

<ul style="list-style-type: none"> <li>H. Immigration <b>(McDermott)</b></li> <li>I. Family Law <b>(Saunders)</b></li> <li>b. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>8. Pre-Launch Objective Deadlines: 1:00 p.m. Mondays - Chase <ul style="list-style-type: none"> <li>i. Organizational Chart <ul style="list-style-type: none"> <li>a. What remains to be done? Leah</li> <li>b. When will it be published?</li> </ul> </li> <li>ii. Next Team Leader Orientation session planning</li> <li>iii. Process of Change: Liaison/Team Leader Workshops Susan</li> <li>iv. Launch Discussion <ul style="list-style-type: none"> <li>a. When do we launch? Kathi</li> <li>b. Preparation of the Launch Announcement</li> <li>c. End of July? August 3?</li> <li>d. Report to the MCB from Team Leaders</li> </ul> </li> <li>v. Confirmation of Crisis Team Liaisons matchup to Sectors</li> </ul> </li> </ul>		5
<ul style="list-style-type: none"> <li>9. HOMEWORK <ul style="list-style-type: none"> <li>a. Old Business? <ul style="list-style-type: none"> <li>i. Sector identification and Team leader completion</li> <li>ii. Organizational Chart</li> </ul> </li> <li>b. New Homework: Facilitating the work of the Team Leaders <ul style="list-style-type: none"> <li>I. Liaison outreach to identified Team Leaders</li> <li>II. Liaison schedule for regular meetings with Team Leaders</li> <li>III. Educational programs</li> <li>IV. Feedback Sector-Bar Working Programs</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE DISCUSSION <ul style="list-style-type: none"> <li>i. CORE CRISIS TEAMS</li> <li>ii. Liaison Meetings with Sector Chairs/Co-Chairs</li> <li>iii. Team Leader Meetings- Joint with Crisis Team?</li> <li>iv. PRINCIPLES OF CHANGE process of Change Webinars <b>(Luck)</b></li> </ul> </li> </ul> </li> </ul>	Kathi	8
ADJOURN		

# August 10, 2020 Agenda

Day 81



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 8 ..... LAUNCH + 7

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, August 10, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 81		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees MCB Director Leah Campbell, Co-Chair Kathi Lucchesi, Shelby Benson Brian Cromwell, James Gronquist, Susan Luck, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan, Carla Archie, Co-Chair Chase Saunders 4. We have LAUNCHED!	Chase	2
	5. Minutes – Review and Approval	Kathi	2
	6. Communications Platform and Protocol – Status Report a. Update on Teams Platform b. Update on Organizational Chart – with contact information c. Status of connections with Team Leaders and Teams	Leah	3
	7. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney G. Magistrate's Practice Sector Courtney H. Indigent Services/Administrative Sector Emon I. District Court/Superior Court Sector Kathi b. Administrative Order regarding Court Expansion Judges c. Reports on from Court Representatives re Status of Their Courts	Kathi	30

<ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul>		
<p>8. WHATS NEXT TOPIC INTRODUCTION</p> <ul style="list-style-type: none"> <li>i. Change Webinar</li> <li>ii. Liaising with Committees</li> <li>iii. Gathering information for the final report</li> <li>iv. Managing Teams</li> <li>v. Status of Team activities</li> <li>vi. Questions from Crisis Team Members</li> </ul>	Chase	2
<p>9. HOMEWORK</p> <ul style="list-style-type: none"> <li>a. CONVERSATION RE TOPICS INTRODUCED ABOVE</li> <li>b. Facilitating the work of the Team Leaders <ul style="list-style-type: none"> <li>I. Liaison outreach to identified Team Leaders</li> <li>II. Liaison schedule for regular meetings with Team Leaders</li> <li>III. Educational programs</li> <li>IV. Feedback Sector-Bar Working Programs</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE DISCUSSION <ul style="list-style-type: none"> <li>i. WEEKLY UNTIL ORGANIZATIONAL CHART FILLED?</li> <li>ii. BIMONTHLY AFTER THAT?</li> </ul> </li> </ul>	Kathi	10
ADJOURN		



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 9 ..... LAUNCH + 28

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, August 31, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 81		
	1. Convening	Chase	2
	2. Roll call and timekeeping for the CRISIS CORE TEAM		
	3. We have LAUNCHED!		
	4. Minutes – Review and Approval	Kathi	2
	5. Communications Platform and Protocol – Status Report	Leah	3
	a. Update on Teams Platform		
	6. Topical Discussions -	Kathi	30
	a. Completion of Sector Team Leader/Organization Formation Reports		
	i. Criminal Sector Liaison Team Jim/Ane/Brian		
	ii. Civil Sector Liaison Team		
	A. Report on Dispute Resolution Sector Chase		
	B. Report on Real Estate Sector Chase		
	C. Family Law Sector Chase		
	D. Tech-Ed Sector Susan/Rick		
	E. Immigration Rick		
	F. Clerk's Practice Sector Courtney		
	G. Magistrate's Practice Sector Courtney		
	H. Indigent Services/Administrative Sector Emon		
	I. District Court/Superior Court Sector Kathi		
	b. Administrative Order regarding Court Expansion Judges		
	c. Reports on from Court Representatives re Status of Their Courts		
	i. Judge Archie		
	ii. Judge Trosch		
	iii. Assistant Clerk Vidwan		
	7. WHATS NEXT TOPIC INTRODUCTION	Chase	2
	i. Change Webinar		
	ii. Liaising with Committees		
	iii. Gathering information for the final report		
	iv. Managing Teams		
	v. Status of Team activities		
	vi. Questions from Crisis Team Members		
	8. HOMEWORK	Kathi	10
	a. CONVERSATION RE TOPICS INTRODUCED ABOVE		

<ul style="list-style-type: none"> <li>b. Facilitating the work of the Team Leaders <ul style="list-style-type: none"> <li>I. Liaison outreach to identified Team Leaders</li> <li>II. Liaison schedule for regular meetings with Team Leaders</li> <li>III. Educational programs</li> <li>IV. Feedback Sector-Bar Working Programs</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE DISCUSSION</li> </ul>		
ADJOURN		

# September 28, 2020 Agenda

Day 130



To: MCB JusticeAccessInitiative Crisis Team Member Meeting No. 10 ..... LAUNCH + 56

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, August 10, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 130		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees Co-Chair Chase Saunders, MCB Director Leah Campbell, Shelby Benson, Brian Cromwell, James Gronquist, Courtney Ballard, Rick McDermott, Emon Northe, Anne Tompkins, Mandana Vidwan, Judge Elizabeth Trosch 4. 56 days post-launch	Chase	2
	5. Minutes – Review and Approval for August 10 and August 31 Meetings	Kathi	2
	6. Communications Platform and Protocol – Status Report a. Update on Teams Platform	Leah/Shelby	3
	7. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney G. Magistrate's Practice Sector Courtney	Kathi	30

H. Indigent Services/Administrative Sector Emon I. District Court/Superior Court Sector Kathi b. Reports on from Court Representatives re Status of Their Courts i. Judge Archie ii. Judge Trosch iii. Assistant Clerk Vidwan		
8. WHATS NEXT - TOPIC INTRODUCTION i. Change Webinar – September 30th ii. Liaising with Committees iii. Gathering information for the final report (a) Damages – how do we assess and quantify the damage done by COVID closures and restrictions iv. Managing Team Sectors (a) Suggest private meetings with Team Leaders to assist with creation of reports? v. Status of Team Sector activities vi. Presentation of the Final Report (a) Present to MCB thru Bar Blast (similar to launch) (b) How do we present to the Media/3rd parties? vii. Questions from Crisis Team Members	Chase	10
9. HOMEWORK a. CONVERSATION RE TOPICS INTRODUCED ABOVE b. Facilitating the work of the Team Leaders I. Liaison outreach to identified Team Leaders II. Liaison schedule for regular meetings with Team Leaders III. Educational programs IV. Feedback Sector-Bar Working Programs c. NEXT MEETING SCHEDULE DISCUSSION	Kathi	10
ADJOURN		



# October 13, 2020 Agenda

Day 145



To: MCB Justice Access Initiative Crisis Team Member Meeting No. 11 ..... LAUNCH + 71

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Tuesday, October 13, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 145		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees Co-Chair Chase Saunders, Co-Chair Kathi Lucchesi, Judge Carla Archie, Susan Luck, Brian Cromwell, Jim Gronquist, Emon Northe, Courtney Ballard, MCB Ex. Ass't Shelby Benson 4. 71 days post-launch	Chase	2
	5. Minutes – Review and Approval for September 28 Meeting	Kathi	2
	6. Communications Platform and Protocol – Status Report a. Update on Teams Platform	Leah/Shelby	3
	7. Topical Discussions - a. Report on Change Without Fear CLE b. Report on Courtroom 6130 Preparation c. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney G. Magistrate's Practice Sector Courtney	Chase Kathi	30

<ul style="list-style-type: none"> <li>H. Indigent Services/Administrative Sector Emon</li> <li>I. District Court/Superior Court Sector Kathi</li> <li>d. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>		
8. WHATS NEXT - TOPIC INTRODUCTION <ul style="list-style-type: none"> <li>i. Liaising with Committees</li> <li>ii. Gathering information for the final report <ul style="list-style-type: none"> <li>(a) Damages – how do we assess and quantify the damage done by COVID closures and restrictions</li> </ul> </li> <li>iii. Managing Team Sectors <ul style="list-style-type: none"> <li>(a) Suggest private meetings with Team Leaders to assist with creation of reports?</li> </ul> </li> <li>iv. Status of Team Sector activities</li> <li>v. Presentation of the Final Report <ul style="list-style-type: none"> <li>(a) Present to MCB thru Bar Blast (similar to launch)</li> <li>(b) How do we present to the Media/3rd parties?</li> </ul> </li> <li>vi. Questions from Crisis Team Members</li> </ul>	Chase	10
9. HOMEWORK <ul style="list-style-type: none"> <li>a. CONVERSATION RE: TOPICS INTRODUCED ABOVE</li> <li>b. Facilitating the work of the Team Leaders <ul style="list-style-type: none"> <li>I. Liaison outreach to identified Team Leaders</li> <li>II. Liaison schedule for regular meetings with Team Leaders</li> <li>III. Educational programs</li> <li>IV. Feedback Sector-Bar Working Programs</li> </ul> </li> <li>c. NEXT MEETING SCHEDULE DISCUSSION</li> </ul>	Kathi	10
ADJOURN		



To: MCB Justice Access Initiative Crisis Team Member Meeting No. 12 ..... LAUNCH + 84

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, October 26, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 158		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees Co-Chair Chase Saunders, Co-Chair Kathi Lucchesi, Judge Carla Archie, Anne Tompkins, Brian Cromwell, Jim Gronquist, Emon Northe, Rick McDermott, MCB Executive Dir. Leah Campbell, MCB Ex. Ass't Shelby Benson 4. 84 days post-launch	Chase	2
	5. Minutes – Review and Approval for October 13 Meeting	Kathi	2
	6. Communications Platform and Protocol – Status Report	Leah/Shelby	2
	7. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney G. Magistrate's Practice Sector Courtney H. Indigent Services/Administrative Sector Emon I. District Court/Superior Court Sector Kathi	Chase Kathi	30

<ul style="list-style-type: none"> <li>b. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>8. CLOSING IN ON CLOSURE <ul style="list-style-type: none"> <li>i. Liaising with Committees</li> <li>ii. Gathering information for the final report <ul style="list-style-type: none"> <li>(a) Damages – how do we assess and quantify the damage done by COVID closures and restrictions</li> </ul> </li> <li>iii. Status of Team Sector activities</li> <li>iv. Presentation of the Final Report <ul style="list-style-type: none"> <li>(a) Present to MCB thru Bar Blast (similar to launch)</li> <li>(b) How do we present to the Media/3rd parties?</li> </ul> </li> <li>v. Questions from Crisis Team Members</li> </ul> </li> </ul>	Chase	5
<ul style="list-style-type: none"> <li>9. HOMEWORK <ul style="list-style-type: none"> <li>a. Rounding up the reports! <ul style="list-style-type: none"> <li>i. The length of the report is driven by identified needs</li> <li>ii. Short or long, both are fine!</li> </ul> </li> <li>b. NEXT MEETING SCHEDULE DISCUSSION</li> </ul> </li> </ul>	Kathi	5
ADJOURN		

# December 7, 2020 Agenda

Day 190



To: MCB Justice Access Initiative Crisis Team Member Meeting No. 14 ..... August LAUNCH + 136

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, December 7, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson, Bush, Aziz, Willink

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 172		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees Co-Chair Chase Saunders, Co-Chair Kathi Lucchesi, Judge Carla Archie, Susan Luck, Brian Cromwell, Jim Gronquist, Emon Northe, Courtney Ballard, MCB Ex. Ass't Shelby Benson	Chase	2
	4. Minutes – Review and Approval for November 9 Meeting Minutes	Kathi	2
	5. Communications Platform and Protocol – Status Report	Leah/Shelby	0
	6. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney G. Magistrate's Practice Sector	Chase Report In Report In Report In Report Due Inclusive Report Due Report In Report In	15

<p>Courtney</p> <p>H. Indigent Services/Administrative Sector Emon</p> <p>I. District Court/Superior Court Sector Kathi</p> <p>b. Reports on from Court Representatives re Status of Their Courts</p> <p>i. Judge Archie</p> <p>ii. Judge Trosch</p> <p>iii. Assistant Clerk Vidwan</p>	Inclusive  Report In	
<p>7. CLOSING IN ON CLOSURE</p> <p>i. Collecting the Final Reports</p> <p>ii. Editing and Compilation by Chase and Kathi</p> <p>iv. Draft tender to Crisis Team</p> <p>v. Submission the MCB President and Executive Committee</p>	Chase	5
<p>8. NEXT STEPS</p> <p>a. Tender</p> <p>b. Publication</p> <p>c. Final Meeting</p> <p>d. Followup</p>		
ADJOURN		

# November 9, 2020 Agenda

Day 172



To: MCB Justice Access Initiative Crisis Team Member Meeting No. 13 ..... LAUNCH + 98

From: Co-chairs Chase Saunders and Kathi Lucchesi

Re: AGENDA for Monday, October 26, 2020 meeting at 1:00 p.m.

Invitees: Gilbert, Lucchesi, Campbell, Luck, Gronquist, Cromwell, Tompkins, Northe, McDermott, Ballard, Archie, Vidwan, Trosch, Saunders, Benson

Minutes	Agenda Items	Person	
	Setting an example of best practices: IT IS ABOUT HOW?		
	Welcome to the JAI Crisis Team Member Meeting Day 172		
	1. Convening 2. Roll call and timekeeping for the CRISIS CORE TEAM 3. Last Meeting Crisis Team Attendees Co-Chair Chase Saunders, Co-Chair Kathi Lucchesi, Judge Carla Archie, Susan Luck, Brian Cromwell, Jim Gronquist, Emon Northe, Courtney Ballard, MCB Ex. Ass't Shelby Benson 4. 84 days post-launch	Chase	2
	5. Minutes – Review and Approval for October 26 Meeting	Kathi	2
	6. Communications Platform and Protocol – Status Report	Leah/Shelby	0
	7. Topical Discussions - a. Completion of Sector Team Leader/Organization Formation Reports i. Criminal Sector Liaison Team Jim/Anne/Brian ii. Civil Sector Liaison Team A. Report on Dispute Resolution Sector Chase B. Report on Real Estate Sector Chase C. Family Law Sector Chase D. Tech-Ed Sector Susan/Rick E. Immigration Rick F. Clerk's Practice Sector Courtney	Chase Kathi	30

<ul style="list-style-type: none"> <li>G. Magistrate's Practice Sector Courtney</li> <li>H. Indigent Services/Administrative Sector Emon</li> <li>I. District Court/Superior Court Sector Kathi</li> <li>b. Reports on from Court Representatives re Status of Their Courts <ul style="list-style-type: none"> <li>i. Judge Archie</li> <li>ii. Judge Trosch</li> <li>iii. Assistant Clerk Vidwan</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>8. CLOSING IN ON CLOSURE <ul style="list-style-type: none"> <li>i. Collecting the Final Reports</li> <li>ii. Editing and Compilation by Chase and Kathi</li> <li>iv. Draft tender to Crisis Team</li> <li>v. Submission the MCB President and Executive Committee</li> </ul> </li> </ul>	Chase	5
<ul style="list-style-type: none"> <li>9. NEXT STEPS <ul style="list-style-type: none"> <li>a. Tender</li> <li>b. Publication</li> <li>c. Final Meeting</li> <li>d. Followup</li> </ul> </li> </ul>	Kathi	5
ADJOURN		





## TEAM LEADER LETTER



To: \_\_\_\_\_

From: Justice Access Initiative (JAI) – Co-Chairs Judge Chase Saunders (ret'd.)/Kathleen K. Lucchesi

Re: JAI Team Leader Sector Package

Date: \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for agreeing to serve as the Team Leader for the \_\_\_\_\_ Sector of the Justice Access Initiative (JAI) team, which is charged with preparing a report for submission to Heath Gilbert, President of the Mecklenburg County Bar (MCB), by \_\_\_\_\_ date.

The report of your team will be aggregated with those of the other teams into a Justice Access Initiatives Report. Your portion of that Report will serve as the action plan for moving us forward in the wake of the COVID19 pandemic, which has imposed an existential burden on the old system and all law practice sectors. The compilation report will conclude Phase I of our Initiative. Phase II will focus on implementation.

The current COVID 19 pandemic has accentuated our need to plan for an access to justice system that is versatile, user-friendly, technologically up-to-date and provides unfettered access the court system for all users. In essence, we are seeking your expertise in building a 22<sup>nd</sup> Century justice access system. That term is defined as the ecosystem of all of the legally-related services associated with that system. Your team will consider options and practices, rules, technology, and training/educational models, which were not within contemplation six months ago. The Chief Justice has approved moving as much of the court system and related services online. As we do this, we are freeing the court system to handle the matters they are prioritizing.

Identifying the protocols, procedures, and technology to achieve this is your mission. The development of an innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system in response to the pandemic is your mission.

As a Team Leader, you are asked to do the following things:

1. Work with the JAI Crisis team and the sector liaison to select members of your team.
2. Work with the JAI – MCB Comms team who will assist you in setting up meetings with your team.
3. Meet with your practice sector team, online or telephonically, using the Microsoft Teams software package.
4. Study, discuss, and prepare a report answering these questions:
  - i. What are the most significant “access” challenges facing your practice sector?
  - ii. For each challenge, what are potential solutions, including infrastructure, court rule and/or protocol changes
    - a. Which solutions can be implemented via rule or protocol changes and would require no financial burden, and are therefore immediately implementable?

- b. Which solutions are achievable in the near term, but which may take additional time, money and/or coordination? in the interim
  - c. Which solutions are longer term goals?
- iii. For each solution, identify other jurisdictions, forms, and models that can be used as a guide
- iv. For each challenge, what are the technology needs?
  - a. Hardware and software
  - b. One-time costs
  - c. Training and education needs
- v. What are the educational and training needs associated with each solution?
  - a. Immediate needs assessment
  - b. Sustainable needs assessment
- vi. Describe the implementation strategy for each solution
  - a. Administrative rule
  - b. Legislation
  - c. Grants and funding sources
- vii. Prepare a JAI SECTOR REPORT following a uniform template which will be sent to all Sector Team Leaders.
- viii. Submit the report to the JAI Crisis team with any supporting documents within 60 to 75 days of the program launch.

You and your team are encouraged to develop a model for discussing and preparing a report using video- assisted technologies. The JAI Program Team will be inviting you and your team to online conferences as we use available tools to develop new ways to practice and provide access to the system for our clients and the community. Think big and out of the box!

The JAI Communications Platform will be managed by Leah Campbell and staff at the MCB. The platform will use the **Microsoft Teams® application**. That application will give you uniform access to tools for use by you and your team in scheduling online meetings. It will facilitate scheduling, individual and group conversations, webinar meetings, record keeping, and other administrative activity so that the Crisis Team can interact with you and your team. (Nomenclature: a “team is a collection of people, files, tools; a “channel” is the discussion topic or topics of the sector team leader and members.)

Initiative operational materials are included with this letter and instructions are provided below which can give you access to all documents and forms. They include:

1. President Gilbert’s 2020 Commission of the Justice Access Initiative is included as **Appendix I.**
2. The JAI Organization Chart and Contact List appears on the MeckBar Teams Website in EXCEL format. The Charts list the Crisis Team Members and contact information as well as the Sectors and Team Leaders.
3. Contact Leah Campbell, the MCB Director at [lcampbell@meckbar.rog](mailto:lcampbell@meckbar.rog) to be invited to the MCB JAI Microsoft Teams website and Team Communications Platform materials.

Thank you for your willingness to serve your profession and the community! If you have any questions, please contact either of us at the designated email.

*Chase B. Saunders*

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Chase B. Saunders, JAI Program Co-Chair  
[chase@chasesaunders.com](mailto:chase@chasesaunders.com)

*Kathleen K. Lucchesi*

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Kathleen K. Lucchesi, JAI Program Co-Chair  
[kathleen.lucchesi@lincolnderr.com](mailto:kathleen.lucchesi@lincolnderr.com)

cc: Heath Gilbert, President of the Mecklenburg County Bar

**JAI Purpose:** A healthy and accessible justice system is required if a community is to be healthy. The Justice Access Initiative is a platform for the development of the innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system we must rapidly implement to provide access to the justice system ecosystem with a consideration on all of its sectors and specialties.

The Justice Access Initiative is commissioned to facilitate the legal community's development of an action plan to address the effects of the pandemic on those using and seeking legal services. An examination of problems, solutions, enabling technologies, education, implementation and training strategies will be examined. A multi-sector report will be issued within 90 days of program launch to the Mecklenburg County Bar.



## FAQS



## JUSTICE ACCESS INITIATIVES

### Instructions for Team Leaders and Members – Frequently Asked Questions

#### Including a Report Format

#### 1. What is JusticeAccessInitiatives?

Answer: The Justice Access Initiative is commissioned to facilitate the legal community's development of an action plan to address the effects of the pandemic on those using and seeking legal services. An examination of problems, solutions, enabling technologies, education, training and implementation strategies will be examined. A multi-sector report will be issued within 90 days of program launch.

#### 2. Why was it commissioned?

Answer: Excerpts from President Heath Gilbert's Address provide the reasons:

" We are collectively experiencing a public health crisis unlike any we have experienced in our lifetime. The advent of the COVID-19 Pandemic into our world and the subsequent collective pause that we all have undergone has created a crisis in all aspects of our lives. From the closing of schools, to the stay at home orders, to change in our daily routines, economic loss to our clients and practices and the tragic loss of life in our community and nationwide, life as we have known it, has changed.

In the months to come, the collective societal pause will continue to result in a significant change in our professional lives. By the very nature of our profession as counselors of law, we are and will be called upon to be beacons of calming light in the eyes of this storm. In addition, every imaginable area of criminal and civil trial practice will experience delays that will manifest themselves for quite some time. And it is not just limited to the trial bar, as the real estate, estate planning, and all areas of the bar will continue to experience impediments to their practices. This collective pause coupled with a predicted resurgence of COVID-19 in the coming fall and winter highlights that the curve of the limitation to justice is rising rather than flattening.

For the last few years, the Mecklenburg County Bar has been introspective and rightly chartered a course to improve involvement of members in our organization and Bar leadership involvement in your Sections and Committees. We have examined ways to

improve our outputs to our members that include continuing legal education and bringing more value for your membership dollars. In the last year, we have made a concentrated effort to be more accommodating and to seek ways to fulfill membership requests. We began the year without a formal executive director and have ended this past year with our very able and talented executive director Leah Campbell, who has been a steady hand in this time of crisis. With the continued guidance of both Leah and her staff and the officers elected today and your Board of Directors, we will continue that same path forward.

Yet, circumstances compel us to do more.

The mission statement of the Mecklenburg County Bar as set forth on the main page of the website reads as follows:

The mission of the Mecklenburg County Bar is to serve the public and the Bar members in improving and preserving the administration of justice, and to assist the North Carolina State Bar as described by statutory requirements.

With this mission statement as our charge, how do we in the midst of a COVID-19 world, keep and fulfill our obligation?

With respect to our macro mission, this COVID-19 Pandemic, not only reminds us, but demands, that we, as officers of the Court, leaders of this community, and bearers of the torch of access to justiciable relief, are compelled to find a way forward to improve and preserve the administration of justice.

For over 100 years, our Bar has led the way with innovations later adopted by others. We were the first in this state to adopt a lawyer referral service and we established the first Lawyer Assistance Program in the United States offered by a metropolitan Bar. Today I am calling for this Bar to be the first to study and recommend a path forward for the practice of law in a post Covid-19 world.

With the current and anticipated crippling delays of COVID-19, we as practitioners will not be able to facilitate the improvement and preservation of justice until we determine how that can be done when our current methods are limited out of respect for public health. As practitioners, we must have the courage to consider a shift in the paradigm of our practice processes if we intend on bending the curve on the limitation to justice.”

**3. Who are the Co-Chairs of the study commissioned to coordinate the preparation of a report over 90 days?**

Answer: “I will therefore be commissioning a study for the improvement and preservation of justice amid a COVID-19 world. I have asked Kathi Lucchesi of Lincoln Derr and former Superior Court Judge Chase Saunders to co-chair these efforts.”

#### **4. What is the scope and innovative concept for the preparation of the report?**

Answer: “They will begin the process of examining the limitations that have been brought upon our profession by COVID-19 and will recommend innovative ways to facilitate our processes as practitioners including pioneering ways to conduct jury trials in a protected environment or facilitating real estate closings with all the parties and the closing counsel in different locations. This study will also build upon the current implemented successes of things such as Web-Ex Court hearings, video alternative dispute resolution and video notarization. It is my hope that their recommendations will serve as a lodestar for those that have the power to effectuate change and want the perspective of practitioners on how best to implement the same in our efforts to maintain equal access to justice for all.”

The report will be a compilation of reports from the various practice sectors of the criminal and civil court system. Innovative thinking and new ideas and models are sought. An examination of leading national innovators is encouraged. The National Center of State Courts is a great resource with recorded sessions on many relevant issues associated with reopening.

#### **5. What is the leadership structure to manage the preparation of this report?**

Answer:

- a. Executive Committee of the MCB – authorized the initiative
- b. MCB President Heath Gilbert – recommended the initiative
- c. Attorneys Kathleen Lucchesi and former Superior Court Judge Chase Saunders were commissioned to co-chair the initiative
- d. MCB Director Leah Campbell – provides the communications platform for use by all participants using the Microsoft® TEAMS platform. The MCB and platform provides the following features:
  - Meeting scheduling
  - Zoom meeting video meetings
  - Archiving
  - Access to all participants to posted research
  - Recordation
  - Chat features
  - Centralized communications and data flow
- e. The JAI Crisis Core Team – provides organization and operational planning and support
- f. Sectors – specifically identified areas of the civil and criminal ecosystem affected by COVID19
- g. Sector Team Leaders – leaders chairing/cochairing the initiative practicing in specific areas of the law
- h. Sector Team Members – professionals with a focus on a specific area of the law



## **6. What is the key role of the Team Leader?**

Answer: A Sector Team Leader ( TL) or co-chairs selects a team of like-minded professionals to study, assess, recommend, and prepare a report on how the pandemic is affecting their practice sector and what should be done about.

- The TL uses the JAI TEAMS platform for managing communications
- Remote technology is a part of this in that zoom is available on the platform
- Research into what other jurisdictions or practice sectors are doing in response to this crisis is a part of the mission.
- Receive input from other interested members of the legal community following the publication of the JAI Organizational Chart to the Bar in a Bar Blast.
- Reach out to legal and business resources who may provide information helpful to the generation of your sector report.

## **7. What is the role of the Team Members?**

Answer: Each specific practice sector is its own ecosystem. It is governed by substantive and procedural laws as well as operational protocols. Team Members offer granular insights into the problems, solutions, technology, education, and implementation strategies. These insights are valuable and contribute to a sector report. Each sector report is an existential document.

## **8. What does a Sector Team do?**

Answer: Using the JAI TEAMS platform, the Sector Team meets, studies, assesses, and prepares a Team Sector Report.

## **9. What goes into a Team Sector Report?**

Answer: Each team is an aggregator gathering data and making recommendations which

- examines the present, impending, and future of their practice sector as affected by the pandemic
- searches for means to allow access to justice by practitioners, clients, and the public
- conceptualizes innovative models for the delivery of services
- assesses the use of remote technologies in the delivery of services
- identifies the specific processes which are subject to the option of going remote
- examines the costs of services and models for delivering services more effectively and economically are considerations
- identifies issues associated with operational rules of agencies interacting with attorneys
- assesses the emergency rules and practices with a view toward the future

- examines how pro bono services may be affected
- identifies the technology necessary to implement changes
- identifies the training necessary to educate practitioners in the use of remote technology
- proposes solutions which specify how the recommendations can be implemented
- suggests immediate, interim, and goals to improve sector service delivery and availability
- proposes drafts of rules, protocols, or legislation associated with the implementation of reforms or changes
- makes recommendations for sustainability with a feasibility assessment
- provides information on different perspectives
- provides any budget information associated with an initial implementation of a recommended change

#### 10. What does a Team Sector Report look like?

Answer: The Sector Report will feature the following elements.

- Introduction
  - a. Identifies the Sector upon which the Team will focus
  - b. Identifies the the Team Leader and Team Members
- Issues Section
  - a. Identifies the practice issues facing the Sector
  - b. Identifies client and pro se issues ( if any ) facing the Sector
- Solutions Section
  - a. For each practice issue specifically identify solutions
  - b. Solutions should be ranked as
    - i. immediately doable,
    - ii. intermediately doable
    - iii. and goals to work toward
  - c. Solutions should include remote or virtual remedies
  - d. Solutions should include the specific method for achievement, such as
    - i. Judicial rule of court
    - ii. Local rule of practice
    - iii. Legislation
  - e. Solutions should include
    - i. The language for a specific procedural rule or protocol
    - ii. The specific language necessary to implement the rule
    - iii. Proposed legislation
  - f. Solutions should include
    - i. Comments on existing emergency proceedings

- g. Solutions should include a budget or cost estimate associated with implementation
- Technology Section
  - a. For each practice issue,
    - i. Identify the remote technology solution which may solve the problem
    - ii. Provide a description of the technology solution which identifies technology needs and a budget, e.g. YouTube videos, webinars, etc.
    - iii. Offer a budget ( if applicable ) associated with implementing a remote solution
    - iv. Identify locations where a remote hearing solution may be conducted
- Education Section
  - a. For each practice issue,
    - i. Identify the necessary educational requirements to implement the recommended change on a sustainable basis
    - ii. Identify the educational methodologies; videos, webinars
    - iii. Identify the means by which the public and the bar can access the educational methodology
    - iv. Identify the location or entity responsible for providing ongoing access to the educational model
- Implementation Section
  - a. For each practice issue,
    - i. Specify the means by which the objective is reached
      - a. Judicial administrative rule,
      - b. Local funding,
      - c. Legislation

### Comments

- a. In the event there are differing views with respect to certain issues, those views should be represented.
- b. If there are documents the Team Sector wants to be included in the report, they should be attached as an Appendix with an Index.
- c. Submit your reports to the MCB Director Leah Campbell as [lcampbell@meckbar.org](mailto:lcampbell@meckbar.org)
- d. If you have any questions, email them to the Co-Chairs [kathleen.lucchesi@lincolnderr.com](mailto:kathleen.lucchesi@lincolnderr.com) or [chase@chasesaunders.com](mailto:chase@chasesaunders.com)
- e. Note that Paragraphs 1 and 2 will be made available to the members of the MCB in order that they may submit any specific information to the Team Sector which is of interest to them.

### **11. When is the report due?**

Answer: The Sector Team Report is due at the latest, ninety days after the July 1, 2020 launch. Please seek to provide a report within 75 days of launch so that it can be

compiled with other reports within 90 days. (The United Kingdom performed a survey and study in fifteen (15) days! )

**12. To whom is it to be emailed or addressed?**

Answer: The report is to be emailed to the MCB – JusticeAccessInitiative to Leah Campbell, MCB Director with copies to Kathy Lucchesi and Chase Saunders.

**13. What will be done with the report?**

Answer: It will be compiled by the Co-Chairs into a final report to be delivered to the Bar. The President of the MCB sits on a committee established by the Chief Justice to seek solutions to the matters which we are addressing. In addition, the report is a blue print for what needs to be done in Mecklenburg County to create greater access to justice. To that end, it is a document which the community at large must consider as part of a path forward. An action plan will be developed to implement the recommendations.

**14. What is this all about?**

Answer: A healthy and accessible justice system is required if a community is to be healthy. The Justice Access Initiative is a platform for the development of the innovative, transformative, equitable, accessible, affordable, and cloud-based (online) system we must rapidly implement to provide access to the justice system ecosystem with a consideration on all of its sectors and specialties.

*Chase B. Saunders*

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*Chase B. Saunders, JAI Program Co-Chair*  
[chase@chasesaunders.com](mailto:chase@chasesaunders.com)

*Kathi Lucchesi*

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*Kathleen Lucchesi, JAI Program Co-Chair*  
[Kathleen.lucchesi@lincolnderr.com](mailto:Kathleen.lucchesi@lincolnderr.com)



## CHIEF JUSTICE ORDERS

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 10 March 2020, Governor Roy Cooper declared a state of emergency in North Carolina in response to the emerging public health threat posed by COVID-19. Since that time, the World Health Organization has designated the COVID-19 outbreak as a global pandemic.

On 14 March 2020, Governor Cooper signed Executive Order No. 117, which prohibits mass gatherings, closes the public schools of North Carolina for at least two weeks, and encourages all North Carolinians to practice social distancing whenever possible and practice proper hygiene in order to stem the spread of infection.

Subsequent guidance from state and federal officials has advised or mandated more extensive social distancing in an attempt to limit the spread of COVID-19, including: a recommendation from the North Carolina Department of Health and Human Services that in-person gatherings of 50 people or more be cancelled or postponed, Governor Cooper's Executive Order No. 118 closing dine-in service at restaurants and bars, and guidance from the federal Centers for Disease Control and Prevention to limit in-person interactions.

Although the superior courts and district courts remain open, additional action is necessary to reduce the spread of infection.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(1) that catastrophic conditions resulting from the public health threat posed by COVID-19 exist in all counties of this state.

**Extension of Time and Periods of Limitation  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

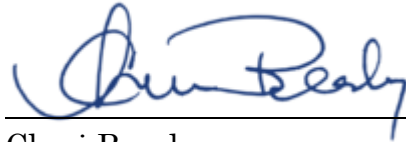
I order that all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on 17 April 2020.

I further order that all other acts that were or are due to be done in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on 17 April 2020.

This order does not apply to documents and papers due to be filed or acts due to be done in the appellate courts.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Issued this the 19th day of March, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is written over a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

On 13 March 2020, I issued an [order with two emergency directives](#) affecting the North Carolina Judicial Branch in response to the emerging public health threat posed by the COVID-19 outbreak. On 19 March 2020, I issued another [order extending time and periods of limitation](#) for documents and papers due to be filed and acts due to be done in the trial courts.

On 27 March 2020, Governor Roy Cooper issued Executive Order 121 directing all individuals in the state to stay in their place of residence subject to limited exceptions. North Carolina's courts are a critical government function and are therefore exempt from the order. Nevertheless, we are directed, to the extent practicable, to maintain social distancing requirements, including "facilitating online or remote access by customers if possible."

Additional emergency directives under N.C.G.S. § 7A-39(b)(2) are now necessary to reduce the spread of infection and to ensure the continuing operation of essential court functions.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 1**

All superior court and district court proceedings, including proceedings before the clerks of superior court, must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless:

- a. the proceeding will be conducted remotely;
- b. the proceeding is necessary to preserve the right to due process of law (e.g., a first appearance or bond hearing, the appointment of counsel for an indigent defendant, a probation hearing, a probable cause hearing, etc.);
- c. the proceeding is for the purpose of obtaining emergency relief (e.g., a domestic violence protection order, temporary restraining order, juvenile custody order, judicial consent to juvenile medical treatment order, civil commitment order, etc.); or
- d. the senior resident superior court judge, chief business court judge, or chief district court judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

The examples provided above are not exhaustive.



This emergency directive does not apply to any proceeding in which a jury has already been empaneled.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
- d. has a known exposure to COVID-19;
- e. has been diagnosed with COVID-19; or
- f. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings by remote audio and video transmissions, notwithstanding any other North Carolina statutory or regulatory provision.

Judicial officials who conduct a remote proceeding pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. A remote proceeding may not be conducted without the consent of each party.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before that proceeding may be conducted remotely.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained in the remote proceeding.

- d. If the proceeding is required by law to be recorded, then the remote proceeding must be recorded.
- e. Each party to a remote proceeding must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

Nothing in this emergency directive prevents judicial officials from conducting in-person proceedings consistent with Emergency Directive 1.

#### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

#### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

#### **Emergency Directive 6**

Notwithstanding the manner of service described in Rule 5 of the Rules of Civil Procedure, service required by Rule 5 may be made electronically on a party or a party’s attorney as follows:

If the party has consented in writing to service by electronic mail (“email”), then service may be made on the party by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be

considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If the attorney has consented in writing to service by email, then service may also be made on the attorney by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If one or more persons are served by email, then the certificate of service shall show the email address of each person so served.

Nothing in this emergency directive is intended to modify electronic service in the North Carolina Business Court, which continues to be governed by Business Court Rule 3.

### **Emergency Directive 7**

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on 1 May 2020, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40th day following nonpayment falls on or after 6 April 2020 and before or on 1 May 2020.

If a court enters a judgment or order on or after 6 April 2020 and before or on 1 May 2020 in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

\* \* \*

## **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

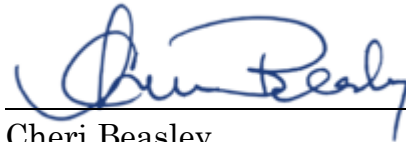
Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order are effective immediately and expire on 1 May 2020.

Nevertheless, given the current severity of the COVID-19 outbreak, I fully expect to extend these directives for an additional 30-day period. Accordingly, judicial system stakeholders should plan for these directives to last through the month of May 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

I encourage all court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts, as they deem appropriate.

Issued this the 2nd day of April, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 19 March 2020, I issued an [order](#) pursuant to N.C.G.S. § 7A-39(b)(1) extending time and periods of limitation for documents and papers due to be filed and acts due to be done in the trial courts. My order was in response to the public health threat posed by the COVID-19 outbreak and was intended to reduce the spread of infection in courthouses throughout the state.

The deadline set for filings and other acts by my previous order is 17 April 2020. Late April, however, may be the apex of the outbreak in North Carolina. An additional extension of time and periods of limitation pursuant to N.C.G.S. § 7A-39(b)(1) is therefore necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(1) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Extension of Time and Periods of Limitation  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

I order that all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 16 March 2020 and before the close of business on 1 June 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on 1 June 2020.

I further order that all other acts that were or are due to be done in any county of this state on or after 16 March 2020 and before the close of business on 1 June 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on 1 June 2020.

This order does not apply to documents and papers due to be filed or acts due to be done in the appellate courts.

**Extension of Time in Bail Bond Forfeiture Proceedings  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

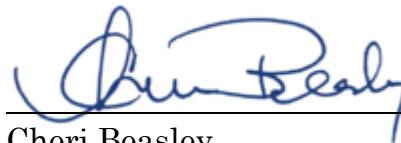
Notwithstanding the extension of time provided above, in proceedings for forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes for which disposition by entry of final judgment under N.C.G.S. § 15A-544.6 or by grant of a motion to set aside under N.C.G.S. § 15A-544.5(d)(4) is due to occur on or after 14 April 2020 and before or on 29 September 2020, any motion to set aside or any objection to a motion to set aside that is due to be filed within that period shall

be deemed to be timely filed if it is filed before the close of business on 30 September 2020.

In order to implement this extension, any entry of final judgment under N.C.G.S. § 15A-544.6 or any grant of a motion to set aside under N.C.G.S. § 15A-544.5(d)(4) that is due to occur on or after 14 April 2020 and before or on 29 September 2020, is hereby stayed until after the close of business on 30 September 2020.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Issued this the 13th day of April, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is written over a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

On 2 April 2020, I issued an [order with seven emergency directives](#) affecting the North Carolina Judicial Branch in response to the public health threat posed by the COVID-19 outbreak. On 16 April 2020, I issued another [order with an eighth emergency directive](#) that resumed marriage ceremonies statewide. An extension and modification of those emergency directives is now necessary to reduce the spread of infection and to ensure the continuing operation of essential court functions.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 1**

All superior court and district court proceedings, including proceedings before the clerks of superior court, must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless:

- a. the proceeding will be conducted remotely;
- b. the proceeding is necessary to preserve the right to due process of law (e.g., a first appearance or bond hearing, the appointment of counsel for an indigent defendant, a probation hearing, a probable cause hearing, etc.);
- c. the proceeding is for the purpose of obtaining emergency relief (e.g., a domestic violence protection order, temporary restraining order, juvenile custody order, judicial consent to juvenile medical treatment order, civil commitment order, etc.); or
- d. the senior resident superior court judge, chief business court judge, or chief district court judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

The examples provided above are not exhaustive.

This emergency directive does not apply to any proceeding in which a jury has already been empaneled.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior

court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
- d. has a known exposure to COVID-19;
- e. has been diagnosed with COVID-19; or
- f. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions, notwithstanding any other provision of law.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.
- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.



The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

Nothing in this emergency directive prevents judicial officials from conducting in-person proceedings consistent with Emergency Directive 1.

#### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

#### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

#### **Emergency Directive 6**

Notwithstanding the manner of service described in Rule 5 of the Rules of Civil Procedure, service required by Rule 5 may be made electronically on a party or a party’s attorney as follows:

If the party has consented in writing to service by electronic mail (“email”), then service may be made on the party by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If the attorney has consented in writing to service by email, then service may also be made on the attorney by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If one or more persons are served by email, then the certificate of service shall show the email address of each person so served.

Nothing in this emergency directive is intended to modify electronic service in the North Carolina Business Court, which continues to be governed by Business Court Rule 3.

### **Emergency Directive 7**

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on 30 May 2020, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40th day following nonpayment falls on or after 6 April 2020 and before or on 30 May 2020.

If a court enters a judgment or order on or after 6 April 2020 and before or on 30 May 2020 in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers' compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

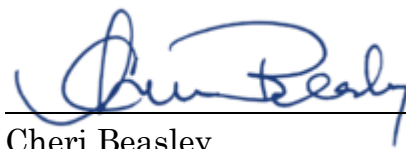
Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order are effective immediately and expire on 30 May 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

I encourage all court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19-coronavirus-updates>.

Issued this the 1st day of May, 2020.



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Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

Since 13 March 2020, in response to the COVID-19 global pandemic, I have issued a series of emergency directives necessary to ensure the continuation of critical court system functions while limiting the number of face-to-face interactions and the gathering of large groups in courthouses.

In that time, Governor Roy Cooper has issued emergency executive orders limiting public gatherings, closing public schools, restricting the operation of non-essential businesses, and encouraging the use of social distancing in keeping with current public health guidelines.

Adherence to social distancing and other public health guidance cannot be achieved with traditional, routine operation of the district and superior courts of this State. High-volume sessions of court, heavy dockets, and jury trials require the public to gather in county courthouses and courtrooms in close proximity for extended periods of time in numbers greater than currently allowed by the Governor's orders.

North Carolina's courts are a critical governmental function and, as such, are exempt from executive orders that limit large gatherings. Even so, crowded sessions of court are not in keeping with current public health guidance and must be avoided.

It is critical to the continued operation of our court system that the public and our court personnel have confidence that appropriate precautionary measures have been taken to protect public health in their local court facilities.

It is also critical to the functioning of our state government that the Judicial Branch continue carrying out its constitutional functions. Continued operation of the court system in light of the current pandemic requires a careful balancing of the needs of public safety, the rule of law, and our collective public health.

Therefore, additional emergency directives are now necessary to reduce the risk of infection and ensure the continuing operation of essential court functions.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be convened in the district or superior courts of this State for the next thirty (30) days.

Although this emergency directive will expire in 30 days pursuant to N.C.G.S. § 7A-39(b)(2), it is my intention to extend this directive through at least the end of July and judicial officials are directed to plan accordingly.

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities. The name of the COVID-19 Coordinator for each facility shall be submitted no later than 5:00 p.m. on Tuesday, 26 May 2020 to the [Administrative Office of the Courts](#).

The COVID-19 Task Force is directed to develop additional guidelines and best practices for the conduct of in-person court proceedings in compliance with current public health guidance.

### **Emergency Directive 12**

Each senior resident superior court judge shall for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;

4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than thirty minutes will have a facemask made available prior to the session of court.

For sessions of court for which calendars have already been distributed, the COVID-19 Coordinator must make such assurances before the session of court begins.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five (5) business days of the date the filing is due.

## **Emergency Directive 16**

Each COVID-19 Coordinator is directed to determine whether there is adequate space in the court facility to convene a jury trial in keeping with current public health guidance. In making this determination, the COVID-19 Coordinator should take into account the need for the venire to observe social distancing, as well as for jurors to be socially distanced in the courtroom and any deliberation room. The COVID-19 Coordinator is encouraged to consult with the local public health director, or their designee, in making this determination where possible.

If local court facilities are determined to be inadequate to convene socially distanced jury trials, the senior resident superior court judge is directed to identify, no later than 1 July 2020, other appropriate facilities where trials may be safely convened beginning in August and continuing during the pendency of this emergency.

If the alternate facility is located outside the county seat, information about the alternate proposed facility shall, pursuant to N.C.G.S. §§ 7A-42(i) and 7A-130, be submitted to the Administrative Office of the Courts for approval and, in the case of the superior court division, to the Chief Justice for approval as well.

The COVID-19 Task Force is directed to develop recommended best practices and minimum requirements for the convening of jury trials and to submit those recommendations to the Chief Justice and to the Administrative Office of the Courts no later than 30 June 2020.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

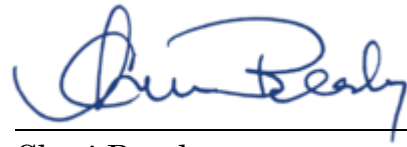
Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 20 June 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 21st day of May, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is positioned above a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina



**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 19 March 2020 and 13 April 2020, I issued orders pursuant to N.C.G.S. § 7A-39(b)(1) extending time and periods of limitation for documents and papers due to be filed and acts due to be done in the trial courts. My orders were issued in response to the public health threat posed by the COVID-19 outbreak and were intended to reduce the spread of infection in courthouses throughout the state.

Another extension of time and periods of limitation pursuant to N.C.G.S. § 7A-39(b)(1) is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(1) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Extension of Time and Periods of Limitation  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

**1. Civil Actions, Estates, and Special Proceedings.**

- a. **Time for Filing and for Other Acts Due to be Done.** All deadlines for filing documents and papers and all deadlines for other acts that were due to be filed or done between 16 March 2020 and 1 June 2020, inclusive of those dates, remain extended until the close of business on 1 June 2020 in accordance with my 13 April 2020 order.
- b. **Periods of Limitation.** All periods of limitation that were set to expire between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020.

**2. Criminal Actions.**

- a. **Time for Filing and for Other Acts Due to be Done.** All deadlines for filing documents and papers and all deadlines for other acts that were due to be filed or done between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020.

This order does not apply to proceedings for the forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes, which continue to be governed by my 13 April 2020 order pursuant to N.C.G.S. § 7A-39(b)(1).

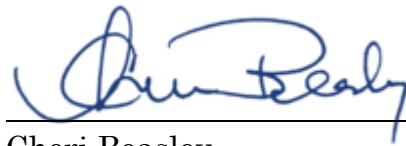
This order does not alter Emergency Directive 7, which continues to be governed in accordance with my 1 May 2020 order pursuant to N.C.G.S. § 7A-39(b)(2).

This order does not apply to documents and papers that are due to be filed or to acts that are due to be done in the appellate courts.

Presiding judicial officials retain the authority provided to them by law to grant further extensions of time as they deem appropriate.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Issued this the 21st day of May, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is positioned above a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

Since 13 March 2020, in response to the COVID-19 global pandemic, I have issued a series of emergency directives necessary to ensure the continuation of critical court system functions while protecting the health and safety of all who work in or visit North Carolina's county courthouses.

On 19 March 2020, 13 April 2020, and 21 May 2020, I issued orders extending the time in which any pleading, motion, notice, document or paper was due to be filed in any county of the state.

On 27 March 2020, the Supreme Court entered an [order](#) extending by sixty (60) days all deadlines imposed by the Rules of Appellate Procedure that fell between 27 March 2020 and 30 April 2020.

There is a need for clarity in the application of these orders to the filing of notices of appeal. Therefore, another extension of time and periods of limitation pursuant to N.C.G.S. § 7A-39(b)(1) is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(1) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

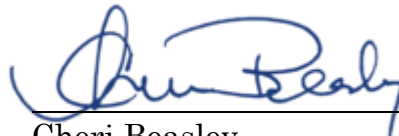
**Extension of Time and Periods of Limitation  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

In any matter in which the deadline to file a notice of appeal fell between 13 March 2020 and 1 June 2020, the deadline for filing such appeal and making any required payment or bond is hereby extended to 30 June 2020.

Presiding judicial officials retain the authority provided to them by law to grant further extensions of time as they deem appropriate.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Issued this the 30th day of May, 2020.

  
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Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 21 May 2020, I issued [Emergency Directives 9–16](#) in response to the public health threat posed by the COVID-19 outbreak.

It remains critical to the continued operation of our court system that the public and our court personnel have confidence that appropriate precautionary measures have been taken to protect public health in their local court facilities.

It also remains critical to the functioning of our state government that the Judicial Branch continue carrying out its constitutional functions.

An extension and modification of Emergency Directives 9–16 is therefore necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

**Emergency Directive 10**

No jury trials shall be convened in the district or superior courts of this State for the next thirty (30) days.

Although this emergency directive will expire in 30 days pursuant to N.C.G.S. § 7A-39(b)(2), it is my intention to extend this directive through at least the end of July and judicial officials are directed to plan accordingly.

**Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities. The

name of the COVID-19 Coordinator for each facility shall be submitted no later than 5:00 p.m. on Tuesday, 26 May 2020 to the Administrative Office of the Courts.

### **Emergency Directive 12**

Each senior resident superior court judge shall for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than thirty minutes will have a facemask made available prior to the session of court.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five (5) business days of the date the filing is due.

### **Emergency Directive 16**

Each COVID-19 Coordinator is directed to determine whether there is adequate space in the court facility to convene a jury trial in keeping with current public health guidance. In making this determination, the COVID-19 Coordinator should take into account the need for the venire to observe social distancing, as well as for jurors to be socially distanced in the courtroom and any deliberation room. The COVID-19 Coordinator is encouraged to consult with the local public health director, or their designee, in making this determination where possible.

If local court facilities are determined to be inadequate to convene socially distanced jury trials, the senior resident superior court judge is directed to identify, no later than 1 July 2020, other appropriate facilities where trials may be safely convened beginning in August and continuing during the pendency of this emergency.

If the alternate facility is located outside the county seat, information about the alternate proposed facility shall, pursuant to N.C.G.S. §§ 7A-42(i) and 7A-130, be submitted to the Administrative Office of the Courts for approval and, in the case of the superior court division, to the Chief Justice for approval as well.

The COVID-19 Task Force is directed to develop recommended best practices and minimum requirements for the convening of jury trials and to submit those recommendations to the Chief Justice and to the Administrative Office of the Courts no later than 30 June 2020.

\* \* \*

## **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

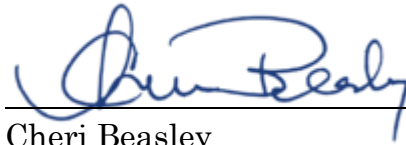
Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 20 July 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 20th day of June, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 30 May 2020, I issued [Emergency Directives 17–19](#) in response to the public health threat posed by the COVID-19 outbreak.

Each of those emergency directives addressed the more than 10,500 evictions pending in our state court system and coincided with Executive Order 142, in which Governor Roy Cooper prohibited landlords from taking any action in furtherance of a summary ejectment or an eviction of a residential or commercial tenant for reason of non-payment.

An additional emergency directive related to eviction proceedings is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Emergency Directive 20**

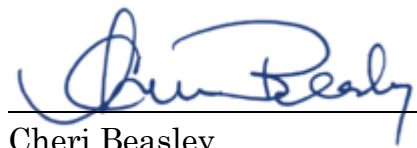
Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed thirty (30) days from the issuance of the summons to answer the complaint.

\* \* \*

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch’s response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 20th day of June, 2020.

  
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Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina



## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

On 24 June 2020, Governor Roy Cooper signed Executive Order 147, which requires people in our state to wear a face covering in certain settings in order to decrease the spread of COVID-19. Although courthouses are exempt from this requirement, the Governor’s order strongly encourages all state government agencies to adopt similar requirements.

Since the COVID-19 pandemic began, I have issued a number of emergency directives for the Judicial Branch in response to the public health threat posed by the outbreak. These directives have been calculated to decrease the spread of COVID-19 in our courthouses so that essential court functions may continue safely.

In June, courts began conducting a greater number of in-person proceedings following the expiration of the first emergency directive that I issued in response to the pandemic. Since that time, dozens of court personnel have contracted COVID-19 and numerous courts have been forced to temporarily close so that the facilities could be sanitized and employees with possible exposure could be tested. If we are to continue conducting a greater number of in-person proceedings, it is vital that we utilize all available tools to limit the transmission of the virus.

Consistent with the Governor’s recommendation and mounting evidence that face coverings decrease the spread of COVID-19, an additional emergency directive related to face coverings in courthouses is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are interacting with others.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, or who are under eleven years of age.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

\* \* \*

Pursuant to [Emergency Directive 10](#), all jury trials in the superior court and district court are postponed through 20 July 2020. It is my intention to extend Emergency Directive 10 until at least the end of September. While face coverings will help decrease the spread of COVID-19 in our courthouses, more precautions and planning are necessary before jury trials may resume.

The Judicial Branch's COVID-19 Task Force has recently submitted [recommendations](#) related to the resumption of jury trials. The Task Force recommends, and I agree, that the approach for resuming jury trials should be left to the reasoned judgment of local judicial officials. An additional emergency directive is therefore necessary to charge local judicial officials to plan for the eventual resumption of jury trials in their districts.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;

- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

Before jury summonses are issued, and before promulgating the plan to the public, the senior resident superior court judge shall submit a copy of the Jury Trial Resumption Plan to the Chief Justice, which shall bear a signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

The Jury Trial Resumption Plan shall be promulgated either by local rule or administrative order no later than 1 September 2020, and may become effective after the date on which Emergency Directive 10 expires. The local rule or administrative order shall be submitted to North Carolina Administrative Office of the Courts and thereafter posted to the [NCCourts.gov](https://www.nccourts.gov) website.

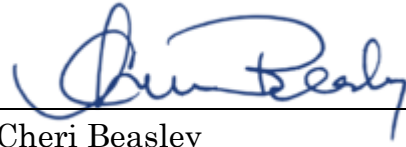
\* \* \*

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 15 August 2020.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 16th day of July, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is positioned above a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 20 June 2020, I extended [Emergency Directives 9–16](#) and issued [Emergency Directive 20](#) in response to the public health threat posed by the COVID-19 outbreak.

Emergency Directives 9–15 and Emergency Directive 20 remain critical to the continued operation of our court system. A modification and further extension of these emergency directives for an additional 30-day period is therefore necessary. Emergency Directive 16 will not be further extended.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

**Emergency Directive 10**

No jury trials shall be convened in the district or superior courts of this State for the next 30 days.

Although this emergency directive will expire in 30 days pursuant to N.C.G.S. § 7A-39(b)(2), it is my intention to extend this directive through at least the end of September, and judicial officials are directed to plan accordingly.

**Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

### **Emergency Directive 12**

Each senior resident superior court judge shall for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than 30 minutes will have a face covering made available prior to the session of court.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

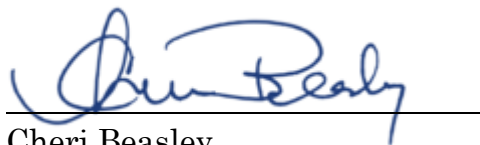
Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 19 August 2020.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 20th day of July, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 29 June 2020, I extended [Emergency Directive 18](#) in response to the public health threat posed by the COVID-19 outbreak. A modification and further extension of Emergency Directive 18 for an additional period of time is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

**Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.

In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act or an “applicable property” as defined by Section 4023(f)(1) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

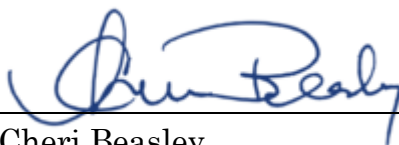
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This emergency directive expires on 23 August 2020.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch’s response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 24th day of July, 2020.

  
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Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina



## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

On 16 July 2020, I issued [Emergency Directive 21](#) and [Emergency Directive 22](#) in response to the COVID-19 outbreak. Those emergency directives require persons in court facilities throughout our state to wear a face covering and call on local judicial officials to develop a plan for the eventual resumption of jury trials.

On 20 July 2020, I extended existing [Emergency Directives 9–15](#) and [Emergency Directive 20](#), which are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

An extension of all these directives for an additional 30-day period is now necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be convened in the district or superior courts of this State for the next 30 days.

Although this emergency directive will expire in 30 days pursuant to N.C.G.S. § 7A-39(b)(2), it is my intention to extend this directive through at least the end of September, and judicial officials are directed to plan accordingly.

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

### **Emergency Directive 12**

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than 30 minutes will have a face covering made available prior to the session of court.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are interacting with others.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, or who are under eleven years of age.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

### **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;
- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

Before jury summonses are issued, and before promulgating the plan to the public, the senior resident superior court judge shall submit a copy of the Jury Trial Resumption Plan to the Chief Justice, which shall bear a signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

The Jury Trial Resumption Plan shall be promulgated either by local rule or administrative order no later than 1 September 2020 and may become effective after the date on which Emergency Directive 10 expires. The local rule or administrative

order shall be submitted to North Carolina Administrative Office of the Courts and thereafter posted to the [NCCourts.gov](https://www.nccourts.gov) website.

\* \* \*

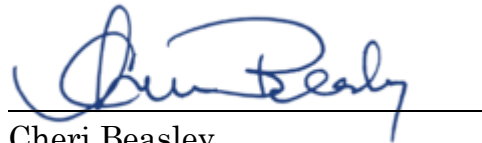
**Expiration of this Emergency Order and  
Guidance to Judicial System Stakeholders**

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 14 September 2020.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 15th day of August, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

Last month, I extended [Emergency Directives 2–8](#) and [Emergency Directive 18](#) in response to the public health threat posed by the COVID-19 outbreak. A further extension of Emergency Directives 2–6, 8, and 18 is now necessary. Emergency Directive 7 will not be further extended. A modification and extension of Emergency Directive 22 is also necessary to change the date by which local Jury Trial Resumption Plans may be promulgated.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
- d. has a known exposure to COVID-19;
- e. has been diagnosed with COVID-19; or
- f. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions, notwithstanding any other provision of law.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.
- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

#### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

#### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

"I (we) affirm, under the penalties for perjury, that the foregoing

representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

### **Emergency Directive 6**

Notwithstanding the manner of service described in Rule 5 of the Rules of Civil Procedure, service required by Rule 5 may be made electronically on a party or a party’s attorney as follows:

If the party has consented in writing to service by electronic mail (“email”), then service may be made on the party by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If the attorney has consented in writing to service by email, then service may also be made on the attorney by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

If one or more persons are served by email, then the certificate of service shall show the email address of each person so served.

Nothing in this emergency directive is intended to modify electronic service in the North Carolina Business Court, which continues to be governed by Business Court Rule 3.

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### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers’ compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved



by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

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### **Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.

In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act; or (2) the property is a “covered dwelling” and the tenant had 30 days of notice to vacate as required by Section 4024(c) of the CARES Act. Further, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not an “applicable property” as defined by Section 4023(f)(1) of the CARES Act; or (2) the property is an “applicable property” and the mortgage loan on that property is not currently in forbearance, and, if a prior forbearance period has expired, the tenant had 30 days of notice to vacate under the provisions of Section 4023(e) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

\* \* \*

### **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;
- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

The Jury Trial Resumption Plan shall bear the senior resident superior court judge's signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

The Jury Trial Resumption Plan shall be submitted to the Administrative Office of the Courts and the Chief Justice no later than 30 September 2020.

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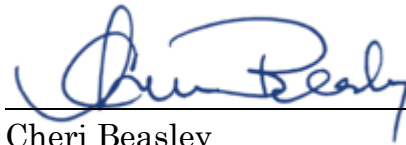
**Expiration of this Emergency Order and  
Guidance to Judicial System Stakeholders**

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 22 September 2020.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 24th day of August, 2020.



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Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

Last month, I issued [orders](#) extending Emergency Directives 2–6, 8–15, 18, and 20–22 in response to the public health threat posed by the COVID-19 outbreak. Those emergency directives remain crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public. A further extension of those emergency directives is therefore necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
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Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional

rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
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- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

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Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

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When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

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If the party has consented in writing to service by electronic mail ("email"), then service may be made on the party by email to an address that is either included in the consent or is otherwise on record with the court in the case. The email must be timestamped before 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. If the email is timestamped after 5:00 P.M., then service will be deemed to have been completed on the next business day.

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Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted,

may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

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No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be convened in the district or superior courts of this State for the next 30 days.

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Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

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1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and

5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

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Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
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Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

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### **Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.



In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act; or (2) the property is a “covered dwelling” and the tenant had 30 days of notice to vacate as required by Section 4024(c) of the CARES Act. Further, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not an “applicable property” as defined by Section 4023(f)(1) of the CARES Act; or (2) the property is an “applicable property” and the mortgage loan on that property is not currently in forbearance, and, if a prior forbearance period has expired, the tenant had 30 days of notice to vacate under the provisions of Section 4023(e) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are interacting with others.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, or who are under eleven years of age.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

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The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;
- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

The Jury Trial Resumption Plan shall bear the senior resident superior court judge's signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;

- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

In the event that approval of one or more of the above-named officials cannot be obtained, the senior resident superior court judge may submit the plan with a statement indicating that despite his or her good-faith effort, such approval could not be obtained.

The Jury Trial Resumption Plan shall be submitted to the Administrative Office of the Courts and the Chief Justice no later than 30 September 2020.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

This order includes all Emergency Directives currently in effect: 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, 21, and 22.

These emergency directives are crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

Emergency Directive 6 expires on 30 September 2020. Pursuant to N.C.G.S. § 7A-39(b)(2), the other emergency directives contained in this order expire on 15 October 2020.

Other Emergency Directives issued throughout the pandemic expired on the following dates:

Emergency Directive 1: 30 May 2020

Emergency Directive 7: 28 August 2020

Emergency Directive 16: 20 July 2020

Emergency Directive 17: 29 June 2020

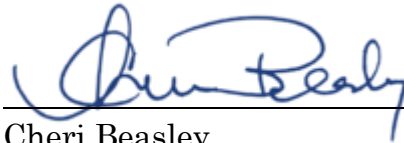
Emergency Directive 19: 29 June 2020

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 15th day of September, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is written over a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

Last month, I issued an [order](#) extending Emergency Directives 2–6, 8–15, 18, and 20–22 in response to the public health threat posed by the COVID-19 outbreak. Emergency Directive 6 expired on 30 September 2020. A further extension of Emergency Directives 2–5, 8–15, 18, and 20–22, however, is crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

Modifications have been made in this order to Emergency Directives 2, 10, 21, and 22. Most notably, Emergency Directive 10 had previously postponed jury trials throughout the state. As modified, Emergency Directive 10 will postpone jury trials only in those judicial districts without an approved Jury Trial Resumption Plan.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;
- b. is under a direction to quarantine, isolate, or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen (14) days;
- d. has been diagnosed with COVID-19 within the last fourteen (14) days; or
- e. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions, notwithstanding any other provision of law.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.
- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified,

or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

\* \* \*

### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers’ compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

### **Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be conducted in the superior or district court of any county unless the Jury Trial Resumption Plan for that county and relevant trial division has

been approved by the Administrative Office of the Courts and entered as a local administrative order.

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

### **Emergency Directive 12**

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than 30 minutes will have a face covering made available prior to the session of court.



### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due.

\* \* \*

### **Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.

In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act; or (2) the property is a “covered dwelling” and the tenant had 30 days of notice to vacate as required by Section 4024(c) of the CARES Act. Further, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not an “applicable property” as defined by Section 4023(f)(1) of the CARES Act; or (2) the property is an “applicable property” and the mortgage loan on that property is not currently in forbearance, and, if a prior forbearance period has expired, the tenant had 30 days of notice to vacate under the provisions of Section 4023(e) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are or may be within six (6) feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A “face shield” means an item of personal protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer’s face from splashes, coughs, or sneezes.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement, or who are under five years of age.

During a jury trial conducted pursuant to a Jury Trial Resumption Plan that has been approved by a local public health director and the Administrative Office of the Courts, the presiding judicial official may order a juror answering questions during voir dire or a testifying witness to remove his or her face covering so that facial expressions may be observed. Face coverings removed for this purpose may only be removed while the juror or witness is actively speaking and only if he or she is six feet or more away from any other person. The presiding judicial official may, upon a showing of good cause and after consideration of all appropriate health concerns, exempt a criminal defendant from the requirement to wear a face covering during his or her jury trial.

## **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;
- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

The Jury Trial Resumption Plan shall bear the senior resident superior court judge's signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;

- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

In the event that approval of one or more of the above-named officials cannot be obtained, the senior resident superior court judge may submit the plan with a statement indicating that despite his or her good-faith effort, such approval could not be obtained.

The Jury Trial Resumption Plan shall be submitted to the Administrative Office of the Courts and the Chief Justice.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

This order includes all emergency directives currently in effect: 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, 21, and 22.

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 14 November 2020.

Other emergency directives issued throughout the pandemic expired on the following dates:

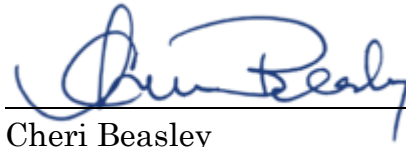
Emergency Directive 1: 30 May 2020  
Emergency Directive 6: 30 September 2020  
Emergency Directive 7: 28 August 2020  
Emergency Directive 16: 20 July 2020  
Emergency Directive 17: 29 June 2020  
Emergency Directive 19: 29 June 2020

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 15th day of October, 2020.

A handwritten signature in blue ink, appearing to read "Cheri Beasley", is written over a horizontal line.

Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

Last month, I issued an [order](#) extending Emergency Directives 2–5, 8–15, 18, and 20–22 in response to the public health threat posed by the COVID-19 outbreak. A further extension of those emergency directives is crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;
- b. is under a direction to quarantine, isolate, or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen (14) days;
- d. has been diagnosed with COVID-19 within the last fourteen (14) days; or
- e. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions, notwithstanding any other provision of law.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.
- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

#### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

#### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

"I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_"

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

\* \* \*

### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers' compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

### **Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be conducted in the superior or district court of any county unless the Jury Trial Resumption Plan for that county and relevant trial division has been approved by the Administrative Office of the Courts and entered as a local administrative order.

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.



### **Emergency Directive 12**

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than 30 minutes will have a face covering made available prior to the session of court.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due.

\* \* \*

### **Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.

In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act; or (2) the property is a “covered dwelling” and the tenant had 30 days of notice to vacate as required by Section 4024(c) of the CARES Act. Further, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not an “applicable property” as defined by Section 4023(f)(1) of the CARES Act; or (2) the property is an “applicable property” and the mortgage loan on that property is not currently in forbearance, and, if a prior forbearance period has expired, the tenant had 30 days of notice to vacate under the provisions of Section 4023(e) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the

defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are or may be within six (6) feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A “face shield” means an item of personal protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer’s face from splashes, coughs, or sneezes.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement, or who are under five years of age.

During a jury trial conducted pursuant to a Jury Trial Resumption Plan that has been approved by a local public health director and the Administrative Office of the Courts, the presiding judicial official may order a juror answering questions during voir dire or a testifying witness to remove his or her face covering so that facial expressions may be observed. Face coverings removed for this purpose may only be removed while the juror or witness is actively speaking and only if he or she is six feet or more away from any other person. The presiding judicial official may, upon a showing of good cause and after consideration of all appropriate health concerns, exempt a criminal defendant from the requirement to wear a face covering during his or her jury trial.

### **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;
- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

The Jury Trial Resumption Plan shall bear the senior resident superior court judge's signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

In the event that approval of one or more of the above-named officials cannot be obtained, the senior resident superior court judge may submit the plan with a statement indicating that despite his or her good-faith effort, such approval could not be obtained.

The Jury Trial Resumption Plan shall be submitted to the Administrative Office of the Courts and the Chief Justice.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

This order includes all emergency directives currently in effect: 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, 21, and 22.

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 14 December 2020.

Other emergency directives issued throughout the pandemic expired on the following dates:

Emergency Directive 1: 30 May 2020

Emergency Directive 6: 30 September 2020

Emergency Directive 7: 28 August 2020

Emergency Directive 16: 20 July 2020

Emergency Directive 17: 29 June 2020

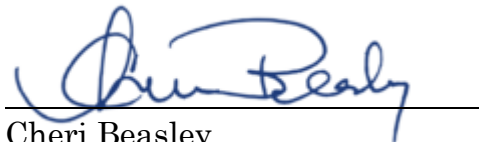
Emergency Directive 19: 29 June 2020

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 16th day of November, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

## **ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA**

Last month, I issued an [order](#) extending Emergency Directives 2–5, 8–15, 18, and 20–22 in response to the public health threat posed by the COVID-19 outbreak. A further extension of those emergency directives is crucial to ensuring that our court system continues to administer justice while protecting the health and safety of court officials, court personnel, and the public.

Moreover, due to the rising levels of COVID-19 infection throughout North Carolina, I am reinstituting Emergency Directive 1, which orders a 30-day pause for most judicial proceedings. Emergency Directive 1 had previously expired on 30 May 2020 but is once again needed to help slow the spread of COVID-19 in our courts. I am also modifying Emergency Directive 10 to clarify that, during the period of time Emergency Directive 1 is in effect, no jury trial should be conducted unless a jury has already been empaneled.

Further, a modification of Emergency Directive 18 is necessary.

Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

### **Emergency Directive 1**

All superior court and district court proceedings, including proceedings before the clerks of superior court, must be scheduled or rescheduled for a date no sooner than 14 January 2021, unless:

- a. the proceeding will be conducted remotely;
- b. the proceeding is necessary to preserve the right to due process of law (e.g., a first appearance or bond hearing, the appointment of counsel for an indigent defendant, a probation hearing, a probable cause hearing, etc.);
- c. the proceeding is for the purpose of obtaining emergency relief (e.g., a domestic violence protection order, temporary restraining order, juvenile custody order, judicial consent to juvenile medical treatment order, civil commitment order, etc.); or
- d. the senior resident superior court judge, chief business court judge, or chief district court judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

The examples provided above are not exhaustive.

This emergency directive does not apply to any proceeding in which a jury has already been empaneled.

### **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;
- b. is under a direction to quarantine, isolate, or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen (14) days;
- d. has been diagnosed with COVID-19 within the last fourteen (14) days; or
- e. resides with or has been in close contact with any person in the abovementioned categories.

### **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions, notwithstanding any other provision of law.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. While consent of the parties is not required to conduct a proceeding that includes remote audio and video transmissions, a party may, for good cause, object to the use of remote audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.

- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.
- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

#### **Emergency Directive 4**

Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

#### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

\* \* \*

#### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers’ compensation



benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the Chief District Court Judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the Chief District Court Judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

### **Emergency Directive 9**

No session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

### **Emergency Directive 10**

No jury trials shall be conducted in the superior or district court of any county for the next thirty (30) days, unless a jury has already been empaneled.

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

### **Emergency Directive 12**

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

1. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;

3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
5. all areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

### **Emergency Directive 13**

Before any court calendar is published or distributed, the COVID-19 Coordinator must ensure that:

1. each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
2. all judicial branch personnel assigned to a courtroom for more than 30 minutes will have a face covering made available prior to the session of court.

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

The clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. The clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due.

\* \* \*

### **Emergency Directive 18**

This emergency directive applies only in summary ejectment actions that are commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.

In actions commenced on or after 27 March 2020, no writ of possession for real property shall be issued unless the magistrate or judge concludes that either: (1) the property is not an “applicable property” as defined by Section 4023(f)(1) of the CARES Act; or (2) the property is an “applicable property” and the mortgage loan on that property is not currently in forbearance, and, if a prior forbearance period has expired, the tenant had 30 days of notice to vacate under the provisions of Section 4023(e) of the CARES Act.

The Administrative Office of the Courts has promulgated a [form affidavit](#) to be completed by the plaintiff in these actions. In actions that were commenced on or after 27 March 2020 and before 4 June 2020, the plaintiff shall file the affidavit with the court before the magistrate or judge enters final judgment. In actions that are commenced on or after 4 June 2020, the plaintiff shall file the affidavit with his or her complaint, and the affidavit shall be served on the defendant with the summons and complaint.

\* \* \*

### **Emergency Directive 20**

Notwithstanding the time limitation in N.C.G.S. § 42-28, when a plaintiff files a summary ejectment or small claim eviction complaint pursuant to Article 3 or Article 7 of Chapter 42 of the General Statutes and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 30 days from the issuance of the summons to answer the complaint.

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are or may be within six (6) feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A “face shield” means an item of personal protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer’s face from splashes, coughs, or sneezes.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement, or who are under five years of age.

During a jury trial conducted pursuant to a Jury Trial Resumption Plan that has been approved by a local public health director and the Administrative Office of the Courts, the presiding judicial official may order a juror answering questions during voir dire or a testifying witness to remove his or her face covering so that facial expressions may be observed. Face coverings removed for this purpose may only be removed while the juror or witness is actively speaking and only if he or she is six feet or more away from any other person. The presiding judicial official may, upon a showing of good cause and after consideration of all appropriate health concerns, exempt a criminal defendant from the requirement to wear a face covering during his or her jury trial.

### **Emergency Directive 22**

Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.

The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.

The plan shall, at a minimum, include the following:

- a. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- b. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- c. a plan for conducting voir dire with social distancing;

- d. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- e. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- f. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- g. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

The Jury Trial Resumption Plan shall bear the senior resident superior court judge's signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:

- a. the chief district court judge;
- b. the clerk of superior court;
- c. the district attorney;
- d. the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- e. the sheriff; and
- f. the public health director.

In the event that approval of one or more of the above-named officials cannot be obtained, the senior resident superior court judge may submit the plan with a statement indicating that despite his or her good-faith effort, such approval could not be obtained.

The Jury Trial Resumption Plan shall be submitted to the Administrative Office of the Courts and the Chief Justice.

\* \* \*

### **Expiration of this Emergency Order and Guidance to Judicial System Stakeholders**

This order includes all emergency directives currently in effect: 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, 21, and 22.

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 13 January 2021.

Other emergency directives issued throughout the pandemic expired on the following dates:

Emergency Directive 6: 30 September 2020

Emergency Directive 7: 28 August 2020

Emergency Directive 16: 20 July 2020

Emergency Directive 17: 29 June 2020

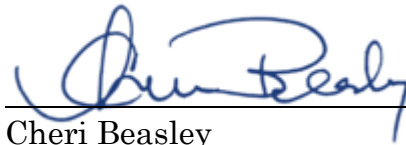
Emergency Directive 19: 29 June 2020

All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

Issued this the 14th day of December, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**ORDER OF THE CHIEF JUSTICE  
OF THE SUPREME COURT OF NORTH CAROLINA**

On 13 April 2020, I issued an [order](#) pursuant to N.C.G.S. § 7A-39(b)(1) extending time in certain proceedings for forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes. I issued an [order](#) with an additional extension of time in those proceedings on 30 September 2020 and another [order](#) on 30 November 2020. My orders were in response to the public health threat posed by the COVID-19 outbreak and were intended to reduce the spread of infection throughout the state.

A further extension of time pursuant to N.C.G.S. § 7A-39(b)(1) is now necessary. Accordingly, I hereby determine and declare under N.C.G.S. § 7A-39(b)(1) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state.

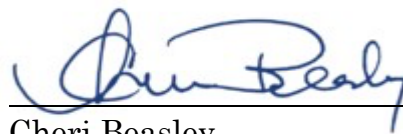
**Extension of Time in Bail Bond Forfeiture Proceedings  
Pursuant to N.C.G.S. § 7A-39(b)(1)**

In proceedings for forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes for which disposition by entry of final judgment under N.C.G.S. § 15A-544.6 or by grant of a motion to set aside under N.C.G.S. § 15A-544.5(d)(4) is due to occur on or after 14 April 2020 and before or on 30 January 2021, any motion to set aside or any objection to a motion to set aside that is due to be filed within that period shall be deemed to be timely filed if it is filed before the close of business on 31 January 2021.

In order to implement this extension, any entry of final judgment under N.C.G.S. § 15A-544.6 or any grant of a motion to set aside under N.C.G.S. § 15A-544.5(d)(4) due to occur on or after 14 April 2020 and before or on 30 January 2021, is hereby stayed until after the close of business on 31 January 2021.

Additional emergency orders or directives under N.C.G.S. § 7A-39(b) may be entered as necessary to support the continuing operation of essential court functions.

Issued this the 31st day of December, 2020.



Cheri Beasley  
Chief Justice  
Supreme Court of North Carolina

**14 JANUARY 2021**  
**ORDER OF THE CHIEF JUSTICE**  
**OF THE SUPREME COURT OF NORTH CAROLINA**

On 14 December 2020, Chief Justice Cheri Beasley issued an [order](#) containing a number of emergency directives in response to the public health threat posed by the COVID-19 pandemic. I hereby extend some, but not all, of those emergency directives for an additional thirty-day period. The emergency directives in that order not extended by this order are no longer in effect.

Article I, Section 18 of the North Carolina Constitution provides that “[a]ll courts shall be open” and that “justice shall be administered without favor, denial, or delay.” I am committed to this constitutional mandate. At the same time, the Judicial Branch must fulfill this mandate in ways that prioritize and protect the health and safety of judicial officials and employees and the public.

While I am allowing Emergency Directive 1 to expire, I ask that local judicial officials and employees conduct trials and other proceedings and perform other courthouse functions with caution and with due regard for the COVID-19 situation in their respective judicial districts. This order restores to local judicial officials substantial decision-making authority over when and how to conduct jury trials and other in-person proceedings. Although some emergency directives will expire on 13 January 2021, the risks posed by COVID-19 continue to be serious. I have allowed certain emergency directives to expire because they concern matters best addressed by local judicial officials. Disagreements among local judicial officials over proposed safety precautions should be referred to the senior resident superior court judge for resolution. Appropriate safety precautions may include a temporary courthouse closure when emergency conditions in a particular county warrant such action. As local judicial officials consider what measures to take in addition to the ones set out in this order, I request that they consult their local health directors, as well as COVID-19 protocols adopted by the State and the counties and municipalities in which they operate.

Given the evolving nature of the pandemic, I will be evaluating how best to exercise the emergency powers vested in my office by State law, including N.C.G.S. § 7A-39(b), in the days and weeks ahead. That evaluation may result in the expiration or modification of emergency directives already in force, the issuance of new emergency directives, or both. In the interim, I deem it necessary to extend Emergency Directives 2, 3, 5, 8, 11, 12, 14, 15, and 21 for an additional thirty days in order to ensure the continuing operation of essential judicial functions. I further determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this State.



## **Emergency Directive 2**

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;
- b. is under a direction to quarantine, isolate, or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen days;
- d. has been diagnosed with COVID-19 within the last fourteen days; or
- e. resides with or has been in close contact with any person in the abovementioned categories.

## **Emergency Directive 3**

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this emergency directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

- a. A party may, for good cause, object to the use of remote audio and video transmissions. If good cause is not shown, the court may conduct a proceeding that includes audio and video transmissions.
- b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.
- c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.
- d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.

- e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

\* \* \*

### **Emergency Directive 5**

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(Signed) \_\_\_\_\_”

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

\* \* \*

### **Emergency Directive 8**

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers’ compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the chief district court judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the chief district court judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

\* \* \*

### **Emergency Directive 11**

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities. The COVID-19 Coordinator shall ensure that relevant safety protocols and mandates are being followed within court facilities.

### **Emergency Directive 12**

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

- a. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;
- b. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
- c. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;
- d. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and
- e. all areas accessed by the public are cleaned daily and that high touch areas are cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

\* \* \*

### **Emergency Directive 14**

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

A clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. A clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

### **Emergency Directive 15**

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due. The extension of filing deadlines in this emergency directive does not apply to pleadings and other documents filed in proceedings for forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes.

\* \* \*

### **Emergency Directive 21**

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are or may be within six feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

For purposes of this emergency directive, a “face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A “face shield” means an item of personal protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer’s face from splashes, coughs, or sneezes.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement or courthouse personnel, or who are under five years of age.

During a trial or proceeding, the presiding judicial official may order a juror answering questions during voir dire, an affiant, or a testifying witness to remove his or her face covering so that facial expressions may be observed. Face coverings removed for this purpose may only be removed while the juror, witness, or affiant is actively speaking and only if he or she is six feet or more away from any other person. The presiding judicial official may, upon a showing of good cause and after consideration of all appropriate health concerns, exempt a criminal defendant from the requirement to wear a face covering during his or her jury trial.

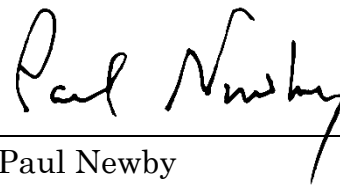
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**Expiration of this Emergency Order and  
Guidance to Judicial System Stakeholders**

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 12 February 2021.

I urge local judicial officials to exercise their own authority to grant additional relief and accommodations as necessary to protect courthouse personnel and the public while honoring the Judicial Branch's commitment to open courts and the prompt administration of impartial justice. Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at <https://www.nccourts.gov/covid-19>.

This order becomes effective on 14 January 2021. Issued this the 13th day of January, 2021.

A handwritten signature in black ink, reading "Paul Newby", written over a horizontal line.

Paul Newby  
Chief Justice  
Supreme Court of North Carolina



## **LOCAL CHIEF JUDGE ORDERS**



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

**Jessica Davis**

**704-686-0269**

**[Jessica.C.Davis@nccourts.org](mailto:Jessica.C.Davis@nccourts.org)**

**FOR IMMEDIATE RELEASE**

**March 26, 2020**

**26<sup>TH</sup> JUDICIAL DISTRICT UPDATED RESPONSE TO COVID-19**

In the continued interest of the health and safety of the community and court personnel, we remain committed to balancing access to justice with the rapidly developing public health crisis that COVID-19 presents.

In addition to the March 13<sup>th</sup> directive, on March 19, 2020 Chief Justice Cheri Beasley entered an order extending filing deadlines, stating that documents due to be filed from March 16, 2020 to April 17, 2020 will be deemed timely filed if received before the close of business on April 17, 2020, and that any actions required to be done during that time can be postponed until April 17, 2020.

On March 26, 2020, Mecklenburg County implemented a "Stay at Home" Order, effective for twenty-one (21) days, directing all non-essential employees to remain home with specific exceptions. This order was entered to reduce interpersonal contacts that can facilitate the spread of COVID-19. Further modifications to the operations of the Twenty-Sixth Judicial District are necessary to both implement the "Stay at Home" Order and to protect the health and welfare of court personnel and the public. The Mecklenburg County Sheriff's Office will implement new protocols to ensure social distancing of six feet as much as possible in each courtroom. **These additional modifications to superior court and district court proceedings will go into effect on Monday, March 30, 2020.**

**Court offices in the Mecklenburg County Courthouse will remain open for business. However, unless you are required to appear in-person to conduct your business, attorneys and the public will not be allowed into the building and should use email and telephone to communicate with staff of the Twenty-Sixth Judicial District.** Contact information may be found on the [Judicial Directory](#).

[Online court services](#) are available for handling some court business, including citation services, paying your ticket, court payments, signing up for court date notifications and reminders, eFiling court documents for certain courts and case types, and more.

If you need to update your address with the Clerk of Superior Court's Office please send us an email at [MeckCourtHotLine@nccourts.org](mailto:MeckCourtHotLine@nccourts.org).

Accurate and timely information may be obtained from the following resources:

- Information about the North Carolina Judicial Branch system-wide response to the COVID-19 virus is available on the [NCCourts.gov website](http://NCCourts.gov).
- Information specific to Mecklenburg County courts will be available [here](#).

## CLERK OF SUPERIOR COURT:

- Open to the public at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, on Monday through Friday, between the hours of 9:00AM and 12:00PM.
- Operate an alternate filing site at the Magistrate's Office, 801 East Fourth Street, Charlotte, North Carolina 28202, from 12:00PM to 5:00PM on Monday through Friday for acceptance of fees and emergency filings only.
- Guardianship Hearings will be conducted as needed, subject to health precautions, including remote testimony, as determined by the Clerk of Court.
- Involuntary Commitments will be conducted as needed, subject to health precautions, including remote testimony, as determined by the Clerk of Court.
- Estates will continue to be administered by Clerk's Office staff; however, customer service lines and in-person appointments are suspended at this time.
- Estate and Special Proceeding hearings will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

## MAGISTRATE AND SMALL CLAIMS

- The Criminal Magistrate's Office located at 801 East Fourth Street will be open 24 hours per day, 7 days per week and normal operations will continue for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash Bonds / Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders.
- **Courtroom 2310** will operate from **9:00AM to 3:45PM** daily for the purpose of Involuntary Commitment Orders.
- Weddings will not be conducted at the Mecklenburg County Courthouse or at the Criminal Magistrate's Office.
- Small claim proceedings, including summary ejectments and money owed, will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

## DISTRICT COURT:

- District Court sessions have been suspended for 30 days; however, the following court sessions will run in the ***mornings only*** as a limited exception:

### Domestic Violence Court

- **Courtroom 4110** will operate for the purpose of hearing *ex parte* Domestic Violence Protective Order (DVPO) requests and ten-day return hearings pursuant to G.S. 50B and ten-day return hearings pursuant to G.S. 50B.
- **Courtroom 4130** will operate for the purpose of hearing *ex parte* Domestic Violence Protective Order (DVPO) requests and ten-day return hearings pursuant to G.S. 50B.
- Motions to Show Cause, Motions to Modify or Set Aside, and Motions for Return of Weapons will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

### Civil District Court

- **Courtroom 4110 and 4130**
  - Emergency and time sensitive *ex parte* matters including, but not limited to: Motions for TRO, Motions to Stay Eviction, and requests for temporary No Contact Orders pursuant to the Workplace Violence Prevention Act.
  - Ten-day return hearings pursuant to G.S. 50C
  - Hearings on requests for one year Civil No-Contact Orders for which Ex Parte relief was not granted will be scheduled after April 17, 2020.
- District Court Arbitrations will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.



### **Domestic Court**

- Domestic court cases will be continued and rescheduled. Notices of new dates will be issued by the Family Court Administrator's Office.
- **Courtroom 4110** will hear all DVPO return hearings previously assigned to a Family Court Judge on the date for which it is currently scheduled. Motions to Show Cause and Motions to Modify or Set Aside will be continued and rescheduled.
- The return hearing for Emergency Custody motions in which an ex parte order has been entered will be heard in **Courtroom 8370** on *Tuesdays only*. All other emergency custody hearings will be scheduled on or after April 17, 2020.

### **Criminal District Court**

- **Courtroom 1150** will have a docket for felony bond hearings and probable cause hearings for defendants in custody. These will be handled according to an expedited administrative process for defendants who remain in custody 7 to 10 days after arrest.
- **Courtroom 1150** will operate daily for morning sessions only to hear in-custody first appearances by remote video and in-custody misdemeanor probation violation probable cause hearings on Friday mornings.
- The Judge will appoint counsel on ALL out of custody people without affidavits.
- All other criminal and traffic courts, not listed above, will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.

### **Juvenile Abuse, Neglect & Dependency Court**

- **Courtroom 8370** will operate on Wednesdays for the purpose of conducting non-secure custody review hearings (7-Day hearings).
- All other hearings will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.

### **Juvenile Delinquency Court**

- **Courtroom 8370** will operate on Mondays and Thursdays for the purpose of hearing detention hearings (secure custody reviews) and return indictment hearings.
- First appearances for non-detained juveniles will be calendared on or after April 17, 2020.

### **Child Support Enforcement Court**

- **Courtroom 8110** will not operate. All child support cases will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.
- An administrative order was entered for the 26<sup>th</sup> Judicial District on March 24, 2020 staying service of outstanding orders for arrest in Child Support Contempt matters until April 17, 2020.

## **SUPERIOR COURT:**

- Superior Court sessions have been suspended for 30 days; however, the following court sessions will run as a limited exception:

### **Criminal Superior Court**

- No new jury trials (unless already empaneled in an ongoing matter as per instructions, subject to discretion of trial judge).
- **Courtroom 5310** will operate in the mornings on Fridays only for the purpose of felony bond hearings and taking pleas in expedited arraignment matters as scheduled by staff of the Trial Court Administrator's Office.
- **Courtroom 1150** will operate on Monday Afternoons for the purposes of probation probable cause and bond hearings. These will be conducted with the defendant participating remotely using video and audio technology.

**Civil Superior Court**

- No new jury trials unless already empaneled on an ongoing matter as per instructions, subject to discretion of trial judge.
- A Superior Court Judge will be available to hear emergency matters, if deemed necessary, as scheduled by staff of the Trial Court Administrator's Office.

**JURY DUTY:**

- All jurors summoned for Wednesday, March 25, 2020 through Friday, April 17, 2020 have been excused from jury service, and should not report. If you are summoned for a date *beyond* April 17, 2020, please follow the instructions on your jury summons to determine if you will be required to report.
- All grand jury proceedings have been suspended until Monday, April 20, 2020 and persons serving on the grand jury should not report.

###

**PUBLIC ANNOUNCEMENT**  
from the  
**Office of the Mecklenburg County Clerk of Superior Court**  
In Response to COVID-19 (Coronavirus)  
April 17, 2020

On 2 April 2020, North Carolina Supreme Court Chief Justice Cheri Beasley issued an order that postponed court proceedings until 1 June 2020. Emergency Directive 4 of the order states, “Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.”

In order to mitigate the effects of the ongoing coronavirus (COVID-19) emergency and in compliance with Chief Justice Beasley’s order, the Clerk of Superior Court’s Office will immediately implement the following modifications to its hours of operations and staff availability.

**1. Modified Operations**

- A. To maintain the health and safety of judicial officials, court personnel, clerk staff and members of the public, the Office of the Clerk of Superior Court is operating with minimal staff. The Clerk’s Office will remain open on Monday through Friday from 9:00AM to 12:00PM at the Mecklenburg County Courthouse, located at 832 East Fourth Street, Charlotte, North Carolina 28202.
- B. **Attorneys, paralegals and members of the public are directed not to enter the courthouse, unless required to appear in person to conduct business.**
- C. **Filings are strongly encouraged to be submitted by mail, rather than in person, to the following address:**
  - Clerk of Superior Court
  - Mecklenburg County Courthouse
  - PO Box 37971
  - Charlotte, NC 28237-7971
- D. An after-hours Drop Box receptacle for emergency filings and payments only will be available on Monday through Friday from 12:00PM to 5:00PM at the Criminal Magistrate’s Office, located at 801 East Fourth Street, Charlotte, North Carolina 28202. The Mecklenburg County Sheriff’s Office may require temperature checks prior to entering the Magistrate’s Office. Any matters left in the Drop Box will be filed and processed within two (2) business days.

- E. The public is encouraged to visit [www.nccourts.gov](http://www.nccourts.gov) as a first resort to determine if a question can be answered without calling the courthouse. If you have a question about your court case, please first view the page for Mecklenburg County for any local announcements. Then, if needed, contact the Clerk of Superior Court's Office utilizing the specific contact information noted below.

## 2. **The Administration of Estates, Guardianship & Other Special Proceedings**

- A. Filings. The Special Proceedings Customer Service Window will be closed to all filings with the exception of Incompetency and Guardianship matters pursuant to North Carolina General Statute Chapter 35A. Emergency filings for Adult or Minor Guardianship may be filed at the Special Proceedings Customer Window. With the exception of motions for interim guardianship filed attendant to incompetency petitions, all other incompetency hearings will be scheduled after June 1, 2020. The Clerk's Office reserves the right to prioritize scheduling of incompetency hearings. A Judicial Hearing Officer will be on-site during operational hours.  
The Estates Customer Service Window is closed to the public. Requests for emergency qualifications should be sent to [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org). Decisions regarding emergency requests will be made on a case-by-case basis. Non-emergency filings will be accepted by mail and by delivery to the Drop Box located at the Estates Customer Service Window.  
Upset bids pending on or after Monday, March 16, 2020 to Monday, June 1, 2020 will be deemed timely filed if received by close of business on Monday, June 1, 2020. Upset bids will be accepted on or after June 1, 2020.
- B. Hearings. Incompetency hearings will be scheduled and conducted in designated courtrooms assigned by Judicial Hearing Officers. All non-emergency hearings, including foreclosures, are suspended and will be rescheduled by the parties on dates provided by Judicial Hearing Officers. Please send any requests for hearing dates to [Mecklenburg.CSC.FrontDesk@nccourts.org](mailto:Mecklenburg.CSC.FrontDesk@nccourts.org).
- C. Access to Files & Records. Requests to inspect and copy files must be made using the email noted below. Appointments to review and inspect any requested files will be confirmed by email within two (2) business days.
- D. Contact Information. Clerk staff will monitor and respond to emails as availability permits. Please limit your communication to address emergency and/or pressing matters. Clerks, working remotely, will have limited access to provide the status of pending cases. For Estate matters, contact [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org).

## 3. **The Administration of Juvenile Court & Adoptions**

- A. Filings. The Juvenile Customer Service Window, located on the eighth floor, will accept emergency filings. Attorney Fee Applications continue to be timely filed, processed and forwarded to Indigent Defense Services.
- B. Adoptions. Clerk staff continue to administratively process petitions for adoption. However, adoption hearings will be suspended. Future hearings will be assigned by clerk staff.

- C. Court Sessions. Clerk staff continue to administratively support the management of each juvenile court session.
  - D. Contact Information. Clerk staff will monitor and respond to voicemail and email as availability permits. Please limit your communication to matters scheduled before the court. Clerks, working remotely, will have limited access to provide the status of pending cases. For juvenile court and adoption matters, contact [Angela.Mcneill@nccourts.org](mailto:Angela.Mcneill@nccourts.org).
4. **The Administration of Special Proceedings Confidential (Judicial Hospitalization)**
- A. Filings. The Special Proceedings Confidential (Judicial Hospitalization) Customer Service Window, located on the eighth floor, will remain open. A Drop Box located at the Special Proceedings Confidential Customer Service Window can be utilized before or after hours.
  - B. Gun Purchase Permit Applications. Clerk staff continue to administratively process gun purchase permit applications.
  - C. Court Sessions. Clerk staff continue to administratively support the management of each judicial hospitalization court session.
  - D. Contact Information. Clerk staff will monitor and respond to emails as availability permits. Please limit your communication to address emergency and/or pressing matters. Clerks, working remotely, will have limited access to provide the status of pending cases.
5. **The Administration of District and Superior Criminal Court**
- A. Filings. The Criminal Attorney Customer Service Window, located on the second floor, will remain open.
    - a. Release orders will continue to be processed. When filing release orders, please have three (3) copies of the signed bond modification order when presenting to the Criminal Attorney Customer Service Window for file-stamping and certification.
    - b. Background checks are available to the public.
    - c. Attorney Fee Applications continue to be timely filed, processed and forwarded to Indigent Defense Services.
  - B. Court Sessions. Clerk staff continue to administratively support the management of each criminal court session.
  - C. Access to Files & Records. The Criminal File Room will be closed to the public for all non-essential record requests. Attorneys are asked to limit their requests for files to those relating to proceedings currently before the court.
  - D. Contact Information. Clerk staff will monitor and respond to emails as availability permits. Please limit your communication to address emergency and/or pressing matters. Clerks, working remotely, will have limited access to provide the status of pending cases. For Criminal Court matters regarding citations and infractions, contact [Mecklenburg.CSCTraffictickets@nccourts.org](mailto:Mecklenburg.CSCTraffictickets@nccourts.org).

**6. The Administration of District and Superior Civil Court**

- A. Filings. The Civil Customer Service Windows and Domestic Violence Window, located on the third floor, will remain open. **However, attorneys, paralegals and members of the public are directed not to enter the courthouse, unless required to appear in person to conduct business. Filings should be submitted by mail, rather than in person, to the following address:**
- Clerk of Superior Court  
Mecklenburg County Courthouse  
PO Box 37971  
Charlotte, NC 28237-7971
- B. Court Sessions. Clerk staff continue to administratively support the management of each civil court session. All matters that are continued or rescheduled will be reassigned new hearing dates. Notices of Hearing will be mailed to last known addresses. Notices of Hearing providing new court dates will be sent by May 22, 2020.
- C. Access to Files & Records. Requests to inspect files must be made using the email noted below. Appointments to review and inspect the files will be confirmed by email within two (2) business days.
- D. Contact Information. Clerk staff will monitor and respond to emails as availability permits. Please limit your communication to address emergency and/or pressing matters. Clerks, working remotely, will have limited access to provide the status of pending cases. For Civil Court matters (including child support, divorce, domestic violence, judgments, evictions and money owed), contact [Mecklenburg.Civil@nccourts.org](mailto:Mecklenburg.Civil@nccourts.org).

**7. The Administration of Payments for Citations & Court Fines, Fees and Costs**

- A. Filings. The Cashier Customer Service Windows, located on the first floor, will remain open. A Drop Box receptacle will be available for filings and making payments at the Criminal Magistrate's Office, located at 801 East Fourth Street, Charlotte, North Carolina 28202 from 12:00PM to 5:00PM on weekdays.
- B. Contact Information. Please visit [www.nccourts.gov/services](http://www.nccourts.gov/services) for availability of online services for court payments and paying your citation. Payments may also be mailed by certified check or money order to:
- Clerk of Superior Court  
Mecklenburg County Courthouse  
PO Box 37971  
Charlotte, NC 28237-7971  
[Make checks payable to: Mecklenburg County Clerk of Superior Court]



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

**Jessica Davis**

**[Jessica.C.Davis@nccourts.org](mailto:Jessica.C.Davis@nccourts.org)**

**FOR IMMEDIATE RELEASE**

**April 18, 2020**

**26<sup>TH</sup> JUDICIAL DISTRICT UPDATED RESPONSE TO COVID-19**

In the continued interest of the health and safety of the community and court personnel, we remain committed to balancing access to justice with the rapidly developing public health crisis that COVID-19 presents.

In accordance with the April 2<sup>nd</sup> and April 13, 2020 directives from North Carolina Supreme Court Chief Justice Cheri Beasley, stating that documents due to be filed from March 16, 2020 to June 1, 2020 will be deemed timely filed if received before the close of business on June 1, 2020 and that any actions required to be done during that time can be postponed until June 1, 2020, **the 26<sup>th</sup> Judicial District has extended its modified court schedule until June 1, 2020.**

Court offices in the Mecklenburg County Courthouse remain open for business. However, unless you are required to appear in-person to conduct your business, attorneys and the public will not be allowed into the building and should use email and telephone to communicate with staff of the Twenty-Sixth Judicial District. Contact information may be found on the [Judicial Directory](#).

**CLERK OF SUPERIOR COURT:**

**Operational Hours**

- Open to the public at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, on Monday through Friday, between the hours of 9:00AM and 12:00PM. A Drop Box receptacle will be available Monday through Friday, from 12:00PM to 5:00PM at the Magistrate's Office located at 801 East Fourth Street, Charlotte, North Carolina 28202 for emergency filings and payments only. Any matters left in the Drop Box will be filed and processed within 2 (two) business days.
- If you need to update your address with the Clerk of Superior Court's Office, please send us an email at [MeckCourtHotLine@nccourts.org](mailto:MeckCourtHotLine@nccourts.org).
- Additional details regarding the Clerk of Superior Court's modified operations and hours can be found [here](#).

**MAGISTRATE AND SMALL CLAIMS**

- The Criminal Magistrate's Office located at 801 East Fourth Street will be open 24 hours per day, 7 days per week and normal operations will continue for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash Bonds / Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders.
- **Courtroom 2310** will operate from **9:00AM to 3:45PM** daily for the purpose of Involuntary Commitment Orders.
- Weddings will not be conducted at the Mecklenburg County Courthouse or at the Criminal Magistrate's Office.
- Small claim proceedings, including summary ejectments and money owed, will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

## DISTRICT COURT:

- District Court sessions have been suspended for 30 days; however, the following court sessions will run in the **mornings only** as a limited exception:

### Domestic Violence Court

- **Courtroom 4110** will operate for the purpose of hearing *ex parte* Domestic Violence Protective Order (DVPO) requests and ten-day return hearings pursuant to G.S. 50B.
- **Courtroom 4130** will operate for the purpose of hearing *ex parte* Domestic Violence Protective Order (DVPO) requests and ten-day return hearings pursuant to G.S. 50B.
- Motions to Show Cause, Motions to Modify or Set Aside, and Motions for Return of Weapons will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

### Civil District Court

- **Courtrooms 4110 and 4130**
  - Emergency and time sensitive *ex parte* matters including, but not limited to: Motions for TRO, Motions to Stay Eviction, and requests for temporary No Contact Orders pursuant to the Workplace Violence Prevention Act.
  - Ten-day return hearings pursuant to G.S. 50C
  - Hearings on requests for one year Civil No-Contact Orders for which Ex Parte relief was not granted will be scheduled **after June 1, 2020**.
- District Court Arbitrations will be continued and rescheduled. Notices of new dates will be issued and sent via U.S. Mail.

### Domestic Court

- Domestic court cases will be continued and rescheduled. Notices of new dates will be issued by the Family Court Administrator's Office.
- **Courtroom 4110** will hear all DVPO return hearings previously assigned to a Family Court Judge on the date for which it is currently scheduled. Motions to Show Cause and Motions to Modify or Set Aside will be continued and rescheduled.
- The return hearing for Emergency Custody motions in which an ex parte order has been entered will be heard in **Courtroom 8370 on Tuesdays only**. All other emergency custody hearings will be scheduled **on or after June 1, 2020**.

### Criminal District Court

- **Courtroom 1130 will not operate**. All matters scheduled for this courtroom will be continued and rescheduled. [Online court services](#) are available for handling some court business, including citation services, paying your ticket, court payments, signing up for court notifications and reminders, eFiling court documents for certain courts and case types, and more.
- **Courtroom 1150** will have a docket for felony bond hearings and probable cause hearings for defendants in custody. These will be handled according to an expedited administrative process for defendants who remain in custody 7 to 10 days after arrest.
- **Courtroom 1150** will operate daily for morning sessions only to hear in-custody first appearances by remote video and in-custody misdemeanor probation violation probable cause hearings on Friday mornings.
- The Judge will appoint counsel on ALL out of custody people without affidavits.
- All other criminal and traffic courts, not listed above, will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.

### Juvenile Abuse, Neglect & Dependency Court

- **Courtroom 8370** will operate on Wednesdays for the purpose of conducting non-secure custody review hearings (7-Day hearings).
- All other hearings will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.



### Juvenile Delinquency Court

- **Courtroom 8370** will operate on Mondays and Thursdays for the purpose of hearing detention hearings (secure custody reviews) and return indictment hearings.
- First appearances for non-detained juveniles will be calendared **on or after June 1, 2020**.

### Child Support Enforcement Court

- **Courtroom 8110** will **not** operate. All child support cases will be continued and rescheduled. Notice of new dates will be issued and sent via U.S. Mail.
- An administrative order was entered for the 26<sup>th</sup> Judicial District on March 24, 2020 staying service of outstanding orders for arrest in Child Support Contempt matters until **June 1, 2020**.

## SUPERIOR COURT:

- Superior Court sessions have been suspended for 30 days; however, the following court sessions will run as a limited exception:

### Criminal Superior Court

- No new jury trials (unless already empaneled in an ongoing matter as per instructions, subject to discretion of trial judge).
- **Courtroom 5310** will operate in the mornings on Fridays only for the purpose of felony bond hearings and taking pleas in expedited arraignment matters as scheduled by staff of the Trial Court Administrator's Office.
- **Courtroom 1150** will operate on Monday Afternoons for the purposes of probation probable cause and bond hearings. These will be conducted with the defendant participating remotely using video and audio technology.

### Civil Superior Court

- No new jury trials unless already empaneled on an ongoing matter as per instructions, subject to discretion of trial judge.
- A Superior Court Judge will be available to hear emergency matters, if deemed necessary, as scheduled by staff of the Trial Court Administrator's Office.
- The Trial Court Administrator's Office will schedule remote civil motion hearings via Webex where both parties agree to the remote hearing. Hearings will be scheduled Monday through Thursday from 9:00am until 12:30pm for the weeks of April 27, May 4<sup>th</sup>, May 11<sup>th</sup>, May 18<sup>th</sup>, and May 25<sup>th</sup>. [Local form CCF-00](#) (Request for Remote Video Conference Hearing or Stipulation for Decision on the Briefs) must be filled out in its entirety and submitted to the Trial Court Administrator's Office.

## JURY DUTY:

- All jurors summoned for Wednesday, March 25, 2020 through Friday, May 29, 2020 have been excused from jury service, and should not report. If you are summoned for a date *beyond* May 29, 2020, please follow the instructions on your jury summons to determine if you will be required to report.
- All grand jury proceedings have been suspended until Monday, June 1, 2020 and persons serving on the grand jury should not report.

###



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

**Jessica Davis**

**[Jessica.C.Davis@nccourts.org](mailto:Jessica.C.Davis@nccourts.org)**

**FOR IMMEDIATE RELEASE**

**June 3, 2020**

**26<sup>TH</sup> JUDICIAL DISTRICT COVID-19 MODIFIED COURT OPERATIONS FOR JUNE 2020**

In the continued interest of the health and safety of the community and court personnel, we remain committed to balancing access to justice with the ongoing public health crisis that COVID-19 presents.

In accordance with the May 14<sup>th</sup>, May 21<sup>st</sup>, and May 30<sup>th</sup>, 2020 emergency directives from North Carolina Supreme Court Chief Justice Cheri Beasley, **the 26<sup>th</sup> Judicial District has modified its court operations for the month of June 2020.** Additionally, the Senior Resident Superior Court Judge and Chief District Court Judge have entered an Administrative Order regarding court rules necessary to protect public health and slow the spread of COVID-19 in the Mecklenburg County Courthouse. A copy of this June 1, 2020 Administrative Order can be accessed [here](#).

Court offices in the Mecklenburg County Courthouse remain open for business. However, by order of the Chief Justice, only people with business at the courthouse will be allowed to enter. Everyone is encouraged to use email and telephone to communicate with staff of the 26<sup>th</sup> Judicial District to minimize the number of persons entering the courthouse. Contact information for court offices may be found on the [Judicial Directory](#).

The following are highlights from the June 1, 2020 Administrative Order pertaining to modified court operations for the month of June 2020. The June 1, 2020 Administrative Order can be accessed in its entirety [here](#).

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**CLERK OF SUPERIOR COURT:**

**Operational Hours, Mail & Filing**

- Open to the public at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, on Monday through Friday, between the hours of 9:00AM and 12:00PM.
- To further minimize foot traffic in the courthouse, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Filings are to be mailed to:

**Clerk of Superior Court  
Mecklenburg County Courthouse  
P.O. Box 37971  
Charlotte, NC 28237-7971**

- Receptacles will be available in designated areas to accept filings. All persons seeking to file legal documents are encouraged to submit their filings using the secure receptacles. If you are a legal professional or filing on behalf of another, you are required to deposit your documents in the receptacle.
- A secure receptacle will be located at the reception-desk inside the McDowell and Fourth Street entrance on the first floor. Filing will be available at this receptacle from 8:00AM to 5:00PM. Items placed in the receptacle by

4:00PM will be file-stamped, processed, and a copy mailed back. To ensure same-day mailing, please include a self-addressed, pre-paid envelope.

- As a courtesy, a secure receptacle will also be located on the third floor for a limited time. Filing will be available at this receptacle from 9:00AM to 12:00PM. Items placed in the receptacle by 12:00PM will be file-stamped, processed, and a copy mailed back. To ensure same-day mailing, please include a self-addressed, pre-paid envelope.
- For filings by mail and deposited in the receptacles, please include a certified check or money order. No cash payments accepted.

### Access to Public Records

- Access to public records is available from 9:00AM to 12:00PM, Monday through Friday, by appointment only.
- To access Criminal files by appointment, email [Mecklenburg.Criminal@nccourts.org](mailto:Mecklenburg.Criminal@nccourts.org)
- To access Civil files by appointment, email [Mecklenburg.Civil@nccourts.org](mailto:Mecklenburg.Civil@nccourts.org)
- To access Estate files by appointment, email [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)

### Special Proceedings

- Foreclosure hearings will not be scheduled during the month of June.
- Filers are encouraged to submit documents in the secure receptacle (*i.e.*, motor vehicle liens, name changes, guardian ad litem appointments).
- An upset bid period that is pending on or after Monday, March 16, 2020 to Monday, June 1, 2020, will continue to be timely filed until the close of business on Monday, June 1, 2020. Please note that close of business is 12:00PM. If an upset bid is delivered by United States Postal Service and received by the Clerk within five (5) business days of the expiration of the upset bid period, the filing will be deemed timely.

### Estates

- In order to limit face-to-face interactions between the public and staff, customer assistance will be provided using technology to the greatest extent possible. Telephone conferencing, email transmissions, and WebEx tutorials are methods being employed to deliver customer service.
- Clerk staff will monitor and respond to telephone calls and emails. The Estates phone line is 704-686-0460. Estates questions may be emailed to: [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)
- Filers are encouraged to submit documents in the secure receptacle (*i.e.*, application for administration by clerk, family history affidavit, application and assignment of the year's allowance).

### Incompetency & Guardianship Matters

- Incompetency and Guardianship matters are scheduled in Courtrooms 2370, 2350 and 2330.
- A Judicial Hearing Officer will be on-site during operational hours to address emergency matters.
- Non-emergency filings will be accepted by United States Postal Service or may be submitted in the secure receptacle. To schedule a hearing, please email: [Mecklenburg.CSC.FrontDesk@nccourts.org](mailto:Mecklenburg.CSC.FrontDesk@nccourts.org)

### MAGISTRATE AND SMALL CLAIMS

- The Criminal Magistrate's Office located at 801 East Fourth Street will be open 24 hours per day, 7 days per week and normal operations will continue for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash Bonds / Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders.
- **Courtroom 2310** will operate for the purpose of Civil Commitment hearings. Civil Commitment hearings will be conducted remotely. All participants in a remote hearing shall be able to be seen and heard by all other participants. Respondents must have the ability to communicate confidentially with Special Counsel during the proceeding.
- From June 8, 2020 through July 2, 2020, **weddings** will be conducted by Magistrates in the Mecklenburg County Courthouse in **Courtroom 5350 on Mondays, Wednesdays and Fridays from 9:00AM until 12:00PM by**

**appointment only.** To schedule an appointment for a wedding, please email:

[Mecklenburg.Magistrate.Weddings@nccourts.org](mailto:Mecklenburg.Magistrate.Weddings@nccourts.org) . Only the parties to the marriage and two witnesses may attend a scheduled marriage ceremony.

- Summary ejectment matters in Small Claims Court will not be scheduled in the month of June 2020. A plan for the scheduling of summary ejectment matters will be publicized before June 30, 2020. The scheduling of money owed matters in Small Claims Court will begin the week of June 8, 2020.

## **DISTRICT AND SUPERIOR COURT:**

### **Criminal District Court—Courtrooms 1150 and 1130**

- Misdemeanor First Appearances will not be held in the month of June, 2020 and traffic matters will not be scheduled for in-person hearings in the month of June, 2020.
- Felony First Appearance hearings will be conducted by video during the morning session of court.
- Domestic Violence First Appearance hearings will be conducted by video during the morning session of court.
- Felony Probable Cause Hearings will be scheduled consistent with state law within 15 days in the morning sessions.
- Defendants who appear for Probable Cause Hearings will be seated in Courtroom 1130 at six-foot intervals. Defense attorneys will use the administrative courtrooms in 1130 to conduct confidential discussions with clients. Defendants who need to see a judge will be seated in courtroom 1150 at the end of the morning session.

### **Domestic Violence (Civil) Court—Courtrooms 4110 and 4130**

- Return hearings will be scheduled for morning sessions according to statute. If the calendar within 10 days of filing has too many cases docketed to allow for social distancing, then the Court may determine that good cause exists to set the case for hearing in 11 to 15 days out. Calendaring decisions are intended to comply with the directives of the Chief Justice to minimize the number of persons in the courtroom.
- Hearings will be held in **courtroom 4110**. Plaintiffs will be seated at six-foot intervals in courtroom 4110. Defendants will be seated at six-foot intervals in **courtroom 4130**.
- Defendants will be called into courtroom 4110 when their case is called for hearing and will return to courtroom 4130 to receive the order and instructions from the Mecklenburg County Sheriff's Office.
- Witnesses and persons present for emotional support may be asked to wait outside the courtroom or in another designated location.

### **General Civil Court\***

*(\*excludes Family Court, Child Support and Domestic Violence cases)*

- There will be no jury trials during the months of June or July 2020 in District or Superior Court. All jury trials previously scheduled during these months have been or will be continued by the Trial Court Administrator (TCA), considering peremptorily set cases, number of prior continuances, and age of cases.
- There will be no civil bench trials in the month of June 2020. All bench trials which were continued on or after April 13, 2020 will be continued by the TCA considering peremptorily set cases, number of prior continuances, and age of cases.
- Superior Court Civil Motions will be heard in **courtroom 6310** Monday through Thursday. Motions in Superior Court civil cases will transition from remote hearings to in-person hearings beginning Monday, June 1, 2020, except for the week of June 22, 2020. No civil motions will be heard that week.

### **Domestic Court—Courtrooms 6170, 6350, 8100, 8130, 8150, 8170, and 8300**

- Beginning June 1, 2020, in-person trials and hearings will resume in the morning sessions only in all domestic courtrooms. Judges may direct and parties may request remote WebEx hearings for certain cases.
- For a complete listing of Domestic Court directives, please refer to the [June 1, 2020 Administrative Order](#)
- Child Support Court (**courtroom 8110**) will resume operations after June 30, 2020. Prior to July 1, 2020, any continuances, dismissals, consent order or other matters needing review or signatures of a District Court Judge shall be submitted in chambers to the Lead Child Support Judge.

### **Juvenile Court—Courtrooms 8330, 8350, 8370, and 8390**

- All cases will be scheduled for a time certain after consideration of the issues to be tried, the nature of evidence and number of witnesses necessary to the material issues.
- Two judges will handle abuse, neglect, dependency and delinquency hearings. AM hearings will be time certain; PM hearings will be remote.
- One judge will handle special proceedings (*e.g.*, contested adjudications and probable cause hearings that need testimony).
- Detention hearings will be held on Monday and Thursday (remotely).
- Non-secure custody hearings will be held on Wednesday and Friday of each week and will be heard by the assigned judge except when assigned to cover detention hearings.
- Delinquency cases will be scheduled on Mondays and Thursdays. In-person hearings will be calendared on a case-by-case basis during morning sessions.
- The Assistant District Attorney supervising the Juvenile Prosecution Unit will work with the Council for Children's Rights and defense bar to prioritize cases for hearings in the months of June, July and August 2020. Priority cases will include probable cause hearings, return indictment hearings, post-supervision release planning review hearings, and adjudication and/or disposition for juveniles in detention.

### **Felony Administrative Court**

- Superior Criminal Administrative Court will be held daily in both **courtroom 5310 and courtroom 5150** through the month of June. These courts will run during the **AM session only** and begin at 9:30AM.
- Matters such as scheduling conferences and follow-up scheduling conferences will take place electronically via email between the parties and the Trial Court Administrator. Pre-Trial Readiness Conferences will not be calendared in Administrative Court, though out-of-court evidence viewings will be arranged by the assigned prosecutor upon timely request of the defense. Cases currently scheduled for Pre-Trial Readiness Conference will be moved to trial calendars.
- Friday court sessions will be used for expedited arraignments and bond hearings.

### **Felony Probation Violation Court**

- Felony Probation Violation Court will not be held in the month of June. Probable Cause Hearings for new felony probation violations will continue to be held in courtroom 1150 on Monday afternoons.

### **JURY DUTY:**

- All jurors summoned for Monday, June 1 or Monday, June 8, 2020, should check their reporting status at [eresponse.mecknc.gov](https://eresponse.mecknc.gov) or call the automated juror information line at 877-649-7133 after 5:30PM on the evening before their scheduled report date to determine if their appearance is still required. The grand jury will be selected on June 1 and June 8. If chosen to serve on the grand jury, jurors will be required to appear every other Monday through December 2020.
- Jurors summoned for all other dates in June have been excused and should not report.

###



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

**Jessica Davis**

**[Jessica.C.Davis@nccourts.org](mailto:Jessica.C.Davis@nccourts.org)**

**FOR IMMEDIATE RELEASE**

**JULY 1, 2020**

**26<sup>TH</sup> JUDICIAL DISTRICT COVID-19 MODIFIED COURT OPERATIONS BEGINNING JULY 6, 2020**

In the continued interest of the health and safety of the community and court personnel, we remain committed to balancing access to justice with the ongoing public health crisis that COVID-19 presents.

In accordance with all COVID-19 related emergency directives from North Carolina Supreme Court Chief Justice Cheri Beasley, **the 26<sup>th</sup> Judicial District has modified its court operations for the month of July 2020.**

Court offices in the Mecklenburg County Courthouse remain open for business. However, by order of the Chief Justice, only people with business at the courthouse will be allowed to enter. Everyone is encouraged to use email and telephone to communicate with staff of the 26<sup>th</sup> Judicial District to minimize the number of persons entering the courthouse. Contact information for court offices may be found on the [Judicial Directory](#).

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**CLERK OF SUPERIOR COURT:**

**Operational Hours, Mail & Filing**

- Open to the public at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, on Monday through Friday, between the hours of 9:00AM and 12:00PM.
- To further minimize foot traffic in the courthouse, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Filings are to be mailed to:  
**Clerk of Superior Court  
Mecklenburg County Courthouse  
P.O. Box 37971  
Charlotte, NC 28237-7971**
- Receptacles will be available in designated areas to accept filings. All persons seeking to file legal documents are encouraged to submit their filings using the secure receptacles. If you are a legal professional or filing on behalf of another, you are required to deposit your documents in the receptacle.
- A secure receptacle will be located at the reception-desk inside the McDowell and Fourth Street entrance on the first floor. Filing will be available at this receptacle from 8:00AM to 5:00PM. Items placed in the receptacle by 4:00PM will be file-stamped, processed, and a copy mailed back. To ensure same-day mailing, please include a self-addressed, pre-paid envelope.
- A secure receptacle will also be located on the third floor for a limited time. Filing will be available at this receptacle from 9:00AM to 12:00PM. Items placed in the receptacle by 12:00PM will be file-stamped, processed, and a copy mailed back. To ensure same-day mailing, please include a self-addressed, pre-paid envelope.



- For filings by mail and deposited in the receptacles, please include a certified check or money order. No cash payments accepted.

#### Access to Public Records

- Access to public records is available from 9:00AM to 12:00PM, Monday through Friday, by appointment only.
- To access Criminal files by appointment, email [Mecklenburg.Criminal@nccourts.org](mailto:Mecklenburg.Criminal@nccourts.org)
- To access Civil files by appointment, email [Mecklenburg.Civil@nccourts.org](mailto:Mecklenburg.Civil@nccourts.org)
- To access Estate files by appointment, email [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)

#### Special Proceedings

- Foreclosure hearings will resume in the month of July 2020.
- Filers are encouraged to submit documents in the secure receptacle (*i.e.*, motor vehicle liens, name changes, guardian ad litem appointments).

#### Estates

- In order to limit face-to-face interactions between the public and staff, customer assistance will be provided using technology to the greatest extent possible. Telephone conferencing, email transmissions, and WebEx tutorials are methods being employed to deliver customer service.
- Clerk staff will monitor and respond to telephone calls and emails. The Estates phone line is 704-686-0460. Estates questions may be emailed to: [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)
- Filers are encouraged to submit documents in the secure receptacle (*i.e.*, application for administration by clerk, family history affidavit, application and assignment of the year's allowance).

#### Incompetency & Guardianship Matters

- Incompetency and Guardianship matters will be scheduled in designated courtrooms. Dockets will be posted in the Clerk of Court – Administration Suite 3600.
- A Judicial Hearing Officer will be on-site during operational hours to address emergency matters.
- Non-emergency filings will be accepted by United States Postal Service or may be submitted in the secure receptacle. To schedule a hearing, please email: [Mecklenburg.CSC.FrontDesk@nccourts.org](mailto:Mecklenburg.CSC.FrontDesk@nccourts.org)

### MAGISTRATE AND SMALL CLAIMS

- The Criminal Magistrate's Office located at 801 East Fourth Street will be open 24 hours per day, 7 days per week and normal operations will continue for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash Bonds / Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders.
- **Courtroom 5150** will operate for the purpose of Civil Commitment hearings. Civil Commitment hearings will be conducted remotely. All participants in a remote hearing shall be able to be seen and heard by all other participants. Respondents must have the ability to communicate confidentially with Special Counsel during the proceeding.
- **Weddings** will be conducted by Magistrates in the Mecklenburg County Courthouse **in courtroom 2330 Monday through Friday from 2:00PM until 4:00PM by appointment only**. To schedule an appointment for a wedding, please email: [Mecklenburg.Magistrate.Weddings@nccourts.org](mailto:Mecklenburg.Magistrate.Weddings@nccourts.org). Only the parties to the marriage and two witnesses may attend a scheduled marriage ceremony.
- Summary ejectment matters in Small Claims Court will resume the week of July 20, 2020.

### DISTRICT AND SUPERIOR COURT:

#### Criminal District Court—Courtrooms 1150 and 1130

- Virtual pleas will be scheduled in the month of July 2020.
- Felony First Appearance hearings will be conducted by video during the morning session of court.
- Domestic Violence First Appearance hearings will be conducted by video during the morning session of court.

- Felony Probable Cause Hearings will be scheduled consistent with state law within 15 days in the morning sessions.
- Defendants who appear for Probable Cause Hearings will be seated in Courtroom 1130 at six-foot intervals. Defense attorneys will use the administrative courtrooms in 1130 to conduct confidential discussions with clients. Defendants who need to see a judge will be seated in courtroom 1150 at the end of the morning session.

#### **Domestic Violence (Civil) Court—Courtrooms 4110 and 4130**

- Requests for Ex Parte relief filed with the Clerk of Superior Court between 9:00AM and 10:30AM will be immediately scheduled for hearing before a district court judge in Courtroom 4110 during the morning session. Requests for Ex Parte relief filed with the Clerk of Superior Court after 10:30AM will be scheduled for the afternoon session in Courtroom 4110 or 4130 on the date of filing.
- Return hearings will be scheduled according to statute in Courtroom 4110 and 4130 during morning and afternoon sessions. Return hearings that require substantial evidence and will last an hour or longer may be rescheduled to an afternoon session in Courtroom 4130. If the calendar within 10 days of filing has too many cases docketed to allow for social distancing, then the Court may determine that good cause exists to set the case for hearing in 11 to 15 days out. Calendaring decisions are intended to comply with the directives of the Chief Justice to minimize the number of persons in the courtroom.
- Hearings will be held in **Courtrooms 4110 and 4130**. Litigants will be seated at six-foot intervals in the courtrooms.
- The capacity of each courtroom is posted outside the vestibule. If the number of persons appearing for DVPO hearings exceeds the courtroom capacity, litigants, witnesses and persons present for emotional support may be asked to wait outside the courtroom or in another designated location until the case is called for hearing.

#### **General Civil Court\***

*(\*excludes Family Court, Child Support and Domestic Violence cases)*

- There will be no jury trials during the months of June or July 2020 in District or Superior Court. All jury trials previously scheduled during these months have been or will be continued by the Trial Court Administrator (TCA), considering peremptorily set cases, number of prior continuances, and age of cases.
- Superior Court Civil bench trials will resume in the month of July 2020 in **courtroom 6130**. All bench trials which were continued on or after April 13, 2020 will be continued by the TCA considering peremptorily set cases, number of prior continuances, and age of cases.
- Superior Court Civil Motions will be heard in **courtroom 6310** Monday through Friday, in-person during the AM sessions and remotely during the PM sessions.

#### **Domestic Court—Courtrooms 8100, 8130, 8150, 8170, 8300 and 8310**

- In-person trials and hearings will resume in the morning sessions only in all domestic courtrooms. Judges may direct and parties may request remote WebEx hearings for certain cases.
- Child Support Court (**courtroom 8110**) will resume operations in August 2020. In-person and remote hearings will be scheduled.

#### **Juvenile Court—Courtrooms 8330, 8350, 8370, and 8390**

- All cases will be scheduled for a time certain after consideration of the issues to be tried, the nature of evidence and number of witnesses necessary to the material issues.
- Two judges will handle abuse, neglect, dependency and delinquency hearings. AM hearings will be time certain; PM hearings will be remote hearings.
- One judge will handle special proceedings (*e.g.*, contested adjudications and probable cause hearings that need testimony).
- Detention hearings will be held on Monday and Thursday (remotely).
- Non-secure custody hearings will be held each week and will be heard by the assigned judge except when assigned to cover detention hearings.
- Delinquency cases will be scheduled on Mondays and Thursdays. In-person hearings will be calendared on a case-by-case basis during morning sessions.



- The Assistant District Attorney supervising the Juvenile Prosecution Unit will work with the Council for Children's Rights and defense bar to prioritize cases for hearings in the months of July and August 2020. Priority cases will include probable cause hearings, return indictment hearings, post-supervision release planning review hearings, and adjudication and/or disposition for juveniles in detention.

#### **Felony Administrative Court**

- Administrative Court (**5310**) will run Monday through Friday in both the AM and PM sessions. Cases will be set according to the current schedule of Mecklenburg County Superior Criminal Court and will continue to be grouped under the current Quad system. Cases will be scheduled in four (4) quads: 9:30AM, 11:00AM, 2:00PM, and 3:30PM. Parties must appear promptly at their scheduled time and will be allowed in the courtroom only during their scheduled Quad. **Bond hearings will continue to be scheduled only during the administrative week of the teams handling the case.**
- Matters such as scheduling conferences and follow-up scheduling conferences will take place electronically via email between the parties and the Trial Court Administrator. Pre-Trial Readiness Conferences will not be calendared in Administrative Court, though out-of-court evidence viewings will be arranged by the assigned prosecutor upon timely request of the defense. Cases currently scheduled for Pre-Trial Readiness Conference will be moved to trial calendars.

#### **Felony Probation Violation Court**

- Probation Court will resume its normal schedule in **courtroom 5350**. Full terms of Probation Court will be set in 5350 the weeks of July 13, 2020 and July 27, 2020.
- After the week of June 29<sup>th</sup>, **courtroom 5150** will not continue to be used for administrative court until and unless the backlog of administrative matters necessitates it.

#### **JURY DUTY:**

- All jurors summoned for Monday, July 6, 2020, should check their reporting status at [eresponse.mecknc.gov](https://eresponse.mecknc.gov) or call the automated juror information line at 877-649-7133 after 5:30PM on the evening before their scheduled report date to determine if their appearance is still required. The grand jury will be selected on July 6. If chosen to serve on the grand jury, jurors will be required to appear every other Monday for six months.
- Jurors previously rescheduled to dates in July (other than July 6) have been excused and should not report.

###

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MECKLENBURG CO., C.S.C.

ADMINISTRATIVE ORDER

BY \_\_\_\_\_  
COURT EXPANSION

State Courts across the country are responding to the impact of COVID-19 in varying ways, but we share the priorities of protecting our collective public health while carrying out our constitutional functions. Governor Roy Cooper has issued emergency executive orders limiting public gatherings, closing public schools, restricting the operation of nonessential businesses, requiring face coverings and encouraging the use of social distancing in keeping with current public health guidelines. North Carolina's courts perform a critical governmental function and, as such, are exempt from executive orders that limit large gatherings. Even so, crowded sessions of court are not in keeping with current public health guidance and must be avoided.

The Mecklenburg County Courts have operated on a reduced schedule since April 16, 2020 in response to the COVID-19 pandemic and in compliance with Emergency Directive Number 1 issued by Chief Justice Cheri Beasley of the North Carolina Supreme Court. This directive, mandating the rescheduling of all non-critical court services through the end of May, 2020, expired on June 1, 2020. The 26<sup>th</sup> Judicial District has expanded court proceedings since June 1, 2020.

Court officials have worked closely with the Mecklenburg County Public Health Department to obtain guidance regarding the conditions necessary to conduct in-person court hearings safely and increase public access to the courthouse. We must continue to restrict occupancy of the Mecklenburg County Courthouse, exercise social distancing, limit the gathering of people in public areas, and enhance cleaning and sanitizing practices. It is only through our collective vigilance that we will protect court personnel and members of the public.

Chief Justice Beasley advised that adherence to social distancing and other public health guidance cannot be achieved with traditional, routine operation of the district and superior courts of this State. High-volume sessions of court, heavy dockets, jury trials and long service lines require the public to gather in county courthouses and courtrooms in close proximity for extended periods of time in numbers and under conditions inconsistent with the public health. Emergency Directive Number 12, issued by Chief Justice Beasley, requires that we establish the maximum allowable occupancy of each courtroom, or meeting space based upon the implementation of social distancing of, at least, six-feet in every direction. This significantly reduces the capacity of our courtrooms to an occupancy level ranging from, as little as, six persons to a maximum of twenty-six. Six-foot intervals at the building entrances, inside courtrooms, outside public windows, and throughout public corridors have been marked in the courthouse. Additionally, plexiglass barriers that are necessary to



prevent the spread of disease at public windows and inside courtrooms are being procured and installed.

Foot traffic throughout the building must be reduced as much as possible to prevent the spread of infection. Prior to the pandemic, the average number of persons entering the courthouse in one month was 70,000. The capacity of the facility and various floors and offices must be reduced to 25% of the maximum occupancy. In accordance with Chief Justice Beasley's Emergency Directive Number 15, attorneys and litigants are strongly encouraged to submit filings by mail to the greatest extent possible. A secure receptacle is available at the first-floor entrance of the courthouse to receive payments and documents for civil filing.

Additionally, we must be able to ensure that the facilities are maintained in a clean and sanitary condition for the health and safety of the public and court personnel. Certain standards have been established by our local public health director and are further mandated by the Chief Justice, including: ensuring that hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high-touch areas of the facility including doorways, service counters, stairwells and elevators; and ensuring that all areas accessed by the public are cleaned daily with high-touch areas cleaned periodically throughout the day. Sanitizing protocols require cleaning products which are in limited supply and have only recently been procured.

Finally, the Clerk of Superior Court, comprised of 218 positions, performs core functions across all operations of the Mecklenburg County Court. Staffing levels continue to fluctuate from 55% to 80% based upon the following key factors: (1) vacancies, resignations, and retirements; (2) employees who test positive for COVID-19, employees who are quarantined due to exposure to COVID-19, and employees whose health status otherwise qualifies them to take leave from the job; (3) occupancy restrictions and the absence of protective barriers in staff areas; and (4) virtual learning of school-age children.

A phased approach to expanding court operations is necessary to prevent and slow the transmission of disease. Expansion decisions are based upon guidance from state and local public health officials, the Administrative Office of the Courts and the Chief Justice's emergency directives. After careful consideration, we will not expand our in-person court operations for the month of August, 2020. There will be expansion of remote proceedings in accordance with the plan set forth in this administrative order. Court officials have worked closely with community and government organizations and members of the bar to reduce docket size. The Lead Judges in each respective area have developed more detailed protocols intended to reduce the number of individuals in a courtroom and increase the use of technology to the greatest extent possible.

These unprecedented times require us to adapt to a very fluid situation. Be assured that the health and welfare of court personnel, attorneys, and members of the public entering the Courthouse has been paramount in the decision to expand court operations. We will continue to confer with public health officials, to evaluate the level of disease transmission in the community, and to plan for the next phases of court expansion. Your knowledge of and adherence to the content of this order is expected.

#### **SAFETY AND SECURITY PROTOCOLS FOR ALL IN-PERSON COURT PROCEEDINGS**

- All courtrooms have restricted capacity to ensure that all occupants are able to maintain six-foot social distancing.

- The gallery seating area inside each courtroom will have six-foot intervals marked on the benches with tape.
- Plexiglass shields will be installed in every courtroom on the bench, the clerk's desk and counsel tables.
- Entry into a courtroom will be limited to the persons essential, or necessary, to a scheduled proceeding. The presiding judge will make reasonable accommodations to make hearings accessible to members of the press, or the public, upon request.
- All persons who enter the courthouse must wear a face covering consistent with Administrative Order 20R988, entered July 22, 2020, and Emergency Directive Number 21 entered by the Chief Justice of the North Carolina Supreme Court. All persons participating in an in-person hearing must wear a face covering for the duration of a proceeding.
- All court personnel and members of the public shall wear face coverings while in the Courthouse to include public areas and during inter-personal interactions.
- Each courtroom will maintain a supply of sanitizing wipes and hand sanitizer for use at each counsel table, the judge and the clerk.
- Mecklenburg County Asset and Facility Management will ensure thorough cleaning and sanitizing of courtrooms at the end of each scheduled morning and afternoon session of court.

#### **GENERAL CIVIL COURT\***

(\*excludes Family Court, Child Support and Domestic Violence cases)

##### Jury Trials

- There will be no jury trials during the month of August 2020 in District or Superior Court. All jury trials previously scheduled during these months have been or will be continued by the Trial Court Administrator ("TCA"), considering peremptorily set cases, number of prior continuance and age of cases.

##### District Court Bench Trials

- All bench trials which were continued on or after April 13, 2020 will be scheduled by the TCA for remote hearing beginning in the month of August, 2020 considering peremptorily set cases, number of prior continuance and age of cases.
- Judicial Settlement Conferences will continue to be available for all continued or rescheduled cases which were to be heard between April 13, 2020 and June 1, 2020. Please contact the TCA to schedule a judicial settlement conference.

##### District Court Civil Motions (Courtroom 6330)

- All District Court Civil Motions that will be scheduled by the TCA for remote hearing beginning in the month of August, 2020.

##### Superior Civil Court Motions (Courtroom 6310)

- Superior Court Civil Motions will be heard in Courtroom 6310 Monday-Thursday.



- Superior Court Civil Motions will continue to be heard in-person during the morning sessions and remotely during the afternoon session.
- Scheduling for both in-person and remote hearings will be done through the Trial Court Administrator's Office.

### DOMESTIC COURT

(Courtrooms 6170, 6350, 8100, 8130, 8150, 8170, 8300)

In person trials and hearings will continue in the morning sessions only in all domestic courtrooms. Judges may direct and parties may request remote WebEx hearings for domestic relations hearings as provided herein.

### Motions

- Motions day (am session): Motions shall be calendared beginning at 9:00 a.m. Motions to Withdraw as Counsel are to be submitted as Consent Orders through Family Court whenever possible. Local Form CCF-7 should accompany each submission of a proposed Order to Withdraw. Orders to Withdraw shall include the client's address, telephone number, and email address.
- Motions that can be heard via argument only, without testimony, shall be heard via WebEx. The Motions set on the calendar shall be staggered for hearing between 9:00 a.m. and 12:00 p.m., with one third at 9:00 a.m., one third at 10:00 a.m., and one third at 11:00 a.m. The clerk will send WebEx invites to everyone on the Motions docket. If there are any Motions requiring testimony, or any Motions that will take longer than the WebEx time slots allow, or there are other extenuating circumstances that prevent the Motion from being heard via WebEx at the Monday morning Motions setting, the Judge will set those to be heard, presumptively via WebEx, during the term at a time certain.
- Motions day (pm session): Temporary Child Support (TCS) and Post-Separation Support (PSS): The Mecklenburg County Local Rules permit hearing TCS and PSS cases by Affidavit only. These matters will be decided on Affidavits with limited exceptions.
  - All TCS and PSS cases will be set on the Motions docket on the first Monday of the term at 1:30 p.m. (A limit may be imposed on the number of cases set for each term.) After obtaining a date from Family Court, the moving party shall serve the opposing party with a Notice of "Calendared Date."
  - Parties shall file with the court and serve upon the other party the Affidavit of Financial Standing and serve upon the other party the required attachments to the Affidavit 10 days prior to the scheduled calendar date. Parties shall be permitted to file testimonial affidavits that shall not exceed 15 pages in total, double spaced, single sided, with no smaller than 12-point font. Multiple affidavits may be submitted, but the entirety of all affidavits shall not exceed the 15-page limit. These may include comments on the other party's financial information. The signature/notary page shall not be included in the limitation of page numbers. The testimonial affidavits shall be filed and served upon the other party no later than the Thursday prior to the Monday when the case is calendared. Filed Testimonial Affidavits and the non-filed supporting documents required to be exchanged pursuant to the Local Rules shall be delivered to the Judge's clerk by noon on the Friday prior to the calendared date, by requesting the file clerk leave a copy on the courtroom clerk's desk, or by submitting the documents to the clerk via One

Drive. During the time the matters are calendared, the judges' courtroom shall not be open, and the judge shall use the afternoon to review each of the matters calendared. The judge shall notify the parties/counsel of the ruling based on the review of verified pleadings, motions, financial affidavits and required attachments, and testimonial affidavits.

- If a matter is complex (such as one party being self-employed), a party may file and serve "Request for Hearing on Temporary Matter" at the time the Affidavit of Financial Standing is filed and served. Family court shall hold these request for 3 days, and the opposing party shall have an opportunity to file and submit a Response to the Request for the Judge's consideration. If the judge grants a hearing, the judge's clerk shall notify the parties of the date and time of the hearing, which may be at a different setting than the original "calendared date" and may be done by WebEx. A hearing may be granted on the court's own Motion if the judge determines additional evidence beyond the affidavits is needed.

### Contempt

- Civil contempt hearings may be scheduled for a hearing via WebEx. Criminal contempt hearings require an in-person hearing due to constitutional concerns unless the alleged contemnor executes a written waiver of in-person appearance. In-person contempt hearings will be scheduled for morning sessions only.
- Dockets shall be staggered to allow for the courtroom to not exceed the maximum recommended occupants to allow for proper social distancing. Cases known to be for Civil Contempt may be scheduled via WebEx. Calendar start times shall be staggered with each judge starting at 8:30 a.m., 9:00 a.m., or 9:30 a.m. The judge's preference for their contempt day start time shall be communicated to their case coordinator. Judges may schedule up to 2 cases per hour for no more than 7 specific time slots during the day, allowing for skipping 12:00 p.m. or 12:30 p.m. so that the court may have a lunch break.

### Pretrial Conferences

- Pretrial conferences are strongly encouraged to be handled by Consent Orders and submitted prior to the calendared date. Parties may submit Consent Orders through family court prior to the date the pretrial conference is scheduled. The case coordinator will assist by providing Status Conference dates for Initial Pretrial Orders and trial term dates for Status Conference Checklist Orders for the Consent Orders. To obtain the dates for status conferences and trial terms, please contact the case coordinator via e-mail only. Pretrial Consent Orders shall be submitted to Family Court by noon the Friday prior to the calendared Pretrial Conference. Only those cases without Consent Orders submitted will have an actual pretrial or status conference on the first Wednesday morning of the judge's term. These may be done by WebEx conference.
- The pretrial and status conferences done via WebEx shall be staggered with the first half of the docket attending the WebEx conference from the top of the hour to the bottom of the hour and the second half of the docket attending the WebEx conference beginning at the bottom of the hour. For example, if there are 20 cases on the docket, cases 1-10 will appear for pretrial via WebEx beginning at 9:00 a.m. and cases 11-20 will appear via WebEx beginning at 9:30 a.m. Only pro se litigants not able to attend via WebEx should be in the courtroom for these matters.

### Calendar Call



- Published calendars will be posted approximately 23 days prior to the scheduled calendar call. Calendar calls shall be done via WebEx Conference. The clerk shall be responsible for setting up the WebEx Conference for calendar call. Fewer cases will be set on each judge's docket to minimize the need for cases not being reached, continued, or set for standby. This will mean it is highly likely that your case will be set and not continued. If you have a case on a published calendar and intend to request a continuance to another term, you should file a Motion to Continue at least 10 days prior to the scheduled calendar call.
- All Motions to Continue will be held by family court for 3 days to allow the opposing side to respond, according to the Local Rules. Judges shall rule on written Motions to Continue in advance of calendar call, and the clerk or case coordinator will notify the parties of the Judge's ruling. Continuance requests at calendar call should be a rarity.
- Each judge shall have their calendar call at their normal designated day and time of their session. The calendar call shall be done via WebEx and shall be staggered with the first half of the docket attending the WebEx conference from the top of the hour to the bottom of the hour and the second half of the docket attending the WebEx conference beginning at the bottom of the hour. For example, Judge Culler's calendar call is on the first Friday of the term at 10:00 a.m.; if there are 20 cases on the docket, cases 1-10 will appear for calendar call via WebEx beginning at 10:00 a.m. and cases 11-20 will appear for calendar call via WebEx beginning at 10:30 a.m. Only pro se litigants not able to attend via WebEx should actually be in the courtroom for calendar call.

#### Pro Se Day

- Pro Se Day shall have fewer cases set than in the past to allow for staggered appearances and proper social distancing. Calendar start times shall be staggered with each judge starting at 8:30 a.m., 9:00 a.m., or 9:30 a.m. The judge's preference for their consistent Pro Se Day start time shall be communicated to their case coordinator. Two cases per hour shall be set and noticed for seven specific time slots during the day, allowing for skipping 12:00 p.m. or 12:30 p.m. so that the court may have a lunch break.
- A second Pro Se Day shall be set for each judge on the second Tuesday morning of the term for a half day (three time slots) to allow for a sufficient number of cases to be heard and a gradual reduction of backlog. This changes the normal number of Pro Se cases set per session of approximately 17 in one day to 20 in a day and a half.

#### Temporary Parenting Arrangements (TPAs)

- TPAs will be handled on the verified and responsive motions, in most cases without a hearing. Presentation of Motions and Responses shall be through Family Court in the manner currently in effect in the local rules. If necessary, and directly related to the urgency raised by the Motion or Response, parties are permitted to include Testimonial Affidavits with the Motion or Responsive Motion. Testimonial Affidavits must be served with the Motion or Response, and shall not exceed 15 pages in total, double spaced, single sided, with no smaller than 12-point font. The notary page shall not be included in the limitation of page numbers. Multiple affidavits may be submitted, but the entirety of all affidavits shall not exceed the 15-page limit.
- Testimonial affidavits shall not include any statements not admissible under the rules of evidence.

- Exhibits may be attached to the affidavits only if they are directly related to the urgency raised in the TPA Motion or Response and would be admissible in evidence. The judge may exclude any Affidavits that do not comply with these requirements.
- The judge shall rule on the submitted documents and notify the parties of the ruling. If the judge determines additional testimony is needed, then the judge may set a hearing, which may be via WebEx.

#### Emergency Custody and TROs

- **Emergency hearings** will be heard by the assigned family court judge on the date and time and in the manner (i.e. WebEx or in person) as the judge sets in the order. Judges will continue to put signed emergency orders (original signature) in the basket located near Judicial Assistant Jana Ellison's desk.
- Emergency hearings with a hearing date after June 1, 2020, will be heard by the assigned family court judge on the date and time and in the manner (i.e. Web Ex or in person) as the judge sets in the order. Judges will continue to put signed emergency orders (original signature) in the basket of the Judicial Assistant supporting Domestic Court Judges.
- Return hearings in DVPO cases assigned to Family Court Judges will be scheduled on the calendar of the assigned judge.

#### Trials

- See, "Calendar Call" and "People in Attendance for in Person Hearing"

#### People in Attendance for In- Person Hearings

- To protect the health and wellbeing of everyone involved, only the party, their attorney, essential witnesses, and persons required by the Americans with Disabilities Act shall be present at in- person hearings and trials. Paralegals and co-counsel from the same firm should be present only if the attorney deems them necessary to being able to represent their client. Support persons, such as parents, new spouses, and friends shall not come to court, unless they will be called as an essential witness to the case.

#### Submission of Orders

- Attorneys may submit hard copies of orders through Family Court in the regular manner. If an envelope is submitted with the order, it will be returned by mail; otherwise it will be left for pick up in the Family Court box. Attorneys may alternatively email orders to the judge's Case Coordinator. Emails to Case Coordinators with attached orders shall be copied to opposing counsel/pro se party. The subject line of emails to Case Coordinators with proposed orders shall include the case number and "proposed order".
- Proposed Orders shall be submitted in Word format. Consent Orders shall be submitted in pdf format. The case number shall be followed with the assigned judge's initials on all orders. If an Order is submitted via email, the entered order will be returned by the case coordinator via email to the submitting attorney and opposing counsel/pro se party.

#### Divorces



- The judicial review of summary judgment divorces has resumed. Divorce judgments can no longer be picked-up at the courthouse. A self-addressed stamped envelope must be provided with each submission.
- In-person divorce hearings are not currently available. Live divorces will become available after court operations continue to expand and are likely to be handled via Web Ex hearing.

## **DOMESTIC VIOLENCE (CIVIL) COURT**

(Courtroom 4110 and 4130)

### **Filing Complaints and Motions**

- Parties may file Complaints and Motions related to Chapter 50B and 50C with the Clerk of Superior Court's Office on Monday through Friday between 9:00AM and 12:00PM.
- E-filing through Safe Alliance is temporarily suspended. Currently, there are no other approved remote filing options available.

### **Ex Parte Hearings**

- Plaintiffs who file with the Clerk's Office between 9:00AM and 10:30AM and are seeking Ex Parte relief will be directed to immediately report to either Courtroom 4110 or 4130 for the Ex Parte hearing. Requests for Ex Parte relief filed with the CSC between 10:30PM and 12:00PM will be scheduled for the afternoon session in either Courtroom 4110 or 4130.
- Parties seeking Ex Parte relief after 12:00PM may file at the Public Window at the Criminal Magistrate's Office located at 801 East Fourth Street on the same day or may file with the CSC the next morning between 9:00AM and 12:00PM.

### **Return Hearings**

- Return hearings will be scheduled for morning sessions and according to statute. If the calendar within 10 days of filing has too many cases docketed to allow for social distancing, then the Court may determine that good cause exists to set the case for hearing in 11-15 days out. The CSC will limit the number of cases scheduled in each session of court to a number consistent with the modified capacity of the courtrooms. Calendaring decisions are intended to comply with the directives of the Chief Justice to minimize the number of persons in the courtroom.
- Return hearings that require the presentation of substantial evidence will be rescheduled for remote hearing on the next available Wednesday afternoon.

### **Courtroom Protocol**

- The CSC in Courtroom 4110 will complete a general docket call of all matters scheduled for hearing during the session. The CSC will assign cases to each of the two courtrooms operating for DVPO matters.

- Witnesses and persons present for emotional support may be asked to wait outside the courtroom or in another designated location.

### **CHILD SUPPORT COURT**

(Courtroom 8110)

- Courtroom 8110 will begin remote hearing operations on August 3, 2020.
- Any continuances, dismissals, consent order or other matters resolved outside of a court session needing review or signatures of a District Court Judge shall be submitted in chambers to the Lead Child Support Judge.
- Child Support Contempt Hearings will be scheduled for in-person hearings during the morning sessions of August 17, 2020 and August 20, 2020.

### **JUVENILE ABUSE, NEGLECT AND DEPENDENCY COURT**

(Courtrooms 8330, 8350, 8370, 8390)

#### **General Provisions**

- The Juvenile Case Coordinator is Christine VanDonge ([Christine.M.VanDonge@nccourts.org](mailto:Christine.M.VanDonge@nccourts.org)) (704-686-0286).
- Any hearing that is required to be recorded as required by the Rules of Record Keeping shall be recorded by the Juvenile Clerk or a designee. Attorneys, parties or other persons are not permitted to record any proceeding.
- All physical distancing and other health precautions adopted by the Chief District Court Judge and recommended/required by the Chief Justice will be followed.
- Face coverings must be used in accordance with the 26<sup>th</sup> Judicial District Administrative Order entered July 22, 2020 and in accordance with the North Carolina Supreme Court Justice's Emergency Directive Number 21.
- Hearings will be conducted remotely. In-person hearings will be held on a limited, case-by-case basis, during morning sessions only.

#### **Prioritization of Cases**

- The Children's Bureau (federal) has not relaxed standards on meeting timeframe standards in abuse, neglect, dependency cases, thus Youth and Family Services (YFS) is still required to have hearings.
- Non-secure, Adjudication, and Initial Permanency Planning Hearings were prioritized based on the current backlog in cases and the requirements of the Administration for Children and Families.

#### **Calendaring**

- All cases will be scheduled for a time certain after consideration of the issues to be tried, the nature of evidence and number of witnesses necessary to the material issues.
- A new notice of hearing will be sent to attorneys and unrepresented litigants for a remote hearing once a hearing date and time is set.
- The schedule below is valid the week of June 15, 2020 through the week of August 31, 2020.
  - Two judges handling AND/Delinquency hearings (2 courtrooms required; Pre COVID schedule). AM hearings will be time certain; PM hearings will be remote.
  - One judge handling special proceedings (one courtroom required for cases that will need multiple days to resolve, including, but not limited to, contested adjudications and probable cause hearings that need testimony). Detention hearings will be held on Monday and Thursday (remotely)
- Non-Secure Custody Hearings will be held on Wednesday and Friday of each week and will be heard by the assigned judge except when assigned to cover detention hearings.

#### Remote Hearings

- Pursuant to Emergency Directive Number 3 in the Chief Justice's May 1, 2020 Order, consent of the parties is not required to conduct a proceeding remotely. The presiding judge may direct that a hearing be conducted remotely or a party may request a remote hearing. A party may, for good cause, object to the use of remote audio and video transmissions. It is the expectation that all parties who agree to a remote hearing agree that all aspects of the hearings are remote; including any necessary testimony.
  - A party must file a motion objecting to a remote hearing no less than 7 days prior to the scheduled hearing. The motion must be in writing and served on all parties.
  - The presiding judge will rule on the motion in chambers. If the judge determines that additional information or argument is necessary, the judge will schedule a WebEx pretrial conference to hear the motion.
- The Juvenile Clerk will initiate the remote WebEx hearing with an e-mailed invitation from the geo-calendar that will go to attorneys as follows:
  - The YFS attorney in the geo-district
  - The GAL attorney in the geo-district
  - The parent attorney
  - The presiding judge
- Attorneys will be responsible for delivering information regarding the WebEx hearing to their clients
- The Juvenile Clerk will email an invitation to the WebEx hearing to any self-represented party if she has the email address.



- All participants must be able to be seen and heard by all other participants, with the exception of a respondent parent. If a respondent parent does not have a device available which has video capability, the Respondent parent shall have the option of telephoning into the WebEx hearing.
- During a remote hearing, all participants that are not testifying, questioning a witness, or addressing the court should have their microphones muted.
- All participants in the WebEx hearing should be in a room alone during the hearing (unless attorney and client are together in a room) and be free from interference by other people or other distractions.
- Attorneys and parties may communicate privately via text or email during the hearing if they are not in the same location. A party may not communicate with his/her attorney while testifying.

#### Private Termination of Parental Rights Cases

- Private actions for **termination of parental rights will not be scheduled during the month of August, 2020** unless the allegations are not contested, and the parties consent to a remote hearing.

#### JUVENILE DELINQUENCY COURT

(Courtrooms 8330, 8350, 8370, 8390)

##### Calendaring

- Delinquency cases will be scheduled on Mondays and Thursdays. In-person hearings will be calendared on a case-by-case basis during morning sessions.
- The Assistant District Attorney assigned to each Geo-District will identify cases that can be disposed outside of court by dismissal and cases for which an appearance is not necessary through advance communication with defense attorneys. If the prosecutor and juvenile attorney agree that the juvenile's appearance is not necessary, the juvenile and parent will be excused from appearing in court. Examples include successful diversions and situations in which additional time is needed to prepare for disposition.
- The Assistant District Attorney supervising the Juvenile Prosecution Unit will work with The Council For Children's Rights and defense bar to prioritize cases. Priority cases will include Probable Cause Hearings, Return Indictment Hearings, Post-Supervision Release Planning Review Hearings, and Adjudication and/or Disposition for juveniles in detention.

##### Remote Hearings

- Remote hearings should be limited to circumstances in which remote hearings (1) are authorized by the Juvenile Code (only delinquency hearings on the need for continued custody pursuant to G.S. 7B-1906(h)) or an Emergency Directive of the Chief Justice of the NC Supreme

Court or (2) where the parties consent to a remote hearing and there are limited evidentiary issues that do not require substantial testimony.

- The practice of remote detention hearings will continue. A waiver is not necessary for a remote detention hearing because the Juvenile Code authorizes conducting detention hearings by audio and video transmission which allows the court and the juvenile to see and hear each other. WebEx will be used exclusively as the remote platform for these proceedings.
- Remote hearing protocols for adjudications or motion for review (MFR) hearings where the juvenile is entering an admission will be used.
- The use of remote hearing protocols for juveniles in custody whose length of detention would be unnecessarily extended will be considered. This may be appropriate when: 1) the juvenile will tender an admission and 2) the juvenile is likely to receive a Level 3 commitment or is likely to be released as part of the disposition and when 1) the juvenile is alleged to have committed an A-G felony at age 16 or 17 and; 2) the hearing is a return indictment hearing.
- The use of remote platforms for contested hearings at which significant rights are at stake is not advised.

#### Waiver of Personal Appearance for Juveniles and Parents, Guardians and Custodians

- Obtain a written waiver of in-person participation from the juvenile and the juvenile's parent, guardian, or custodian. It is especially important to engage in a colloquy with a juvenile, who is the respondent in a delinquency proceeding, regarding waiver of in-person participation and the right to confront and cross examine witnesses given the court's affirmative duty to protect the constitutional rights of juveniles under the Juvenile Code.
- When a juvenile is confined in a juvenile detention facility, the juvenile's attorney or a custodian of the detention facility (i.e., a person located at the facility with the juvenile) should assist the juvenile with completion of the waiver form. Upon completion of the remote proceeding, the juvenile's attorney or detention center staff should forward the juvenile's signed waiver to the clerk of superior court's office for execution by the presiding judge.
- Parents (or guardians or custodians) are also parties in delinquency and undisciplined proceedings. As such, parents (and guardians or custodians) should also complete a waiver of in-person participation. If the juvenile's parent has access to a computer and printer, the parent (or guardian or custodian) can access the parent waiver form online (if the form is adopted) and deliver it to the clerk of court's office following the remote hearing. For parents who do not have access to a computer and printer, the juvenile's attorney or the juvenile court counselor should assist the parent (or guardian or custodian) in obtaining a waiver form and should also assist the parent (or guardian or custodian) in forwarding the signed waiver to the clerk of superior court's office following the remote hearing for execution by the presiding judge. Districts should also consider allowing parents to call the clerk's office to request a copy of the waiver form by mail.
- As a last resort, if the court is unable to obtain a written waiver from the juvenile's parent, guardian, or custodian, the court can consider recording the parent's voluntary and knowing waiver of in-person appearance through the audio-video transmission.



## CIVIL COMMITMENT COURT

(Courtroom 2310)

- All civil commitment hearings will be conducted remotely.
- All participants in a remote hearing shall be able to be seen and heard by all other participants.
- Respondents must have the ability to communicate confidentially with Special Counsel during the proceeding.

## SMALL CLAIMS COURT

- Beginning August 3, 2020, Magistrates will rotate operation of five courtrooms presiding over Weddings, Money Owed, IJH and Summary Ejectments.
- Weddings will total 20 appointments per week and will be scheduled by the Clerk's Office.

Courtroom 2310, 2350, 2370					
	Monday	Tuesday	Wednesday	Thursday	Friday
9:00AM	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment
10:00AM	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment
11:00AM	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment
12:00PM					
1:00PM	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment
2:00PM	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment	30 Summary Ejectment
3:00PM	Money Owed	Money Owed	Money Owed	Money Owed	Money Owed
4:00PM					
5:00PM					
Courtroom 2330					
	Monday	Tuesday	Wednesday	Thursday	Friday
9:00AM	Money Owed	Money Owed	Money Owed	Money Owed	Money Owed
10:00AM	Money Owed	Money Owed	Money Owed	Money Owed	Money Owed
11:00AM	Money Owed	Money Owed	Money Owed	Money Owed	Money Owed

12:00PM					
1:00PM					
2:00PM	Weddings	Weddings	Weddings	Weddings	Weddings
3:00PM	Weddings	Weddings	Weddings	Weddings	Weddings
4:00PM					
5:00PM					
<b>Courtroom 5150</b>					
	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
9:00AM	IJH	IJH	IJH	IJH	IJH
10:00AM	IJH	IJH	IJH	IJH	IJH
11:00AM	IJH	IJH	IJH	IJH	IJH
12:00PM	IJH	IJH	IJH	IJH	IJH
1:00PM	IJH	IJH	IJH	IJH	IJH
2:00PM	IJH	IJH	IJH	IJH	IJH
3:00PM	IJH	IJH	IJH	IJH	IJH
4:00PM					
5:00PM					

### **WEDDINGS**

(Courtroom 2330)

- Pursuant to the directives of the Chief Justice, restrictions have been placed on the location, times and attendance for marriage ceremonies to promote social distancing and to reduce the potential exposure to the COVID-19 virus.
- Weddings will be conducted by Magistrates in the Mecklenburg County Courthouse in Courtroom 2330 on Monday through Friday from 2:00PM until 4:00PM by appointment only.
- Individuals wishing to get married must bring a valid marriage license from a North Carolina Register of Deeds Office, two witnesses and the requisite \$50.00 marriage fee.
- Only the parties to the marriage and two witnesses may attend a scheduled marriage ceremony.

### **DISTRICT CRIMINAL ADMINISTRATIVE**

(Courtroom 1150 and 1130)



- Misdemeanor First Appearances will not be held in the month of August, 2020 and Traffic matters will not be scheduled for in-person hearings in the month of August, 2020.
- The District Attorney's Office will utilize virtual platforms including ECAD and iPlea to the fullest extent possible to resolve traffic matters and other waivable offenses.
- Felony First Appearance hearings will be conducted by video during the morning session of court.
- Domestic Violence First Appearance hearings will be conducted by video during the morning session of court.
- Felony Probable Cause Hearings will be scheduled consistent with state law within 15 days in the morning sessions.
- The District Attorney will communicate with Defense Counsel about its intent to transfer or take other actions at least 48 hours prior to the scheduled Probable Cause Hearing.
- Defense Counsel will make diligent efforts to communicate with each client about the state's intent and to execute the defendant's decision prior to the scheduled Probable Cause Hearing.
- Defendants who appear for the Probable Cause Hearing will be seated in Courtroom 1130 at six-foot intervals. Defense attorneys will use the administrative courtrooms in 1130 to conduct confidential discussions with clients.
- Defendants who need to see a judge will be seated in courtroom 1150 at the end of the morning session.
- Defense counsel will submit any executed Waivers of Probable Cause to the Clerk prior to the end of the session.

#### **FELONY ADMINISTRATIVE COURT**

Administrative Court (5310) will run Monday through Friday in both the AM and PM sessions. Cases will be set according to the existing Mecklenburg County Superior Court Criminal Administrative Calendar and will continue to be grouped under the current Quad system. Cases will be scheduled in four (4) quads: 9:30AM, 11:00AM, 2:00PM, and 3:30PM. Parties must appear promptly at their scheduled time and will be allowed in the courtroom only during their scheduled Quad.

Matters such as scheduling conferences and follow-up scheduling conferences will take place electronically (via email) between the parties and the Trial Court Administrator. Pretrial Readiness Conferences will not be calendared in Administrative Court, though out-of-court viewings will be arranged by the assigned prosecutor upon the timely request of the defense. Cases currently scheduled for Pretrial Readiness Conferences will be moved to trial calendars.

#### **FELONY PROBATION VIOLATION COURT**

Full terms of Probation Court will be set in Courtroom 5350 during the weeks of August 10<sup>th</sup> and August 31<sup>st</sup>. On August 10<sup>th</sup> and August 31<sup>st</sup> at 9:30AM, Probation Probable Cause hearings will be scheduled



in Courtroom 5350. On August 3<sup>rd</sup>, August 17<sup>th</sup> and August 24<sup>th</sup>, Probation Probable Cause hearings will be scheduled at 1:30PM in Courtroom 1150.

## **CLERK OF SUPERIOR COURT**

### **Operational Hours**

- The Clerk of Superior Court Office, located at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, is open to the public on Monday through Friday, between the hours of 9:00AM and 12:00PM.

### **Filing by Mail**

- Attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Filings are to be mailed to:

Clerk of Superior Court  
Mecklenburg County Courthouse  
P.O. Box 37971  
Charlotte, NC 28237-7971

### **Filing By Secure Receptacle Deposit**

- Secure receptacles are available in designated areas to accept payments and civil filings. All persons on courthouse premises seeking to file legal documents are encouraged to submit their filings using the secure receptacles.
- Only payments made by certified check or money order may be deposited in the receptacles. No cash payments will be accepted.
- Same-day pick up of items deposited in the receptacle is not available.
- Legal professionals or those persons filing on behalf of another are required to submit filings by mail or deposit documents in the secure receptacles. Only in the case of filing an emergency pleading are legal professionals or those filing on behalf of another permitted to file at the customer service windows.
- Filings deposited in the receptacles must include a completed Filing by Mail or Secure Receptacle Coversheet (form attached). Blank forms can also be found at the receptacle tables.
- The secure receptacle is located at the reception-desk inside the McDowell and Fourth Street entrance on the first floor of the courthouse. Filing is available at this receptacle from 8:00AM to 5:00PM. Items placed in the receptacle by 4:00PM will be file-stamped and processed the same day. Copies will be mailed back the next business day. To ensure next business day mailing, please include a self-addressed, pre-paid envelope.
- A second secure receptacle is also located on the third floor for a limited time. Filing is available at this receptacle from 9:00AM to 12:00PM. Items placed in the receptacle by 12:00PM will be file-stamped and processed the same day. Copies will be mailed back the next business day. To ensure next business day mailing, please include a self-addressed, pre-paid envelope.

### Access to Public Records

Access to public records is available from 9:00AM to 12:00PM, Monday through Friday, by appointment only.

- To access Criminal files by appointment, email [Mecklenburg.Criminal@nccourts.org](mailto:Mecklenburg.Criminal@nccourts.org).
- To access Civil files by appointment, email [Mecklenburg.Civil@nccourts.org](mailto:Mecklenburg.Civil@nccourts.org).
- To access Estate files by appointment, email [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org).

### Special Proceedings

- Foreclosure hearings are scheduled in designated courtrooms. To confirm courtroom assignment, dockets are posted in the Clerk of Court – Administration Suite 3600.
- Persons filing documents are encouraged to submit documents in the secure receptacle (i.e., motor vehicle liens, name changes, guardian ad litem appointments).

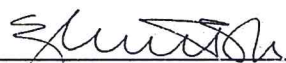
### Estates

- In order to limit face-to-face interactions between the public and staff, customer assistance is provided using technology to the greatest extent possible. Telephone conferencing, email transmissions, and WebEx tutorials are methods being employed to deliver customer service.
- Clerk staff monitor and respond to telephone calls and emails daily. The Estates phone line is 704-686-0460. Estates questions may be emailed to: [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org).
- Persons filing documents are encouraged to mail or deposit documents in the secure receptacle (i.e., application for administration by clerk, family history affidavit, application and assignment of the year's allowance).

### Incompetency, Guardianship & Foreclosure Matters

- Non-emergency filings are accepted by mail or may be deposited in the secure filing receptacles.
- Incompetency, Guardianship and Foreclosure hearings are scheduled in accordance with safety protocols. To schedule a hearing, please email: [Mecklenburg.CSC.FrontDesk@nccourts.org](mailto:Mecklenburg.CSC.FrontDesk@nccourts.org).
- To confirm courtroom assignment on the date of the hearing, dockets are posted in the Clerk of Court – Administration Suite 3600.

This the 5<sup>th</sup> day of August, 2020.



Elizabeth T. Trosch  
Chief District Court Judge



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

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**FOR IMMEDIATE RELEASE**

**OCTOBER 22, 2020**

***\*UPDATED\****

## **26<sup>TH</sup> JUDICIAL DISTRICT EXPANDED COURT OPERATIONS FOR OCTOBER & NOVEMBER 2020**

Our court shares the priorities of the local Bar and the public of protecting our collective public health while ensuring access to justice. These unprecedented times have required us to modify court operations to reduce the possibility of transmission of COVID-19. The next phase of court expansion launched October 19, 2020. This phase includes the expansion of criminal district court operations, the expansion of operational hours for the Clerk of Superior Court, a virtual hearing presumption in civil cases, and the resumption of jury trials. The *October 22, 2020 Administrative Order* linked here replaces the October 21, 2020 Administrative Order linked in yesterday's Press Release.

### **Expanding Criminal District Court Operations**

Through a phased approach we will resume hearings for criminal arraignments and bench trials in district court, misdemeanor probation violations, criminal contempt and district civil bench hearings. Details regarding the expansion of criminal district court operations may be found in the [\*October 22, 2020 Administrative Order\*](#).

### **Expanded Hours with the Clerk of Court**

The Mecklenburg County Clerk of Superior Court will be open to the public Monday through Friday, between the hours of 9:00AM and 3:00PM. Details regarding the expansion of the Clerk of Superior Court's operations may be found in the *October 22, 2020 Administrative Order*.

### **Virtual Hearing Presumption in Civil Cases**

Our ability to open more courtrooms to schedule in-person criminal sessions is contingent on reducing in-person hearings in civil matters and expanding the use of technology to conduct civil hearings virtually. All Domestic Court hearings, except those in which the right of a contemnor to confront witnesses or be present is implicated by the proceeding, shall be presumptively scheduled for a remote hearing. The Administrative Order detailing the *Remote Hearing Presumption for Civil Matters in the District Court* may be found [here](#). Details regarding the *Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District* may be found [here](#).

### **Resumption of Jury Trials**

Jury Trials will resume in Mecklenburg County on Monday, November 16, 2020. The *Resumption of Jury Trials Plan for the 26<sup>th</sup> Judicial District Pursuant to Chief Justice's Emergency Directive 22* may be found [here](#).

For a list of all Mecklenburg County forms and orders please visit the [Mecklenburg County Local Rules and Forms](#) page.

###



# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

**Jessica Davis**

**[Jessica.C.Davis@nccourts.org](mailto:Jessica.C.Davis@nccourts.org)**

**FOR IMMEDIATE RELEASE**

**AUGUST 4, 2020**

**26<sup>TH</sup> JUDICIAL DISTRICT COVID-19 MODIFIED COURT OPERATIONS FOR AUGUST 2020**

As our nation, state, county, and city continue to deal with the effects of the COVID-19 pandemic, the Mecklenburg County Courts remain committed ensuring access to justice with the health and safety of the community and court personnel in mind.

In accordance with the July 16<sup>th</sup>, July 20<sup>th</sup>, July 24<sup>th</sup>, and July 29<sup>th</sup>, 2020 emergency directives from North Carolina Supreme Court Chief Justice Cheri Beasley, **the 26<sup>th</sup> Judicial District will continue modified court operations for the month of August 2020.**

Court offices in the Mecklenburg County Courthouse remain open for business. However, by order of the Chief Justice, only people with business at the courthouse will be allowed to enter.

All persons who enter the Mecklenburg County Courthouse are required to wear a face covering while they are in common areas of the building and when interacting with others. The face covering requirement is not applicable to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, or who are under eleven years of age.

Everyone is encouraged to use email and telephone to communicate with staff of the 26<sup>th</sup> Judicial District to minimize the number of persons entering the courthouse. Contact information for court offices may be found on the [Judicial Directory](#).

[\*\*A comprehensive listing of all court operations can be found in the August 5, 2020 Administrative Order \(20 R 1069\).\*\*](#)

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**CLERK OF SUPERIOR COURT:**

**Operational Hours, Mail & Filing**

- Open to the public at the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202, on Monday through Friday, between the hours of 9:00AM and 12:00PM.
- To further minimize foot traffic in the courthouse, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Filings are to be mailed to:

**Clerk of Superior Court  
Mecklenburg County Courthouse  
P.O. Box 37971  
Charlotte, NC 28237-7971**



- Secure receptacles are available in designated areas to accept payments and civil filings. All persons on courthouse premises seeking to file legal documents are encouraged to submit their filings using the secure receptacles.
- Only payments made by certified check or money order may be deposited in the receptacles. No case payments will be accepted.
- Same day pick up of items deposited in the receptacle is not available.
- Legal professionals or those persons filing on behalf of another are required to submit filings by mail or deposit documents in the secure receptacles. Only in the case of filing an emergency pleading are legal professionals or those filing on behalf of another permitted to file at the customer service windows.
- Filings deposited in the receptacles must include a completed cover sheet. Blank forms can also be found at the receptacle tables.
- The secure receptacle is located at the reception-desk inside the McDowell and Fourth Street entrance on the first floor. Filing will be available at this receptacle from 8:00AM to 5:00PM. Items placed in the receptacle by 4:00PM will be file-stamped and processed the same day. Copies will be mailed back the next business day. To ensure next business day mailing, please include a self-addressed, pre-paid envelope.
- A second secure receptacle is also located on the third floor for a limited time. Filing will be available at this receptacle from 9:00AM to 12:00PM. Items placed in the receptacle by 12:00PM will be file-stamped and processed the same day. Copies will be mailed back the next business day. To ensure next business day mailing, please include a self-addressed, pre-paid envelope.

#### **Access to Public Records**

- Access to public records is available from 9:00AM to 12:00PM, Monday through Friday, by appointment only.
- To access Criminal files by appointment, email [Mecklenburg.Criminal@nccourts.org](mailto:Mecklenburg.Criminal@nccourts.org)
- To access Civil files by appointment, email [Mecklenburg.Civil@nccourts.org](mailto:Mecklenburg.Civil@nccourts.org)
- To access Estate files by appointment, email [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)

#### **Special Proceedings**

- Foreclosure hearings are scheduled in designated courtrooms. To confirm courtroom assignment, dockets are posted in the Clerk of Court—Administration Suite 3600.
- Filers are encouraged to submit documents in the secure receptacle (*i.e.*, motor vehicle liens, name changes, guardian ad litem appointments).

#### **Estates**

- In order to limit face-to-face interactions between the public and staff, customer assistance will be provided using technology to the greatest extent possible. Telephone conferencing, email transmissions, and WebEx tutorials are methods being employed to deliver customer service.
- Clerk staff will monitor and respond to telephone calls and emails. The Estates phone line is 704-686-0460. Estates questions may be emailed to: [Mecklenburg.Estates@nccourts.org](mailto:Mecklenburg.Estates@nccourts.org)
- Customers are encouraged to mail or deposit documents in the secure receptacle (*i.e.*, application for administration by clerk, family history affidavit, application and assignment of the year's allowance).

#### **Incompetency, Guardianship & Foreclosure Matters**

- Non-emergency filings are accepted by mail, or may be deposited in the secure filing receptacles.
- Incompetency, Guardianship, and Foreclosure hearings are scheduled in accordance with safety protocols. To schedule a hearing, please email: [Mecklenburg.CSC.FrontDesk@nccourts.org](mailto:Mecklenburg.CSC.FrontDesk@nccourts.org).
- To confirm courtroom assignment on the date of the hearing, dockets are posted in the Clerk of Court—Administration Suite 3600.

## MAGISTRATE, CIVIL COMMITMENT & SMALL CLAIMS

- The Criminal Magistrate's Office located at 801 East Fourth Street will be open 24 hours per day, 7 days per week and normal operations will continue for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash Bonds / Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders.
- All civil commitment hearings will be conducted remotely. All participants in a remote hearing shall be able to be seen and heard by all other participants. Respondents must have the ability to communicate confidentially with Special Counsel during the proceeding.
- Beginning August 3, 2020, Magistrates will rotate operation of five courtrooms presiding over Weddings, Money Owed, IJH and Summary Ejectments.
- **Weddings** will be conducted by Magistrates in the Mecklenburg County Courthouse in **courtroom 2330 Monday through Friday from 2:00PM until 4:00PM by appointment only**. To schedule an appointment for a wedding, please email: [Mecklenburg.Magistrate.Weddings@nccourts.org](mailto:Mecklenburg.Magistrate.Weddings@nccourts.org) . Individuals wishing to get married must bring a valid marriage license from a North Carolina Register of Deeds Office, two witnesses and the requisite \$50.00 marriage fee. Only the parties to the marriage and two witnesses may attend a scheduled marriage ceremony.

## DISTRICT AND SUPERIOR COURT:

### Criminal District Court—Courtrooms 1150 and 1130

- Misdemeanor First Appearances will not be held in the month of August, 2020 and Traffic matters will not be scheduled for in-person hearings in the month of August, 2020. The District Attorney's Office will utilize virtual platforms including ECAD and iPlea to the fullest extent possible to resolve traffic matters and other waivable offenses.
- Felony First Appearance hearings will be conducted by video during the morning session of court.
- Domestic Violence First Appearance hearings will be conducted by video during the morning session of court.
- Felony Probable Cause Hearings will be scheduled consistent with state law within 15 days in the morning sessions.
  - The District Attorney will communicate with Defense Counsel about its intent to transfer or take other actions at least 48 hours prior to the scheduled Probable Cause Hearing.
  - Defense Counsel will make diligent efforts to communicate with each client about the State's intent and to execute the defendant's decision prior to the scheduled Probable Cause Hearing.
- Defendants who appear for Probable Cause Hearings will be seated in Courtroom 1130 at six-foot intervals. Defense attorneys will use the administrative courtrooms in 1130 to conduct confidential discussions with clients.
  - Defendants who need to see a judge will be seated in courtroom 1150 at the end of the morning session.
  - Defense counsel will submit any executed Waivers of Probable Cause to the Clerk prior to the end of the session.

### Domestic Violence (Civil) Court—Courtrooms 4110 and 4130

#### Filing Complaints and Motions

- Parties may file Complaints and Motions related to Chapter 50B and 50C with the Clerk of Superior Court's Office Monday through Friday between 9:00AM and 12:00PM.
- E-filing through Safe Alliance is temporarily suspended. Currently, there are no other approved remote filing options available.

#### Ex Parte Hearings

- Plaintiffs who file with the Clerk's Office between 9:00AM and 10:30AM and are seeking Ex Parte relief will be directed to immediately report to either Courtroom 4110 or 4130 for the Ex Parte hearing. Requests for Ex Parte relief filed with the Clerk's Office between 10:30AM and 12:00PM will be scheduled for the afternoon session in either Courtroom 4110 or 4130.

- Parties seeking Ex Parte relief after 12:00PM may file at the Public Window at the Criminal Magistrate's Office located at 801 East Fourth Street on the same day or may file with the Clerk's Office the next morning between 9:00AM and 12:00PM.

#### Return Hearings

- Return hearings will be scheduled for morning sessions according to statute. If the calendar within 10 days of filing has too many cases docketed to allow for social distancing, then the Court may determine that good cause exists to set the case for hearing in 11 to 15 days out. The Clerk's Office will limit the number of cases scheduled in each session of court to a number consistent with the modified capacity of the courtrooms. Calendaring decisions are intended to comply with the directives of the Chief Justice to minimize the number of persons in the courtroom.
- Return hearings that require the presentation of substantial evidence will be rescheduled for remote hearing on the next available Wednesday afternoon.
- The Clerk in Courtroom 4110 will complete a general docket call of all matters scheduled for hearing during the session. The Clerk will assign cases to each of the two courtrooms operating for DVPO matters.
- Witnesses and persons present for emotional support may be asked to wait outside the courtroom or in another designated location.

#### **General Civil Court\***

*(\*excludes Family Court, Child Support and Domestic Violence cases)*

- There will be no jury trials during the month of August in District or Superior Court. All jury trials previously scheduled during these months have been or will be continued by the Trial Court Administrator (TCA), considering peremptorily set cases, number of prior continuances, and age of cases.
- All bench trials which were continued on or after April 13, 2020 will be scheduled by the TCA for remote hearing beginning in the month of August, 2020 considering peremptorily set cases, number of prior continuance and age of cases.
- Judicial Settlement Conference will continue to be available for all continued or rescheduled cases which were to be heard between April 13, 2020 and June 1, 2020. Please contact the TCA to schedule a judicial settlement conference.
- All District Court Civil Motions will be scheduled by the TCA for remote hearing beginning in the month of August, 2020.
- Superior Court Civil Motions will be heard in **Courtroom 6310** Monday through Thursday. In-person hearings will occur during the morning sessions. Remote hearings will occur during the afternoon session. Scheduling for both in-person and remote hearings will be done through the TCA's Office.

#### **Domestic Court—Courtrooms 6350, 8100, 8130, 8150, 8170, and 8300**

- In-person trials and hearings will continue in the morning sessions only in all domestic courtrooms. Judges may direct and parties may request remote WebEx hearings for certain cases.
- The judicial review of summary judgment divorces has resumed. Divorce judgments can no longer be picked up at the courthouse. A self-addressed, stamped envelope must be provided with each submission.
- In-person divorce hearings are not currently being scheduled.
- Child Support Court (**courtroom 8110**) will begin remote hearing operations in August, 2020. Any continuances, dismissals, consent order or other matters resolved outside of a court session needing review or signatures of a District Court Judge shall be submitted in chambers to the Lead Child Support Judge. Child Support Contempt Hearings will be scheduled for in-person hearings during the morning sessions of August 17, 2020 and August 20, 2020.

#### **Juvenile Court—Courtrooms 8330, 8350, 8370, and 8390**

- All cases will be scheduled for a time certain after consideration of the issues to be tried, the nature of evidence and number of witnesses necessary to the material issues.
- A new notice of hearing will be sent to attorneys and unrepresented litigants for a remote hearing once a date and time is set.

- The schedule below is valid through the week of August 31, 2020:
  - Two judge handling AND/Delinquency hearings (2 courtrooms required; Pre COVID schedule). AM hearings will be time certain; PM hearings will be remote.
  - One judge handling special proceedings (one courtroom required for cases that will need multiple days to resolve, including, but not limited to, contested adjudications and probable cause hearings that need testimony). Detention hearings will be held on Monday and Thursday (remotely).
- Non-Secure Custody Hearings will be held on Wednesday and Friday of each week and will be heard by the assigned judge except when assigned to cover detention hearings.
- Delinquency cases will be scheduled on Mondays and Thursdays. In-person hearings will be calendared on a case-by-case basis during morning sessions.
- The Assistant District Attorney supervising the Juvenile Prosecution Unit will work with the Council for Children's Rights and defense bar to prioritize cases. Priority cases will include Probable Cause Hearings, Return Indictment Hearings, Post-Supervision Release Planning Review Hearings, and Adjudication and/or Disposition for juveniles in detention.

#### **Felony Administrative Court**

- Administrative Court (**Courtroom 5310**) will run Monday through Friday in both the AM and PM sessions. Cases will be set according to the existing Mecklenburg County Superior Court Criminal Administrative Calendar and will continue to be grouped under the current Quad system. Cases will be scheduled in four (4) quads: 9:30am, 11:00AM, 2:00PM, and 3:30PM. Parties must appear promptly at their scheduled time and will be allowed in the courtroom only during their scheduled Quad.
- Matters such as scheduling conferences and follow-up scheduling conferences will take place electronically via email between the parties and the Trial Court Administrator. Pre-Trial Readiness Conferences will not be calendared in Administrative Court, though out-of-court evidence viewings will be arranged by the assigned prosecutor upon timely request of the defense. Cases currently scheduled for Pre-Trial Readiness Conference will be moved to trial calendars.

#### **Felony Probation Violation Court**

- Full terms of Probation Court will be set in **Courtroom 5350** during the weeks of August 10<sup>th</sup> and August 31<sup>st</sup>, 2020. On August 10<sup>th</sup> and August 31<sup>st</sup> at 9:30AM, Probation Probable Cause hearings will be scheduled in Courtroom 5350.
- On August 3<sup>rd</sup>, August 17<sup>th</sup>, and August 24<sup>th</sup>, 2020, Probation Probable Cause hearings will be scheduled at 1:30PM in **Courtroom 1150**.

#### **JURY DUTY:**

- All jurors summoned for the months of August and September have been excused and should not report.

###





# NEWS RELEASE

The 26<sup>th</sup> Judicial District of North Carolina

[www.nccourts.gov](http://www.nccourts.gov)

**CONTACT:**

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**704-686-0269**

**FOR IMMEDIATE RELEASE**

**DECEMBER 12, 2020**

## **26<sup>TH</sup> JUDICIAL DISTRICT COURT OPERATIONS IN RESPONSE TO COVID-19 PANDEMIC**

In response to the increasing number of positive COVID-19 cases in our community, and in alignment with the December 11, 2020 announcement by Chief Justice Cheri Beasley of the North Carolina Supreme Court, the 26<sup>th</sup> Judicial District will modify its operations beginning Monday, December 14, 2020. These modifications shall be in effect for at least 30 days.

Court offices in the Mecklenburg County Courthouse will remain open for business. However, unless you are required to appear in-person to conduct your business, attorneys and the public should utilize email and telephone to communicate with courthouse staff. Contact information may be found on [the Judicial Directory](#).

### **SMALL CLAIMS & WEDDINGS**

- Small claims proceedings, including summary ejectments and money owed, currently scheduled for hearing between December 14, 2020 and January 14, 2021 will be continued until the next available date after January 14, 2021.
- Weddings will continue as scheduled, by appointment only, Monday through Friday from 2:00PM until 4:00PM. Appointments shall be made by email to [Mecklenburg.Magistrate.Weddings@nccourts.org](mailto:Mecklenburg.Magistrate.Weddings@nccourts.org)

### **INCOMPETENCY, GUARDIANSHIP & FORECLOSURE MATTERS**

- All in-person hearings before the Clerk of Superior Court will be continued for at least 30 days.

### **DISTRICT COURT**

#### **Criminal District Court**

- Felony first appearance hearings will continue via WebEx.
- Bond hearings shall proceed as scheduled and may be held in the absence of the defendant upon consent. Otherwise, the matter will be continued.
- Bond hearings and expedited misdemeanor arraignments previously scheduled in courtroom 4310 on Tuesday will be scheduled in courtroom 1150.

- Out-of-custody probable cause hearings will be continued for at least 30 days per the December 11, 2020 Administrative Order (20 R 1897).
- Misdemeanor probation violation probable cause hearings will occur on Fridays in courtroom 1150.

### **Domestic Violence Court**

- Courtrooms 4110 and 4130 will continue to operate for the purpose of hearing *ex parte* Domestic Violence Protective Order requests and ten-day return hearings pursuant to G.S. 50B.
- All Domestic Violence criminal matters, *with the exception of expedited arraignments*, are canceled and will be continued for at least 30 days.

### **Civil District Court**

- All Civil District Court matters scheduled for Webex will proceed as scheduled. Any matters scheduled for in-person hearings will be rescheduled for a date on or after January 14, 2021.

### **Domestic Court**

- All in-person sessions, including contempt hearings, will be continued for at least 30 days.

### **Juvenile Abuse, Neglect & Dependency**

- In-person juvenile hearings will be continued for at least 30 days *with the exception of* adjudication or first permanency planning hearings. Adjudication and first permanency planning hearings will proceed as scheduled.
- Non-secure custody hearings will proceed remotely as outlined in the [October 22, 2020 Administrative Order](#).

### **Juvenile Delinquency**

- Adjudications and dispositions shall be continued to a date on or after January 14, 2021.
- First Appearance and Probable Cause hearings will proceed as scheduled.

### **Child Support Enforcement**

- All in-person hearings scheduled between December 14, 2020 and January 14, 2021 shall be scheduled as a virtual hearing in accordance with applicable law and policy or rescheduled to a date after January 14, 2021.

### **Recovery Courts**

- Recovery Courts will proceed with virtual sessions as scheduled.

## **SUPERIOR COURT**

### **Criminal Superior Court**

- Bond hearings shall continue as scheduled and may be held in the absence of the defendant upon consent. Otherwise, the matter will be continued.
- Felony Administrative Court matters will be limited to in-custody arraignments, bond hearings, and Rule 24 proceedings.
- Felony probation violation probable cause hearings will proceed on Mondays.
- All criminal jury trials are suspended for at least 30 days.

### **Civil Superior Court**

- All civil jury trials are suspended for at least 30 days.

## **JURY DUTY**

- All grand jury proceedings will continue as scheduled. Selection for new grand jurors will be held on Monday, January 4, 2021.
- All jury trials have been suspended through January 14, 2021. A decision regarding the resumption of jury trials will be communicated at a later date.

###

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 26

MECKLENBURG COUNTY

IN RE:

MODIFIED COURT OPERATIONS  
DUE TO COVID-19 PANDEMIC  
SURGE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
21R40

FILED  
2021 JAN 11 P 1:44

MECKLENBURG CO., C.S.C.

ADMINISTRATIVE ORDER

THIS ADMINISTRATIVE ORDER has been entered to ensure the fair and proper administration of justice and to mitigate the public health threat posed by COVID-19 within the Mecklenburg County Courthouse facilities and amongst court employees and the public. The undersigned Chief District Court Judge enters this Administrative Order pursuant to the inherent authority of the court and pursuant to its administrative supervision and authority over the operation of the District Court pursuant to N.C. Gen. Stat. §§ 7A-41.1, 7A-146, and 15A-535(a), and the inherent authority of the undersigned in the administration of civil procedure for this Judicial District. This Order is intended to address the unprecedented public health threat posed by COVID-19 to the operations of the courts of the 26<sup>th</sup> Judicial District and is subject to modification or termination depending upon multiple factors related to the transmission of COVID-19 in Mecklenburg County.

Whereas, COVID-19 is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new, highly-contagious strain of coronavirus that can be spread from person to person via aerosol droplets; and

Whereas, Governor Roy Cooper declared a State of Emergency in North Carolina on March 10, 2020, in response to the emerging public health threat posed by COVID-19 by entry of Executive Order No. 116, *Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19*; and

Whereas, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

Whereas, the Centers for Disease Control and Prevention ("CDC") has warned of the extreme public threat posed by COVID-19 globally and in the United States and strongly recommended the practice of social distancing, the use of face coverings and avoidance of in-person gatherings to deter the spread of the virus; and

Whereas, more than 600,000 people in North Carolina have had COVID-19 and over 7,300 people in North Carolina have died from the disease; and

Whereas, over 69,000 people in Mecklenburg County have confirmed COVID-19 infections and 607 people in Mecklenburg County have died from the disease, representing a doubling of infections and deaths over the last 90 days; and

Whereas, there have been substantial increases, compared to July levels, in the percent of emergency department visits for COVID-19 illness, daily new case counts, the percent of COVID-19 tests that are positive, and COVID-19-associated hospitalizations; and

Whereas, one in twenty reported cases of COVID-19 infection in Mecklenburg County were hospitalized in the past week due to the COVID-19 infection; and

Whereas, during the past week, an average of 15.6 percent of individuals who were tested in Mecklenburg County were positive for COVID-19 and the 7-day COVID-19 case rate per 100,000 Mecklenburg County residents has reached an all-time high of 480.6; and

Whereas, during the past week, an average of 473 individuals with laboratory confirmed cases of COVID-19 infections were hospitalized at acute care facilities in Mecklenburg County; and

Whereas, both hospital systems, Novant and Atrium, have reported a record high admitted and ICU census; and

Whereas, Novant has reported a positive test rate of 15-20 percent and Atrium has reported a positive test rate near 15 percent; and

Whereas, Atrium is at 94 percent capacity system wide with surge capacity in the “red status;” and

Whereas, the number of North Carolina counties categorized as “red” or “orange” by the North Carolina Department of Health and Human Services has more than doubled; and

Whereas, since the onset of the pandemic, Judicial Branch officials and employees have reported 291 confirmed positive cases; and

Whereas, over half of North Carolina’s county courthouses have been partially or completely closed due to COVID-19 since the onset of the pandemic; and

Whereas, the Office of the Public Defender for the 26<sup>th</sup> Judicial District has reported several positive COVID-19 cases among staff over the last 45 days and that dozens have been

quarantined over the same period resulting in staffing shortages for which no remedial resources exist; and

Whereas, several members of the staff of the District Attorney for the 26<sup>th</sup> Prosecutorial District have tested positive for COVID-19 and others have been quarantined since the onset of the pandemic; and

Whereas, two district court judges in the 26<sup>th</sup> Judicial District tested positive for COVID-19 and one district court judge was quarantined according to public health guidelines over the last 45 days; and

Whereas, multiple staff of the Clerk of Superior Court for the 26<sup>th</sup> Judicial District have tested positive for COVID-19 since the onset of the pandemic resulting in public health mandated quarantine for dozens of staff and entire units being closed due to staff shortages for which no remedial resources exist; and

Whereas, over a dozen Mecklenburg County Detention Center (MCDC) staff have tested positive for COVID-19 in the last 30 days after reporting to work without symptoms, contributing to spread of the virus in the facility; and

Whereas, the MCDC experienced a substantial outbreak of COVID-19 in the last 30 days and has established housing protocols that restrict inmate movement within and outside of the facility to prevent the spread of COVID-19; and

Whereas, the MCDC housing protocols have placed over one-quarter of the inmates in isolation, quarantine, treatment housing or hospitalization over the past two weeks and these inmates will not be moved for participation in remote or in-person court proceedings; and

Whereas, the Mecklenburg County Health Director has advised the Key Court Officials of the 26<sup>th</sup> Judicial District (KCO) to suspend all non-essential in-person court operations to prevent the spread of COVID-19; and

Whereas, the KCO have unanimously determined that the dire COVID-19 conditions in the 26<sup>th</sup> Judicial District and the recent impacts of COVID-19 infections on MCDC residents and court personnel necessitates immediate action consistent with the advice of the Mecklenburg County Health Director; and

Whereas, these trends and considerations require the undersigned to continue certain public health restrictions to court operations for the 26<sup>th</sup> Judicial District to slow the spread of the virus during the pandemic; and

Whereas, Governor Roy Cooper issued Executive Order No. 169, *Restrictions to Protect Lives During the COVID-19 Pandemic: Phase 3*, on September 30, 2020, as a means to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 outbreak, reduce the number of people infected, and avoid strain on our health care system; and

Whereas, throughout the State of North Carolina, indoor activity venues are restricted to operations at 30% of the facility capacity and gatherings of persons indoors is limited to 25 persons; and

Whereas the Mecklenburg County Courthouse is visited by over 70,000 people per month; and

Whereas, high-volume sessions of court, heavy dockets, jury trials and long service lines require the public to gather in county courthouses and courtrooms in close proximity for extended periods of time in numbers and under conditions inconsistent with the public health; and

Whereas, the Mecklenburg County Public Health Director has recommended that the occupancy of the Mecklenburg County Court facilities be restricted to 30% of capacity in each office, courtroom, and public area; and

Whereas, it is in keeping with the Governor's Executive Order for the 26<sup>th</sup> Judicial District to take appropriate measures to reduce the population within the Mecklenburg County Courthouse to protect the health and safety of court personnel and the public and reduce the potential exposure of the virus to court staff, personnel, litigants and members of the bar by, suspending non-essential in-person proceedings for 30 days and directing that matters in which a party's confrontation rights are not implicated or are knowingly and voluntarily waived be scheduled for remote hearing.

**WHEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED** that effective January 11, 2021:

All District Court in-person criminal arraignments and trials are suspended for a period of 30 days. Remote sessions will be scheduled at least one day per week for represented and unrepresented persons to be arraigned or to dispose of pretrial motions with the written consent and waiver of personal appearance executed and signed by the defendant.

Probable cause settings for out-of-custody defendants that are required to be scheduled pursuant to N.C.G.S. 15A-606 between January 14, 2021 and February 11, 2021 will be scheduled or rescheduled to a date on or after February 11, 2021. All Domestic Court hearings, except those in which the right of a contemnor to confront witnesses or be present is implicated by the proceeding, shall be presumptively scheduled for a remote hearing in accordance with the Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District established pursuant to this order and in-person hearings are suspended for a period of 30 days. Criminal Contempt matters may be scheduled by the presiding judge upon a determination that the exigency of the circumstances necessitates immediate hearing.

Hearings for permanent relief pursuant to N.C.G.S. 50B-1 may be scheduled for remote hearing with the consent of both parties.

All Abuse, Neglect and Dependency hearings, except for termination of parental rights, adjudication, and disposition hearings, shall be presumptively scheduled for a remote hearing in



accordance with the Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District established pursuant to this order and in-person hearings are suspended for a period of 30 days.

The following delinquency hearings shall be scheduled as remote hearings and should not be continued except for good cause: secure custody review hearings, first appearance hearings, and return indictment hearings.

Juvenile Delinquency adjudication, disposition and review hearings may be scheduled as remote hearings with the consent of the juvenile and parent(s)/guardian(s) provided on the record as a knowing and voluntary waiver of the right to be present for an in-person proceeding.

All actions for establishment or modification of child support brought by or through Mecklenburg County Child Support Enforcement shall be presumptively scheduled for a remote hearing in accordance with the Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District established pursuant to this order and in-person hearings are restricted to criminal contempt matters which may be scheduled in the AM session on Thursdays of each week for the next 30 days.

All actions filed in the Civil Division of District Court, excluding those in which the right of a contemnor to confront witnesses or be present is implicated, shall be presumptively scheduled for a remote hearing in accordance with the Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District established pursuant to this order.

In any case, a party may, for good cause, object to the use of remote audio and video transmissions in accordance with the Procedures for Remote Hearings in the 26<sup>th</sup> Judicial District established pursuant to this order.

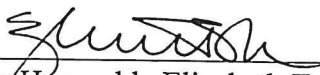
Confidentiality must be maintained for any proceeding required by law to be confidential.

Any remote audio and video transmissions that are required by law to be recorded must be recorded in accordance with the rules established by the Administrative Office of the Courts.

Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with their attorney if the party is represented.

This order does not extend to proceedings that involve a jury.

Entered and effective, this the 11<sup>th</sup> day of January, 2021 through February 11, 2021.

  
\_\_\_\_\_  
The Honorable Elizabeth Trosch  
Chief District Court Judge





**JULY 7, 2020 FIELD GUIDANCE  
FROM THE  
ADMINISTRATIVE OFFICE OF COURTS**

# COVID-19 FIELD GUIDANCE FOR LOCAL JUDICIAL OFFICIALS

PREPARED BY

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS

BASED ON

RECOMMENDATIONS OF THE JUDICIAL BRANCH COVID-19 TASK FORCE

JULY 7, 2020

# TABLE OF CONTENTS

	Page
<b>INTRODUCTORY MESSAGE FROM THE JUDICIAL BRANCH</b>	
<b>COVID-19 TASK FORCE .....</b>	<b>4</b>
<b>OVERVIEW OF FIELD GUIDANCE BASED ON TASK FORCE RECOMMENDATIONS ...</b>	<b>6</b>
<b>GENERAL BEST SAFETY PRACTICES.....</b>	<b>6</b>
<b>COVID-19 Facility Coordinators .....</b>	<b>6</b>
<b>Hierarchy of Controls .....</b>	<b>7</b>
<b>Courthouses and Other Court Facilities .....</b>	<b>8</b>
<b>Court Personnel .....</b>	<b>12</b>
<b>Personal Protective Equipment .....</b>	<b>14</b>
<b>In-Person Court Proceedings .....</b>	<b>16</b>
<b>References and Resources .....</b>	<b>18</b>
<b>CASE MANAGEMENT PRIORITIES AND COURT INNOVATIONS AS COURTS PHASE</b>	
<b>BACK TO FULL OPERATIONS .....</b>	<b>18</b>
<b>Classification by Level of Risk of Exposure / Transmission .....</b>	<b>20</b>
<b>Case Priority Ranking System .....</b>	<b>21</b>
<b>Combining Risk and Priorities.....</b>	<b>22</b>
<b>Resolving Conflicts—Rule 3.1 .....</b>	<b>26</b>
<b>Court Innovations to Consider.....</b>	<b>26</b>
<b>PLANNING FOR THE RESUMPTION OF JURY TRIALS.....</b>	<b>27</b>
<b>Stakeholder Concerns .....</b>	<b>28</b>
<b>Minimum Requirements for Resumption of Jury Trials .....</b>	<b>30</b>
<b>BEST SAFETY PRACTICES FOR JURY MANAGEMENT AND JURY TRIALS .....</b>	<b>35</b>
<b>Before Jury Selection and Trial .....</b>	<b>35</b>
<b>Jury Selection and Trial.....</b>	<b>37</b>
<b>References and Resources .....</b>	<b>40</b>
<b>CONCLUSIONS .....</b>	<b>41</b>
 <b>Appendix A:     Jury Service During COVID-19 Frequently Asked Questions Template</b>	

**About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.

**About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

# INTRODUCTORY MESSAGE FROM THE JUDICIAL BRANCH COVID-19 TASK FORCE

On March 10, 2020, North Carolina Governor Roy Cooper issued [Executive Order No. 116](#), the first in a series of executive orders declaring a State of Emergency to coordinate the response and protective actions to prevent the spread of COVID-19. On March 13, 2020, the Chief Justice of the Supreme Court of North Carolina, The Honorable Cheri Beasley, issued the [first in a series of emergency directives for the court system](#) aimed at protecting the health of court personnel and the public during the outbreak of COVID-19. Both the Governor and Chief Justice have issued numerous additional emergency orders since mid-March. While Chief Justice Beasley's orders have been clear since the onset of this public health emergency that the North Carolina courts must remain open for essential business, the scope of court operations and services have been significantly curtailed due to the need to minimize foot traffic and in-person contact in court facilities and courtrooms across the state.

On April 30, 2020, Chief Justice Beasley created the Judicial Branch COVID-19 Task Force and charged it with working with the conferences and associations within the Judicial Branch to develop recommendations for future emergency directives, policy changes, and best practices to help courts across the state provide increased levels of service to the public during the remainder of the COVID-19 health emergency.

While this public health emergency has continued to strain the state, the country, and the world, leaders in many states, including North Carolina, have begun to ease restrictions to allow more functions of daily life to resume as safely as possible. Effective May 8, 2020, Governor Cooper implemented the first phase of a [three-phase approach to relaxing some restrictions](#) in North Carolina. On May 22, 2020, North Carolina moved into the second phase. As we continue to move through the phases in the Governor's plan, the Task Force has discussed the numerous unique challenges facing the state's court system. The Task Force's focus has been on expanding limited court operations in a manner and on a timeline that ensures the public receives enhanced services from the Judicial Branch, while continuing to protect the health and safety of court personnel and the members of the public that rely on meaningful access to the courts.

As it always has, the Judicial Branch continues to work at the intersection of justice, the preservation of constitutional rights, and public safety. COVID-19 has added another lane to that intersection—public health—and it requires all of us to work together to navigate an even more challenging crossing. As Chief Justice Beasley has noted, it is time to shift our focus and consider not only what matters *must* be heard, but what matters *can* be heard safely. If it is possible to proceed with a matter safely, we must figure out new ways to do so.

On [June 12, 2020](#) and [June 30, 2020](#), respectively, the Task Force submitted two reports to the Chief Justice. The information in those reports was offered as a resource for the Chief Justice and local court officials as the Judicial Branch works to balance these competing concerns and phase back toward full operations, based on research and consultation with public health authorities. The points in those reports, and in this report, should be viewed as recommendations and guidance, not directives. While North Carolina has a unified court system, there is no one set of rules that can be implemented

identically in all 100 counties in the state. Ultimately, the manner and methods for expansion back to full operations will best be made by local court officials through cooperation and communication among themselves, in light of their local courthouse designs, caseloads, staffing limitations, and infection data.

June 1, 2020 was the beginning of a “soft expansion” back to normal operations and, at this time, our court facilities and courtrooms across the state should not look like they did the day before this emergency began. All court officials must stay informed about the current state of the Governor’s Executive Orders and the Chief Justice’s Emergency Directives, as well as all public health guidance from the [Centers for Disease Control and Prevention](#) (CDC) and state and local public health officials.

In both of its reports, the Task Force urged judicial officials throughout the state to communicate, collaborate, and cooperate with all local court leaders and partners—including district and superior court judges, clerks, court managers, district attorneys, public defenders (where applicable), private attorneys, sheriffs, and local county and public health officials—as we all seek to scale back toward full operations in ways that both provide for the efficient administration of justice and keep people safe. All local officials must strive to provide a safe and healthy courthouse, but also to instill confidence in that safety among the people who choose or are required to enter court facilities. Clear and consistent messages about safety precautions should be communicated to the public by local officials through both words and action.

Local communication will be particularly important in coordinating higher volumes in different courts in a staggered manner. Each district is responsible for ensuring that there is sufficient court staff and courtroom space to hold court efficiently and safely. Each district is also responsible for ensuring that the numbers of people entering and remaining in individual courtrooms, as well as court facilities in general, are manageable and allow for appropriate social distancing. This time, perhaps more than any other time in our history, will require careful coordination between divisions of the trial court with regard to scheduling and the use of courthouse space, as well as other resources that may be in high demand and short supply. Court personnel, attorneys, and the public must be cognizant that judicial offices across the state likely will not be operating at full capacity in the near future.

The COVID-19 pandemic continues to present rapidly changing circumstances, and there is a possibility of increased cases of infection during the coming months. Plans for expansion back to full operations must be flexible enough to allow both for “ramping up” and “ramping down” court operations as circumstances demand. The past few months have presented difficult challenges for everyone, and the next few months will present new and equally difficult challenges. On behalf of the thousands of elected and appointed officials and court staff across the state, the Task Force asks for your patience and understanding as we all navigate this “new normal.”

The Honorable F. Donald Bridges, Co-Chair  
District 27B Senior Resident Superior Court Judge

The Honorable Wayland Sermons  
District 2 Senior Resident Superior Court Judge

The Honorable Billy West  
District 14 District Attorney

The Honorable Jay Corpening, Co-Chair  
District 5 Chief District Court Judge

The Honorable Teresa Vincent  
District 18 Chief District Court Judge

The Honorable Robert Evans  
District 8 District Attorney

The Honorable Marsha Johnson  
Harnett County Clerk of Superior Court

Kinsley Craig  
District 27B Trial Court Coordinator

The Honorable Jason Cheek  
Davidson County Magistrate

John McCabe  
Attorney at Law

Patrick Weede  
Attorney at Law

The Honorable Elisa Chinn-Gary  
Mecklenburg County Clerk of Superior Court

Kellie Myers  
District 10 Trial Court Administrator

The Honorable Jennifer Harjo  
New Hanover County Public Defender

Wade Harrison  
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## OVERVIEW OF FIELD GUIDANCE BASED ON TASK FORCE RECOMMENDATIONS

The Task Force met regularly throughout the months of May and June 2020, and it submitted an interim report to the Chief Justice on [June 12, 2020](#) and a final report on [June 30, 2020](#). The information in this separate field guidance report contains the North Carolina Administrative Office of the Courts' (NCAOC) guidance to local judicial officials based on the Task Force's recommendations. Additional Task Force recommendations that are geared toward the Chief Justice and the NCAOC can be found in the Task Force's two reports.

This document contains guidance to local judicial officials in the following areas:

1. General best safety practices in the courts;
2. Case management priorities and court innovations as the North Carolina courts phase back to full operations;
3. Minimum requirements for the resumption of civil and criminal jury trials; and
4. Best safety practices for civil and criminal jury trials.

## GENERAL BEST SAFETY PRACTICES

This section provides guidance and information about best safety practice(s) in the courts. These recommendations are subject to change as the [CDC](#), the [North Carolina Department of Health and Human Services](#) (NCDHHS), and local health officials alter their guidance based on new research and evidence regarding the transmission and prevention of the virus. Local court leaders should be prepared to make changes to their plans, accordingly.

### COVID-19 Facility Coordinators

Pursuant to Emergency Directives 11, 13, and 16 of Chief Justice Beasley's [May 21, 2020](#) and [June 20, 2020](#) orders, each senior resident superior court judge shall serve as or designate a COVID-19

coordinator for each facility in his or her district. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

Before any court calendar is published or distributed, the COVID-19 coordinator must ensure that:

1. Each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and / or for extended periods of time in contravention of current public health guidance; and
2. All Judicial Branch personnel assigned to a courtroom for more than thirty minutes will have a facemask made available prior to the session of court.

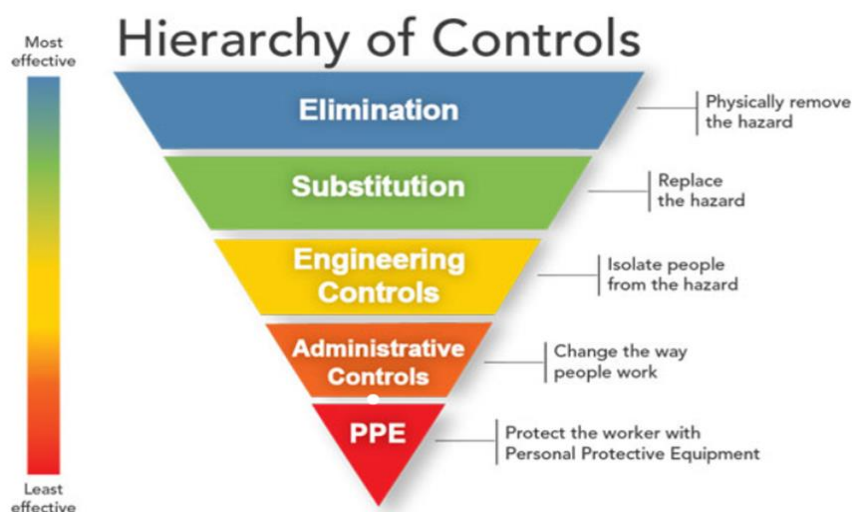
## Hierarchy of Controls

There is a continuum of risks associated with the spread of COVID-19. Risk may increase based on:

1. The number of people;
2. The size of a space;
3. The length of time that people are gathered together;
4. The proximity of the attendees to one another; and
5. The airflow over time.

Due to the interplay of these factors, there is no specific time (e.g., 30 minutes or one hour) that people may safely assemble in the same room. Therefore, in the courtroom setting, a combination of tools should be used to reduce the risks as much as possible.

The hierarchy of controls is an effective means to implement various tools to help prevent the spread of COVID-19 within court facilities. The control methods at the top of the hierarchy are more effective and protective than those at the bottom, and local court officials should consider using a combination of available control methods.



Source: <https://www.cdc.gov/niosh/topics/hierarchy/default.html>



Wherever possible, judicial officials should eliminate the risk of infection by limiting in-person contact to the greatest extent possible. Examples of elimination include proceedings conducted remotely through Webex; orders rendered without hearing based on written motion, affidavit, or argument; and waivable offenses disposed through online tools such as the [Electronic Compliance and Dismissal](#) (ECAD) system.

Where the physical hazard cannot be eliminated and substitution is not possible, the three remaining controls should be used.

### 1. Engineering Controls

- Designed to isolate employees from hazards before contact with the hazard, without relying on employee behavior.
- Examples: Physical barriers such as plexiglass (sneeze guards), drive-through service, signage, hand sanitizer in high-traffic areas, rope barriers to control crowd flow, enhanced cleaning and disinfecting, and limiting badge access to immediate working areas.

### 2. Administrative Controls

- Action by the hiring authority or employee through changes to policies and procedures.
- Examples: Teleworking, staggered shifts and hearings, online training, requiring sick employees to stay home, and non-punitive sick leave policies.

### 3. Personal Protective Equipment

- Used to prevent individual worker exposure.
- Examples: gloves, goggles, and masks / face coverings.

## Courthouses and Other Court Facilities

### 1. Occupancy Thresholds for Courthouses and Courtrooms

- Currently, public health officials are not aware of specific guidance for courthouses and suggest looking toward recommendations for similar settings with regard to duration and types of exposure that are expected to occur in the facility. The most similar operations for which guidance is available are places of worship.

*NCDHHS' Interim Guidance for Places of Worship and Religious Services (May 22, 2020) provides:*

*"It is recommended that places of worship . . . [s]pace seating arrangements so there are 6 feet between groups who live in the same household. Consider limiting seating to alternate rows."*

Source: <https://files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Places-of-Worship-Phase-2.pdf>

## 2. Social Distancing

*"Social distancing means avoiding [large gatherings](#) and maintaining distance (at least 6 feet or 2 meters) from others when possible. Strategies that businesses could use include:*

- *Allowing flexible worksites (such as telework)*
- *Allowing flexible work hours (such as staggered shifts)*
- *Increasing physical space between employees at the worksite*
- *Increasing physical space between employees and customers (such as a drive-through and partitions)"*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

- The general guidance of six feet for social distancing is for casual interactions between individuals for less than 10 minutes, and one hour is considered a prolonged period of time. Issues such as air flow within the facility, use of masks / face coverings, and individuals coughing or sneezing will vary and affect the safety of all.

## 3. Cleaning and Disinfecting

*"Current evidence, though still preliminary, suggests that SARS-CoV-2, the virus that causes COVID-19, may remain viable for hours to days on surfaces made from a variety of materials. It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads."*

- *If an object may be contaminated and can be cleaned, follow the [CDC cleaning and disinfection recommendations](#). First clean dirty surfaces with soap and water. Second, disinfect surfaces using [products that meet EPA's criteria for use against SARS-Cov-2](#) and are appropriate for the surface.*
- *If an object may be contaminated and cannot be cleaned, it can be isolated. Isolate papers or any soft (porous) surfaces for a minimum of 24 hours before handling. After 24 hours, remove soft materials from the area and clean the hard (non-porous) surfaces per the cleaning and disinfection recommendations. Isolate hard (non-porous) surfaces that cannot be [cleaned and disinfected](#) for a minimum of 7 days before handling.*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

## 4. Signage

- Courts should post clear signage regarding safety practices. See [NCAOC court facility signage examples](#).
- Suggested locations for signs include:
  - Entrance doors;
  - Main lobbies;
  - Breakrooms;
  - Bathroom doors;
  - Meeting rooms;
  - Elevators; and
  - Floor markers (where lines may form).

- COVID-19 posters and other resources created by NCAOC's Communications Division are being translated into North Carolina's top languages (Spanish at a minimum), and posted online for use, as applicable, by all courts.

## 5. Entrances

- Security screening queues should be marked for social distancing using engineering controls.
- Provide and mark outside waiting areas for overflow lines while enforcing social distancing.
- High-touch areas such as door handles, countertops, buckets at security screening, etc. should be cleaned on a regular frequent basis.
- Hand sanitizer stations should be installed near entrances, elevators, and courtrooms.
- Consider tracking / logging people who enter facilities for contact tracing. If a log or other tracking is to be implemented, consider:
  - Who will be responsible for the log?
  - How will you keep it private?
  - How will the information be used?
  - Note that paper sign-in sheets may increase risk of contamination.

Note: Evidence-based advice is in conflict with respect to logging people who enter facilities, so local officials should consider this possibility in light of local data and guidance from local public health officials.

## 6. Temperature or Health Screenings: Visitors / Public

- The CDC recommends [daily health screenings](#) of staff and attendees at mass gatherings, if feasible. NCDHHS recommends that all [K-12 schools](#) and [childcare centers](#) conduct daily health screenings of staff and students. Such screenings may include temperature taking.
- If health screenings are considered, consult with your local public health officials for assistance in developing appropriate policies.<sup>1</sup>
- If health screenings are implemented, consider the following:
  - Who is permitted to administer the health screening (e.g., must it be a health professional or can it be a law enforcement officer)?
  - If the person being screened must answer questions, will the information be saved or stored? If so, by whom and for how long?<sup>2</sup>
- If health screenings are implemented, ensure that the policy includes provisions that address:
  - Rescreening: Walking even a short distance on a hot day can increase body temperature and cause false high temperature checks. Consider how long to wait before allowing a person to rescreen.
  - Refusal: What happens if a person who is required to come to court refuses the screening?

<sup>1</sup> If health screenings for employees are implemented, records reported in writing must be retained for the duration of the workers' employment plus 30 years. See 29 CFR § 1910.1020. In addition, both the Americans with Disabilities Act and the Family Medical Leave Act require that the records be treated confidentially and maintained separately from personnel files.

<sup>2</sup> Privacy or HIPAA concerns may arise if personally identifiable health information is maintained and stored as a result of the screening process.

- Possible exposure: If a person presents with symptoms of COVID-19 or does not successfully complete the screening, where will the person wait while you determine how best to provide services?

## **7. Public Service Counters**

- Install plexiglass barriers at the counter between the court personnel and the public.
- Mark where individuals who are waiting should stand.
- Pens should be cleaned between use, if shared.
- Consider other engineering controls, such as providing curbside service for some tasks.

## **8. Lobby and Hallways**

- Limit the number of people permitted in the space, following current social distancing guidelines, and clearly mark where individuals should sit or stand while waiting.
- Design pathways / one-way lanes to limit traffic in narrow areas.

## **9. Elevators**

- Encourage use of stairs.
- Mark for social distancing and limit the number of people permitted to ride at a time.
- Clean buttons frequently.

## **10. Meeting Rooms**

- Arrange tables and chairs to ensure at least a six-foot distance between meeting attendees, not to exceed maximum occupancy based on social distancing.
- Remove white board pens and erasers; if needed, people should bring their own.
- Those using rooms should bring pens as needed.
- Tabletops should be sanitized on a regular frequent basis.
- Conference phones should be sanitized on a regular frequent basis.

## **11. Bathrooms**

- There is no CDC guidance to limit bathroom capacity:
  - The barriers in stalls should prevent spread of respiratory droplets.
  - Washing hands next to another person for 20 seconds does not meet the definition of close contact.
- Confirm that all sinks have running hot water.
- Ensure soap and paper towels are checked and filled regularly.
- Use signage to encourage social distancing and proper handwashing.

## **12. Water Fountains and Ice / Drink Machines**

- Should be cleaned and disinfected regularly, particularly high-touch areas like buttons.

### 13. Lactation Rooms

- Should be sanitized on a regular frequent basis.

### 14. Recirculating Air / HVAC

- The spread of COVID-19 through ventilation systems is not likely because respiratory droplets cannot travel long distances.
- Installing HEPA filters is not recommended due to the high cost, short service life, and incompatibility with existing equipment.
- Each local court will need to have these concerns addressed by local county representatives as to the capacity of each facility to ensure safe interior air quality.

*"The risk of spreading the virus that causes COVID-19 through ventilation systems has not been studied, but is likely low. Routine HVAC maintenance is recommended. Although it is never the first line of prevention, consider general ventilation adjustments in your workplace, such as increasing ventilation and increasing the amount of outdoor air used by the system. Maintain the indoor air temperature and humidity at comfortable levels for building occupants."*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

### 15. Trash Receptacles for Masks and Gloves

- Use no-touch trash receptacles and include hand sanitizer near trash receptables so people can perform hand hygiene after removing personal protective equipment.

## Court Personnel

### 1. Employees who Interact with the Public

*"To keep your employees safe, you should:*

- *Consider options to increase physical space between employees and customers such as opening a drive-through, erecting partitions, and marking floors to guide spacing at least six feet apart.*
- *At least once a day [clean and disinfect](#) surfaces frequently touched by multiple people. This includes door handles, desks, phones, light switches, and faucets.*
- *Consider assigning a person to rotate throughout the workplace to clean and disinfect surfaces.*
- *Consider scheduling handwashing breaks so employees can wash their hands with soap and water for at least 20 seconds. Use hand sanitizer that contains at least 60% alcohol if soap and water are not available.*
- *Consider scheduling a relief person to give cashiers and service desk workers an opportunity to wash their hands."*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

## **2. Shared Equipment and Supplies**

- Minimize the passing of objects that, if contaminated, could transmit infection.
- Although there is not a lot of data on how long the coronavirus lives on surfaces, including paper, limit transfer of papers and pens. Wash hands before touching anything else.
- Shared equipment should be cleaned regularly (e.g., copiers and printers). [NCAOC Technology Services Division's guidance on cleaning equipment](#) is available on Juno.

## **3. Mail and Other Documents**

- Assign a point person in each office to receive paperwork.
- Utilize inter-office mail and minimize personal delivery.

## **4. Employee Health Information and Screenings**

- Advise employees not to report to work if they have symptoms of COVID-19.
- Provide written information for employees to stay home if they are ill.
- Facilities should have a flexible and non-punitive sick leave policy and should ensure that all employees are aware of this policy.
- Post signage on building entrances to raise awareness.

## **5. Staggered Shifts**

- Hiring authorities should determine the best options for their local employees.
- Options may include a team concept (Team A / Team B), flexible work hours, etc., as well as rotation of employees between telework and physical work onsite.
- Managers should consider seating arrangements such as checkerboard seating. Ensure all seats are six feet apart in all directions.

## **6. Employee Breakrooms**

- Breakrooms should remain open for individual use and access to a refrigerator and microwave.
- Signage should be posted about maintaining social distancing and proper handwashing.
- Tabletops and other surfaces should be cleaned on a regular frequent basis.
- Consider removing some tables and chairs to enforce social distancing.

## **7. Employee Meetings, Social Gatherings, and Visits**

- Minimize in-person meetings and encourage remote meetings (ensure proper bandwidth for virtual meetings and hearings).
- In-person social gatherings (e.g., birthday celebrations, retirement parties, and baby showers) should be prohibited until it is determined they are safe to have.
- Encourage use of email and telephone for communication.
- Employees are encouraged not to have social visitors in the office.
- Consider a policy on bringing children into the office.

## 8. Communications and Training to Court Personnel

- Local court leaders and hiring authorities are strongly encouraged to share information with personnel so they know that their safety is paramount.
- General information for all employees should be shared by all hiring authorities in a timely manner.
- Ensure that employees have been trained regarding how to put on / take off personal protective equipment.

## Personal Protective Equipment

OSHA defines personal protective equipment (PPE) as specialized clothing or equipment worn by an employee for protection against infectious materials. PPE must be worn correctly to be effective.

### 1. Masks / Face Coverings

*The CDC recommends that people wear face coverings when around others, even when social distancing.*

*“Cover your mouth and nose with a cloth face cover when around others*

- *You could spread COVID-19 to others even if you do not feel sick.*
- *The cloth face cover is meant to protect other people in case you are infected.*
- *Everyone should wear a [cloth face cover](#) in public settings and when around people who don’t live in your household, especially when other [social distancing](#) measures are difficult to maintain.*
  - *Cloth face coverings should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance. . . .*
- *Continue to keep about 6 feet between yourself and others. The cloth face cover is not a substitute for social distancing.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

- **Court Personnel**
  - Strongly encourage or require masks / face coverings to be worn by employees:
    - In common areas (e.g., hallways, restrooms, break rooms, and lobbies);
    - Where two or more people are gathered for a short time and social distancing cannot be maintained; and
    - Where two or more people are gathered for an extended duration even if social distancing is maintained.
  - Exception: When an employee has a health condition and a health-care professional certifies in writing that the wearing of a mask / face covering would be detrimental to that employee’s health, and that certification is provided to the appropriate hiring authority.
  - Employees who choose to wear a mask / face covering should not be prevented by the hiring authority from doing so.

- Masks / face coverings can be ordered from NCAOC's online supply store, and they should be provided to employees by the Judicial Branch, with distribution coordinated by the hiring authority. For instructions on how to use masks properly, see [COVID-19 Workplace Safety](#) (NCAOC June 5, 2020).
- If N95 masks will be used, all users must be fit-tested and the facility must have a respiratory protection program in place, per NCDHHS.
  - Review [CDC guidance on fit testing](#).
  - Review [CDC guidance on respiratory protection programs](#), which are designed for hospitals, but these procedures need to be in place if N95 masks will be used.
- **Members of the Public**
  - Strongly encourage or require everyone entering a court facility to wear a mask / face covering.
  - If a person does not have a mask / face covering or refuses to wear one when masks are required, consider the following:
    - If the person is required to be in court, how do you ensure they are not called and failed? How do you assign a new court date and notify all parties?
    - Will you provide a mask / face covering for individuals seeking emergency relief (e.g., domestic violence protective orders or workplace violence)?
    - Will you prioritize who is given a mask / face covering and, if so, how?
    - Will your local court security enforce the policy?
  - If masks will be distributed to the public, court officials should plan ahead for supply chain issues and limited resources.
- **Everyone**
  - Masks should be changed if they are dirty or contaminated or wet from breath. There is no specific time limit for wearing a mask; the guidance is based on the state of the mask, not how long it is worn.
  - If masks are not used correctly, they can increase an individual's risk of exposure (e.g., facial hair can decrease the effectiveness of a mask).

## 2. Gloves

- Hiring authorities should follow [CDC guidance for businesses around PPE use](#), including gloves.
- If gloves are used, [education should be provided](#) about how to use them safely (e.g., do not touch face, change gloves if torn or soiled, and remove safely and wash hands afterward).
- Note that wearing gloves can give someone a false sense of security and lead to unintentional cross-contamination (e.g., the wearer touches an object and then touches their face).

Note: Evidence-based advice is in conflict with respect to gloves, so local officials should consider this possibility in light of local data and guidance from local public health officials.



## In-Person Court Proceedings

Pursuant to the Chief Justice's Emergency Directives, no session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and / or for extended periods of time in contravention of current public health guidance, and judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

If local court officials determine that in-person court proceedings may be scheduled pursuant to the [Chief Justice's Emergency Directive 11](#), they should implement a combination of engineering controls, administrative controls, and PPE, such as:

1. Maximum safety occupancy shall be posted ([Emergency Directive 12](#)).
2. Public seating shall be clearly marked for social distancing of six feet in all directions ([Emergency Directive 12](#)).
3. All Judicial Branch personnel assigned to a courtroom for more than thirty minutes should have a facemask made available prior to the session of court ([Emergency Directive 13](#)).
4. Stagger start and break times when there are multiple courtrooms operating.
5. Schedule appointment times for hearings.
6. Divide high-volume calendars into multiple courtrooms by last name.
7. Ask that only the person required to be in court appear.
8. Conduct calendar calls remotely via Webex.
9. Assign the same court personnel to work with the same judge in the same courtroom (less rotation to reduce spread).
10. Install physical barriers (plexiglass) in front of the judge and / or courtroom clerk.
11. Encourage materials for the hearing, such as briefs and memoranda, to be submitted electronically prior to the hearing and discourage hard copies unless they are required to be in the court file.
12. Designate separate doors as "entrance only" and "exit only" to control the flow of traffic in tight doorways.
13. Permit the use of door stops, when not violative of fire and safety codes, to minimize frequent touching of doors into and out of the courtrooms.
14. Designate a single person to retrieve documents from counsel and parties and deliver them to the presiding judge or clerk (e.g., a bailiff).
15. Instruct counsel and parties not to approach the presiding judge or clerk unless directed by the court and only when wearing a mask / face covering.
16. Instruct defense counsel to wait behind the bar and to approach the prosecutor's table only when directed to do so (i.e., do not crowd the prosecutor's table).
17. Affirm oaths; inform people that they must bring their own religious text if they wish to swear on one.
18. Minimize the passing of objects, including papers and pens, that normally would be passed back and forth in court transactions and interactions. Individuals should wash their hands after contact and before touching anything else. Pens should be cleaned between use, if shared.
19. Provide cleaning wipes at counsel tables to wipe surfaces, if available. Encourage attorneys and parties to bring their own wipes to clean tables.

Additional considerations for in-person court proceedings include:

1. With respect to **attorney-client communication and interactions** when social distancing is not possible, consider plexiglass partitions, masks / face coverings, and / or headsets and microphones (must be a private connection).

## 2. Interpreters

- Disposable gloves and disinfecting wipes or alcohol prep pads should be provided in order to allow for safe handling and disinfection of interpreting equipment.
- Court interpreters should use remote wireless interpreting equipment for all in-person events. Alternatively, interpreters and limited English proficient (LEP) parties should be allowed to bring their mobile phones into the courtroom to be used in lieu of interpreting equipment. This would allow the interpreter to create a direct audio connection to the LEP party, thus avoiding any physical handoff of equipment.
- Interpreters should disinfect interpreting equipment before and after use.
- Interpreters should sanitize equipment in front of the LEP party before handing it to the party.
- If the use of equipment or a mobile phone is not practical or allowed, especially in brief proceedings, the interpreter should be allowed to maintain physical distancing from the LEP party and to interpret in the consecutive mode loudly enough to be heard.

## 3. Witnesses

- Encourage remote appearances, when permitted by law.
- Consider alternate locations for witnesses, such as a jury box, to effectuate social distancing from the bench.
- Consider installing plexiglass barriers between the witness and judicial official.
- Provide tissues and hand sanitizer at the witness stand.

## 4. Court Reporters

- Social distancing should be clearly marked and enforced around the court reporter's station / desk in the courtroom.
- If the witness or clerk sits above the court reporter, consider moving the witness or court reporter to another location in the courtroom (e.g., jury box) to minimize the droplets spread through coughing, talking, breathing, etc.
- Equipment should be cleaned frequently.
- Permit the court reporter to appear remotely via Webex when possible.
- Be cognizant of court reporters using the voice writing method as they may not be able to wear a mask / face covering while in court.

## 5. Weddings

- Limit the number of observers (two witnesses are required).
- Conduct in-person ceremonies outside, enforcing social distancing.

- Limit the days and times available for weddings to be performed.
6. Ensure that courts safely remain open to the **public and press**.
- Consider administrative orders regarding the number of credentialed press permitted and utilizing pool feeds to minimize the number of individuals in a courtroom.
  - Consider permitting remote observation of in-person court proceedings to minimize the number of individuals entering a court facility while keeping the courts open.

## References and Resources

- [National Institute for Occupational Safety and Health \(NIOSH\) Hierarchy of Controls](#)
- [CDC Cleaning and Disinfecting Guidelines](#)
- [CDC Information on Cloth Face Coverings](#)
- [CDC Poster on Cloth Face Coverings](#)
- [CDC Poster on Wearing and Taking Off Cloth Face Coverings](#)
- [CDC Poster for People with Symptoms of COVID-19](#)
- [CDC Information for People at Higher Risk](#)
- [CDC Business FAQs](#) (includes information on temperature checks and ventilation systems)
- [CDC Workplace Decision Tool](#)
- [Orders of the Chief Justice and the Supreme Court Related to COVID-19](#)
- [Judicial Branch COVID-19 Task Force](#)

Information from NCAOC Human Resources Division is available on Juno.

## CASE MANAGEMENT PRIORITIES AND COURT INNOVATIONS AS COURTS PHASE BACK TO FULL OPERATIONS

This section provides a sample framework for case management during the period of reduced operations. Ultimately, the prioritization of specific case types and matters in any individual county or district must be done by local court officials through cooperation and communication among themselves. The discussion in this section is intended to offer a framework for local stakeholders as they think through what prioritization will work best in light of their own local circumstances and needs.

Because of the uncertainties surrounding the virus' progression, this section will describe operations in four phases that can be adjusted upward or downward by local policy- and decision-makers, depending on the level of threat and the extent of spread of the virus at any given time:

1. **State of Emergency Phase:** This refers to the time period between March and May 2020 when the Governor's "Stay-at-Home" and "Safer-at-Home" orders were in effect.

2. **Emergency Curtailment Limited Operations Phase:** This refers to the phase of operations that the courts began on June 1, 2020, as local courts began to expand operations with significant limitations on in-person contact, through both a heavy reliance on remote proceedings and strict safety measures for limited in-person proceedings.
3. **Relaxed Social Distancing Phase:** This refers to a more expansive phase of operations where social distancing and other safety measures for in-person proceedings can be relaxed somewhat based on public health guidance.
4. **Return to Full Operations Phase:** This refers to a phase when we have a vaccine against or highly effective treatments for COVID-19 that allow our courts to resume full operations.

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs. That mission remains constant during the COVID-19 pandemic and thereafter. However, court operations have had to be curtailed substantially to minimize the danger of infection and transmission of the disease through the types of close physical contact that have become an integral part of court processes in North Carolina and around the country.

As we move toward resumption of full operations, court officials must continue to focus on the mission of the Judicial Branch, while being mindful of the importance of protecting the safety and health of all those who participate in the judicial process, including court officials and employees, lawyers and litigants, jurors, witnesses, and members of the public who need to visit court facilities. To that end, local officials should consider current guidance and safety recommendations when evaluating requests for continuances or excusals from appearing in court, and consider more liberally granting such requests, particularly for high-risk individuals, at least through the Emergency Curtailment Limited Operations Phase.

Expanding back to full operations will require significant attention to case management by court officials. Local court officials should adopt a model of case management that employs some degree of triage, taking into account the following considerations:

1. The significant case backlogs that developed during the State of Emergency Phase.
2. Until the threat of exposure is eradicated through vaccines or effective treatments are developed, certain types of in-person court proceedings may be impractical or even impossible.
3. The continued need for social distancing will create a need for larger spaces for court or fewer people within existing spaces, thereby causing shortages in courtroom space.
4. Additional necessary precautions will inevitably slow down court proceedings. As an example, while remote hearings through video technology are a helpful alternative to in-person hearings in court, they may also be more time consuming.
5. The increased competition for courtroom space and increased demands on the time of judges, prosecutors, attorneys, clerks, bailiffs, and other court actors will lead to scheduling conflicts that will need to be resolved.

NCAOC recommends that local court officials approach case management triage based on two primary factors:

1. The classification of proceedings by the level of risk of exposure and transmission, with priority given to proceedings that can be handled with little or no risk; and
2. A case priority ranking system based on the relative importance of various proceedings, both as a result of the significance of the rights at issue and in light of external factors, such as the presence of statutory timeframes and the implications for federal funding.

## Classification by Level of Risk of Exposure / Transmission

1. **Low risk** proceedings do not involve physical contact or close proximity between participants. Examples include:

- Hearings, chambers conferences, calendar calls, depositions, and mediations conducted via video conferencing;
- Client interviews (including jail interviews) conducted via video conferencing; and
- Dispositions based on written motions or affidavits without oral argument.

Many of these proceedings continued during the State of Emergency Phase. Absent a showing of good cause, all such proceedings should continue to be conducted remotely to the fullest extent possible during the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase.

2. **Medium risk** proceedings can be accommodated with appropriate social distancing and other safety precautions. Examples include:

- In person hearings in which the courtroom will accommodate all participants and necessary witnesses / observers, while allowing each person to maintain a distance of six feet from every other person;
- A hybrid of in-person and remote hearings, in which one or more participants and necessary witnesses / observers attend through an audio or video connection; and
- Grand jury proceedings conducted in an appropriately large room with social distancing maintained.

These proceedings may be conducted, with appropriate social distancing and other safeguards, during both the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase.

3. **High risk** proceedings are those in which safe social distancing is not possible due to the size of the courtroom and / or the number of participants. Examples include:

- Conventional jury trials (i.e., using a “jury box” for a 12-person jury in close quarters and retiring to a small jury deliberation room);

- Large civil and criminal calendar calls, where large numbers of persons are summoned for the same place at the same time; and
- Traffic administrative courts, where hundreds of traffic tickets are scheduled for disposition on the same day at the same time, requiring large numbers of people to wait in line.

These proceedings cannot be conducted, at least in a conventional manner, until the public health crisis has passed. However, these proceedings may be conducted during the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase if, through the use of technology and other innovations, local court officials can provide for these proceedings to be conducted in a safe manner that does not result in close physical proximity between participants or otherwise violate best safety practices and public health guidelines.

## Case Priority Ranking System

Court officials are likely to experience shortages in courtroom space and competition for those limited resources. For this reason, each county or district leadership team should adopt a case management plan that includes an analysis and ordering of pending cases based on a case priority ranking system. Some of the considerations that might be included in creating such a ranking system are set forth below:

1. The constitutional rights that would be affected by any further delay of the proceeding;
2. Any statutory deadlines for the hearing or disposition of the matter;
3. Any state or federal rules or guidelines that require the hearing or the delay of the matter, including rules that would impact federal funding, such as Title IV-E funding;
4. The significance of the rights and interests at stake in the proceeding, as compared to those in other cases that are scheduled for the same time;
5. The age of the case;
6. The complexity of the proceeding;
7. The need for and availability of foreign language or sign language interpreters;
8. The availability or unavailability of courtroom space;
9. The availability or unavailability of the presiding judicial official, lawyers, other needed court staff, parties, and witnesses due to scheduling conflicts;
10. Any other factors that would normally qualify a case for a peremptory setting;
11. If the case will be for trial, the consent of all parties or lack thereof to an immediate trial;
12. If the case will be for trial, whether it is possible to conduct parts of it remotely;
13. The availability of court reporters and / or the ability to record proceedings; and
14. In particular with respect to criminal cases:
  - a. Whether the defendant is confined while awaiting trial and, if so, whether pretrial release conditions can be modified to allow the defendant to be released from custody;
  - b. The offense class;
  - c. The number of and reasons for prior continuances;
  - d. Any demand for a speedy trial;
  - e. The likely length of any trial;
  - f. The number of defendants;
  - g. Public safety; and
  - h. Any health issues of the defendant.

## Combining Risk and Priorities

Local judicial officials should work together to balance the competing complex concerns as they make decisions about how to expand, with public health and safety serving as the guiding stars. As they conduct this balancing, local court officials should ask the following questions with respect to each type of proceeding:

1. Can this proceeding be conducted with little or no risk of exposure / transmission of infection?
2. If not, can this proceeding be modified with the use of technology or innovations to reduce the risk of exposure / transmission to an acceptable level?
3. Is this a proceeding that can be conducted in compliance with public health guidance through the application of current social distancing measures, appropriate personal protective equipment, and other best safety practices?

NCAOC and the Task Force offer the following submission from the court managers as an example of the interplay between the risk of exposure and the priority ranking of various matters.

### District Court

	Low Risk	Medium Risk	High Risk
<b>Low Priority</b>	<ol style="list-style-type: none"> <li>1. Bond Forfeiture</li> <li>2. Expunction</li> </ol>	<ol style="list-style-type: none"> <li>1. Tax Delinquency*</li> <li>2. Arbitration*</li> </ol>	<ol style="list-style-type: none"> <li>1. H &amp; I Felonies</li> <li>2. Jury</li> </ol>
<b>Medium Priority</b>	<ol style="list-style-type: none"> <li>1. Emancipation</li> </ol>	<ol style="list-style-type: none"> <li>1. Misdemeanor*</li> <li>2. DWI</li> <li>3. Traffic*</li> <li>4. Nonjury*</li> <li>5. Motions*</li> <li>6. Divorces*</li> <li>7. PSS/Alimony*</li> <li>8. Child Support FAM*</li> <li>9. Equitable Distribution*</li> <li>10. TPR</li> </ol>	<ol style="list-style-type: none"> <li>1. Criminal Admin</li> <li>2. Citizen-Initiated Comp</li> <li>3. Child Support (IVD)</li> </ol>
<b>High Priority</b>	<ol style="list-style-type: none"> <li>1. First Appearances*</li> <li>2. Pleas</li> <li>3. Judicial Waivers</li> </ol>	<ol style="list-style-type: none"> <li>1. DV Bond hearings</li> <li>2. Minor Settlements*</li> <li>3. Custody*</li> <li>4. Juvenile A/N/D &amp; Delinquency*</li> <li>5. IVC hearings*</li> </ol>	<ol style="list-style-type: none"> <li>1. Felony Probable Cause</li> <li>2. Drug Treatment</li> <li>3. DWI Treatment</li> <li>4. Veterans Court</li> <li>5. Probation Violation</li> <li>6. Small Claims</li> <li>7. 50B DV Hearings</li> <li>8. 50C No-Contact Hearings</li> </ol>

*\*remote hearings = lower risk / courtroom hearings = higher risk*

### Superior Court

	Low Risk	Medium Risk	High Risk
<b>Low Priority</b>	1. Criminal Non-Jury Trials if Conducted via Webex <hr/> 2. Bond Forfeitures if Conducted via Webex	1. Criminal & Civil Non-Jury Trials if Conducted in Person <hr/> 2. Bond Forfeitures if Conducted in Person <hr/> 3. Gun Permit Denial Appeals Conducted in Person	1. Misdemeanor Appeals  <i>Option to waive jury trial if Judge agrees.</i>
<b>Medium Priority</b>	1. Guilty Pleas: Not in Custody Cases Conducted via Webex  <i>Potential need for public computers for SLRs to use for Webex purposes.</i> <hr/> 2. Civil Administrative Sessions / Civil Case Management Conducted via Webex  (e.g., trial date assignment, status hearings) <hr/> 3. Swearing-In New Attorneys and Judges Conducted via Webex <hr/> 4. Completion of Mediation via Webex	1. Guilty Pleas: Not in Custody Cases Conducted in Person <hr/> 2. Specialty Courts Conducted in Person  (e.g., drug court / 90-96 hearings, Veterans treatment court)  <i>More staffing involved from various offices / resources for these types of hearings.</i> <hr/> 3. Appeals from the Clerk Conducted in Person  (e.g., foreclosures, incompetency) <hr/> 4. Administrative Appeals Conducted in Person  (e.g., EEOC, Long Term School Suspensions) <hr/> 5. Completion of Mediation in Person	
<b>High Priority</b>	1. Criminal Administrative Sessions / Criminal Case Management Conducted via Webex  (e.g., Bond Hearings, Motions to Suppress, Status Reviews, Setting of Trial Dates & Rule 24 Hearings) <hr/>	1. Criminal Administrative Sessions / Criminal Case Management Conducted In-Person  <i>Extradition matters will not be eligible for hearings via Webex.</i> <hr/>	1. Criminal & Civil Jury Trials  <i>Requirement of 12 jurors in addition to alternate jurors in Criminal / Civil trials can agree to less.</i>



	Low Risk	Medium Risk	High Risk
High Priority	<p>2. First Appearances Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>2. Probation Violations for In-Custody / Jail Cases Conducted In-Person</p>	<p>2. Hearings on Writs of Habeas Corpus</p> <p><i>If coming from DOC, additional exposure risk. Special care and PPE should be provided to any individual arriving from DOC facilities to local detention centers.</i></p>
	<p>3. Probation Violations for In-Custody / Jail Cases Conducted via Webex.</p> <p><i>Contingent on jail facility connection.</i></p>	<p>3. Probation Violations for Not in Custody Conducted in Person</p> <p><i>Probation officer who makes field visits may be an additional factor in favor of a Webex hearing.</i></p>	
	<p>4. Probation Violation Hearings Conducted for Defendants Not in Custody via Webex</p> <p><i>Probation officer who makes field visits may be an additional factor in favor of a Webex hearing.</i></p>	<p>4. PV Arrest Review / Probable Cause Hearing Conducted in Person</p>	<p>3. Will Caveats</p> <p><i>Treated as jury trial matters. Cannot be treated as non-jury trial. Receives priority over all other cases.</i></p>
	<p>5. PV Arrest Review / Probable Cause Hearing Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>5. Guilty Pleas: In-Custody / Jail Cases Conducted in Person</p>	
	<p>6. Guilty Pleas: In-Custody / Jail Cases Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>6. Guilty Pleas: Not in Custody Cases Conducted in Person</p>	<p>4. Facial Constitutional Challenges to Acts of the General Assembly</p> <p>(i.e. Three (3) Judge Panel Cases)</p> <p><i>More judges, staffing, media, attendees, etc. than a regular court setting.</i></p>
	<p>7. Guilty Pleas: Not in Custody Cases Conducted via Webex</p> <p><i>Contingent on connection capability.</i></p> <p><i>Potential need for public computers for SLRs to use for Webex purposes.</i></p>	<p>7. Criminal Motions if Conducted in Person for Matters that Cannot be Completed via Webex</p> <p>(e.g., capital cases, extradition matters)</p>	
	<p>8. Motions if Conducted via Webex in Criminal Matters</p> <p>(e.g., pre-trial/dispositive, suppression matters, bond issues, in camera reviews)</p>	<p>8. Grand Jury</p>	
		<p>9. Innocence Commission Referred Cases</p>	
		<p>10. Sex Offender Registry Hearings</p> <p><i>Offenders may not be allowed to be "online" or have limitations concerning online usage, thus eliminating any online resolution method.</i></p>	
		<p>11. Review &amp; Issuance of Search Warrants if Completed in Person</p>	

	Low Risk	Medium Risk	High Risk
High Priority	<p>9. Review &amp; Issuance of Search Warrants if Completed via E-Mail</p> <p><i>Sworn by Webex.</i></p>	<p>12. Review &amp; Issuance of Law Enforcement Officer Recordings if Completed in Person</p>	
	<p>10. Review &amp; Issuance of Law Enforcement Officer Orders (Phone Orders) if Completed via E-Mail</p> <p><i>Sworn by Webex.</i></p>	<p>13. Motions for Appropriate Relief / Evidentiary Hearings Conducted in Person</p> <p><i>If coming from DOC, additional exposure risk. Special care and PPE should be provided to any individual arriving from DOC facilities to local detention centers.</i></p>	
	<p>11. Settlement Approvals Conducted via Webex</p>	<p>14. Civil Non-Jury Trials Conducted in Person</p> <p><i>Webex non-jury civil trials are not favored by many attorneys; however, Webex may be a viable option for bench trials.</i></p>	
	<p>12. Civil Motions Conducted via Webex (e.g., emergency, contempt, TROs, BCR 9.3 case management conferences, BCR 10.9 discovery disputes, NCBC status conference)</p>	<p>15. Settlement Approvals Conducted in Person</p>	
	<p>13. Petitions for Release of Law Enforcement Agency Recordings Conducted via Webex</p> <p><i>Statutory priority under NCGS § 132-1.4A(f): petitions filed pursuant to this subsection shall be set for hearing as soon as practicable and shall be accorded priority by the court.</i></p>	<p>16. Petitions for Release of Law Enforcement Agency Recordings Conducted in Person</p> <p><i>Statutory priority under N.C.G.S. § 132-1.4A(f): petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.</i></p>	
	<p>14. Swearing-In New Judges and Attorneys via Webex</p> <p><i>SL 2020-3 permits swearing in of attorneys remotely.</i></p>	<p>17. Swearing-In New Attorneys and Judges in Person</p> <p>18. Judicial Review of State Board Decisions Conducted in Person</p> <p>(e.g., Appeal of County Commission Decisions/Rulings, appeal of State Board of Elections decision)</p>	

## Resolving Conflicts—Rule 3.1

Rule 3.1 of the General Rules of Practice is designed to resolve scheduling conflicts when attorneys have commitments in more than one court. Local communication and cooperation will be essential to resolving conflicts concerning courtroom space and case prioritization. In addition, NCAOC and the Task Force recommend utilizing Rule 3.1 for guidance in resolving conflicts over courtrooms and other courthouse facilities, as well as court personnel, during the upcoming time of expected shortages.

## Court Innovations to Consider

In its two reports, the Task Force made a series of recommendations about court innovations to the Chief Justice, the NCAOC, and local court officials for their consideration. A complete list of those recommendations, which are currently under consideration by the Chief Justice and NCAOC, can be found in the Task Force's [June 12, 2020](#) and [June 30, 2020](#) reports. The following recommendations are directed to local judicial officials:

1. Clerks should exercise their existing authority to enter judgment in absolute divorces and to enter judgment based on the pleadings, when possible.
2. Chief district court judges should require / order that custody mediation orientations and sessions be held remotely.<sup>3</sup>
3. Judges should conduct chambers conferences remotely, even absent consent of a party.
4. Consistent with existing statutes and case law, courts should render orders without a hearing when they may be made based on affidavits, verified motions, and written argument.
5. Consider using referees as provided in N.C.G.S. § 1A-1, Rule 53 for issues in civil cases.
6. Request or require that defendants register for the [Court Date Notification System](#) as a condition of release or when the defendant receives a summons or citation.
7. Judges, magistrates, clerks, and other court officials should remind defendants and witnesses of the [Court Date Notification System](#). Court staff should obtain email addresses and phone numbers for the purpose of contacting parties if there is a change to the court schedule.
8. Senior resident superior court judges should survey each county in their district to determine which jails and correctional facilities have video conferencing capability for attorney / client conferences. If such a capability is not already operational, determine if and when it can be established and an estimate of its cost to the county.
9. Consider changes to calendaring / docketing of court matters, to the extent that they are possible with existing technology or through non-technological means:
  - a. Limit the docket size based on courtroom and / or court facility capacity or ability to stage matters to meet social distancing requirements. Counties should work with local health and other county officials to determine social distancing capacities for each courtroom.
  - b. Use morning and afternoon calendars instead of single, day-long calendars. In criminal cases, district attorneys should consider defense attorneys that practice in multiple counties and allow for attorney scheduling to accommodate it (e.g., group cases by attorney blocks).

<sup>3</sup> Safety concerns should continue to be considered for parties entering into mediation to discuss co-parenting. The parties retain the right to request a waiver of mediation, pursuant to N.C.G.S. § 50-13.1(c).

- c. In a district court traffic setting, schedule only the number of defendants that can safely fit in a courtroom for social distancing at different intervals (e.g., 40 defendants at 9 a.m., 40 at 11 a.m., etc.).
- d. Stage larger volume courts in multiple courtrooms with multiple judges.
- e. Schedule cases by attorney / parties (e.g., Attorney Smith's cases scheduled at 9 a.m.).
- f. If remote hearings are not possible for "high-risk" individuals, consider scheduling a block of time for "high-risk" individuals to appear in court.
- g. Consider remote screening for deferred prosecution / first offender programs.
- 6. Local policies should be implemented for motions (or types of motions) to be addressed without oral argument. Civil examples include motions to compel, motions to dismiss, motions to continue or for peremptory setting, and other administrative matters.
- 7. Explore / consider temporary changes to improve the jury process for civil cases, such as:
  - a. Requiring jurors to watch the juror orientation video online prior to appearing for service; and
  - b. Encouraging the use of online juror questionnaires, and perhaps case-specific questionnaires, prior to appearing for service to reduce time in court.

## PLANNING FOR THE RESUMPTION OF JURY TRIALS

Jury trials constitute a cornerstone of the American justice system, both in civil and criminal courts, and a substantial number of civil and criminal cases cannot be resolved without the decision of a jury. The effectiveness and fairness of the courts depend, in large measure, on the availability and willingness of citizens to serve on juries. Throughout the duration of this pandemic, local court officials must find new ways to conduct jury trials that are as safe as practicable for all participants and that overcome the reluctance of many potential jurors to enter a public building and serve on a jury during a pandemic.

The resumption of jury trials presents one of the most daunting challenges in the expansion of court proceedings during the COVID-19 pandemic. Traditionally, jury trials have involved the gathering of large numbers of people—including potential jurors, courthouse personnel, attorneys, clients, witnesses, court reporters, bailiffs, and observers—in relatively small courtrooms. Jury service typically requires close physical proximity with other jurors, beginning in a jury assembly room, then in a courtroom gallery, followed by placement in a jury box, and concluding with deliberations in a small jury room.

The Task Force, comprised of various stakeholders in the judicial process, believes it is important for the Chief Justice and NCAOC to provide clarity and predictability, to the extent possible, with respect to the resumption of jury trials in our state courts. However, as the Task Force's reports to the Chief Justice noted, there is no "one size fits all" approach with respect to North Carolina's 100 counties. Thus, the balancing of these complex concerns and considerations in individual cases must be left to the reasoned judgment of the presiding judicial officials.

Local officials should be mindful of the concerns of all stakeholders as their districts ramp up court operations, including the conduct of jury trials in both civil and criminal cases. The transition back to full operations may vary by the type and complexity of caseloads and by local issues such as the prevalence of the virus in any given county and the availability of appropriate facilities, but there must be a

paramount concern for the safety of all participants. Like all other court proceedings, local judicial officials should attempt to scale back gradually toward the full resumption of jury trials.

Based on the Task Force's recommendations, NCAOC suggests that complex lengthy trials not be chosen as the first jury trials immediately after the Chief Justice's orders allow them. Instead, local officials should begin with shorter and less demanding jury trials, such as simple civil trials and lower-level felonies, while new protective measures are being perfected. Moreover, presiding judges should not force parties to proceed to trial if they are unprepared due to the pandemic, and should be sensitive to the potential need for additional delays to allow for adequate trial preparation by all parties.

## Stakeholder Concerns

The complexities and the challenging nature of managing jury trials in this environment are illustrated by the comments and concerns that were expressed by various stakeholders to the Task Force, some of which are shared across groups and some of which are in conflict with each other. A summary of the written and verbal comments follows:

1. **Judges** expressed concerns about the limitations of court facilities, including the fact that many North Carolina courthouses only have one or two courtrooms. There are significant challenges inherent in scheduling trials that accommodate social distancing, and judges expect there to be competition for limited courtroom spaces in the coming months as all court operations expand, not just jury trials. Judges also expressed concerns about management issues in safely summoning, orienting, and monitoring potential jurors and seated jurors, including the impact that trials will have on overall traffic in court facilities. Finally, judges expressed concerns over maintaining appropriate safety practices within courtrooms without creating an atmosphere that could operate to prejudice any party.
2. The **civil and family law bars** expressed a readiness to resume trials by early August in order to move their cases, as long as it can be done safely, but they requested as much advance notice as possible upon calendaring so they can coordinate scheduling and complete trial preparations. In order to accommodate social distancing concerns, the civil bar expressed a general willingness to consider consenting to six-person jury trials or bench trials in appropriate cases, as well as a reduction in the number of peremptory challenges.
3. The **district attorneys** expressed a similar desire to resume calendaring criminal trials by early August, coupled with local control over when and how trials in individual cases resume after that date. They expressed concerns that criminal defendants have both statutory and constitutional rights that could be impacted by an extended delay in jury trials across North Carolina. The district attorneys were especially concerned about defendants who are incarcerated. While the district attorneys agree that criminal defendants can waive certain rights, they noted that it is the individual defendant who must make that decision. For that reason, along with differences in facilities, resources, and health concerns throughout the state, the district attorneys expressed a belief that any emergency directives from the Chief Justice should set guidelines but allow local court officials to prioritize cases selected for trial. They noted that numerous other states are following such a localized approach. The district attorneys expressed concerns that each case is unique and that

any decision to separate when jury trials can begin based on class of offense could prompt constitutional challenges. Finally, the district attorneys expressed concerns that victims of crime have constitutional rights and a strong interest in having their cases heard in a timely and efficient manner.

4. The **private criminal defense bar and public defenders** expressed a number of concerns about the resumption of jury trials, including:
  - The impact of the pandemic on their ability to meet safely with in-custody clients to review discovery and to conduct substantive discussions about case preparation;
  - The increased difficulty in locating and interviewing witnesses and gathering other information to prepare a defense during the “Stay-at-Home” and “Safer-at-Home” phases;
  - The impact that the pandemic has had on the ability of investigators, mitigation specialists, and experts to perform their work in the field;
  - Concerns about their ability to protect their clients’ constitutional rights to confrontation and cross examination if witnesses and jurors wear masks in a courtroom, as well as concerns about ensuring the accuracy of trial transcripts if witnesses testify wearing masks;
  - Concerns about having the ability to communicate confidentially with their clients during trials, especially under arrangements that include social distancing or plexiglass barriers;
  - Concerns that social distancing practices resulting in a reconfiguration of jury seating might impede their opportunity to view jurors during trial;
  - Concerns about the dehumanizing impact of physical separations between them and their clients, as well as the potential negative inferences that jurors might draw from those physical separations;
  - Concerns about the ability to select a jury that is fully representative of the community given that more prospective jurors will likely seek deferrals and excuses; and
  - Opposition to a resumption of criminal jury trials without the consent of both the state and the defendant prior to September 21, 2020, and opposition to the resumption of any capital or non-capital first-degree murder trials prior to November 30, 2020.
5. **Clerks** expressed concerns about managing large numbers of jurors when they return to the courthouse, including the logistics of handling juror orientations and reporting. Clerks agreed that jurors should report in staggered intervals, but they recognized that this process will require more attention and planning. Because of these additional steps, the clerks asked that judges and attorneys carefully screen cases to ensure that cases calendared for jury sessions will actually require a jury for determination. Clerks also noted the need for generous deferral policies and second noticing for potential jurors who do not appear. Finally, clerks stressed the importance of messaging to the public concerning measures that are being taken to keep people safe, including the necessity of accuracy in that messaging.
6. **Court managers** expressed concerns about the potential impact that holding jury trials under current conditions may have on future appeals and motions for appropriate relief, as well as the safety of court reporters who often sit in close proximity to testifying witnesses.
7. **All stakeholders** expressed concerns about safety and the availability of appropriate personal protective equipment, particularly for high-risk participants and their families.

All of these concerns and perspectives should be taken into consideration by judicial officials as they plan for resuming trials in their districts. For criminal jury trials in particular, judges should be mindful of the handicaps that criminal practitioners have been and will continue to operate under during this pandemic, including the limitations on their ability to meet with their clients; the need for confidential communications with clients and witnesses during trial; the importance of being able to view the facial expressions of witnesses during testimony; and the possibility that certain courtroom arrangements could prompt prejudicial inferences about their clients.

## **Minimum Requirements for Resumption of Jury Trials**

Pursuant to the Chief Justice’s [Emergency Directive 16](#), the Task Force has recommended that the Chief Justice order, in an upcoming emergency directive, a specified date for the resumption of jury trials, subject to any prerequisites that the Chief Justice deems appropriate, including the submission of any operations plans from local districts. In addition, the Task Force recommends the following minimum requirements for the resumption of jury trials in the trial courts of North Carolina.

### **1. Local Consultation and Planning for the Resumption of Jury Trials**

In preparation for the Chief Justice’s directive establishing the earliest date on which jury trials may resume, every senior resident superior court judge should, in consultation with other local court officials—including the COVID-19 coordinator, chief district court judge, clerk of superior court, district attorney, chief public defender (or one or more members of the local criminal defense bar in non-public defender districts), trial court administrator or coordinator, and a local civil attorney—craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for district court is warranted, the chief district court judge should, in consultation with other local court officials—including the COVID-19 coordinator, clerk of superior court, trial court administrator or coordinator, family court administrator, and one or more members of the civil and domestic bar—craft a plan for the resumption of district court jury trials in his or her judicial district.

These plans should be crafted well in advance of the anticipated date of the first jury trial. Communication and cooperation among local officials are imperative, not only with respect to the management of jury trials, but also with respect to the coordination of the use of court facility space needed for jury management and its effect on the operations of other courts within the same facility.

Before proceeding with the scheduling of jury trials, the senior resident superior court judge and chief district court judge must be able to confirm to the Chief Justice that they have done the following:

- Reviewed all of the Chief Justice’s Emergency Directives pertaining to COVID-19 and these minimum requirements for the resumption of jury trials; and
- Considered input from the stakeholders described above, as well as local public health officials, and concluded that it is reasonable for the district to proceed with jury trials under a local plan or plans crafted by those judges, which follow all appropriate standards for the health and safety of participants, including any specific guidelines as may be provided by the Chief Justice.

Depending on local health conditions, the senior resident superior court judge and / or chief district court judge may exercise discretion to delay resumption or to suspend operation of jury trials in the interest of local health and safety.

While remote jury trials are not a feasible option in North Carolina at this time, some of the processes leading up to the impaneling of a jury—such as juror orientation, prescreening for deferrals and excuses, strikes for cause based on written juror questionnaires, and other aspects of jury management—could be handled by remote means.

In planning for the resumption of jury trials, every senior resident superior court judge and chief district court judge (or their designees) should meet with the clerk of superior court (or designated jury coordinator) in each county in their district to address the summoning and management of jurors during the period of required social distancing. The senior resident and chief district court judge (or designee) and clerk (or designee) should give careful consideration to special issues relating to jury management during upcoming months, including, for example:

- Determining the number of jurors to summon for sessions of court, taking into consideration reasonable projections for attendance and deferral requests in light of the pandemic;
- Assessing the feasibility and details of arranging for jurors to report in staggered groups (e.g., 25 to 40 in the morning and a similar number in the afternoon);
- Providing arrangements for online or staggered orientation sessions for each group of potential jurors as they report;
- Establishing criteria for addressing deferral requests based on COVID-19 concerns; NCAOC encourages the chief district court judges to review their district's excuse policy under N.C.G.S. § 9-6(b) and to expand it to allow for deferrals and excuses to be heard remotely and for more leeway for deferring / excusing jurors who are in a high-risk group (as defined by [CDC guidelines](#));
- Including a printed message with each jury summons that is also posted online, advising potential jurors of the safety precautions that have been undertaken to protect their health and safety while serving;
- Conducting a safety "walk-through" with the clerk in each county (as well as designees from the sheriff's office and local health department) in his or her district, viewing where jurors will go from the time they enter the courthouse until they leave at the end of their service, including jury assembly, jury orientation, waiting before and after selection, entrances to and exits from the courtroom, break rooms, deliberation rooms, and other areas;
- Determining whether current jury assembly rooms and jury deliberation rooms are sufficiently large to provide appropriate spacing for social distancing in each room; if so, use tape or markings to indicate where seating is allowed; if not, identify other rooms to be used for jury assembly and jury deliberation (including the possible use of the trial courtroom, another available courtroom, or other room in an alternate local facility);
- Developing a waiting plan for seated jurors, using an appropriate waiting room or a call-back system to free up space in the courtroom during the remaining jury selection, if needed;
- Determining whether each courtroom needs plexiglass shields at counsel tables, the witness stand, and / or the workstations of the courtroom clerk and court reporter;



- Considering the possible need for cautionary jury instructions that may be appropriate with respect to obvious shields that have been placed in the courtroom in order to avoid prejudicial inferences by jurors, upon request; and
- Preparing to deal with trial issues that create potential complications due to social distancing, including, for example, the handling of requests for bench conferences.

## 2. Facility Assessment and Local Rules

Pursuant to the Chief Justice's [Emergency Directive 16](#), if local court facilities are determined to be inadequate to convene socially distanced jury trials, the senior resident superior court judge was directed to identify, no later than July 1, 2020, other appropriate facilities where trials may be safely convened. If the alternate facility is located outside the county seat, information about the alternate proposed facility shall, pursuant to N.C.G.S. §§ 7A-42(i) and 7A-130, be [submitted to NCAOC for approval](#) and, in the case of the superior court division, to the Chief Justice for approval as well.

Upon identifying facilities for use in conducting jury trials with appropriate social distancing, whether in the courthouse or elsewhere, each senior resident superior court judge and chief district court judge should craft and adopt a set of local rules or administrative orders that govern how to conduct jury trials under conditions that necessitate social distancing in superior and district court, respectively.

These rules should be drafted in a manner that will address at least the following concerns for all jury trials conducted while social distancing is recommended, whether the trial is held in a courtroom or an alternate facility:

- The manner in which failures to appear and requested deferrals will be handled; local rules are encouraged to provide for lenient failure to appear policies and the liberal granting of deferrals during the pandemic, with appropriate consideration of the impact this may have on fair cross-section challenges and the diversity of seated juries;
- Accommodate bench trials and jury trials with less than 12 jurors with the consent of the parties to better allow for social distancing; in criminal cases, there must be strict compliance with N.C.G.S. § 15A-1201;
- Any room to which jurors or potential jurors are directed should be sufficiently large to accommodate social distancing for that number of persons, and seating arrangements for jurors and other participants in the jury trial should be clearly marked to so provide while also allowing the parties and their attorneys to observe jurors during the trial;
- The maximum number of people who will be allowed in the courtroom at one time;
- The manner and scheduled sequences in which jurors will be required to report to the court facility and courtroom, such as staggered reporting times and the number of jurors in each reporting group;
- The designation of the area in which jurors will be directed to wait before being brought into the courtroom;
- The maximum number of potential jurors that will be summoned into the court facility at one time and the maximum number of potential jurors that will be directed into the courtroom at one time, considering necessary social distancing requirements;

- The manner in which jury orientation(s) will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require jury orientation(s) to be conducted in staggered increments or remotely);
- The manner in which voir dire of prospective jurors will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require voir dire to be conducted in staggered increments or remotely, in part);
- Any restrictions on attorneys, witnesses, or other trial participants concerning approaching the bench, approaching a witness, or movement within the courtroom that will be required to maintain social distancing, such as:
  - Counsel should remain seated at counsel table during witness and juror examination; and / or
  - When standing to present opening statements and closing arguments, counsel shall remain six feet from all other persons in the courtroom.
- Any requirements for the introduction and handling of exhibits in the courtroom (e.g., requiring that all exhibits be presented to the jury electronically rather than passing exhibits among the jurors);
- The optional use of podiums by attorneys for opening statements and closing arguments;
- Any modifications to traditional or local customs concerning jury selection, including the potential use of written jury questionnaire(s);
- Any special instructions to provide for the ability of attorneys to consult privately and confidentially with their clients during the trial, particularly in criminal cases, while maintaining social distancing or with other appropriate safeguards in place (e.g., plexiglass partitions); and
- Review of any changes to the courtroom layout, being mindful of the importance of all participants being able to observe the facial expressions of the witnesses, jurors, and defendant, particularly in criminal cases.

Jury deliberations should take place in a room of sufficient size to allow for proper social distancing among all jurors. It may be necessary to use the actual courtroom or another courtroom as a jury deliberation room. If so, the presiding judge should enter appropriate orders concerning the privacy of jury deliberations and station bailiffs appropriately to enforce those orders.

Each presiding judge should be mindful and considerate of the anxiety of potential jurors who are kept waiting. Every effort should be made to begin jury trials promptly at the time designated. If unexpected delays are encountered, jurors should be allowed to leave the court facility and return at a designated time, rather than being kept waiting in a jury assembly room.

### **3. Calendaring Cases for Trial**

On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, and upon confirmation of readiness after consultation with the clerk of superior court and the COVID-19 coordinator, civil jury trials may be calendared in district and superior court in consultation with the COVID-19 coordinator.

On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, criminal jury trials may be calendared for trial, subject to the following recommendations:

- NCAOC and the Task Force recognize that authority for the calendaring of criminal cases lies with the district attorneys pursuant to N.C.G.S. § 7A-49.4. However, based on the Task Force's recommendations and during the first 90 days after the Chief Justice's orders allow for the resumption of jury trials, criminal cases selected for trial should be prioritized by the senior resident superior court judge in consultation with the elected district attorney, the chief public defender (or a senior member of the criminal defense bar in non-public defender districts), and the COVID-19 coordinator.
- In conducting the prioritization of criminal trials described above, the senior resident superior court judge is encouraged to give careful consideration to at least the following factors:
  - The extent to which a jury trial of the case can be conducted with safety for the health of all participants;
  - The readiness of the case for trial, as determined by counsel for each party;
  - The age of the case;
  - Whether or not the defendant remains in custody pending trial;
  - The complexity, number of parties, and expected length of the trial; and
  - The consent, or lack thereof, of the defendant and defense counsel to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from protective measures taken during the court proceeding.

The Task Force recommends that the first jury trials set for hearing should be civil cases, lower-level felonies (e.g., Class H or I), or misdemeanor appeals that are expected to take less than one week to try. In addition, it is recommended that no complex civil case, high-level felony case (e.g., Class B2 or higher, absent consent of the parties), or any case expected to require multiple weeks for trial be calendared within the first 90 days after the date specified by the Chief Justice for the resumption of jury trials.<sup>4</sup>

#### **4. Communication**

Each presiding judge should be mindful of the importance of communication to potential jurors concerning safety precautions that have been taken so that they will be comfortable with the idea of jury service. NCAOC recommends that a letter from the presiding judge be included with each jury summons, advising potential jurors of the precautions that are being taken to provide for their health and safety during jury service, reminding them of the importance of jury service, and informing each juror that they have an opportunity to request a deferral of service by making that request in advance by telephone. It is suggested that requests for deferral be made in advance of the court date, but that a method also be provided for jurors to communicate changes in their status up until their reporting date, especially with respect to health concerns.

<sup>4</sup> With the exception of the recommendation in this paragraph, the Task Force unanimously approved all recommendations regarding the resumption of jury trials. The district attorneys on the Task Force objected to this recommendation for the reasons set forth in footnote 1 to the [Task Force's June 30, 2020 report](#).

It is imperative that judges be mindful of and follow the recommended best safety practices for jury management and jury trials that are itemized in this report, and they should be familiar with all safeguards and precautions that have been undertaken to provide a safe space for jurors. As part of their orientation, judges should include mention of these safeguards in written and oral communications to jurors. The jury clerk should also have a list of these safeguards in order to address telephone inquiries from prospective jurors.

## BEST SAFETY PRACTICES FOR JURY MANAGEMENT AND JURY TRIALS

### Before Jury Selection and Trial

The first step in resuming jury trials and grand jury proceedings involves the summoning of a pool of prospective jurors from which to select juries. The focus in this stage is to disperse and reduce the number of individuals who appear in person for jury service.

#### 1. Juror Reporting Practices

- Judicial officials should anticipate lower jury yields. Assume that half of summoned jurors will appear after processing failures to appear, summons that are unable to be delivered, and deferrals / excuses. Consider collecting statistics on juror yield, if not currently doing so, to determine the average number of jurors who appear and are willing to serve.
- Consider pooling jurors pursuant to N.C.G.S. § 9-5 to limit the number of venires that have to be summoned, as long as pooling does not increase the size of the pool required.
- Consider conducting juror orientation remotely to reduce the number of people in close proximity and to reduce the foot traffic to and within court facilities.
- If conducting juror orientation in person, do so with smaller groups of individuals at staggered times.
- Summon the jury pool to appear at staggered times to limit contact. Those selected to appear at staggered times should be randomly selected (e.g., if the space used for the jury assembly room has a maximum occupancy of 30 individuals and 80 jurors are summoned to report, then 30 jurors could report at 9:00 a.m., 30 jurors could report at 12:00 p.m., and the remaining 20 jurors could report at 2:30 p.m.).
- Consider using technology to notify jurors remotely when and where they should appear (e.g., if a trial settles at the last minute, the jury clerk would notify the jurors by telephone or other messaging medium that they are no longer needed, eliminating the need for the jurors to appear in-person).
  - A text notification system, similar to what the Judicial Branch currently uses for court date notification or the county uses for emergency notifications, could be used or texts could be sent via email.
- Prior to reporting, notify jurors of the amenities available and what is restricted / unavailable so they can plan accordingly (e.g., if access to a shared refrigerator is restricted, jurors may want to pack ice with their lunches).

- Provide clear information to jurors and potential jurors about the steps taken to prevent the spread of COVID-19. Communicate this information through jury summonses, websites, juror call-in messages, and courthouse [signage](#). See Appendix A for a sample frequently asked questions document that districts can tailor to match their needs and unique circumstances.
- Use disposable stickers / name tags that are issued and disposed of daily in lieu of reusable plastic juror badges.
- Require jurors to maintain [social distancing](#) and recommend that they wear [masks / face coverings](#) when appearing in person. Courts should plan to provide masks for jurors who do not have a mask or face covering.

## 2. Excusal, Deferral, and Failure to Appear (FTA) Policies

- The chief district court judge or his or her designee, pursuant to N.C.G.S. § 9-6(b), should consider revising the district's excuse or deferral policy. Recommended policies include:
  - Reducing the number of people who must appear in person to request an excuse or deferral by providing remote or telephonic request methods;
  - Considering deferrals of service before granting excuses;
  - Allowing more flexibility for excusing / deferring individuals who may not be able to serve, taking into account the [CDC guidance](#) regarding persons who are *high-risk* or who may live with or act as a caregiver for someone who is high-risk, and including this information in the jury summons;
  - Allowing more flexibility for excusing / deferring individuals who are at heightened risk of contracting COVID-19 and transmitting it to others, such as essential workers in the health or service industry or people who have recently traveled;
  - Relaxing show cause policies (e.g., if a person does not appear, resending the summons rather than issuing show cause); and / or
  - Offering an amnesty program after the COVID-19 pandemic has relaxed.

*Those at high-risk for severe illness from COVID-19 are:*

- [Older adults](#)
- People of all ages with certain [underlying medical conditions, particularly if not well controlled](#)

Source: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- These policies should be retained to ensure jurors represent a fair cross-section of the community and to address legal challenges that may be brought after the trial.
- Provide clear information with the jury summons regarding how to contact the court if a juror has safety concerns, such as a recent exposure to COVID-19, *up to and including the day of jury service*, to prevent a juror from appearing in-person who may have been recently exposed but is not within the court's deadline to request an excuse or deferral.

### 3. Jury Assembly

- The court should determine the maximum seating availability, applying [social distancing measures](#), and mark appropriate seating arrangements (i.e., “sit here” or “do not sit here” signage). In high-traffic areas like elevators or cashier counters, it is advisable to mark spacing six feet apart to enforce social distancing.
- Reengineer courtrooms to allow social distancing (e.g., remove the jury box and replace it with individual chairs, if possible).
- Encourage jurors to wear [masks / face coverings](#); provide masks when supply is available; consider requesting supply from the county.

*“We now know from recent studies that a significant portion of individuals with COVID-19 lack symptoms (‘asymptomatic’) and that even those who eventually develop symptoms (‘pre-symptomatic’) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms. In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

- Use additional courthouse space, if available, to space jurors apart for social distancing and summon small panels to the courtroom for voir dire.
- Avoid assembling large groups of people when possible. It is preferable to stagger groups throughout the day than to assemble everyone together in a large space. If this is not possible, determine if a large space exists in the community that could be used as the juror assembly room, such as a school auditorium or gymnasium, theater, convention center, or recreation center.
- Assembly areas should be frequently cleaned according to [CDC](#) and local health guidelines and recommendations.
- Limit the direct exchange of documents and other items with jurors (e.g., photo identification and parking vouchers).
- Provide hand sanitizer, tissues, and lined trash cans in all areas where jurors will convene.
- Restrict or remove shared amenities, such as books, magazines, microwaves, etc.
- Do not reuse pens / pencils without proper cleaning between use.

### Jury Selection and Trial

Additional safety precautions are necessary once the prospective jurors are in the courtroom for voir dire, impaneling, deliberation, and adjournment. The recommendations in this section may be used for grand jury proceedings as well. The focus during this phase should be on implementing the [hierarchy of controls](#) to minimize the potential for exposure to and spread of COVID-19.

As described earlier in this report, there is a continuum of risks associated with the spread of COVID-19 based on numerous factors. Due to the interplay of these factors, there is no specific time (e.g., 30

minutes or one hour) that people may safely assemble in the same room. To reduce the risks, individuals should take certain precautions such as [social distancing](#), washing hands often, avoiding close contact with others, disinfecting frequently touched surfaces, and wearing masks / face coverings. Removing a mask for a brief moment increases the risk of transmitting COVID-19 since COVID-19 [spreads](#) through droplets when people talk, cough, or sneeze. Masks / face coverings are also [advisable](#) because people raising their voices could increase the spread of COVID-19 due to the production and projection of droplets.

When considering whether attorneys, parties, and witnesses should be required to wear masks / face coverings in criminal trials, the rights of the defendant should be weighed against the health and safety of all individuals in the courtroom. Courts may consider requiring witnesses to wear masks while testifying, except in criminal trials, where the court should address confrontation clause issues with the parties pretrial. Courts may also consider the use of face masks with clear panels, such as [those used by individuals who are deaf or hard of hearing](#).

## 1. Convening Jurors and Others in a Courtroom / Enclosed Space

- Require that all attorneys are healthy and not symptomatic and, before coming to court, require that they report to the court if they are not healthy or are [symptomatic](#) so they can receive further direction.

*The CDC recommends that personnel entering the workplace “report symptoms, stay home, and follow CDC guidelines.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#more-changes>

- Because exposure risk increases with the amount of time spent in the courtroom, trials should be kept as short as possible. Jury trials held in half-day increments are not advisable as that may lengthen the overall duration of the trial and lead to more opportunities for jurors to contract COVID-19 and transmit it in the courthouse.
- NCDHHS strongly recommends that jurors wear masks / face coverings, even if they are seated six feet apart, especially if they are in a small enclosed space for several hours. [CDC guidance](#) is that people wear face coverings when around others, even when social distancing.
  - Allow for breaks throughout the day to permit jurors to remove their masks, perhaps by going outdoors. Jurors should maintain social distancing while outside and on breaks.
- Consider selecting more alternate jurors than normal in the event that a juror must self-quarantine due to close contact with a positive COVID-19 individual outside the courtroom.<sup>5</sup>
- Microphones should be cleaned between each use, after each user, and at the end of the day. Alcohol wipes may be used after each person uses the microphone.

<sup>5</sup> If a juror or other trial participant reports a COVID-19 positive test result, all people who were within six feet of that person should quarantine for 14 days. If the exposure occurred for many hours in a small courtroom with poor ventilation, all trial participants may need to be quarantined, even if social distancing was followed.

- Plexiglass partitions have been recommended for use in [retail](#) and [manufacturing](#) settings to aid in social distancing. Such partitions can be useful for designating one-way traffic in hallways or for brief encounters at cashier’s counters. At this point, however, NCDHHS advises that the effectiveness of plexiglass partitions is unclear in settings where people would share the same air for extended periods of time, such as a jury box or a small courtroom. While plexiglass partitions offer some protection against direct sneezes and coughs, air particles may be able to travel around them depending on how they are installed.

## 2. Voir Dire

- Direct prospective jurors to individual courtrooms rather than to a jury assembly room (online orientation will assist with this process).
- Conduct voir dire in stages with multiple groups to ensure safe distancing.
- When more than one panel of prospective jurors is needed, consider conducting multiple sessions of voir dire from small panels, striking jurors for cause, joining the panels, and then completing voir dire and peremptory challenges.
- Consider asking jurors to complete written pretrial questionnaires and submit them to the court electronically or by mail.
- Use [remote](#) technology, such as Webex, to conduct voir dire.
- Encourage counsel and the parties to stipulate to six-person juries in civil trials to reduce the number of people in the courtroom and the amount of time required for jury selection.
- Provide clear information to impaneled jurors regarding how to contact the court if the juror has new safety concerns, such as a [recent exposure](#) to COVID-19. (The juror should not appear in-person to report this information to the court.)
- Conduct bench conferences in chambers or another location close to the courtroom (e.g., an adjacent jury deliberation room that may now be too small to accommodate a jury panel) where safe social distancing may be practiced.
- Consider streaming or projecting the trial to other courtrooms, or online, to allow the public to view the trial while limiting physical contact. This will limit the number of people in the courtroom to those whose physical presence is necessary.
- If the space previously used as the jury deliberation room contains restrooms for jurors that are too small to accommodate jurors safely, consider reserving restrooms for jurors near the designated deliberation space to limit interaction between jurors and others in the restrooms.
- Courts should be cognizant that jurors may speak louder than usual due to social distancing and consider limiting nearby access to the jury deliberation space to prevent others from listening to deliberations.
- Provide hand sanitizer, tissues, and lined trash cans in the courtroom and jury deliberation room; provide sanitizing wipes in the jury deliberation room for cleaning shared objects.

*The CDC recommends practicing “routine cleaning of frequently touched surfaces.*

*High touch surfaces include: Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>



- Affirm jurors rather than having jurors swear on a religious text. Notify jurors that they must bring their own religious text if they wish to be sworn. Religious texts brought to the courthouse should not be shared with another juror.
- Seat jurors in cordoned-off sections of the courtroom gallery, when possible, to provide appropriate distancing as recommended by current CDC and local health guidelines and rearrange courtroom furniture accordingly.

### 3. Exhibits

- Utilize technology to manage and view exhibits, if possible (e.g., view on a screen in lieu of physical copies).
- Attorneys / parties should be required to prepare marked original exhibits to be used at trial as well as copies of exhibits for counsel, the judge, each witness, and the court reporter.
- Attorneys / parties should be required to provide copies, for each juror, of any exhibit they will seek to publish to eliminate the passing of a single exhibit between jurors.
- If it is not possible to provide multiple copies of a published exhibit for the jurors, jurors should sanitize their hands and don [gloves](#) prior to handling the exhibit; jurors should properly remove and dispose of gloves and sanitize hands after handling the exhibit.

*"Paper-based materials, such as books and loose-leaf paper, are not considered high-risk for COVID-19 transmission, and do not need additional cleaning or disinfection procedures."*

Source: <https://files.nc.gov/covid/documents/guidance/Strong-Schools-NC-Public-Health-Toolkit.pdf>

### 4. Notebooks and Pens / Pencils

- Encourage jurors to bring their own pencils / pens; if the court provides pencils / pens, they should be new or properly cleaned prior to a juror's use.
- If juror notebooks are used, the court should provide instructions regarding where the notebooks are to be left or how they will be safely gathered and stored to prevent cross-contamination during court recesses.
- Courts may wish to give each juror a poly / plastic folder that can be easily cleaned with a disinfecting wipe, into which the juror may deposit writing instruments and notebooks during court recesses.

## References and Resources

- [Coronavirus \(COVID-19\)](#) section of the CDC website
- [Coronavirus and the Courts](#) section of the National Center for State Courts website
- [StrongSchoolsNC Public Health Toolkit \(K-12\)](#) (NCDHHS June 8, 2020)
- [Interim Guidance for Restaurants](#) (NCDHHS May 22, 2020);
- [Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency](#) (Arizona June 1, 2020)

- [COVID-19 Continuity of Operations During a Public Health Emergency Workgroup Best Practice Recommendations](#) (Arizona May 1, 2020)

## CONCLUSIONS

North Carolina is the ninth most populous state in the nation. While the state has a unified court system, that system operates in 100 different counties with 100 different court cultures. Adapting that system to the current pandemic conditions is a challenge that none of us has had to meet before, and we must be patient with each other as we all seek to adjust the way we do business. Regardless of the specific steps taken in each county and district, the coming months will be a learning experience for all of us. While NCAOC and the Task Force recognize the stress of speedy forced change, we are hopeful that this experience will lead to new and exciting innovations in our system. Throughout the duration of this pandemic and beyond, we all must continually engage in self-evaluation and strive for ongoing improvement to the services we provide to the public. And, above all else, we must always do that in ways that are designed to protect the safety of the public and our most valuable resources, our Judicial Branch personnel.

## **APPENDIX A**

# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



### **Why are the courts summoning jurors when the virus is still going around and there is no cure?**

Jury service is one of the cornerstones of our system of justice, expressly provided for in the U.S. Constitution and North Carolina Constitution. The Court has an obligation to uphold the constitutional rights of the citizens of this state, which includes the right to a jury trial. We are making every effort to take the necessary steps to keep reporting jurors safe while still protecting the rights of individuals and providing meaningful access to the courts.

### **What safety precautions are being taken at the courthouse to protect jurors?**

Safety precautions may vary by courthouse / facility. Steps are being taken to clean facilities frequently according to CDC guidelines and to create an environment conducive to social distancing. Court staff is encouraged to wear masks and wash hands frequently. Some courthouses are taking temperatures and requiring the public to wear a cloth face covering. Plexiglass has been installed in some courthouses to serve as a barrier. The Chief Justice of the Supreme Court of North Carolina has directed that hand sanitizer be made available, at a minimum, at all entrances to court facilities. Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors.

Notices have been posted at the entrance to each court facility directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings. See the [Judicial Branch COVID-19 page](#) for more information and emergency directives. There may also be local city or county government orders in place that require face coverings.



# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



**I am considered a high-risk individual for COVID-19 and I have been summoned for jury service. Do I have to appear?**

Contact the [jury coordinator](#) in your county for juror excuse policy information.

**I live with a person / I am a caretaker for a person who is a high-risk individual for COVID-19 and I have been summoned for jury service. Do I have to appear?**

Contact the [jury coordinator](#) in your county for juror excuse policy information.

**Do I have to wear a mask at the courthouse?**

Some courthouses may require you to wear a mask or cloth face covering before being allowed to enter.

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings. There may also be local city or county government orders in place that require face coverings.

**Will a mask be provided if I do not have one?**

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings and the availability of masks if you appear without a mask.

**Do I need to bring my own hand sanitizer?**

The Chief Justice has directed that hand sanitizer be made available, at a minimum, at all entrances to court facilities. Please be aware security policies may prevent you from entering the courthouse if you have your own sanitizer. Please check with the [local facility](#) before appearing for court.

# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



**If I am selected, how will the jury pool be seated to ensure social distancing?**

Every effort will be made to practice social distancing in the jury pool and jury box. In addition to other protective measures, the Chief Justice has ordered that spaces where the public and jurors will congregate be marked at intervals of 6 feet to ensure social distancing.

Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors.

**If selected for a jury, will jurors be seated in a small room to deliberate?**

Every effort will be made to practice social distancing during jury trials and deliberations. The Chief Justice created a COVID-19 Task Force that has developed guidelines and best practices for the conduct of in-person court proceedings in compliance with current public health guidance. The Chief Justice also ordered that each court facility designate a COVID-19 Coordinator who is directed to determine whether there is adequate space in the court facility to convene a jury trial in keeping with current public health guidance.

In making this determination, the COVID-19 Coordinator will take into account the need for the jury to observe social distancing, as well as for jurors to be socially distanced in the courtroom and any deliberation room.

The COVID-19 Coordinator is encouraged to consult with the local public health director, or their designee, in making this determination where possible. Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors. If you have additional questions, check with the [local facility](#) before appearing for court.

# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



### How long will the trial last?

This will vary by the policies established by each county's COVID-19 Coordinator in collaboration with local court leadership. Courts have been encouraged to limit the trial duration and to prioritize less complex trials that will require less time to hear in order to shorten the time a juror must appear.

### How long will I be in court each day?

This will vary by the policies established by each county's COVID-19 Coordinator in collaboration with local court leadership.

### What should I do if I am experiencing COVID-19 symptoms prior to my jury service date?

Do not appear at the courthouse to report your symptoms. If you begin experiencing COVID-19 symptoms prior to your jury service date, please inform the [jury coordinator](#) in your county by phone.

### What should I do if I experience COVID-19 symptoms during my jury service?

If you begin experiencing COVID-19 symptoms during your period of jury service while at the court facility, please inform the nearest court employee (e.g., clerk, bailiff).

### What should I do if I have concerns about the safety measures in the courthouse or if I feel safety precautions are not being followed?

If at any time during your jury service you are concerned about your health or safety due to a lack of safety measures or because guidelines are not being followed (e.g., social distancing is not being practiced, there is no hand sanitizer at the courthouse entrance), please bring your concerns to the attention of the judge, the clerk, or the bailiff to be addressed.





**JULY 10, 2020 MEMO  
FROM THE 26<sup>TH</sup> JUDICIAL DISTRICT  
TRIAL COURT ADMINISTRATOR**





*State of North Carolina General Court of Justice*  
*26<sup>th</sup> Judicial District*

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W. ROBERT BELL  
SENIOR RESIDENT SUPERIOR COURT JUDGE  
ELIZABETH T. TROSCHE  
CHIEF DISTRICT COURT JUDGE  
CHARLESTON L. CARTER  
TRIAL COURT ADMINISTRATOR

**MEMORANDUM**

TO: Mecklenburg County Bar

FROM: Jessica C. Davis, Public Information Officer

DATE: July 10, 2020

SUBJECT: Mecklenburg County Efforts to Safely Resume Jury Trials

As we continue to evolve our operations during the COVID-19 pandemic, I want to share with you the Court's efforts to safely resume jury trials.

Since March 2020, our Judicial Branch has received numerous directives from North Carolina Supreme Court Chief Justice Cheri Beasley. These directives have served as a blueprint of statewide and local court operations. Emergency Directive 10, extended on June 20, 2020, states, "No jury trials shall be convened in the district or superior courts of this State for the next thirty (30) days."

In addition to directives, Chief Justice Beasley appointed a Judicial Branch COVID-19 Task Force and charged it with developing recommendations for future emergency directives, policy changes, and best practices to help courts across the state provide increased levels of service during the COVID-19 crisis. This task force held meetings in May and June, submitting reports and recommendations to the Chief Justice and the North Carolina Administrative Office of the Courts. The [Task Force's June 30, 2020 report](#) provided recommendations on best safety practices for jury management and jury trials. These recommendations were based on numerous resources, including but not limited to the Centers for Disease Control and Prevention, National Center for State Courts, and the North Carolina Department of Health and Human Services.

Mecklenburg County is not like other counties in this state. Our court volume coupled with the number of persons entering our courthouse each week pales in comparison to other jurisdictions and must be taken into consideration when making decisions that will impact court personnel, the judiciary and the community. Court Officials have worked with Mecklenburg County health officials to conduct a thorough assessment of our facilities and

court processes regarding safely resuming jury trials. Areas addressed included: juror summoning, entering the courthouse, jury assembly, courtrooms, deliberation rooms, and the grand jury room. The safety of the community, along with the need to ensure adequate ventilation, proper sanitation of court spaces, availability of PPE, and adherence to social distancing guidelines is the vanguard of our decisions regarding court operations and the resumption of jury trials.

While the trends in overall case counts provide an overview of the number of confirmed COVID-19 cases in the County, there are more specific key indicators that we must closely monitor when determining when to resume jury trials. First, the percent of individuals tested for COVID-19 who have positive results (percent positivity) is important to gauge the burden of the virus in the community. A persistently high or increasing percent positivity rate in the community would adversely impact our ability to resume jury trials. A second key indicator is the current capacity of hospitals to care for sick individuals (due to COVID-19 and non-COVID 19). Data that raises concern for hospital capacity is a key indicator of the continued need for continued restrictions regarding our court operations. A third indicator is the availability of court staff to open and operate courtrooms. Court staff are integral to the operation of our courts and the volatile impact of COVID-19 has proven to be an unpredictable factor when planning, scheduling, and staffing court operations.

To do our part in mitigating the spread of COVID-19, we continue to encourage staff to work remotely and limit their physical interactions with the public. As of July 5, 2020, Mecklenburg County has had 12,452<sup>1</sup> laboratory-confirmed cases of COVID-19 among county residents. The current percent positivity rate continues to increase. Additionally, there is a continued increase in the average number of individuals, with laboratory confirmed COVID-19 infection: hospitalized. These numbers indicate a high burden and risk of COVID-19 transmission in the community.

Based upon public health data, State and local recommendations, guidelines, and directives it is not recommended that we resume jury trials in Mecklenburg County in the immediate future. Local court officials will continue to work with state and county health and court officials to equip our facility and adapt our processes to safely resume jury trials when the circumstances make it safe to do so.

Jury trials will not resume in the month of August 2020, and we will keep the Bar updated with developments as they occur.

Thank you,



Jessica Davis  
Public Information Officer  
Trial Court Administrator's Office—26<sup>th</sup> Judicial District (Mecklenburg County, NC)

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<sup>1</sup> <https://www.mecknc.gov/news/Pages/Mecklenburg-County-COVID-19-Data-for-July-5.aspx>

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**Mecklenburg County Bar & Foundation Center**  
2850 Zebulon Avenue  
Charlotte, NC 28208

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# SECOND REPORT TO THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA

PREPARED BY  
JUDICIAL BRANCH COVID-19 TASK FORCE  
JUNE 30, 2020

# TABLE OF CONTENTS

	Page
<b>INTRODUCTION .....</b>	<b>3</b>
<b>RECOMMENDATIONS ON THE RESUMPTION OF JURY TRIALS .....</b>	<b>4</b>
<b>Stakeholder Concerns .....</b>	<b>5</b>
<b>Recommended Minimum Requirements for Resumption of Jury Trials .....</b>	<b>7</b>
<b>RECOMMENDATIONS ON BEST SAFETY PRACTICES FOR JURY MANAGEMENT AND JURY TRIALS.....</b>	<b>12</b>
<b>Before Jury Selection and Trial .....</b>	<b>12</b>
<b>Jury Selection and Trial.....</b>	<b>15</b>
<b>ADDITIONAL RECOMMENDATIONS ON TECHNOLOGY AND COURT INNOVATIONS.....</b>	<b>19</b>
<b>Select Immediate Recommendations .....</b>	<b>20</b>
<b>Intermediate Recommendations .....</b>	<b>21</b>
<b>Long-Term Recommendations .....</b>	<b>22</b>
<b>CONCLUSIONS .....</b>	<b>24</b>
 <b>Appendix A:</b> Additional Task Force Meeting Minutes	
<b>Appendix B:</b> Stakeholder Comments about the Resumption of Jury Trials	
<b>Appendix C:</b> National Center for State Courts COVID Poll PowerPoint	
<b>Appendix D:</b> Best Safety Practices for In-Person Court Proceedings	
<b>Appendix E:</b> Stacey Marz, Faster and as Satisfying: An Evaluation of Alaska’s Early Resolution Triage Program (Family Court Review Oct. 23, 2019)	

## **About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.

## **About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina’s unified court system operate more efficiently and effectively, taking into account each courthouse’s diverse needs, caseloads, and available resources.

# INTRODUCTION

On June 12, 2020, the Judicial Branch COVID-19 Task Force submitted its first interim report to The Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina. This second report is an addendum to that previously submitted report and covers the following additional recommendations that the Task Force developed during the second part of June 2020:

1. Recommendations on the resumption of civil and criminal jury trials;
2. Recommendations on best safety practices for civil and criminal jury trials; and
3. Additional intermediate and long-term recommendations on technology and court innovations.

The Chief Justice’s Judicial Branch COVID-19 Task Force is comprised of the following members:

- The Honorable F. Donald Bridges, Co-Chair, District 27B Senior Resident Superior Court Judge
- The Honorable Jay Corpening, Co-Chair, District 5 Chief District Court Judge
- The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge
- The Honorable Teresa Vincent, District 18 Chief District Court Judge
- The Honorable Billy West, District 14 District Attorney
- The Honorable Robert Evans, District 8 District Attorney
- The Honorable Marsha Johnson, Harnett County Clerk of Superior Court
- The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court
- Kinsley Craig, District 27B Trial Court Coordinator
- Kellie Myers, District 10 Trial Court Administrator
- The Honorable Jason Cheek, Davidson County Magistrate
- The Honorable Jennifer Harjo, New Hanover County Public Defender
- John McCabe, Attorney and Appointee of the North Carolina Advocates for Justice (NCAJ)
- Wade Harrison, Attorney and Appointee of the North Carolina Bar Association (NCBA)
- Patrick Weede, Attorney and Appointee of the NCBA
- JD Keister, Attorney and Appointee of the North Carolina Association of Defense Attorneys (NCADA)

Please see the Task Force’s June 12, 2020 report for a full description of the Task Force’s three working groups—the Best Safety Practices Working Group, the Technology and Innovations Working Group, and the Virus Fatigue Working Group—as well as the members of and staff to those working groups.

# RECOMMENDATIONS ON THE RESUMPTION OF JURY TRIALS

Jury trials constitute a cornerstone of the American justice system, both in civil and criminal courts, and a substantial number of civil and criminal cases cannot be resolved without the decision of a jury. Experience tells us that jurors help facilitate case dispositions, sometimes simply by being available. The effectiveness and fairness of the courts depend, in large measure, upon the availability and willingness of citizens to serve on juries. Throughout the duration of this pandemic, local court officials must find new ways to conduct jury trials that are as safe as practicable for all participants and that overcome the reluctance of many potential jurors to enter a public building and serve on a jury during a pandemic.

In light of the need to protect the public, jurors, and court personnel while safeguarding the fundamental rights of all parties, the resumption of jury trials presents one of the most daunting challenges in the expansion of court proceedings during recovery from the COVID-19 pandemic. Traditionally, jury trials have involved the gathering of large numbers of people—including potential jurors, courthouse personnel, attorneys, clients, witnesses, court reporters, bailiffs, and observers—in relatively small courtrooms. Jury service typically requires close physical proximity with other jurors, beginning in a jury assembly room, then in a courtroom gallery, followed by placement in a jury box, and concluding with deliberations in a small jury room.

The Task Force, comprised of various stakeholders in the judicial process, believes it is important to provide clarity and predictability, to the extent possible, with respect to the resumption of jury trials in our state courts. However, as the Task Force’s prior report noted, there is no “one size fits all” approach with respect to North Carolina’s 100 counties. Thus, the balancing of these complex concerns and considerations in individual cases must be left to the reasoned judgment of the presiding judicial officials.

Local officials should be mindful of the concerns of all stakeholders as their districts ramp up court operations, including the conduct of jury trials in both civil and criminal cases. The transition back to full operations may vary by the type and complexity of caseloads and by local issues such as the prevalence of the virus in any given county and the availability of appropriate facilities, but there must be a paramount concern for the safety of all participants. Like all other court proceedings, local judicial officials should attempt to scale back gradually toward the full resumption of jury trials.

The Task Force recommends that complex lengthy trials not be chosen as the first jury trials immediately after the Chief Justice’s orders allow them. Instead, it suggests that local officials begin with shorter and less demanding jury trials, such as simple civil trials and lower-level felonies, while new protective measures are being perfected. Moreover, presiding judges should not force parties to proceed to trial if they are unprepared due to the pandemic, and should be sensitive to the potential need for additional delays to allow for adequate trial preparation by all parties.

## Stakeholder Concerns

The complexities and the challenging nature of managing jury trials in this environment are illustrated by the comments and concerns that were expressed by the various stakeholders on the COVID-19 Task Force, some of which are shared across groups and some of which are in conflict with each other. The written comments about jury trials that various Task Force members submitted are attached to this report in Appendix B. A summary of the written and verbal comments follows:

1. **Judges** expressed concerns about the limitations of court facilities, including the fact that many North Carolina courthouses only have one or two courtrooms. There are significant challenges inherent in scheduling trials that accommodate social distancing, and judges expect there to be competition for limited courtroom spaces in the coming months as all court operations expand, not just jury trials. Judges also expressed concerns about management issues in safely summoning, orienting, and monitoring potential jurors and seated jurors, including the impact that trials will have on overall traffic in court facilities. Finally, judges expressed concerns over maintaining appropriate safety practices within courtrooms without creating an atmosphere that could operate to prejudice any party.
2. The **civil and family law bars** expressed a readiness to resume trials by early August in order to move their cases, as long as it can be done safely, but they requested as much advance notice as possible upon calendaring so they can coordinate scheduling and complete trial preparations. In order to accommodate social distancing concerns, the civil bar expressed a general willingness to consider consenting to six-person jury trials or bench trials in appropriate cases, as well as a reduction in the number of peremptory challenges.
3. The **district attorneys** expressed a similar desire to resume calendaring criminal trials by early August, coupled with local control over when and how trials in individual cases resume after that date. They expressed concerns that criminal defendants have both statutory and constitutional rights that could be impacted by an extended delay in jury trials across North Carolina. The district attorneys were especially concerned about defendants who are incarcerated. While the district attorneys agree that criminal defendants can waive certain rights, they noted that it is the individual defendant who must make that decision. For that reason, along with differences in facilities, resources, and health concerns throughout the state, the district attorneys expressed a belief that any emergency directives from the Chief Justice should set guidelines but allow local court officials to prioritize cases selected for trial. They noted that numerous other states are following such a localized approach. The district attorneys expressed concerns that each case is unique and that any decision to separate when jury trials can begin based on class of offense could prompt constitutional challenges. Finally, the district attorneys expressed concerns that victims of crime have constitutional rights and a strong interest in having their cases heard in a timely and efficient manner.
4. The **private criminal defense bar and public defenders** expressed a number of concerns about the resumption of jury trials, including:
  - The impact of the pandemic on their ability to meet safely with in-custody clients to review discovery and to conduct substantive discussions about case preparation;

- The increased difficulty in locating and interviewing witnesses and gathering other information to prepare a defense during the “Stay-at-Home” and “Safer-at-Home” phases;
  - The impact that the pandemic has had on the ability of investigators, mitigation specialists, and experts to perform their work in the field;
  - Concerns about their ability to protect their clients’ constitutional rights to confrontation and cross examination if witnesses and jurors wear masks in a courtroom, as well as concerns about ensuring the accuracy of trial transcripts if witnesses testify wearing masks;
  - Concerns about having the ability to communicate confidentially with their clients during trials, especially under arrangements that include social distancing or plexiglass barriers;
  - Concerns that social distancing practices resulting in a reconfiguration of jury seating might impede their opportunity to view jurors during trial;
  - Concerns about the dehumanizing impact of physical separations between them and their clients, as well as the potential negative inferences that jurors might draw from those physical separations;
  - Concerns about the ability to select a jury that is fully representative of the community given that more prospective jurors will likely seek deferrals; and
  - Opposition to a resumption of criminal jury trials without the consent of both the state and the defendant prior to September 21, 2020, and opposition to the resumption of any capital or non-capital first-degree murder trials prior to November 30, 2020.
5. **Clerks** expressed concerns about managing large numbers of jurors when they return to the courthouse, including the logistics of handling juror orientations and reporting. Clerks agreed that jurors should report in staggered intervals, but they recognized that this process will require more attention and planning. Because of these additional steps, the clerks asked that judges and attorneys carefully screen cases to ensure that cases calendared for jury sessions will actually require a jury for determination. Clerks also noted the need for generous deferral policies and second noticing for potential jurors who do not appear. Finally, clerks stressed the importance of messaging to the public concerning measures that are being taken to keep people safe, including the necessity of accuracy in that messaging.
  6. **Court managers** expressed concerns about the potential impact that holding jury trials under current conditions may have on future appeals and motions for appropriate relief, as well as the safety of court reporters who often sit in close proximity to testifying witnesses.
  7. **All stakeholders** expressed concerns about safety and the availability of appropriate personal protective equipment, particularly for high-risk participants and their families.

In addition to these stakeholder concerns, see Appendix C for the results of a June 2020 national public opinion poll of 1,000 registered voters, with many of the questions addressing citizens’ attitudes toward jury service during the pandemic.

All of these concerns and perspectives should be taken into consideration by judicial officials as they plan for resuming trials in their districts. For criminal jury trials in particular, judges should be mindful of the handicaps that criminal practitioners have been and will continue to operate under during this pandemic, including the limitations on their ability to meet with their clients; the need for confidential



communications with clients and witnesses during trial; the importance of being able to view the facial expressions of witnesses during testimony; and the possibility that certain courtroom arrangements could prompt prejudicial inferences about their clients.

## **Recommended Minimum Requirements for Resumption of Jury Trials**

Pursuant to the Chief Justice's [Emergency Directive 16](#), and in an effort to balance all of these considerations, the Task Force recommends the following minimum requirements for the resumption of jury trials in the trial courts of North Carolina:

1. The Chief Justice should order, in an upcoming emergency directive, a specified date as the earliest date on which civil and criminal jury trials will be permitted to resume in the trial courts of North Carolina, based on the rule of law, the fundamental constitutional and statutory rights afforded to criminal defendants and victims, and her assessment of current statewide health data, subject to any prerequisites that the Chief Justice deems appropriate, including the submission of any operations plans from local districts.
2. In preparation for that directive, every senior resident superior court judge should, in consultation with other local court officials—including the COVID-19 coordinator, chief district court judge, clerk of superior court, district attorney, chief public defender (or one or more members of the local criminal defense bar in non-public defender districts), trial court administrator or coordinator, and a local civil attorney—craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for district court is warranted, the chief district court judge should, in consultation with other local court officials—including the COVID-19 coordinator, clerk of superior court, trial court administrator or coordinator, family court administrator, and one or more members of the civil and domestic bar—craft a plan for the resumption of district court jury trials in his or her judicial district.
3. These plans should be crafted well in advance of the anticipated date of the first jury trial due to the lead time required to generate names for a jury pool and to issue jury summons. Communication and cooperation among local officials are imperative, not only with respect to the management of jury trials, but also with respect to the coordination of the use of court facility space needed for jury management and its effect on the operations of other courts within the same facility. Before proceeding with the scheduling of jury trials, the senior resident superior court judge and chief district court judge must be able to confirm to the Chief Justice that they have done the following:
  - a. Reviewed all of the Chief Justice's Emergency Directives pertaining to COVID-19 and the recommendations of this Task Force; and
  - b. Considered input from the stakeholders described above, as well as local public health officials, and concluded that it is reasonable for the district to proceed with jury trials under a local plan or plans crafted by those judges, which follow all appropriate standards for the health and safety of all participants, including any specific guidelines as may be provided by the Chief Justice.

Depending on local health conditions, the senior resident superior court judge and / or chief district court judge may exercise discretion to delay resumption or to suspend operation of jury trials in the interest of local health and safety.

4. This Task Force does not consider remote jury trials to be a feasible option in North Carolina at this time. Hence, it is assumed that all jury trials will operate as “In-Person Court Proceedings” subject to the recommended best safety practices for such proceedings that were set forth in the Task Force’s June 12, 2020 report to the Chief Justice. See Appendix D. Additional best safety practices for jury trials are set forth in the next section of this report. However, the Task Force does believe that some of the processes leading up to the impaneling of the jury—such as juror orientation, prescreening for deferrals and excuses, strikes for cause based on written juror questionnaires, and other aspects of jury management—could be handled by remote means.
5. In planning for the resumption of jury trials, every senior resident superior court judge and chief district court judge (or their designees) should meet with the clerk of superior court (or designated jury coordinator) in each county in their district to address the summoning and management of jurors during the period of required social distancing. The senior resident and chief district court judge (or designee) and clerk (or designee) should give careful consideration to special issues relating to jury management during upcoming months, including, for example:
  - a. Determining the number of jurors to summon for sessions of court, taking into consideration reasonable projections for attendance and deferral requests in light of the pandemic;
  - b. Assessing the feasibility and details of arranging for jurors to report in staggered groups (e.g., 25 to 40 in the morning and a similar number in the afternoon);
  - c. Providing arrangements for online or staggered orientation sessions for each group of potential jurors as they report;
  - d. Establishing criteria for addressing deferral requests based on COVID-19 concerns; the Task Force encourages the chief district court judges to review their district’s excuse policy under N.C.G.S. § 9-6(b) and to expand it to allow for deferrals and excuses to be heard remotely and for more leeway for deferring / excusing jurors who are in a high-risk group (as defined by [Centers for Disease Control and Prevention \(CDC\) guidelines](#));
  - e. Including a printed message with each jury summons that is also posted online, advising potential jurors of the safety precautions that have been undertaken to protect their health and safety while serving;
  - f. Conducting a safety “walk-through” with the clerk in each county (as well as designees from the sheriff’s office and local health department) in his or her district, viewing where jurors will go from the time they enter the courthouse until they leave at the end of their service, including jury assembly, jury orientation, waiting before and after selection, entrances to and exits from the courtroom, break rooms, deliberation rooms, and other areas;
  - g. Determining whether current jury assembly rooms and jury deliberation rooms are sufficiently large to provide appropriate spacing for social distancing in each room; if so, use tape or markings to indicate where seating is allowed; if not, identify other rooms to be used for jury assembly and jury deliberation (including the possible use of the trial courtroom, another available courtroom, or other room in an alternate local facility);
  - h. Developing a waiting plan for seated jurors, using an appropriate waiting room or a call back system to free up space in the courtroom during the remaining jury selection, if needed;
  - i. Determining whether each courtroom needs plexiglass shields at counsel tables, the witness stand, and / or the work stations of the courtroom clerk and court reporter;

- j. Considering the possible need for cautionary jury instructions that may be appropriate with respect to obvious shields that have been placed in the courtroom in order to avoid prejudicial inferences by jurors, upon request; and
  - k. Preparing to deal with trial issues that create potential complications due to social distancing, including, for example, the handling of requests for bench conferences.
6. Pursuant to the Chief Justice's [Emergency Directive 16](#), each COVID-19 coordinator is directed to determine whether there is adequate space in the court facility to convene a jury trial in keeping with current public health guidance. In making this determination, the COVID-19 coordinator should take into account the need for the venire to observe social distancing, as well as for jurors to be socially distanced in the courtroom and any deliberation room. The COVID-19 coordinator is encouraged to consult with the local public health director, or his or her designee, in making this determination where possible.

If local court facilities are determined to be inadequate to convene socially distanced jury trials, the senior resident superior court judge is directed to identify, no later than July 1, 2020, other appropriate facilities where trials may be safely convened beginning in August and continuing during the pendency of this emergency.

If the alternate facility is located outside the county seat, information about the alternate proposed facility shall, pursuant to N.C.G.S. §§ 7A-42(i) and 7A-130, be [submitted to the North Carolina Administrative Office of the Courts \(NCAOC\) for approval](#) and, in the case of the superior court division, to the Chief Justice for approval as well.

7. Upon identifying facilities for use in conducting jury trials with appropriate social distancing, whether in the courthouse or elsewhere, each senior resident superior court judge and chief district court judge should craft and adopt a set of local rules or administrative orders that govern how to conduct jury trials under conditions that necessitate social distancing in superior and district court, respectively. These rules should be drafted in a manner that will address at least the following concerns for all jury trials conducted while social distancing is recommended, whether the trial is held in a courtroom or an alternate facility:
- a. The manner in which failures to appear and requested deferrals will be handled; local rules are encouraged to provide for lenient failure to appear policies and the liberal granting of deferrals during the pandemic, with appropriate consideration of the impact this may have on fair cross-section challenges and the diversity of seated juries;
  - b. Accommodate bench trials and jury trials with less than 12 jurors with the consent of the parties to better allow for social distancing; in criminal cases, there must be strict compliance with N.C.G.S. § 15A-1201;
  - c. Any room to which jurors or potential jurors are directed should be sufficiently large to accommodate social distancing for that number of persons, and seating arrangements for jurors and other participants in the jury trial should be clearly marked to so provide while also allowing the parties and their attorneys to observe jurors during the trial;
  - d. The maximum number of people who will be allowed in the courtroom at one time;
  - e. The manner and scheduled sequences in which jurors will be required to report to the court facility and courtroom, such as staggered reporting times and the number of jurors in each reporting group;

- f. The designation of the area in which jurors will be directed to wait before being brought into the courtroom;
  - g. The maximum number of potential jurors that will be summoned into the court facility at one time and the maximum number of potential jurors that will be directed into the courtroom at one time, considering necessary social distancing requirements;
  - h. The manner in which jury orientation(s) will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require jury orientation(s) to be conducted in staggered increments or remotely);
  - i. The manner in which voir dire of prospective jurors will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require voir dire to be conducted in staggered increments or remotely, in part);
  - j. Any restrictions on attorneys, witnesses, or other trial participants concerning approaching the bench, approaching a witness, or movement within the courtroom that will be required to maintain social distancing, such as:
    - i. Counsel should remain seated at counsel table during witness and juror examination; and / or
    - ii. When standing to present opening statements and closing arguments, counsel shall remain six feet from all other persons in the courtroom.
  - k. Any requirements for the introduction and handling of exhibits in the courtroom (e.g., requiring that all exhibits be presented to the jury electronically rather than passing exhibits among the jurors);
  - l. The optional use of podiums by attorneys for opening statements and closing arguments;
  - m. Any modifications to traditional or local customs concerning jury selection, including the potential use of written jury questionnaire(s);
  - n. Any special instructions to provide for the ability of attorneys to consult privately and confidentially with their clients during the trial, particularly in criminal cases, while maintaining social distancing or with other appropriate safeguards in place (e.g., plexiglass partitions); and
  - o. Review of any changes to the courtroom layout, being mindful of the importance of all participants being able to observe the facial expressions of the witnesses, jurors, and defendant, particularly in criminal cases.
8. Jury deliberations should take place in a room of sufficient size to allow for proper social distancing among all jurors. It may be necessary to use the actual courtroom or another courtroom as a jury deliberation room. If so, the presiding judge should enter appropriate orders concerning the privacy of jury deliberations and station bailiffs appropriately to enforce those orders.
  9. Each presiding judge should be mindful and considerate of the anxiety of potential jurors who are kept waiting. Every effort should be made to begin jury trials promptly at the time designated. If unexpected delays are encountered, jurors should be allowed to leave the court facility and return at a designated time, rather than being kept waiting in a jury assembly room.
  10. On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, and upon confirmation of readiness after consultation with the clerk of superior court and

the COVID-19 coordinator, civil jury trials may be calendared in district and superior court in consultation with the COVID-19 coordinator.

11. On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, criminal jury trials may be calendared for trial, subject to the following recommendations:
  - a. The Task Force recognizes that authority for the calendaring of criminal cases lies with the district attorneys pursuant to N.C.G.S. § 7A-49.4. However, during the first 90 days after the Chief Justice's orders allow for the resumption of jury trials, the Task Force recommends that criminal cases selected for trial be prioritized by the senior resident superior court judge in consultation with the elected district attorney, the chief public defender (or a senior member of the criminal defense bar in non-public defender districts), and the COVID-19 coordinator.
  - b. In conducting the prioritization of criminal trials as described above, the Task Force recommends that the senior resident superior court judge give careful consideration to at least the following factors:
    - i. The extent to which a jury trial of the case can be conducted with safety for the health of all participants;
    - ii. The readiness of the case for trial, as determined by counsel for each party;
    - iii. The age of the case;
    - iv. Whether or not the defendant remains in custody pending trial;
    - v. The complexity, number of parties, and expected length of the trial; and
    - vi. The consent, or lack thereof, of the defendant and defense counsel to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from protective measures taken during the court proceeding.
12. It is further recommended that the first jury trials set for hearing should be civil cases, lower-level felonies (e.g., Class H or I), or misdemeanor appeals that are expected to take less than one week to try. In addition, it is recommended that no complex civil case, high-level felony case (e.g., Class B2 or higher, absent consent of the parties), or any case expected to require multiple weeks for trial be calendared within the first 90 days after the date specified by the Chief Justice for the resumption of jury trials.<sup>1</sup>

<sup>1</sup> With the exception of recommendation number 12, the Task Force unanimously approved these recommendations with respect to the resumption of jury trials. District Attorney Billy West and District Attorney Robert Evans voted to approve the recommendations generally as reflective of the best safety practices that are currently available to facilitate the resumption of jury trials. They objected to the inclusion of recommendation number 12 and similar language that they believe represents an unnecessary intrusion on the district attorneys' statutory authority under N.C.G.S. § 7A-49.4. They believe that a one-size-fits-all standard of what cases can be tried and when fails to allow for variations in facilities and resources among districts and that these decisions are best left to local authorities.

Therefore, Task Force members West and Evans suggested the following alternative language for recommendation number 12: "It is further recommended that the first jury trials set for hearing should be shorter and less demanding jury trials that are expected to take less than one week to try. In addition, it is recommended that no

13. Each presiding judge should be mindful of the importance of communication to potential jurors concerning safety precautions that have been taken so that they will be comfortable with the idea of jury service. The Task Force recommends that a letter from the presiding judge be included with each jury summons, advising potential jurors of the precautions that are being taken to provide for their health and safety during jury service, reminding them of the importance of jury service, and informing each juror that they have an opportunity to request a deferral of service by making that request in advance by telephone. It is suggested that requests for deferral be made in advance of the court date, but that a method also be provided for jurors to communicate changes in their status up until their reporting date, especially with respect to health concerns.
14. It is imperative that judges be mindful of and follow the recommended best safety practices for jury management and jury trials that are itemized in this report, and they should be familiar with all safeguards and precautions that have been undertaken to provide a safe space for jurors. As part of their orientation, judges should include mention of these safeguards in written and oral communications to jurors. The jury clerk should also have a list of these safeguards in order to address telephone inquiries from prospective jurors.

## RECOMMENDATIONS ON BEST SAFETY PRACTICES FOR JURY MANAGEMENT AND JURY TRIALS<sup>2</sup>

### Before Jury Selection and Trial

The first step in resuming jury trials and grand jury proceedings involves the summoning of a pool of prospective jurors from which to select juries. The focus in this stage is to disperse and reduce the number of individuals who appear in-person for jury service.

#### 1. Juror Reporting Practices

- Judicial officials should anticipate lower jury yields. Assume that half of summoned jurors will appear after processing failures to appear, summons that are unable to be delivered, and deferrals / excuses.
  - Begin collecting statistics on juror yield, if not currently doing so, to determine the average number of jurors who appear and are willing to serve.

complex civil case, or any criminal case expected to require multiple weeks for trial, be calendared within the first 90 days after the date specified by the Chief Justice for the resumption of jury trials.”

<sup>2</sup> The recommendations in this section are based on a number of different sources. See, e.g., [Coronavirus \(COVID-19\)](#) section of the Centers for Disease Control and Prevention website; [Coronavirus and the Courts](#) section of the National Center for State Courts website; North Carolina Department of Health and Human Services’ [StrongSchoolsNC Public Health Toolkit \(K-12\)](#) (June 8, 2020); North Carolina Department of Health and Human Services’ [Interim Guidance for Restaurants](#) (May 22, 2020); Arizona [Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency](#) (June 1, 2020); and Arizona [COVID-19 Continuity of Operations During a Public Health Emergency Workgroup Best Practice Recommendations](#) (May 1, 2020).

- Consider pooling jurors pursuant to N.C.G.S. § 9-5 to limit the number of venires that have to be summoned, as long as pooling does not increase the size of the pool required.
- Consider conducting juror orientation remotely to reduce the number of people in close proximity and to reduce the foot traffic to and within court facilities. (NCAOC should consider setting up an online verification form for jurors to complete to indicate they have read the handbook and viewed the orientation video.)
- If conducting juror orientation in person, do so with smaller groups of individuals at staggered times.
- Summon the jury pool to appear at staggered times to limit contact. Those selected to appear at staggered times should be randomly selected (e.g., if the space used for the jury assembly room has a maximum occupancy of 30 individuals and 80 jurors are summoned to report, then 30 jurors could report at 9:00 a.m., 30 jurors could report at 12:00 p.m., and the remaining 20 jurors could report at 2:30 p.m.).
- Consider using technology to notify jurors remotely when and where they should appear (e.g., if a trial settles at the last minute, the jury clerk would notify the jurors by telephone or other messaging medium that they are no longer needed, eliminating the need for the jurors to appear in-person).
  - A text notification system, similar to what the Judicial Branch currently uses for court date notification or the county uses for emergency notifications, could be used or texts could be sent via email.
- Prior to reporting, notify jurors of the amenities available and what is restricted / unavailable so they can plan accordingly (e.g., if access to a shared refrigerator is restricted, jurors may want to pack ice with their lunches).
- Provide clear information to jurors and potential jurors about the steps taken to prevent the spread of COVID-19. Communicate this information through jury summonses, websites, juror call-in messages, and courthouse [signage](#).
- Use disposable stickers / name tags that are issued and disposed of daily in lieu of reusable plastic juror badges.
- Require jurors to maintain [social distancing](#) and recommend that they wear [masks / face coverings](#) when appearing in person. Courts should plan to provide masks for jurors who do not have a mask or face covering.
  - In cases where lip-reading or mood assessment of jurors may be useful, the court may also consider the use of face masks with clear panels, such as [those used by individuals who are deaf or hard of hearing](#).

## 2. Excusal, Deferral, and Failure to Appear (FTA) Policies

- These policies should be retained to ensure jurors represent a fair cross-section of the community and to address legal challenges that may be posed after the trial.
- The chief district court judge or his or her designee, pursuant to N.C.G.S. § 9-6(b), should consider revising the district's excusal or deferral policy. Recommended policies include:
  - Reducing the number of people who must appear in-person to request an excusal or deferral by providing remote or telephonic request methods;
  - Considering deferrals of service before granting excuses;

- Allowing more flexibility for excusing / deferring individuals who may not be able to serve, taking into account the [CDC guidance](#) regarding persons who are *high-risk* or who may live with or act as a caregiver for someone who is high-risk, and including this information in the jury summons;
- Allowing more flexibility for excusing / deferring individuals who are at heightened risk of contracting COVID-19 and transmitting it to others, such as essential workers in the health or service industry or people who have recently traveled;
- Relaxing show cause policies (e.g., if a person does not appear, resending the summons rather than issuing show cause); and / or
- Offering an amnesty program after the COVID-19 pandemic has relaxed.

*Those at high-risk for severe illness from COVID-19 are:*

- [Older adults](#)
- *People of all ages with certain [underlying medical conditions](#), particularly if not well controlled*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- Provide clear information with the jury summons regarding how to contact the court if a juror has safety concerns, such as a recent exposure to COVID-19, *up to and including the day of jury service*, to prevent a juror from appearing in-person who may have been recently exposed but is not within the court's deadline to request an excuse or deferral.

### 3. Jury Assembly

- The court should determine the maximum seating availability, applying [social distancing measures](#), and mark appropriate seating arrangements (i.e., "sit here" or "don't sit here" signage). In high-traffic areas like elevators or cashier counters, it is advisable to mark spacing six feet apart to enforce social distancing.
- Reengineer courtrooms to allow social distancing (e.g., remove the jury box and replace it with individual chairs, if possible).
- Encourage jurors to wear [masks / face coverings](#); provide masks when supply is available; consider requesting supply from the county.

*"We now know from recent studies that a significant portion of individuals with COVID-19 lack symptoms ('asymptomatic') and that even those who eventually develop symptoms ('pre-symptomatic') can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms. In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission."*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>



- Use additional courthouse space, if available, to space jurors apart for social distancing and summon small panels to the courtroom for voir dire.
- Avoid assembling large groups of people when possible. It is preferable to stagger groups throughout the day than to assemble everyone together in a large space. If this is not possible, determine if a large space exists in the community that could be used as the juror assembly room, such as a school auditorium or gymnasium, theater, convention center, or recreation center.
- Assembly areas should be frequently cleaned according to [CDC](#) and local health guidelines and recommendations.
- Limit the direct exchange of documents and other items with jurors (e.g., photo identification and parking vouchers).
- Provide hand sanitizer, tissues, and lined trash cans in all areas where jurors will convene.
- Restrict or remove shared amenities, such as books, magazines, microwaves, etc.
- Do not reuse pens / pencils without proper cleaning between use.

## Jury Selection and Trial

This step occurs once the prospective jurors are in the courtroom for voir dire, impaneling, deliberation, and adjournment. The recommendations in this section may be used for grand jury proceedings as well. The focus during this phase should be on implementing the [hierarchy of controls](#) to minimize the potential for exposure to and spread of COVID-19.

There is a continuum of risks associated with the spread of COVID-19. Risk can be assessed based on the number of people, the size of a space, and the airflow over time. Due to the complexities of these factors, there is no specific time (e.g., 30 minutes or one hour) that people may safely assemble in the same room. To reduce the risks, individuals should take certain actions such as [social distancing](#), washing hands often, avoiding close contact with others, disinfecting frequently touched surfaces, and wearing masks / face coverings. Removing a mask for a brief moment increases the risk of transmitting COVID-19 since COVID-19 [spreads](#) through droplets when people talk, cough, or sneeze. Masks / face coverings are also [advisable](#) because, when people raise their voice, this could increase the spread of COVID-19 due to the production and projection of droplets.

When considering whether attorneys, parties, and witnesses should be required to wear masks / face coverings in criminal trials, the rights of the defendant should be weighed against the health and safety of all individuals in the courtroom. Courts may consider requiring witnesses to wear masks while testifying, except in criminal trials, where the court should address confrontation clause issues with the parties pretrial. Courts may also consider the use of face masks with clear panels, such as [those used by individuals who are deaf or hard of hearing](#).

### 1. Convening Jurors and Others in a Courtroom / Enclosed Space

- Require that all attorneys are healthy and not symptomatic and, before coming to court, require that they report to the court if they are not healthy or are [symptomatic](#) so they can receive further direction.

*The CDC recommends that personnel entering the workplace “report symptoms, stay home, and follow CDC guidelines.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#more-changes>

- The exposure risk increases with the amount of time spent in the courtroom. The North Carolina Department of Health and Human Services (NCDHHS) advises that no special precautions need to be put in place for trials expected to last longer than a week beyond those suggested herein; however, the duration of the trial should be kept as short as possible. Jury trials held in half-day increments are not advisable as that may lengthen the overall duration of the trial and lead to more opportunities for jurors to contract COVID-19 and transmit it in the courthouse.
- NCDHHS strongly recommends that jurors wear masks / face coverings, even if they are seated six feet apart, especially if they are in a small enclosed space for several hours. [CDC guidance](#) is that people wear face coverings when around others, even when social distancing.
  - Allow for breaks throughout the day to permit jurors to remove their masks, perhaps by going outdoors. While there is no CDC guidance stating that masks should be removed at certain intervals, it could make jurors more comfortable. However, jurors should maintain social distancing while outside and on breaks.
  - Mask clips may be used to make mask use more comfortable for those who must constantly wear face coverings.
- Consider selecting more alternate jurors than normal in the event that a juror must self-quarantine due to close contact with a positive COVID-19 individual outside the courtroom.
  - If a juror or other trial participant reports a COVID-19 positive test result, contact tracing would need to be initiated. In general, all people who were within six feet of someone who was COVID-19 positive need to be quarantined for 14 days. However, if the exposure occurred for many hours in a small courtroom with poor ventilation, all trial participants may need to be quarantined, even if social distancing was followed.
  - The local health department may need to notify the court that a trial participant is COVID-positive. The court may consider creating a list of contacts and sending that list to the local health department that can perform the notification. However, the court should keep in mind that, pursuant to N.C.G.S. § 9-4(b), public access to juror information shall be limited to the alphabetized list of names. Additional information, including addresses of prospective jurors, is confidential and not subject to disclosure without an order of the court.
- Microphones should be cleaned between each use, after each user, and at the end of the day. Alcohol wipes may be used after each person uses the microphone.

*“Current evidence, though still preliminary, suggests that SARS-CoV-2, the virus that causes COVID-19, may remain viable for hours to days on surfaces made from a variety of materials. It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.*

*If machinery or equipment [is] thought to be contaminated and can be cleaned, follow the CDC [cleaning and disinfection recommendations](#). First clean dirty surfaces with soap and water. Second, disinfect surfaces*

using [products that meet EPA's criteria for use against SARS-Cov-2](#) and are appropriate for the surface. If machinery or equipment [is] thought to be contaminated and cannot be cleaned, [it] can be isolated. Isolate papers or any soft (porous) surfaces for a minimum of 24 hours before handling. After 24 hours, remove soft materials from the area and clean the hard (non-porous) surfaces per the cleaning and disinfection recommendations. Isolate hard (non-porous) surfaces that cannot be cleaned and disinfected for a minimum of 7 days before handling.”

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

- Plexiglass partitions have been recommended for use in [retail](#) and [manufacturing](#) settings to aid in social distancing. Such partitions can be useful for designating one-way traffic in hallways or for brief encounters at cashier's counters. At this point, NCDHHS advises that there is no evidence on the effectiveness of plexiglass partitions in settings where people would share the same air for extended periods of time, such as a jury box or a small courtroom.

## 2. Voir Dire

- Direct prospective jurors to individual courtrooms rather than to a jury assembly room (online orientation will assist with this process).
- Conduct voir dire in stages with multiple groups to ensure safe distancing.
- When more than one panel of prospective jurors is needed, consider conducting multiple sessions of voir dire from small panels, striking jurors for cause, joining the panels, and then completing voir dire and peremptory challenges.
- Consider asking jurors to complete written pretrial questionnaires and submit them to the court electronically or by US Mail.
- Use [remote](#) technology, such as Webex, to conduct voir dire. Consider providing kiosks or remote access to computers for those who cannot connect from home.
- Encourage counsel and the parties to stipulate to six-person juries in civil trials to reduce the number of people in the courtroom and the amount of time required for jury selection.
- Provide clear information to impaneled jurors regarding how to contact the court if the juror has new safety concerns, such as a [recent exposure](#) to COVID-19. (The juror should not appear in-person to report this information to the court.)
- Conduct bench conferences in chambers or another location close to the courtroom (e.g., an adjacent jury deliberation room that may now be too small to accommodate a jury panel) where safe social distancing may be practiced.
- Consider streaming or projecting the trial to other courtrooms, or online, to allow the public to view the trial while limiting physical contact. This will limit the number of people in the courtroom to those whose physical presence is necessary.
- If the space previously used as the jury deliberation room contains restrooms for jurors that are not large enough to accommodate jurors safely, consider reserving restrooms for jurors near the currently designated deliberation space to limit interaction between jurors, lawyers, parties, and others in the restrooms.
- Courts should be cognizant that jurors may speak louder than usual due to social distancing and consider limiting nearby access to the jury deliberation space to prevent others from listening to deliberations.

- Provide hand sanitizer, tissues, and lined trash cans in the courtroom and jury deliberation room; provide sanitizing wipes in the jury deliberation room for cleaning of shared objects (e.g., dry-erase markers and table tops).

*The CDC recommends practicing “routine cleaning of frequently touched surfaces.*

*High touch surfaces include: Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

- Affirm jurors rather than having jurors swear on a religious text. Notify jurors that they must bring their own religious text if they wish to be sworn. Religious texts brought to the courthouse should not be shared with another juror.
- Seat jurors in cordoned-off sections of the courtroom gallery, when possible, to provide appropriate distancing as recommended by current CDC and local health guidelines and rearrange courtroom furniture accordingly.

### 3. Exhibits

- Utilize technology to manage and view exhibits, if possible (e.g., view exhibits on a screen, in lieu of physical or paper exhibits).
- Attorneys / parties should be required to prepare marked original exhibits to be used at trial as well as copies of exhibits for counsel, the judge, each witness, and the court reporter.
- Attorneys / parties should be required to provide copies, for each juror, of any exhibit they will seek to publish to eliminate the passing of a single exhibit between jurors.
- If it is not possible to provide multiple copies of a published exhibit for the jurors, jurors should sanitize their hands and don [gloves](#) prior to handling the exhibit; jurors should properly remove and dispose of gloves and sanitize hands after handling the exhibit.

*“Paper-based materials, such as books and loose-leaf paper, are not considered high-risk for COVID-19 transmission, and do not need additional cleaning or disinfection procedures.”*

Source: <https://files.nc.gov/covid/documents/guidance/Strong-Schools-NC-Public-Health-Toolkit.pdf>

### 4. Notebooks and Pens / Pencils

- Encourage jurors to bring their own pencils / pens; if the court provides pencils / pens, they should be new or properly cleaned prior to a juror’s use.
- If juror notebooks are used, the court should provide instructions regarding where the notebooks are to be left or how they will be safely gathered and stored to prevent cross-contamination during court recesses.

- Courts may wish to give each juror a poly / plastic folder that can be easily cleaned with a disinfecting wipe, into which the juror may deposit writing instruments and notebooks during court recesses.

## 5. Additional Considerations

- Before reopening after being closed for a prolonged period of time, it is advisable to take certain [precautions](#) to decrease the risk of mold or Legionnaire’s Disease and to ensure ventilation systems are operating properly.

- *“Buildings should be assessed for mold and excess moisture.*
- *A building HVAC system that has not been active during a prolonged shutdown should be operated for at least 48 to 72 hours (known as a “flush out” period) before occupants return.*
- *After a building is reopened and occupied, routine (e.g., weekly) checks of the HVAC system are recommended to ensure operating efficiency.*
- *Develop a comprehensive water management program (WMP) for your water system and all devices that use water. Guidance to help with this process is available from CDC and others.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/php/building-water-system.html>

## ADDITIONAL RECOMMENDATIONS ON TECHNOLOGY AND COURT INNOVATIONS

The Technology and Innovations Working Group of the Task Force was tasked with examining the types of proceedings that can be conducted remotely, whether legislative changes are needed to support that effort, and whether there are additional equipment needs, and with identifying innovations in court scheduling and operations based on technology. Based on the working group’s recommendations, the Task Force’s June 12, 2020 report included a series of recommendations to the Chief Justice, the NCAOC, and local court officials for their consideration for immediate implementation.

In this section of this report, the Task Force makes a series of additional intermediate and long-term recommendations to the Chief Justice, the NCAOC, and local court officials for their consideration. As the Chief Justice and the NCAOC deem appropriate, some of these recommendations may be better suited for additional discussion and consideration by the State Judicial Council.

It bears repeating in this second report that the NCAOC is currently developing an eCourts Integrated Case Management System (ICMS) that will enable all case types to be handled electronically from filing to disposition, thereby expanding access to the courts for all North Carolinians. The COVID-19 pandemic has highlighted the critical need for our courts to move away from paper and toward electronic management of our caseload, and the Task Force urges the General Assembly to fully fund this important and timely initiative. The Task Force recommends that ICMS continue to be developed and configured to accommodate its recommendations, as adopted by the Chief Justice, and that NCAOC request sufficient funding to implement those recommendations that are adopted, including funding for

the hardware, software, and training needed to make North Carolina courts more accessible to attorneys, litigants, and the public.

Particularly in light of the NCAOC resources that are currently dedicated to ICMS implementation, the Task Force understands that there may be technological or resource barriers to implementing some of the following recommendations. In addition, recommendations should only be implemented if they are consistent with principles of fairness, equal access, and unbiased justice.

## Select Immediate Recommendations

The immediate recommendations in the Task Force’s June 12, 2020 report were intended to be those that could be implemented with existing technology, that had little to no associated costs, or that could be authorized through an emergency directive. However, upon further examination of those recommendations, the Task Force has determined that the following immediate recommendations from its June 12, 2020 report may require technological enhancements:<sup>3</sup>

12. Recommend convening the chief district court judges to consider expanding the list of waivable offenses in criminal matters.
14. Remind courts to ensure public access to court proceedings held remotely, which may be achieved by providing information on the calendar that interested parties contact the appropriate court personnel to receive a link to the live session.
17. Recommend secure audio / visual communications from all jails and prisons to permit attorney / client communications, as well as remote hearings.
18. Provide attorneys and their clients a private means of communication *during* court hearings.
21. Recommend the following changes to calendaring / docketing of court matters:
  - b. Use morning and afternoon calendars instead of single, day-long calendars. In criminal cases, district attorneys should consider defense attorneys that practice in multiple counties and allow for attorney scheduling to accommodate it (e.g., group cases by attorney blocks).
  - c. Use “time certain” scheduling:
    - i. In a district court traffic setting, schedule only the number of defendants that can safely fit in a courtroom for social distancing at different intervals (e.g., 40 defendants at 9 a.m., 40 at 11 a.m., etc.).
    - ii. If current technology does not permit this practice, the Task Force recommends exploring options for implementing this capability as soon as possible.
  - e. Schedule cases by attorney / parties (e.g., Attorney Smith’s cases scheduled at 9 a.m.).
  - f. If remote hearings are not possible for “high-risk” individuals, consider scheduling a block of time for “high-risk” individuals to appear in court.

<sup>3</sup> The numbering in this section repeats the numbering from the Task Force’s original June 12, 2020 report to avoid confusion.

## Intermediate Recommendations

Based on the Technology and Innovations Working Group's recommendations, the Task Force makes the following additional intermediate recommendations with a proposed implementation date of no sooner than October 2020. Implementation of the first set of intermediate recommendations below should not require changes to existing technology or statutes or rules:

1. Recommend local policies for motions (or types of motions) to be addressed on written motion, without oral argument. Civil examples include motions to compel, motions to dismiss, motions to continue or for peremptory setting, and other administrative matters.
2. Request that appropriate representatives of the superior court judges, district court judges, clerks of superior court, court managers, and other stakeholders identify high volume / narrow discretion issues that may be fairly resolved using existing public-facing technology, including Online Dispute Resolution (ODR).
3. Evaluate programs for the support of self-represented litigants (e.g., ODR) and assess the use of such programs more widely in our courts.
4. Modify the North Carolina Uniform Citation (form AOC-CR-500) to include fields for a cell phone number and email address for the defendant or develop an alternate mechanism to collect this information in a way that protects the confidentiality of defendants.
5. Request that NCAOC prepare training platforms to teach attorneys and the public how to use Webex to interface with the courts and judicial system.
6. To reduce courthouse traffic, consider an emergency directive during a specified time period to waive the fine / penalty that is established pursuant to N.C.G.S. § 7A-148 for those defendants who elect to waive a trial or hearing, plead guilty or responsible, and pay the cost of their ticket without entering the courthouse (e.g., pay online) prior to their first court date.
7. Find other venues for jury trials or other high-volume court sessions.
8. Explore / consider temporary changes to improve the jury process for civil cases, such as:
  - a. Requiring jurors to watch the juror orientation video online prior to appearing for service; and
  - b. Encouraging the use of online juror questionnaires, and perhaps case-specific questionnaires, prior to appearing for service to reduce time in court.

The following additional intermediate recommendations may require enhancements to NCAOC's existing technology and / or new technology:

1. Establish a portal (computer terminal or iPad) at each courthouse for public use that would allow individuals without home computer access to participate remotely in a hearing outside of the courtroom.
2. Enable self-represented defendants to negotiate with a prosecutor prior to court (e.g., for certain traffic and low-level misdemeanor cases) by iPlea, Webex, or other technologies.
3. Authorize / permit limited driving privilege (LDP) petitions and other filings required in association with LDP petitions to be submitted electronically and for associated costs to be paid online.
4. Eliminate calendar calls and replace them with a digital / phone / kiosk-based check-in system.
5. Following the senior resident superior court judges' survey of jails and correctional facilities to determine the capability of attorney / client video conferences that the Task Force recommended in

its June 12, 2020 report, create a database describing each facility's capacity and contact information in order to allow remote contact with inmates by counsel for attorney-client communications and for court proceedings. Encourage each district's COVID-19 coordinator to make reasonable efforts to bring video capacity to facilities without this technology.

6. Explore / consider temporary changes to improve the jury process for civil cases, such as:
  - a. Conducting voir dire remotely, with computers / kiosks in the courthouse for those who cannot connect from home; and
  - b. Conducting remote civil jury trials.

Finally, the following additional intermediate recommendations would likely require statutory or rule changes, such as changes to the rules of civil procedure, rules of general practice, or the rules governing alternative dispute resolution:

1. Consider requesting that the legislature expand the scope of N.C.G.S. § 1A-1, Rule 53 to specify that alimony, child custody, child support, and equitable distribution issues may be referred by district court judges.
2. Amend paragraph 4 of Rule 6 of the General Rules of Practice to reflect that arguments of any motion may be accomplished by means of a "telephone, *remote*, *online*, or *electronic*" conference without requiring counsel to appear in court in person.
3. Amend the Rules of the Dispute Resolution Commission to permanently authorize remote district and superior court mediations. Require, absent a showing of good cause, remote mediations for superior court matters and district court family financial matters. In-person mediations can be held if social distancing can be observed and upon consent of all parties or order of the court.
4. Amend the Rules of Court Ordered Arbitration to allow for remote arbitration hearings and for in-person arbitrations to occur at locations other than the courthouse.
5. Establish statewide rules for the remote handling of all forms of evidence (e.g., marking / identifying, introduction, and live witness testimony), including the remote swearing of witnesses.
6. Explore / consider temporary changes to improve the jury process for civil cases, such as mandating / encouraging smaller civil juries and reducing the number of civil peremptory challenges and / or setting a reasonable time limit for voir dire.

## Long-Term Recommendations

Based on the Technology and Innovations Working Group's recommendations, the Task Force makes the following long-term recommendations with a proposed implementation date of no sooner than 2021. Most of these recommendations will require enhancements to NCAOC's existing technology and / or statutory or rule changes:

1. Provide for the permanent ability to swear witnesses remotely for both civil and criminal cases (including for search warrants).
2. Provide for the permanent ability of judges, at a minimum, to sign documents electronically. The ability of law enforcement officers (for search warrants) and lawyers to sign documents electronically would also be beneficial.
3. In superior court, with the consent of all parties, permit remote criminal bench trials and civil bench and jury trials.



4. Consider the use of deposition testimony in criminal trials (for testimonial purposes, not for purposes of discovery).
5. Encourage the increased use of civil advisory or provisional jury trials in civil cases as allowed by N.C.G.S. § 1A-1, Rule 39(c).
6. Make all necessary rule and statutory modifications, such as N.C.G.S. § 1A-1, Rule 53, to authorize trial courts to refer custody, child support, alimony, and equitable distribution cases to referees / arbitrators and to select the referee / arbitrator if the parties do not agree.
7. Expand remote application for electronic filing of N.C.G.S. Chapter 50B relief to all North Carolina counties.
8. Based on the recommendations of the superior court judges, district court judges, clerks of superior court, court managers, and other stakeholders, and using examples from other jurisdictions as models, design and implement pilot program(s) for ODR.
9. Develop triage programs for district courts. “Triage” in this context is a process of screening cases prior to and at the time of filing and diverting them into pathways within the judicial system based on the level of services needed. The three pathways are: a) streamlined (involving minimal judicial resources); b) tailored (involving pairing services); and c) judicial / specialized (involving greater need for judicial management and intervention). The triage process may include ODR for streamlined or tailored cases.<sup>4</sup>
10. Create or expand notification systems (text / paging systems) to allow defendants, witnesses, litigants, attorneys, and jurors to receive instant notification when a civil or criminal case is ready to be heard.
11. Improve the current Court Date Notification System (ACEN) to allow for notification of time and date of both civil and criminal hearings. This would allow for instant notification when cases on high-volume dockets need to be rescheduled throughout the day (e.g., a case to be heard at 9 a.m. is postponed to 1 p.m. the same day).
12. Direct this Task Force, the State Judicial Council, or a new group with representatives appointed by the Chief Justice from the statewide organizations for senior resident superior court judges, chief district court judges, clerks of superior court, court managers, and the bar, to establish metrics for the evaluation of initiatives taken in response to the COVID-19 pandemic and to communicate with those groups about the effectiveness of those initiatives.

Because the additional ideas below require thoughtful analysis and input from a wide variety of stakeholders, the Task Force further recommends that the State Judicial Council give consideration to other, more fundamental long-term changes to the jury process. It may be appropriate to pilot some of these changes, to permit them only during declared states of emergency, or to otherwise assess their efficacy before permanently implementing them:

1. Consider reducing the size of the jury panel when the most serious charge is a misdemeanor or Class H or I felony.

<sup>4</sup> For information about triage programs, see [CCJ/COSCA Family Justice Initiative Virtual Triage, Pathways, and COVID-19](#) (Nat’l Center for State Courts Apr. 6, 2020); [A Model Process for Family Justice Initiative Pathways](#) (Nat’l Center for State Courts 2019); and [Family Justice Initiative: The Landscape of Domestic Relations Cases in State Courts](#) (Nat’l Center for State Courts 2018). In addition, Stacey Marz, [Faster and as Satisfying: An Evaluation of Alaska’s Early Resolution Triage Program](#) (Family Court Review Oct. 23, 2019) is available in Appendix E (reprinted with permission of the author).

2. Consider reducing the number of peremptory challenges in civil and criminal cases if the size of the jury panel is reduced to a six-person jury.
3. Rather than an appeal to superior court after a misdemeanor conviction in district court, consider permitting an “appeal” to a district court jury trial with a limited sized jury and a different presiding judge.
4. Create new and efficient ways to handle juror orientation, juror deferrals and excuses, and jury selection remotely.

## CONCLUSIONS

As the Task Force stated in its June 12, 2020 report, adapting our state’s court system to the current pandemic conditions is a challenge that none of us has had to meet before, and we must be patient with each other as we all seek to adjust the way we do business. As we explore new innovations as a result of this pandemic, we must always do so in ways that are designed to protect the safety of the public, the bar, and our Judicial Branch personnel. In addition to the specific recommendations contained in its June 12, 2020 report and this second report, the Task Force recommends that the State Judicial Council consider and address long-term improvements in court processes, both with respect to needs that have arisen from the COVID-19 pandemic and other deficiencies that have been highlighted by recent events in this country and state.

## **APPENDIX A**

# JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

June 11, 2020

Task Force Co Chair, the Honorable F. Donald Bridges, convened the meeting at 2:30 p.m. by WebEx.

## **Reminder of Open Meeting and Roll Call:**

Judge Bridges stated that the meeting is subject to North Carolina's open meetings laws and that a livestream had been made available to the public and members of the media. North Carolina Administrative Office of the Courts (NCAOC) Research and Planning Associate Emily Mehta took roll call. The following Task Force members were present via WebEx:

- The Honorable F. Donald Bridges, Co-Chair, District 27B Senior Resident Superior Court Judge.
- The Honorable Jay Corpening, Co-Chair, District 5 Chief District Court Judge.
- The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge, was not present for roll call but joined the meeting at 3:38 p.m.
- The Honorable Teresa Vincent, District 18 Chief District Court Judge, was not present for roll call but joined the meeting at 3:20 p.m.
- The Honorable Billy West, District 14 District Attorney.
- The Honorable Robert Evans, District 8 District Attorney.
- The Honorable Marsha Johnson, Harnett County Clerk of Superior Court.
- The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court, was not present for roll call but joined the meeting at 2:34 p.m.
- Kinsley Craig, District 27B Trial Court Coordinator.
- Kellie Myers, District 10 Trial Court Administrator.
- The Honorable Jennifer Harjo, New Hanover County Public Defender.
- John McCabe, Attorney and Appointee of the North Carolina Advocates for Justice (NCAJ).
- Wade Harrison, Attorney and Appointee of the North Carolina Bar Association (NCBA).
- Patrick Weede, Attorney and Appointee of the NCBA.
- JD Keister, Attorney and Appointee of the North Carolina Association of Defense Attorneys (NCADA).

The Honorable Jason Cheek, Davidson County Magistrate, was unable to attend. The Honorable Chuck Henry, District 4 Senior Resident Superior Court Judge, and the Honorable R. Allen Baddour, District 15B Resident Superior Court Judge, were present via WebEx. A number of additional people joined the WebEx as representatives of NCAOC and the School of Government (SOG) in their capacity as advisers and staff to the Task Force, as did Richmond County Sheriff James Clemmons.

**Approval of June 4, 2020 Task Force Meeting Minutes:**

Attorney Harrison moved to approve the minutes of the June 4, 2020 meeting, and District Attorney Evans seconded the motion. All Task Force members who were present approved the meeting minutes by a roll call vote.

**Update from Virus Fatigue Working Group:**

SOG Professor Jim Drennan said the working group's "Caring for You" products were finalized yesterday. Professor Drennan said he is proud of those products, and he hopes the Task Force members will use them in whatever ways they can to support the court system actors in the field. Professor Drennan said there is a video and one longer document, as well as two one-page documents. He said the longer document is the heart of it, and NCAOC's Communications Division did a wonderful job putting it into a visually appealing format.

Professor Drennan said he expects the Chief Justice and NCAOC Director to distribute those materials to the field later in the day and, once that is done, they can be made available to other groups that might want to use them, such as the NCBA. He added that the longer document has been edited slightly since the last version the Task Force saw to reflect the increased stress for many people in the court system as the new national crisis has raised awareness about how some people view the justice system. Professor Drennan thanked the members of the Virus Fatigue Working Group and the NCAOC staff who supported their efforts.

Judge Bridges thanked Professor Drennan and everyone who worked on these resources. He said the products are outstanding and he is as proud of this work as anything else the Task Force has done. He added that he has reviewed numerous reports from similar groups in other states, and this aspect of the Task Force's work is unique and creative. Judge Corpening agreed.

**Intermediate and Long-Term Recommendations:****Best Safety Practices Working Group:**

Trial Court Administrator Myers said the Best Safety Practices Working Group circulated a draft document earlier in the day that contained recommendations about jury management and jury trials. She added that the working group held a meeting after that document was shared to discuss some of the issues raised in it. Trial Court Administrator Myers said the working group's objective was to make safety recommendations that are evidence based and appropriate for the courts, noting that they relied heavily on their public health advisor from the North Carolina Department of Health and Human Services (NCDHHS). She said the overall recommendation from the public health advisor was that in-person jury trials should not occur unless there are appropriate safety precautions in place. Trial Court Administrator Myers turned to the working group's draft and noted that the sections highlighted in yellow are areas of concern for some members because of either practical limitations and / or constitutional questions.

Trial Court Administrator Myers said the document is divided into two parts. The first part addresses jury management issues, such as reporting practices, excuses and deferrals, and jury assembly. The second part addresses proceedings that would typically take place in the courtroom, including jury selection and trials. Trial Court Administrator Myers said the Task Force co-chairs plan to attach the previously approved best safety practices for in-person court proceedings from the first interim report as an appendix to these recommendations, so the working group tried to focus solely on jury trials.

Trial Court Administrator Myers noted that the working group has reached consensus about recommending that jurors wear face coverings in jury assembly areas, so the highlighted concerns on the second page of the draft will be moved to the section on in-court proceedings. She said the highlighted sections on the fourth page are where there is not full consensus. Trial Court Administrator Myers said the draft includes language from the federal guidance about jury trials indicating that presiding judicial officials need to weigh the rights of the defendant against the health and safety of everyone in the courtroom. She suggested that the working group revise that section to more clearly set forth those two interests and to give judicial officials guidance on weighing those competing interests.

Trial Court Administrator Myers asked Public Defender Harjo to share the constitutional concerns she has raised regarding face coverings. Public Defender Harjo said she has experienced some court hearings with attorneys and others wearing masks, and she believes it will be impossible to have criminal jury trials like that. She said defendants facing criminal jury trials have constitutional protections and conducting a jury trial is as much an art as it is a science. Public Defender Harjo said criminal defense attorneys need to be able to see the jurors' faces, and the jurors need to be able to see the lawyers' and witnesses' faces to make decisions about credibility. She added that jurors who have to sit through court all day wearing masks will be uncomfortable and have difficulty concentrating. Public Defender Harjo said she wears masks to court, but she takes them off when she is addressing the judge because it is difficult to hear and understand people through masks. She said wearing masks in trials will interfere with lawyers' ability to participate and see how jurors are reacting to evidence and could create prejudicial impressions in some jurors.

Public Defender Harjo said she has some of the same concerns about plexiglass barriers, noting that they cause a glare that can interfere with the ability to observe facial expressions. In addition, her understanding from health officials is that air particles can travel over and under the plexiglass barriers, so she would be concerned about the safety of anyone relying solely on such a barrier for protection while sitting in a closed room for a long period of time.

Public Defender Harjo said she believes the court system should wait until criminal jury trials can be held safely without masks, so that the defendants will get the constitutional protections to which they are entitled. She said, if a defendant wants to waive those protections, he or she has a right to do so and can choose to proceed with a bench trial or ask the court to determine what safety precautions can be put in place for a jury trial. However, until the courts can assure the accused that their constitutional rights to a fair trial will be protected, she believes jury trials where the defendant does not consent need to wait. She added that she believes that is the opinion of the criminal defense bar as a whole. Attorney Weede

asked whether the working group's public health advisor indicated whether her advice about wearing masks would continue until there is a vaccine or treatment or if there is any sense that those precautions could become less necessary over the coming months. Trial Court Administrator Myers said she did not.

District Attorney Evans said the Conference of District Attorneys is in favor of resuming jury trials as soon as reasonably possible subject to the best available safety advice that this Task Force can recommend to the Chief Justice. He said he would hold his additional comments until the Task Force reaches the jury trial section of the agenda. District Attorney West agreed.

Clerk Johnson said the clerks are the official record keepers, and it is going to be problematic for clerks to hear people who are speaking through masks. She said her courtroom clerks often have to ask people to repeat themselves when they speak while wearing masks and, in some instances, they cannot understand what is being said at all. She said masks muffle voices, and the court reporters are going to have the same problems.

Attorney Keister said the civil attorneys he has heard from share similar concerns about the active participants in a trial wearing masks, including attorneys, witnesses, and potential jurors during voir dire. He added that the civil bar does not seem concerned about jurors wearing masks during the actual trial when they are not speaking. Attorney McCabe agreed.

Attorney Harrison asked whether the public health advisor addressed the questions about spending longer durations of time in a courtroom where everyone is not wearing a mask. He said, in the counties where he practices, some people wear masks and others do not. He asked whether there is any scientific information that could inform the Chief Justice about whether masks should be required in the courthouses, and whether there is a significant increase in risk the longer a person spends in an area where someone else is infected but asymptomatic. Trial Court Administrator Myers said the NCDHHS advisor shared helpful information on those topics at the working group's meeting that day.

Public Defender Harjo said her understanding from the public health advisor is that there is a spectrum of risk, and that everyone wearing masks is the safest but safety diminishes as more people are without masks. She added that the same principle appears to be true with respect to time, and the risk increases as the length of time people spend in proximity increases. Public Defender Harjo said air circulation also impacts the spectrum of risk, and she does not believe there is any specific date when masks will no longer be recommended. Attorney Weede said the Task Force has talked a lot about there not being a one size fits all solution for many of the issues facing it, but he said this issue seems closer to requiring a uniform approach, at least in the criminal context, so that the courts do not create appellate issues.

Judge Bridges asked if Public Defender Harjo's position is that safety dictates that all participants wear masks but, because of the potential interference with the right to a fair trial, no criminal trials should take place except where the defendant chooses to waive constitutional protections and proceed. Public Defender Harjo said yes. Judge Bridges asked what should be done in those cases where a criminal

defendant chooses to waive those protection or files a motion for speedy trial demanding to go to trial. Public Defender Harjo said, in those circumstances, court actors will need to rely on the best safety practice recommendations and conduct a trial as safely as possible for all participants. She added that, in such cases, the courts may need to rely on protections like masks and plexiglass barriers and potentially even conduct portions of the trial remotely.

Judge Bridges said he is concerned that this position would leave it to the defendant and the defendant alone to make that decision. He said no defendant would be forced to submit to a trial but, if a defendant chooses to file a speedy trial motion, the witnesses and jurors would have to come to court and be subjected to conditions that other criminal defendants choose not to subject themselves to. Public Defender Harjo said the defendant is the one person in the courtroom with constitutional protections and rights. She said the courts can have trials that rely on protections like plexiglass under those circumstances but a criminal defendant who is facing significant prison time may choose to wait until the participants do not have to wear masks. Public Defender Harjo said there may need to be a reassessment several months down the road but, in 2020, she does not think it is unrealistic to say the courts should wait so that criminal defendants can have the same type of trials that other defendants have received over the years. Judge Bridges said the defendant is not the only person who has constitutional rights, noting that the state constitution now includes protections for victims.

Judge Bridges urged the Task Force members to bear in mind what the current discussion is about. He said the recommendations before the Task Force right now are from the Best Safety Practices Working Group, not the plan for resuming jury trials. Judge Bridges said the purpose of this report is to present the best safety recommendations for trials based on consultation with public health experts. He stressed that the Task Force is not yet talking about the policy considerations with respect to resuming jury trials, which is a matter that will be discussed later in the meeting. Judge Bridges said, where it is clear what the best safety practices are, the Task Force needs to express them and, where there are areas of disagreement about what the best safety practices are, the Task Force's work product needs to express that so everyone has the best information from public health advisors.

Trial Court Administrator Myers said, with the exception of a few questions that the working group asked its public health advisor at the meeting earlier today, she believes the best safety practice recommendations are close to final. She said she wants to add some more information that the group received today about plexiglass barriers and the impact of the duration of time spent together in an enclosed room, but she believes that can be done relatively quickly.

Judge Corpening agreed with Judge Bridges about the role of this working group, adding that the competing concerns of Task Force members about the resumption of trials can be delivered to the Chief Justice. Judge Corpening asked if it was the will of the Task Force to adopt the recommendations of the Best Safety Practices Working Group. Trial Court Administrator Myers suggested that her working group revise the second section on jury trials to focus solely on safety recommendations and to note any inconsistencies in the guidance from public health experts, and that the Task Force vote on the final



recommendations by email. Judge Corpening said he would be open to that approach or to redistributing the recommendations for a final vote at the next meeting.

Attorney Harrison asked whether it would be possible to have the working group's public health advisor create a separate appendix with the information that is the scientific basis for the working group's recommendations. Judge Corpening said Trial Court Administrator Myers could make that request on behalf of the working group. Judge Corpening suggested that the working group make the revisions that Trial Court Administrator Myers suggested earlier in the discussion and ask for the additional scientific information Attorney Harrison suggested, and then recirculate the recommendations for an email vote the following week. Trial Court Administrator Myers agreed.

#### Technology and Innovations Working Group:

Judge Henry stated that the Technology and Innovations Working Group previously submitted immediate and intermediate recommendations to the Task Force. They also developed some recommendations about the resumption of jury trials, many of which have now been incorporated into the proposed plan that will be discussed later in the meeting. In addition, the working group has compiled a list of long-term recommendations that should be finalized early the following week. Judge Henry said the group does not have additional meetings scheduled, but it can reconvene at any time to respond to questions or address certain recommendations. He said the working group had a series of very open discussions, and he thanked all of the members and the AOC staff who supported their work.

Judge Corpening said any discussion of the jury trial recommendations from this working group would be held for that agenda item, and he asked if there was a motion to approve the other intermediate recommendations. Attorney Harrison so moved and Attorney Weede seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Johnson, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, Attorney Weede, and Attorney Keister) approved the motion by a roll call vote.

#### Resumption of Jury Trials:

Judge Bridges said the Chief Justice directed the Task Force to develop recommendations for the resumption of jury trials and the Task Force has been working on those recommendations for some time now. He noted that this is one of the most daunting challenges involved in the courts ramping back up to full operations. He said, at the last Task Force meeting, the group agreed not to recommend a specific date for the resumption of jury trials and to leave that to the Chief Justice based on her assessment of the health conditions at any given time.

Judge Bridges said, at the last meeting, the Task Force received a report from the Technology and Innovations Working Group that was described as a three-legged stool for the resumption of jury trials after taking into account safety considerations. One concern that was expressed at that meeting was the role of the clerk in the decision-making process. He said the Chief Justice has issued an emergency directive that orders the senior resident superior court judges to undertake certain actions, including

efforts to safely resume trials, so it is clear that the Chief Justice intends to have the senior residents and / or their designated COVID-19 facility coordinators play a significant role in crafting local plans. Judge Bridges said, because of the clerks' role in summoning and managing jurors, one suggestion last week was that the clerks should play a critical role in formulating that plan. Thus, Judge Bridges said the proposed plan has been revised to recommend that, in formulating a local plan, the senior residents should work in consultation with the clerk, district attorney, and public defender or senior member of the local criminal defense bar.

Judge Bridges said, since the last Task Force meeting, he has attempted to merge the jury trial recommendations from the Technology and Innovations Working Group into the draft recommendations that already existed. He said there are some areas in which the language diverged somewhat, but he believes the working group's recommendations are now reflected in the proposed plan. Judge Bridges said the proposal now recommends that the Chief Justice identify a specific date as the earliest date on which jury trials will be allowed to resume. Although the specific cases selected for trial would be determined by the identified local judicial officials, the proposal includes a recommendation that local officials begin with short and simple trials, including simple civil trials, misdemeanor appeals, Class H and I felonies, or other trials that are expected to last no more than one week. Judge Bridges said the criminal defense bar requested that no murder trials be convened before late November, and the proposal now states that criminal trials involving offense classes of B2 or higher should not be held during the first 90 days. In addition, there is language providing that local senior resident superior court judges would have discretion depending on local health conditions to delay the resumption of trials for an additional period of time or to suspend them after they have resumed. Judge Bridges said Public Defender Harjo suggested that jury trials should not proceed without the defendant's consent, and the proposal now includes a recommendation that local court officials consider a number of factors in determining whether specific trials or types of trials should proceed, with the defendant's consent or lack thereof being one factor for consideration.

Judge Bridges said Judge Vincent suggested that the chief district court judges should be included in the decision-making process about the resumption of trials because there are jury trials in district court. He said he intended to add a recommendation that chief district court judges be consulted in formulating local plans, but he inadvertently neglected to do so. In addition, he has been told that there is some interest among the chief district court judges in developing their own plans for jury trials in district court. Judge Bridges said there are two basic options. The Task Force could recommend that the senior resident superior court judges' plans address jury trials in district court after consultation with the chief district court judges, or it could recommend that the chief district court judges develop parallel plans for district court trials.

Judge Bridges said he thinks those are all of the significant changes in today's draft compared to the draft the Task Force discussed the prior week. He said the message he received from the Task Force at its last meeting was to go back to the drawing board and try to integrate the Technology and Innovations Working Group's jury trial recommendations into the existing draft plan. Judge Bridges said he did that in consultation with Judge Henry and then took the revised proposal back to the superior

court judges' work group for their feedback. He said the current draft is a product of those efforts and he would be happy to entertain any comments about the revised draft.

District Attorney Evans said the Conference of District Attorneys supports every effort that can be made to ensure that jury trials resume as safely as possible. He said, when the Technology and Innovations Working Group submitted its recommendations the prior week, the district attorneys raised several issues. District Attorney Evans said the district attorneys understand that, in the midst of this crisis, they will have to move slowly and be reflective in choosing what cases to bring to juries. He said he believes the proposed matters that should be considered and the actors that should be consulted during that process are appropriate. However, the conference's primary concern is the erosion of the district attorneys' statutory authority to set calendars, especially given the restrictions that everyone will be under until there is a vaccine or effective treatment.

District Attorney Evans said the virus is getting worse by the day in North Carolina and none of us can predict what will happen in the coming months. He said it is a no brainer to start with shorter and less complicated trials, but he believes the proposed restriction on trials for certain classes of offense is unnecessary. District Attorney Evans said telling the district attorneys that they can only try lower-level felonies for the first 90 days and that they cannot expand to more serious cases does not get to the heart of the issue. He said he believes the real issue is not what class of cases they should try but, given limited resources and the risks that everyone will be facing, what type of cases are worth bringing to trial in the short term. District Attorney Evans said there may be lower-level felony cases that are not worth risking the health of jurors and witnesses to bring to trial, while there may be homicide cases that are not complex and will not take a long time to try. He said, assuming local actors follow all of the best safety recommendations and consult with others as needed, those cases can be tried relatively safely and they are not more difficult to try than the average class H felony. He said the artificial classification by class of offense does not make sense, and he wants to be in a situation where the courts are asking jurors to hear the cases that matter the most.

District Attorney West agreed. He said the district attorneys' primary objections to the draft proposal are the restrictions on trial by class of offense and that some of the recommendations seem to infringe on their statutory calendaring authority. District Attorney Evans said he cannot imagine that any of the district attorneys would want to start out with capital trials and, at least in his district, he would listen if the clerks came to him and said they could not handle a specific trial. Similarly, he said he would be receptive if a criminal defense attorney asks to delay any high-level felony trials because he or she is in a high-risk category. He said the collegiality of the bar is important to him and language that unduly restricts the district attorneys' calendaring authority is unnecessary.

Judge Bridges said the current proposal specifically references G.S. 7A-49.4, which is the statute that gives district attorneys calendaring authority. He said the superior court judges' work group wanted to recognize that statutory authority and to be clear that the intent is not to shift that authority in any way. However, as District Attorney Evans suggested, Judge Bridges said there probably are no judges who would approve proceeding with a capital trial right now. He said, despite the district attorneys having

statutory calendaring authority, judges have the ultimate control over whether particular cases proceed so the district attorneys' authority is not absolute. Judge Bridges said he hopes everyone will be mindful that the proposal contains recommendations and does not use terms like shall, must, or will. He said the Task Force has been clear since its inception that its mission is not to issue mandates or directives to local court officials, but to provide a resource for local court officials and recommendations to the Chief Justice. Judge Bridges said the recommendations about starting with lower-level felonies and the senior resident superior court judges prioritizing cases for trial in consultation with the district attorney and others are not mandates, and local officials will remain free to do what they chose to do within the confines of any emergency directives from the Chief Justice.

Judge Henry said the superior court judges' main focus was on the expected length of the initial trials. He said there are a number of unknowns right now, including how potential jurors will respond to the idea of jury service and what will happen if a defendant claims illness on the second or third day of trial. He said no one has worked through every possibility but, based on the collective wisdom and experience of the groups that have worked on this proposal, high-level felony trials are less likely to be shorter trials. He said he has not presided over a second-degree murder trial or higher that has taken less than a week in a long time. Judge Henry said the ultimate decisions will be controlled locally and cooperatively and arguing over the exact language of the recommendation may not be productive.

Judge Sermons said he understands the district attorneys' concerns, but the language about starting with low-level felony trials was primarily driven by not knowing how it will work to bring that many people into a courtroom. He said local judicial officials will not know how it is going to work until they do it and, once they do, they can react and improve. He said he is not opposed to wordsmithing the proposal but the intent is to try it, find out what works, and make improvements. Trial Court Administrator Myers added that the public health experts said the exposure risk increases with the amount of time spent in a courtroom, which is why shorter trials should be prioritized first.

Public Defender Harjo said she likes the proposal. She said she understands District Attorney Evans' point that there may be more serious trials that will take less than a week to try but, given that these are recommendations, such cases could be accommodated by a request of both the defendant and district attorney. She said the proposal gives due consideration to a lot of the concerns of the defense bar, including their inability to prepare cases due to the danger of being in close proximity with their clients. Attorney Weede said he is pleased with the draft. He said the initial section lays out the concerns of various stakeholders and the plan takes into account public health guidelines and the limitations on the ability of defense attorneys to prepare for trial. He said defendants charged with high-level felonies are facing the potential of decades in prison and the court system needs to ensure that their attorneys have adequate time to prepare a defense. He said it is going to be some time before attorneys will feel comfortable and safe visiting clients in jail, and he thinks the proposal is appropriate as drafted.

Judge Vincent said her preference would be to have the chief district court judges craft a separate plan for district court jury trials. She said that would avoid any miscommunications about conflicting schedules. Judge Corpening said the bulk of the recommendations apply to all trials, regardless of the

court in which they are held. However, the chief district court judges have the statutory obligation to schedule civil matters, so he agrees there should be a dual track with a separate district court plan. He said, in formulating that plan, the chief district court judge should consult with the COVID-19 coordinator, whether that is the senior resident superior court judge or a designee, because that person has to approve calendars right now. In addition, the chief district court judge should consult with the trial court coordinator or trial court administrator, family court administrator, and a domestic or civil lawyer.

Attorney Keister said he believes the proposal is excellent and addresses the concerns of the civil bar. He said a number of civil attorneys will be trying cases in multiple counties and clarified that the intent is to have every senior resident superior court judge and chief district court judge develop local orders with county-specific plans. Judge Bridges said yes, and Attorney Keister said that makes sense to him. Attorney McCabe said he feels very good about the proposal.

Clerk Johnson and Clerk Chinn-Gary said their concerns have been addressed and they are satisfied with the proposal. Trial Court Coordinator Craig agreed. Judge Bridges said the proposal will be edited to include dual tracks for plans for jury trials in both superior and district courts. Attorney Harrison said the chief district court judges should be added as a consultant in recommendation number 4.

District Attorney Evans said he thinks the plan is excellent overall. However, he believes that it would be sufficient for recommendation number 11 to state that the first trials should be short and less demanding and should be expected to take less than a week to try without any reference to the class of offense. District Attorney Evans said he believes it is important to develop as much consensus as possible before submitting these recommendations to the Chief Justice, and he would have to vote against the entire proposal because of that one section. He asked whether he could cast his vote in opposition to that specific item rather than the plan in its entirety.

Judge Sermons asked whether removing the examples in parentheses in recommendation number 11 would address District Attorney Evans' concerns. District Attorney Evans said yes, that would limit the recommendation to starting with shorter and less complex trials without specifying offense classes. He added that, if a district attorney tries to calendar a lengthy capital trial right away, he would expect the presiding judge not to allow it to proceed. Attorney Weede said he is comfortable with number 11 as it is currently drafted, noting that the language in parentheses just provides examples. Judge Bridges said one of the superior court judges in his work group has already identified cases that he wants to go to trial when jury trials are allowed to resume, including murder cases that are expected to take less than a week to try and where both the prosecutor and defense have agreed they are ready to proceed. He said that judge would be permitted to proceed with those trials under the current proposal.

Attorney Weede moved to adopt the resumption of jury trials plan as written with changes recommending a parallel plan for district court trials. Attorney Harrison seconded the motion. Trial Court Administrator Myers directed the Task Force to recommendation number 3, which provides that the Task Force does not believe remote jury trials are a feasible option at this time. She said the Best

Safety Practices Working Group's recommendations suggest the possibility of conducting various portions of a jury trial remotely. Judge Bridges read Trial Court Administrator Myer's written comment about number 3, which stated that the working group recommendations include remote practices leading up to the impaneling of a jury and actual trial, such as online orientation videos, remote pre-screening for deferrals / excusals, remote strikes for cause based on written answers to questionnaires, and voir dire, and suggested that number 3 be modified to distinguish between the processes involved in jury management, jury reporting, voir dire, and trial to ensure that some remote practices are encouraged. Attorney Weede amended his motion to include that language, and Attorney Harrison seconded the motion.

By a roll call vote, 13 of the Task Force members who were present voted to approve the motion (Judge Bridges, Judge Corpening, Judge Vincent, Judge Sermons, Clerk Johnson, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, Attorney Weede, and Attorney Keister). District Attorney West voted no, stating that he objected to recommendation 11 as drafted but did not object to the rest of the proposal; he asked if the report could include a footnote explaining his objection to number 11 and providing his suggested alternative language. District Attorney Evans also voted no.

Judge Bridges asked the Task Force members for their view on whether the report should include a footnote to recommendation number 11 explaining the basis of District Attorney West's and District Attorney Evans' objection. Attorney Harrison said he believes that would be appropriate, noting that the Chief Justice should know that the vast majority of the proposal has the Task Force's unanimous support. Attorney Weede agreed. Trial Court Administrator Myers agreed, noting that is how the Task Force handled her objection to one portion of its May 8, 2020 recommendations on deadline extensions.

Judge Bridges said, given the consent of the Task Force members who made and seconded the motion, he would be inclined to allow the report to include a footnote explaining the basis of their objection to recommendation number 11. He asked if the district attorneys would support the jury trial recommendations with the addition of such a footnote, and District Attorney West and District Attorney Evans said yes. Judge Bridges said the motion would be deemed amended and their votes are now in favor of the motion subject to the addition of a footnote explaining the basis of their objection to recommendation number 11. Judge Bridges added that the motion in favor of the proposal passed unanimously with the addition of that footnote.

Judge Bridges thanked the Task Force members for their hard work and their willingness to consider other points of view. Judge Corpening thanked Judge Bridges for his tireless pursuit of consensus on this issue.

#### Suggested Statutory or Rule Changes and Funding Concerns:

Given the length of the meeting, Judge Corpening suggested tabling a discussion of this issue until the next Task Force meeting, and Judge Bridges agreed. Judge Corpening asked the Task Force members to

be prepared to discuss any recommended statutory or rule changes at the next meeting, and to think about whether the Task Force should make any specific funding recommendations.

**Goals for Next Meeting and Date:**

The Task Force discussed the possibility of meeting the following week or taking a week off in light of the superior court judges' virtual conference the following week. After discussion, the group agreed to hold its next meeting on Wednesday, June 24<sup>th</sup>, at 2:00 p.m. Judge Bridges said the goals for that meeting will be to get the Task Force's final stamp of approval on the revised jury trial plan, to talk about recommended statutory or rule changes and any funding requests, and to get approval of the second report to the Chief Justice that is due by June 30, 2020.

The meeting adjourned at 4:50 p.m.

# JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

June 24, 2020

Task Force Co Chair, the Honorable Jay Corpening, convened the meeting at 2:00 p.m. by WebEx.

## **Reminder of Open Meeting and Roll Call:**

Judge Corpening stated that the meeting is subject to North Carolina's open meetings laws and that a livestream had been made available to the public and members of the media. North Carolina Administrative Office of the Courts (NCAOC) Research and Planning Associate Emily Mehta took roll call. The following Task Force members were present via WebEx:

- The Honorable F. Donald Bridges, Co-Chair, District 27B Senior Resident Superior Court Judge.
- The Honorable Jay Corpening, Co-Chair, District 5 Chief District Court Judge.
- The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge was not present for roll call but joined the meeting at 2:10 p.m.
- The Honorable Teresa Vincent, District 18 Chief District Court Judge.
- The Honorable Billy West, District 14 District Attorney.
- The Honorable Robert Evans, District 8 District Attorney.
- The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court.
- Kinsley Craig, District 27B Trial Court Coordinator.
- Kellie Myers, District 10 Trial Court Administrator.
- The Honorable Jennifer Harjo, New Hanover County Public Defender.
- John McCabe, Attorney and Appointee of the North Carolina Advocates for Justice (NCAJ).
- Wade Harrison, Attorney and Appointee of the North Carolina Bar Association (NCBA).
- JD Keister, Attorney and Appointee of the North Carolina Association of Defense Attorneys (NCADA).

The Honorable Marsha Johnson, Harnett County Clerk of Superior Court, the Honorable Jason Cheek, Davidson County Magistrate, and Patrick Weede, Attorney and Appointee of the NCBA, were unable to attend. The Honorable R. Allen Baddour, District 15B Resident Superior Court Judge, was present via WebEx. A number of additional people joined the WebEx as representatives of NCAOC and the School of Government (SOG) in their capacity as advisers and staff to the Task Force, as did Richmond County Sheriff James Clemmons.

## **Approval of June 11, 2020 Task Force Meeting Minutes:**

Judge Vincent moved to approve the proposed minutes of the June 11, 2020 Task Force meeting, and Clerk Chinn-Gary seconded the motion. All Task Force members who were present approved the minutes by a roll call vote.



**Final Approval of Recommendations for Resumption of Jury Trials:**

Judge Bridges said, at its last meeting, the Task Force discussed the substance of a final draft plan for the resumption of jury trials. He said a revised version of that plan is before the Task Force for approval at this meeting. He added that he does not expect anyone to be surprised by any provisions in this version but invited anyone with questions to raise them.

Judge Bridges said the revised draft includes four primary changes since the last version. First, based on the discussion at the last meeting, the current version includes a provision directing the senior resident superior court judges to consult with their local chief district court judges in crafting a plan for the resumption of jury trials, or allowing the chief district court judges to craft a separate plan for district court jury trials. He said that provision is intended to ensure that the chief district court judges are involved in the planning process or to give the chief district court judges the flexibility to develop their own plans. Second, at the last meeting, District Attorney West and District Attorney Evans voted in favor of the plan for resumption of jury trials, with the understanding that they would be able to include a footnote objecting to then-recommendation number 11 (current recommendation number 12). Judge Bridges said the draft report now includes that footnote, as well as additional language they requested in the district attorney portion of the stakeholder comments section.

Third, the National Center for State Courts (NCSC) recently released the results of a national public opinion poll that explored attitudes toward jury service during the pandemic. Judge Bridges said there had been some discussion about including the results of that poll in an appendix to the Task Force's second report, and the report now contains a reference to that poll on page 6. Finally, Judge Bridges said the report now includes a separate section containing recommendations from the Best Safety Practices Working Group with respect to jury trials. While approval of those recommendations appears separately on the meeting agenda, Judge Bridges said they really are part of the plan for resuming trials.

Judge Bridges asked if any Task Force member had questions or comments. Judge Vincent thanked Judge Bridges for taking into consideration her comments and requests for the chief district court judges to have a role in crafting local plans for the resumption of jury trials, and she said she likes having the options of collaborating with the senior resident superior court judges or creating an independent plan for district court jury trials. Judge Corpening noted that the first recommendation with respect to jury trials includes new language suggested by the Technology and Innovations Working Group about the Chief Justice specifying a date for the earliest resumption of trials based on the rule of law and the fundamental rights afforded to criminal defendants and victims, in addition to her assessment of statewide health data.

Attorney Harrison moved to approve the current version of the plan for the resumption of jury trials and to include it as drafted in the Task Force's second report, and Judge Vincent seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Sermons, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, and Attorney Keister) voted in favor of the motion by a roll call vote.

**Approval of Recommended Best Safety Practices for Jury Trials:**

Judge Corpening said the draft report now includes the Best Safety Practices Working Group's recommendations for jury trials on pages 12 to 19. Trial Court Administrator Myers said that working group submitted its draft recommendations for jury trials at the prior Task Force meeting, and they have since added source information from public health officials at Attorney Harrison's request. Trial Court Administrator Myers said the working group inserted that source information throughout the text as it did in the first report, rather than including it in an appendix. She said one new recommendation is included at the suggestion of a North Carolina Department of Health and Human Services (NCDHHS) intern, which is for local officials to consider the use of face masks with clear panels, such as those used by individuals who are deaf or hard of hearing. Trial Court Administrator Myers added that the revised report also includes a footnote directing readers to the primary sources the working group relied on in generating the best practices recommendations.

Judge Corpening thanked the working group for its efforts, and he asked if any Task Force members had questions or comments. Public Defender Harjo said the section containing the plan for resumption of jury trials contains a discussion about considering defendants' constitutional rights and the rule of law in regard to proceeding, and she wanted to clarify that language also applies to the best safety practices for jury trials. Trial Court Administrator Myers directed everyone to the language on page 15 of the report about weighing the rights of the defendant against the health and safety of all individuals in the courtroom.

Clerk Chinn-Gary referred to the language in that same section of the report about there not being a specific length of time that health professionals say is safe for people to assemble in the same room. Clerk Chinn-Gary said her local health officials have suggested that judges should either take routine breaks during the course of a session or that the courtroom clerks should be rotated so they are not in a courtroom for longer than a half day. She said there may not be a specific time that health officials would identify as safe, but they have suggested those options to mitigate the risk.

Judge Sermons moved to approve the best safety practices for trials, and Attorney Keister seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Sermons, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, and Attorney Keister) voted in favor of the motion by a roll call vote.

**Approval of Technology and Innovations Long-Term Recommendations:**

Judge Corpening noted that the Honorable Chuck Henry, Chair of the Technology and Innovations Working Group, was unable to join the meeting, and he asked Attorney Harrison if he wanted to give a report. Attorney Harrison said most of the working group's intermediate and long-term recommendations carry forward the immediate recommendations that were included in the Task Force's interim report to the Chief Justice. He said the additional recommendations include some resources for NCAOC to investigate and develop projects that will take a longer-term investment of time and resources, such as remote dispute resolution and triage procedures to save time and enhance

efficiencies. In response to Judge Bridges' request, he said the working group also identified one recommendation that would require legislative action, which would be an amendment to Rule 53 of the Rules of Civil Procedure.

Judge Corpening asked about the article on Alaska's Early Resolution Triage Program that might be included as an appendix to the second Task Force report. Attorney Harrison said NCSC provided that article to him as a resource about triage programs in district court. He noted that, unlike the other articles about triage programs that are linked in a footnote in the draft report, the Alaska article is behind a paywall. He said NCSC put NCAOC Deputy Director Danielle Carman and him in touch with the article's author, and she gave permission to include it in the Task Force's report if the members want to do so.

Attorney Harrison moved to approve the intermediate and long-term recommendations of the Technology and Innovations Working Group, and District Attorney Evans seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Sermons, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, and Attorney Keister) voted in favor of the motion by a roll call vote. Judge Corpening thanked Judge Henry and the members of the working group for their efforts.

#### **Discussion of Recommended Statutory or Rule Changes and Funding Concerns:**

Judge Corpening said this item has been on several meeting agendas but the Task Force has not had time to discuss it. He noted that the Technology and Innovations Working Group has recommended some limited statutory and rule changes, and said he believes this section can be deleted as a free-standing part of the report. Judge Bridges and Judge Sermons agreed. No Task Force member objected.

#### **Final Approval of Draft Second Report to Chief Justice:**

Judge Corpening directed the Task Force members to some additional changes to the overall draft report, including the addition of appendices with the NCSC poll results and the article on Alaska's triage program, the removal of the reference to recommendations on statutory or rule changes in the introduction, additions to the summary of the district attorney's concerns in the section on stakeholder comments about jury trials, and a reference on page 6 to the NCSC poll.

Clerk Chinn-Gary said the Chief Justice has noted in recent speeches that the General Assembly controls the Judicial Branch's budget and has asked for legislative support to ensure that the courts have the resources they need to operate during the pandemic. She said she would not want the omission of a section on funding concerns to diminish the opportunity to get legislative support for the Branch. Judge Corpening said NCAOC has already submitted its COVID-related funding requests. Judge Bridges said the Task Force's expression of support for NCAOC's requests could help, but he would not want it to appear to be a rubber stamp. Judge Corpening agreed, noting that the Task Force has not discussed this issue at any length. Attorney Harrison said a number of the long-term recommendations in the report will

require resources to implement and he does not believe the Task Force knows enough to project the amount of resources they would require.

Deputy Director Carman clarified the next steps for the Task Force's work products. She said she spoke with the Chief Justice's Chief of Staff, Anna Stearns, and her understanding is that the Chief Justice wants to receive the Task Force's second report and then have NCAOC create a final report that pulls out the Task Force recommendations that are directed at local officials and puts them into the form of a field guidance document that will be widely circulated throughout the Branch. Deputy Director Carman said the Task Force's first report is posted on NCAOC's website and the second report will be posted when it is final. However, the Chief Justice is the primary audience for those reports and the final outward facing document will be in the form of field guidance from NCAOC. In other words, she said legislators do not seem to be an intended primary audience for the Task Force's reports. Clerk Chinn-Gary said that feedback is helpful.

Judge Vincent moved to approve the additional revisions and the final version of the report, and Clerk Chinn-Gary seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Sermons, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, and Attorney Keister) voted in favor of the motion by a roll call vote.

Judge Corpening expressed his appreciation for the Task Force's work. He said the members all came together on very short notice and worked tirelessly to provide important and valuable information to the Chief Justice. He said he knows the members were already busy professionals and he is grateful for their willingness to jump into this challenging work. He thanked all of the members for their service to the State of North Carolina. Judge Corpening added that the Task Force might need to reconvene in the future, and he knows everyone will be willing to jump back in if it does.

Judge Bridges said he does not know whether the Task Force's work will be complete with the submission of its second report and, if the Chief Justice calls on the group again, he looks forward to working further with everyone. If not, he thanked each member for their service on the Task Force. Judge Bridges said a number of NCAOC, IDS, and SOG staff worked hard behind the scenes to support the Task Force's work, noting that the Task Force's work would not have been possible without them. He thanked all of those staff members for their service, and also thanked the Task Force's public health advisor from NCDHHS. Judge Bridges added that it was a pleasure to serve as Co-Chair with Judge Corpening.

Judge Bridges said the members of the Task Force come from diverse backgrounds and have varying interests, but all of the members have conducted themselves with complete professionalism and respect for differing points of view. He added that the strength of this group flows from its interactions and exchanges of different points of view.

The meeting adjourned at 3:00 p.m.

## **APPENDIX B**

# COVID-19 STAKEHOLDER RESPONSES ABOUT RESUMING JURY TRIALS

June 2020

*Below are the full detailed responses of constituent working groups regarding the resumption of jury trials.*

## **Conference of District Attorneys (revised 6/4/2020)**

North Carolina courts are a critical governmental function and jury trials are a fundamental right guaranteed by both the United States and North Carolina Constitutions. The right to a jury trial is one of the most important rights afforded to criminal defendants and the right to a speedy trial is often of the upmost importance, especially for those who are incarcerated. Victims of crime also have constitutional rights regarding the disposition of their cases and have a strong interest in having their cases heard in a timely and efficient manner. Further a defendant's constitutional rights are not delineated by the type of case. Rather, all defendants charged with any felony have a right to have their case heard by a jury of their peers. Each case is unique with its own priorities and complexities. Any decision to separate when jury trials can begin, based on selection of the arbitrary classification of capital and non-capital first-degree murder or any other type of case, is unjustifiable. Thus, long-term, sweeping, one size fits all restrictions on jury trials should not be dictated. Rather, a more localized approach which can better assess local resources, hear the arguments of the State and criminal defendants and implement safety precautions as delineated by the CDC, the Governor and the Chief Justice, is a more appropriate avenue to ensure justice is administered.

Throughout the country, local jurisdictions are making decisions and creating provisions to safely convene juries, thus allowing criminal defendants to avail themselves of their constitutionally afforded rights, regardless of the case type. These states have considered a myriad of factors, focusing primarily on safety concerns, logistics and constitutional and statutory provisions. We are aware of no state or Chief Justice who has determined when cases can be scheduled based on an arbitrary classification of case type. This type of restriction will produce constitutional challenges. Jury trials in parts of Oregon and in the Eastern District of North Carolina resumed in mid-May. In June, jury trials will resume in Maricopa County, AZ, Lincoln County, Montana, the 7<sup>th</sup> Circuit of South Dakota, St. Louis, Missouri and statewide in West Virginia and New Mexico. Pursuant to an order by the Chief Justice, certain counties in Mississippi can begin convening juries now with the entire state allowed to begin jury trials on July 27<sup>th</sup>. Also, in July, jury trials in St. Charles, Missouri and statewide in Indiana and Colorado will begin. Jurisdictions in Michigan, Texas and Oklahoma are preparing to resume jury trials in early August. Each of these areas in our country implemented, or plan to implement, safety procedures that include masks if requested, social distancing of at least 6 feet and even relocating to larger facilities to provide

additional space and promote safer procedures. Additionally, several jurisdictions in NC have continued to safely convene grand juries and others have grand jurors convening in the near future.

### Chief Justice

During the COVID-19 global pandemic, our Chief Justice and the courts have recognized that adherence to social distancing and other public health guidance cannot be achieved with traditional and routine operation. Therefore, as with previous orders, it is imperative that the Chief Justice provide a best practices framework in which the critical court function of jury trials can convene. This framework should include a date in which jury trials may be considered for scheduling and guidance, which takes into account public health, public safety and the rule of law.

Our Chief Justice has already put into motion a plan that recognizes the value of local collaboration and empowers the senior resident superior court judge to serve as, or designate, a COVID-19 Coordinator. This coordinator should play a critical role in mobilizing a local COVID-19 team to advise regarding local guidelines and best practices for the resumption of jury trials. In order to provide a consistent date in which jury trials may begin, the Chief Justice should permit District Attorneys, pursuant to their statutory duty, to calendar cases for jury trials beginning August 3, 2020, subject to compliance with the framework set out by the Chief Justice and a locally developed safety plan. This is consistent with other states, such as New Mexico and Indiana, which required individual jurisdictions to submit COVID-19 plans before resuming jury trials.

### COVID-19 Coordinator and COVID-19 Team

Local criminal justice professionals are in the best position to determine scheduling decisions in their district. In consideration that all North Carolina counties have vastly different courthouse facilities, community resources, pending caseloads, available court weeks and varying pandemic level threats, each district shall develop individual safety processes and protocols for implementing jury trials. The COVID-19 Coordinator should appoint a local COVID-19 team comprised of the Resident Superior Court Judge, District Attorney, Clerk of Superior Court, Sheriff, and other criminal justice professionals to develop a plan which will set minimum mandates to implement safe and effective jury trial settings in compliance with direction of the Chief Justice, current public health guidance and the following safety provisions. The maximum allowable occupancy of each courtroom or meeting space shall be established to accommodate six feet of social distancing of all trial participants. Trial participants include judges, prosecutors, defendants and their counsel, jurors, victims, witnesses, clerks, court reporters and bailiffs. Minimum mandates may include utilizing alternative community facilities as needed and available. Personal Protection Equipment, including hand sanitizer, cleaning supplies, masks, etc. shall be available and utilized with guidelines established by the COVID-19 Team in contemplation of activities and roles during the course of the trial and social distancing capabilities. The local COVID-19 team is in the best position to determine when court personal and available physical space is prepared to implement jury trials in a manner that is safe for all parties. This determination will likely differ from district to district and possibly county to county. These decisions are best made locally.

Not all counties have criminal superior court jury trial weeks scheduled in August. In fact, with many districts needing to identify alternative locations and the research, time, and collaborative discourse required to develop a local safety plan, many districts will not be able to schedule jury trials in August. However, an aspirational August 3<sup>rd</sup> start date is necessary to begin resumption of some jury trials in districts that can comply with safety plans.

#### District Attorney Responsibilities

The District Attorney shall calendar cases for trial in accordance with NCGS 7A-49.4. In addition to their statutory requirements, the District Attorney is in the best position, in consultation with defense counsel, victims and witnesses to determine when a case is ready to be calendared for trial. As such, the District Attorney has the unique statutory responsibility to set the trial calendar.

#### Trial Judge Responsibilities

As was the case prior to COVID-19, the presiding judge shall make all decisions regarding motions to continue a case scheduled for trial. Judges, elected by their constituents, who are serving in their home districts pursuant to the Chief Justice directive, consider issues presented by counsel including the availability of witnesses, ability of attorneys to prepare, scheduling conflicts, facility safety and readiness in proceeding with trial. Judges will continue to consider those, and other factors, when determining if, and when, jury trials should move forward in their jurisdiction. Therefore, even if the COVID-19 Team has developed an acceptable local safety plan, safe locations for jury trials have been secured, scheduled trial weeks are available and the District Attorney has calendared a case for trial, the trial judge can still consider numerous factors and continue a case.

District Attorneys statewide recognize the unique challenges presented by COVID-19. They have continued to partner with state and local entities to maintain the essential court function while protecting the rights and safety of defendants, victims, the public and courtroom personnel. Providing the ability to begin jury trials on August 3, 2020 will allow them to continue to review local needs and available resources while ensuring justice is administered in a safe, consistent and effective manner.

#### **Public Defenders and Criminal Defense Bar**

##### **Submitted by Task Force Member Jennifer Harjo, New Hanover County Public Defender**

As a committee member of the Judicial Branch COVID-19 Task Force, I solicited comments and concerns from Public Defenders and the Criminal Defense bar regarding the resumption of criminal jury trials. This document attempts to identify and compile the concerns which have been expressed. I have organized the comments by topic and have taken the liberty of condensing the concerns which were duplicative.



### Masks and Face Coverings:

Appellate lawyers are concerned that face coverings will impede the court reporter's ability to accurately transcribe trial proceedings.

Masks will interfere with the ability of the lawyers and jurors to hear and are likely to interfere with the witnesses' ability to speak clearly. Many lawyers who have been participating in court proceedings during these last few months have worn face masks and find it very difficult to speak. (I had one Superior Court Judge who could not understand me while I was standing at the bench and I had to remove my face protection so he could understand my arguments. He thanked me for doing so, even though the conduct violated CDC guidelines.)

Trial lawyers are concerned that masks will impede the jury's role to gauge credibility, one of their primary responsibilities. The ability of the jury to use its "normal tests for truthfulness" when someone is wearing a mask is limited because so much of what we look for in others is based upon facial expression. This could be particularly difficult when a witness is sarcastic or speaks a foreign language, or where normal verbal indicators might not be present.

Masks have become highly politicized in a way that seems unpredictable and a little scary from the perspective of a lawyer (or client) who is trying to be politically neutral in the courtroom. For example, if an attorney in Durham decides not to wear a mask, the jury may take that to mean the person is conservative or reckless or it just may make them not like the attorney. In other counties, where the lawyer intends to wear a mask at all times, doing so may be taken as a political statement. This is magnified if the client is wearing a mask and needs to do so for health reasons. Criminal defendants are dehumanized if the jury cannot look them in the face.

Reading body language, particularly facial expressions, is critical to evaluating credibility and putting into context statements and reactions to statements, testimony, exhibits, etc.

Masks seem like an obvious bad choice. What if the case is a crime involving an allegation of a masked person? If the defendant is in a mask and the case involves an in-court identification, there can be no reliable identification.

Batson challenges require the judge to make credibility findings on the actions of the lawyers. Critical constitutional rights are in jeopardy if the lawyers are wearing face coverings while the court is exercising its obligation in determining credibility.

### Jury Composition:

There is much concern about who may be willing to show up for jury duty. Those who do not take the virus seriously are more likely to show up. Those who take it seriously are more likely express concern and reasons for excusal.

More serious is the likelihood that jury clerks and judges are going to be pressured to let high risk people stay home until there is a vaccine or some solid treatment options -- as they should from a public health perspective. This means our juries may skew upon age, gender and racial lines. There is ample public health evidence that certain "underlying health conditions" (e.g. diabetes) are more prevalent in African American and Latino communities. Men appear to contract the disease with greater severity than women, so we may see more men with underlying conditions inclined to stay home. This is a constitutional concern if it rises to the level of a fair cross-section claim.

Criminal jury trials demand community cross-section representation which cannot occur if there is a systematic approach to excusing any jurors who may fall in the COVID-19 high risk groups.

#### Clear Partitions:

Criminal lawyers have expressed an inability to participate in a jury trial where a barrier is placed between the lawyer and the client. Humanizing clients is a crucial in a capital case, but generally is necessary in every criminal trial. Barriers between clients and their attorneys creates a perception of danger or fear from the accused, thereby interfering with the presumption of innocence. In a case involving allegations of violence, the jurors must not perceive fear of the lawyer from the client.

Criminal defendants are entitled to protection and safety. However, they should not be forced to choose between safety and presenting themselves well to the jury. Because of this, and because of the risk that some of these procedures would ultimately be deemed prejudicial by an appellate court, the defense bar urges against high level felony trials, and especially capital trials, until they can be conducted in a truly "normal" manner.

Plexiglass can interfere with ability to view and hear the witness. Glares and angles in the courtroom may make it even more difficult.

Physical barriers impede the ability to approach a witness with exhibits, and with publishing evidence to jurors.

The optics of a physical barrier, translucent or not, between the witness and client/defendant are terrible in that it could appear that the witness needs protection from the client and that the client is a danger. This seems just as damaging to fairness as a facemask.

Just the appearance of a "shield" or "protection" or a "box" around a witness can affect the way one's testimony is perceived. On the same note, if a defendant wishes to testify, his or her placement behind a box that may conjure up associations of being behind the glass that is often seen in jail images or create an effect that the jury should be protected from the defendant.

Clear partitions dehumanize the process of a live trial. Any partitions around the tables, witness stands or jury box will also create a substantial distraction.

#### Trial Length:

There is a likelihood that risk-averse jurors may feel compelled to rush through the process, including the deliberation process, to minimize contacts. Both sides are entitled to fair outcomes and if jurors feel stressed or compelled to hurry the process, the purpose of the jury is undermined.

#### Physical distancing / Facilities:

If jurors are separated by 6 feet, they are likely going to end up seated behind the lawyers, interfering with the ability of counsel to view the jury and speak to them. Additionally, it would leave the defendant sitting with his or her back to the jury which seems odd and alienating.

Alternate facilities will have to be developed to replace most courtrooms since social distancing would not be possible in most current configurations. If adequate spacing can be arranged, additional video and audio displays will likely be needed so all participants can effectively see and hear all relevant testimony. Trials with more than one witness will require a cleaning of the chair and the area between witnesses.

#### Exposure in the Courtroom:

Lawyers are concerned about the fear and panic that may be experienced if people are required to remain in a courtroom for extended periods of time. Recent scientific articles describe the risk as increasing over a period of time of exposure. Five (5) minutes is enough time to be in contact with the virus to contract it. Remote contact within a room with inadequate air flow is also believed to contribute to infection. Barriers may not provide the protection sufficient to provide comfort to jurors, witnesses, lawyers, judges, clerks and courthouse personnel necessary to accommodate a fair trial.

#### Virtual/Remote Trials:

Virtual trials eliminate the health risks and provide an opportunity for the accused to resolve his or her pending charges.

Virtual trials interfere with the ability to effectively cross-examine witnesses. Nuances about a witnesses' emotion, fear, confidence or uncertainty are difficult to ascertain or develop during a virtual trial.

Technological issues arise in virtual trials which may not be present to all parties' participating in the trial. For instance, a juror could be tending to other business or distracted while "on-line" without the knowledge of the judge or the lawyers. The interactions between lawyers and witnesses utilize more

than one sense. When a witness testifies, it's not just his or her statements that must be evaluated by a juror. Smell, sight, sound, all are factors in evaluating credibility. The physical presence and demeanor of a person are considered.

#### Conclusion:

Criminal defendants need to have their cases resolved in a timely manner. The ability to conduct criminal trials in a fair manner cannot occur in the immediate future. The measures proposed to proceed with jury trials during this pandemic limit a juror's ability to perceive many of the fundamental indicators people utilize to determine credibility. Perception is crucial, that's why we conduct *voir dire* and don't have clients appear in court in jumpsuits or shackles.

No one should be required to attend court proceedings while there exist serious health risks.

If jury trials are commencing in August, especially capital jury trials, health conditions would need to substantially improve, otherwise, courts need to have the capability to regularly test potential jurors and sitting jurors as well as participants and witnesses. There should be contact tracing and quarantining of jurors and others testing positive. Jurors should be vetted for whether they live or interact with others who are positive. Additional alternates would be required in a lengthy or capital jury trial.

Courts should make every effort to accommodate jury trials where both parties consent, including the consent of a defendant to any modified rules and distancing. Lawyers should not be prohibited from having close contact with their clients, but they should also not be forced to do so for the sake of immediacy.

#### **Criminal Defense Bar**

##### **Submitted by Task Force Member Patrick Weede**

The primary concern among criminal defense attorneys who provided feedback pertains to jury trials. Most attorneys believe that the Chief Justice should direct that criminal jury trials not begin until the fall at the earliest. Attorneys who handle capital murder cases and non-capital first-degree murder cases noted issues unique to their work. Generally, they requested a longer delay. I am highlighting the main points below, and I conclude with a proposal.

#### Preparation Time

Attorneys have been greatly impacted by the COVID-19 pandemic, especially in terms of the ability to meet safely with clients who are in custody. This issue is particularly challenging for attorneys who handle capital/potentially capital cases as well as non-capital first-degree murder cases. These attorneys expressed concern that they have been unable to review discovery with clients, have substantive discussions about the case, and track down witnesses and other critical information. Attorneys who

focus on this work often have numerous pending capital/potentially capital cases so there is a lot of catching up necessary for each case.

Further, many of these cases involve investigators, mitigation specialists, and other experts who have been unable to complete their work since mid-March. Thus, those handling capital/potentially capital cases believe that the Chief Justice should issue a directive that no capital or non-capital first-degree murder trial should begin for at least 4-6 months after the end of the stay-at-home directive unless both parties agree.

### Health and Safety

The health and safety of attorneys, clients, and their families is related to the preparation time issue. I also heard from several attorneys who are concerned about being in high-risk groups due to age and underlying health conditions. Attorneys who have a spouse or another family member in a high-risk category are also very concerned about exposing themselves and, consequently, their loved ones. As a result, they are concerned about their ability to meet safely with clients in custody and will need additional time to prepare adequately for trials.

### Courtroom Setup

Attorneys and clients, especially those who are in high-risk categories, must be able to maintain proper social distancing during trial. Criminal attorneys expressed concern about safety since they must have the ability to confer privately with clients at the counsel table, especially during a trial. Proper social distancing would not allow for a defense attorney to have close contact with a client. On the other hand, a defense attorney who sits next to a client puts the health of the attorney and the client at risk. The installation of plexiglass at counsel table would be beneficial for health and safety but would present a challenge to confidential communications during trial.

Furthermore, assuming that proper social distancing will require jurors to sit in the gallery (as opposed to the jury box) in many courtrooms, the configuration of the courtroom will need to change. Attorneys must have the opportunity to see the jurors throughout the trial. If the jurors sit behind the attorneys, they (the attorneys) would lose the opportunity to view the jurors during the trial, which would impair a defendant's ability to have a fair trial. Thus, a plan to resume trials should account for a balance between health and safety and the fair trial requirement.

### Representative Jury

Criminal defense attorneys are also concerned about the ability to select a jury that fully represents the community. With many individuals currently looking for work, it will be difficult for them to serve as jurors in the near future, especially in murder trials that often last for weeks. Requests for a deferral will likely be higher than normal. Attorneys also noted that (especially in more rural Eastern NC counties) a number of potential jurors may be in high-risk categories and may be very reluctant to serve on a jury

for the foreseeable future (or even respond to a summons). This impact on a potential jury pool could affect whether a jury is representative of the community and, consequently, a defendant's right to a fair trial.

### Proposal

Based upon the issues above, I respectfully request that the Task Force consider submitting the following proposal to the Chief Justice.

*There is great interest among litigants, attorneys, witnesses, potential jurors, and members of the public in the resumption of jury trials. As we carefully work to increase the number of available court services, we must recognize that the resumption of jury trials will take time.*

*The COVID-19 pandemic has significantly impacted the ability of criminal defense attorneys and their teams to prepare for trial. The pandemic has affected attorneys' ability to meet safely with their clients (especially those in custody) and has impacted the work of investigators and experts in the field. This impact has been particularly noteworthy for attorneys and their teams in capital murder cases and non-capital first-degree murder cases in which the defendants are facing the death penalty or life in prison without parole. Additionally, attorneys in high-risk groups due to age and other health issues continue to be impacted greatly. To that end, jury trials should resume pursuant to the following schedule:*

- 1) Jury trials in civil cases may begin on August 3, 2020.*
- 2) Jury trials in criminal cases may begin on August 3, 2020 only if the State and the Defendant consent.*
- 3) With the exception of capital murder cases and non-capital first-degree murder cases, all other criminal jury trials may begin on September 21, 2020.*
- 4) Jury trials in capital murder cases and non-capital first-degree murder cases may begin on November 30, 2020.*

## **APPENDIX C**

## **APPENDIX C**

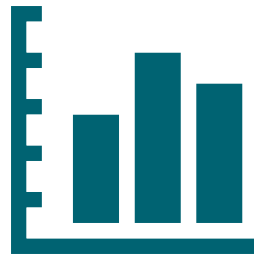


# State of the State Courts in a (Post) Pandemic World

*Results from a National Public Opinion Poll*



## // METHODOLOGY



**What:** National Multimodal Survey (Online + Phones)

**Who:** Conducted by GBAO Strategies

**When:** June 8-11, 2020

**Polled:** 1,000 Registered Voters

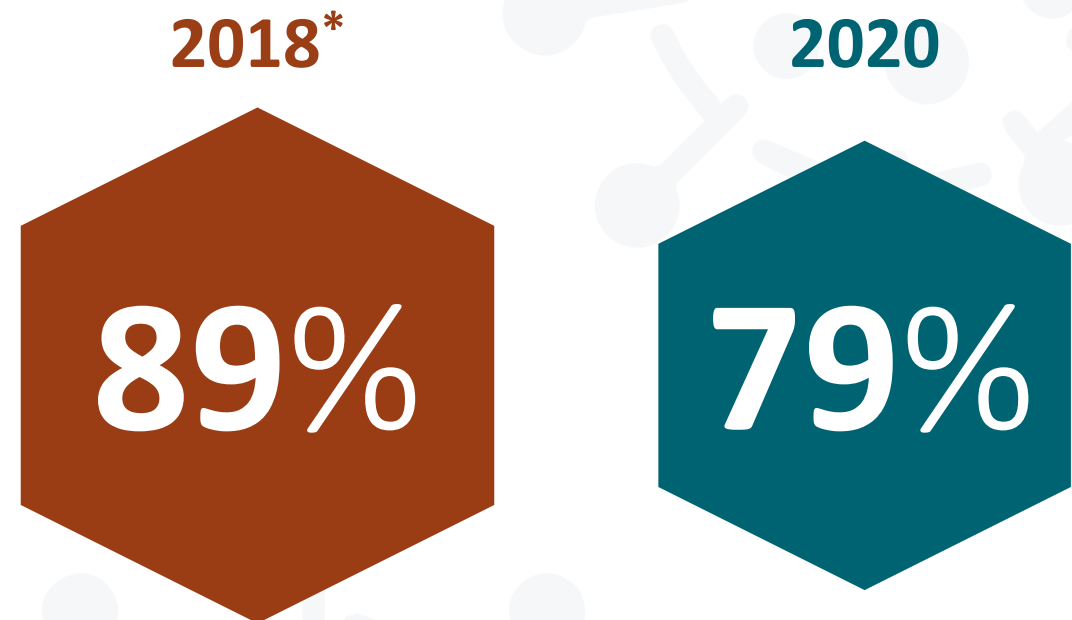
**Stats:** MOE +/- 3% (19 times out of 20)

// **FIGURE 2**

Has Support For  
Law Enforcement  
Changed?

State of the State Courts in a (Post) Pandemic World

**Q:** “How much confidence do you have in your local police department?”



*\*Highest score in our seven-year tracking poll (2014-2020)*

// Results from a National Public Opinion Poll **3**

### // FIGURE 3

## African American Opinion About the Courts/Justice System

State of the State Courts in a (Post) Pandemic World

According to NCSC's 2015 State of the State Courts survey, **only 32%** of African Americans believe state courts provide **equal justice to all**.

“As I said before, they stopped me for no reason. **You don't have to be a criminal to be treated like one.**”

— African American man (2019 NCSC focus group)

// Results from a National Public Opinion Poll **4**

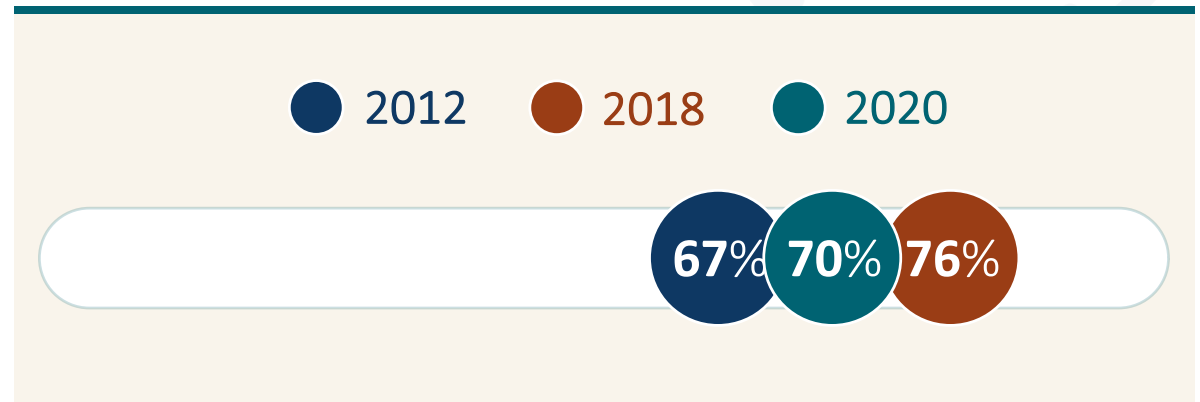
## // FIGURE 4

### Confidence in State Courts is Steady

State of the State Courts in a (Post) Pandemic World

**Q:** “How much confidence do you have in the (state) court system?”

Percent who reported feeling confident in the state court system.



8 Year Average — **70%**

// Results from a National Public Opinion Poll **5**

// FIGURE 5

Pandemic-Related  
Obstacles to  
Reporting for  
Jury Duty

State of the State Courts in a (Post) Pandemic World

14%

Primary caregiver to an  
**elderly family member**

19%

Could not secure **childcare**

47%

Someone in their household with  
**an underlying health condition**

**55%** of respondents

cited at least one of these obstacles to  
reporting for jury service, if called.

// Results from a National Public Opinion Poll








6

## // FIGURE 6

# Understanding “Comfort Levels” in a (Post) Pandemic World

State of the State Courts in a (Post) Pandemic World

**Q:** “On a scale of 1 to 10, how comfortable do you personally feel right now...”

	Going to a friend or family member’s home	7.5	
	Going to the grocery store	7.3	
	Going to a polling place to vote	6.7	
	Going to a government office	6.1	
	Eating out in a restaurant	5.5	
	Reporting for jury duty at your local courthouse	5.4	52% scored this 0-5
	Serving on a jury if selected	5.1	54% scored this 0-5

// Results from a National Public Opinion Poll 7

## // FIGURE 7

### What Protective Measures Improve Comfort Levels?

State of the State Courts in a (Post) Pandemic World

**Q:** “Please indicate whether the implementation of this protective measure would make you comfortable reporting to your local courthouse for jury duty.”



// Results from a National Public Opinion Poll 8



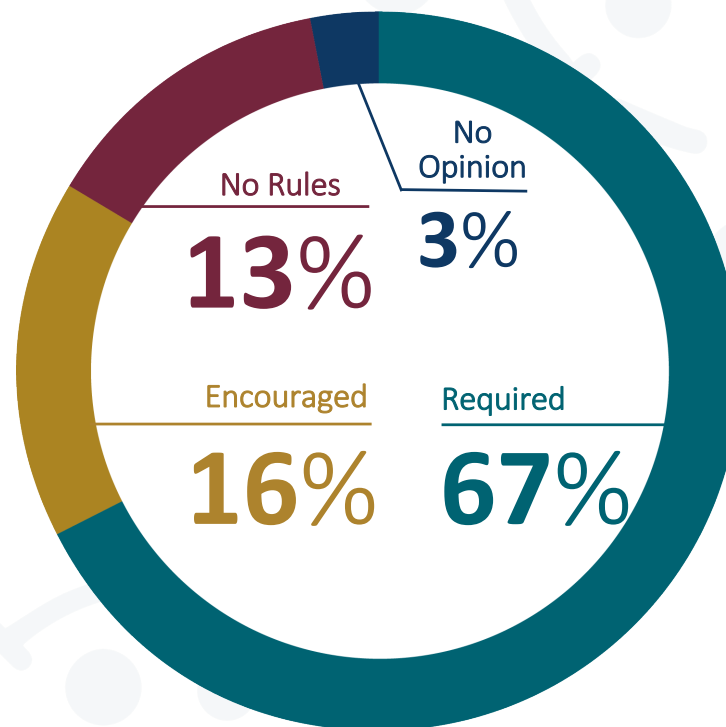
## // FIGURE 8

### A Mask Requirement is Strongly Supported

State of the State Courts in a (Post) Pandemic World

**Q:** “Which of the following best captures the rules you would like to see regarding the wearing of masks?”

For those entering a courthouse, masks should be...

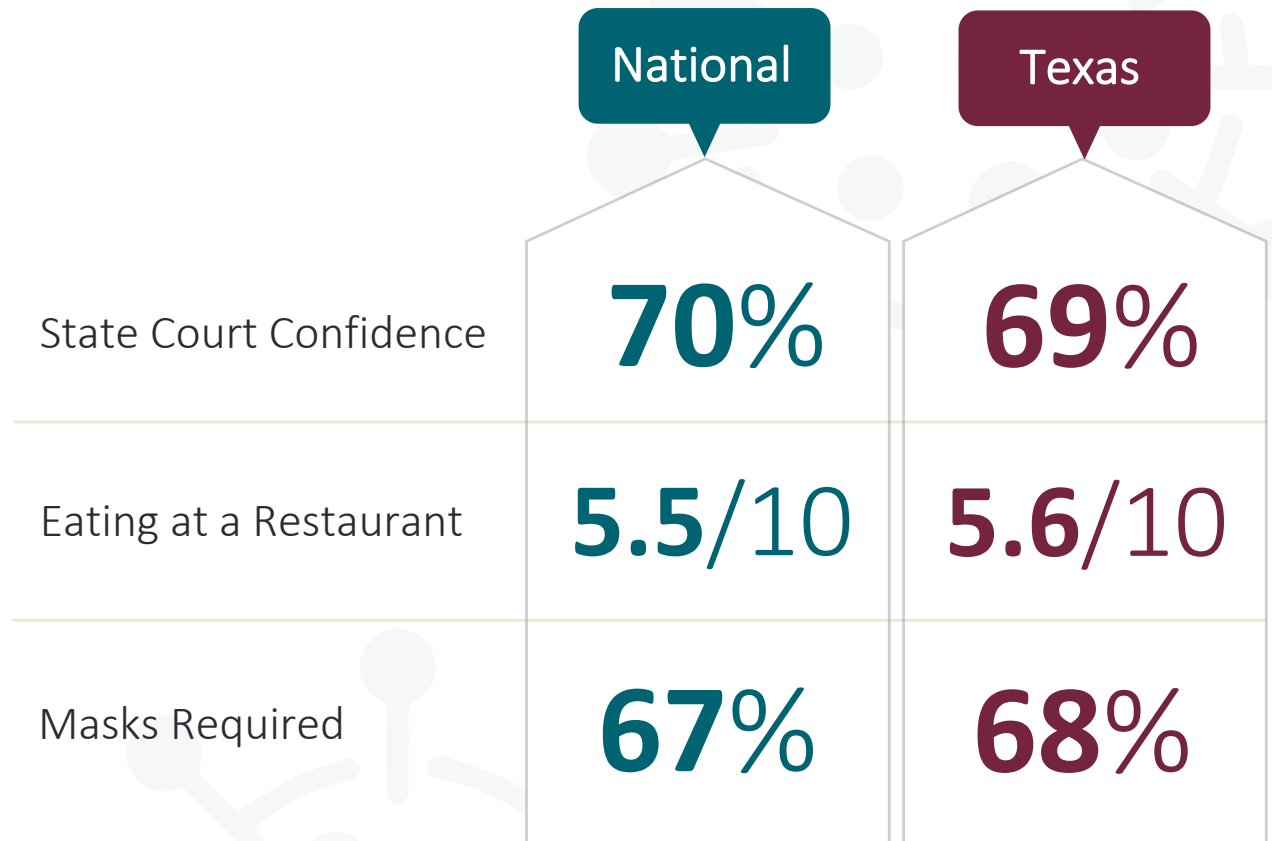


// Results from a National Public Opinion Poll **9**

// FIGURE 9

“This is nice, but  
*my* state is  
different...”

State of the State Courts in a (Post) Pandemic World



// Results from a National Public Opinion Poll 10

## // FIGURE 10

### Attitudes Towards Using Remote Court Services

State of the State Courts in a (Post) Pandemic World

**Q:** “If you had business with the courts, and this service was available online, how likely would you be to use it?”

Percent saying they would  
appear via videoconference  
*for their own case.*

Would Use

Wouldn't Use

2014

2020

43%

64%

55%

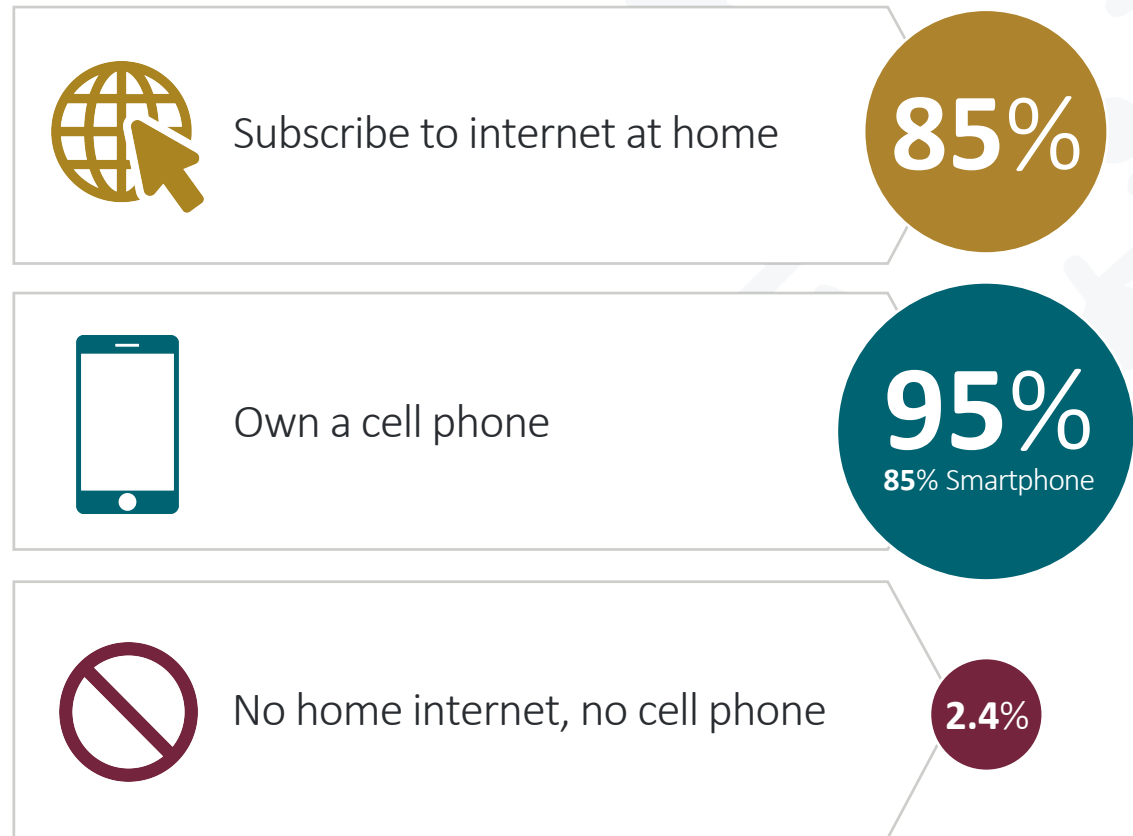
33%

// Results from a National Public Opinion Poll **11**

## // FIGURE 11

### Most Americans Have the Technology Tools for Remote Participation

State of the State Courts in a (Post) Pandemic World



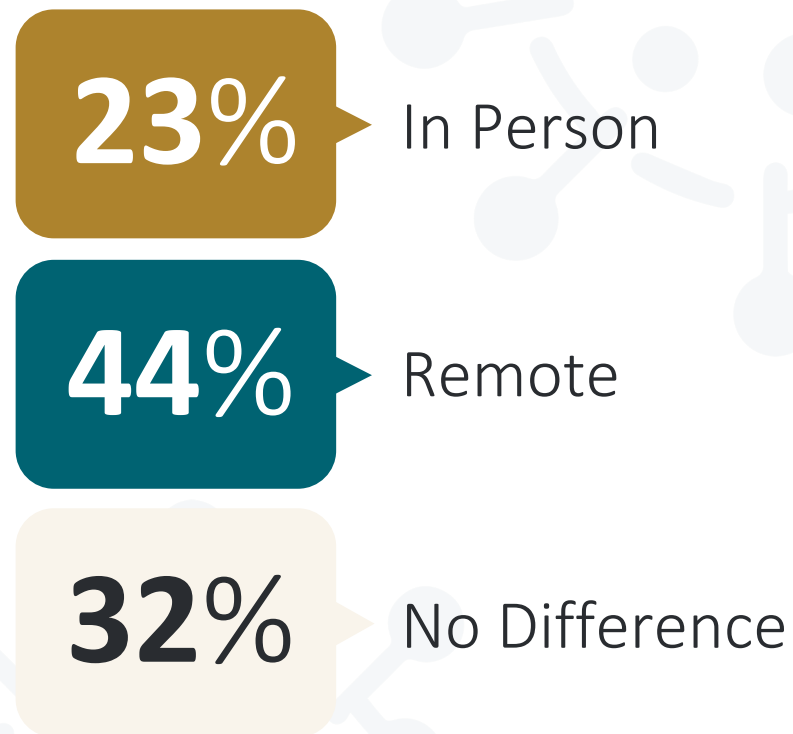
// Results from a National Public Opinion Poll **12**

## // FIGURE 12

### Strong Public Support for Remote Jury Service

State of the State Courts in a (Post) Pandemic World

**Q:** “Are you more comfortable with in person or remote jury service?”



// Results from a National Public Opinion Poll **13**

# // FINAL TAKE-AWAYS & CONUNDRUMS



People are looking for **alternatives to reporting to the courthouse**



**The elderly present the greatest challenge**—they are as uncomfortable with going to a courthouse as they are with accessing and using remote technology



**Composition of the pool** likely to be a challenge

## **APPENDIX D**

## **Best Safety Practices for In-Person Court Proceedings**

(recommendations submitted to the Chief Justice on June 12, 2020)

Pursuant to the Chief Justice's Emergency Directives, no session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and / or for extended periods of time in contravention of current public health guidance, and judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

If local court officials determine that in-person court proceedings may be scheduled pursuant to the [Chief Justice's Emergency Directive 11](#), they should implement a combination of engineering controls, administrative controls, and personal protective equipment, such as:

1. Maximum safety occupancy shall be posted ([Emergency Directive 12](#)).
2. Public seating shall be clearly marked for social distancing of six feet in all directions ([Emergency Directive 12](#)).
3. All Judicial Branch personnel assigned to a courtroom for more than thirty minutes should have a facemask made available prior to the session of court ([Emergency Directive 13](#)).
4. Stagger start and break times when there are multiple courtrooms operating.
5. Schedule appointment times for hearings.
6. Divide high-volume calendars into multiple courtrooms by last name.
7. Ask that only the person required to be in court appear and that all other individuals (e.g., family, friends, and children) remain outside the courthouse facility while socially distanced, or encourage these individuals to stay home or wait in vehicles.
8. Eliminate in-person calendar calls and require calendar calls that must take place to be done remotely via Webex.
9. Assign the same court personnel to work with the same judge in the same courtroom (less rotation to reduce spread).
10. Install physical barriers (plexiglass) in front of the judge and / or courtroom clerk.
11. Encourage materials for the hearing, such as briefs and memoranda, to be submitted electronically to the court prior to the hearing and discourage hard copies unless they are required to be in the court file.
12. Designate separate doors as "entrance only" and "exit only" to control the flow of traffic in tight doorways.
13. Permit the use of door stops, when not violative of fire and safety codes, to minimize frequent touching of doors into and out of the courtrooms.
14. Designate a single person to retrieve documents from counsel and parties and deliver them to the presiding judge or clerk (e.g., a bailiff).
15. Instruct counsel and parties not to approach the presiding judge or clerk unless directed by the court and only when wearing a mask / face covering.
16. Instruct defense counsel to wait behind the bar and to approach the prosecutor's table only when directed to do so (i.e., do not crowd the prosecutor's table).
17. Affirm oaths; inform people that they must bring their own Bible [or other religious text] if they wish to swear on [it].



18. Minimize the passing of objects, including papers and pens, that normally would be passed back and forth in court transactions and interactions. Individuals should wash their hands after contact and before touching anything else. Pens should be cleaned between use, if shared.
19. Provide cleaning wipes at counsel tables to wipe surfaces, if available. Encourage attorneys and parties to bring their own wipes to clean tables.
20. Encourage all participants to follow the [CDC guidelines](#) on how to protect themselves from COVID-19.

Additional considerations for in-person court proceedings include:

1. With respect to **attorney-client communication and interactions** when social distancing is not possible, consider plexiglass partitions, masks / face coverings, and / or headsets and microphones (must be a private connection).
2. **Interpreters:**
  - Disposable gloves and disinfecting wipes or alcohol prep pads should be provided in order to allow for safe handling and disinfection of interpreting equipment.
  - To allow for social distancing, court interpreters must be required to provide and use remote wireless interpreting equipment for all in-person events. Alternatively, interpreters and limited English proficient (LEP) parties should be allowed to bring their mobile phones into the courtroom to be used in lieu of interpreting equipment. This would allow the interpreter to create a direct audio connection to the LEP party, thus avoiding any physical handoff of equipment.
  - Interpreters must disinfect interpreting equipment before and after use.
  - Interpreters must sanitize equipment in front of the LEP party before handing it to the party.
  - If the use of equipment or mobile phone is not practical or allowed, especially in brief proceedings, the interpreter must be allowed to maintain physical distancing from the LEP party and to interpret in the consecutive mode loudly enough to be heard.
3. **Witnesses:**
  - Encourage remote appearances, when permitted by law.
  - Consider alternate locations for witnesses, such as a jury box, to effectuate social distancing from the bench.
  - Provide tissues and hand-sanitizer at the witness stand.
4. **Court Reporters:**
  - Social distancing should be clearly marked and enforced around the court reporter's station / desk in the courtroom.
  - If the witness or clerk sits above the court reporter, consider moving the witness or court reporter to another location in the courtroom (e.g., jury box) to minimize the droplets spread through coughing, talking, breathing, etc.
  - Equipment should be cleaned frequently.
  - Permit the court reporter to appear remotely via Webex when possible.
  - Be cognizant of court reporters using the voice writing method as they may not be able to wear a mask / face covering while in court.

5. **Weddings:**

- Limit the number of observers (two witnesses are required).
- Conduct in-person ceremonies outside, enforcing social distancing.
- Consider permitting observers to appear remotely (e.g., via cell phone or FaceTime).
- Limit the days and times available for weddings to be performed.

6. Ensure that courts safely remain open to the **public and press:**

- Local courts will need to decide who is asked to leave a courtroom if the maximum safe occupancy is reached.
- Consider administrative orders regarding the number of credentialed press permitted and utilizing pool feeds to help minimize the number of individuals in a courtroom while also keeping the courts open.
- Consider permitting remote observation of in-person court proceedings to minimize the number of individuals entering a court facility while keeping the courts open.

## **APPENDIX E**

# FASTER AND AS SATISFYING: AN EVALUATION OF ALASKA'S EARLY RESOLUTION TRIAGE PROGRAM

Stacey Marz

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The Alaska Court Early Resolution Program (ERP) addresses many issues – self-representation in divorce and custody cases, triaging to determine the appropriate resolution approach, the importance of early intervention and the desire to use a simplified process and a problem-solving approach. This article reports on an evaluation of the Anchorage ERP. It found different outcomes for ERP cases that settled than comparable cases that proceeded on the regular trial process track with respect to the following outcomes:

- time to disposition,
- number of staff processing steps and associated completion time, and
- number of motions to modify filed within two years of the disposition.

Key Points for the Family Court Community:

- Courts can resolve 80% of their contested divorce and custody cases between self-represented parties in just one hearing with a special calendar that employs a problem-solving approach, triage, a simplified process, and early intervention.
- Courts should use problem-solving approaches instead of the traditional adversarial model to resolve divorce and custody cases.
- Courts can facilitate problem-solving by using unbundled volunteer attorneys, mediators and settlement judges to help parties resolve cases.
- Courts should triage cases into the appropriate resolution approach.
- Case screening can occur effectively using information from the pleadings and filed documents along with information about each party's other court cases.
- Early intervention in the case process is important to allow the parties to resolve and move on as soon as possible.
- There are significant efficiencies for the court by mass calendaring many cases for the same hearing time.

**Keywords:** *Custody; Differentiated Case Management; Divorce; Early Resolution Program; Problem Solving; Self-Represented; Simplification; and Triage.*

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Many courts are grappling with how to manage divorce and custody cases involving self-represented litigants efficiently and effectively. Some are exploring how to triage each case to determine the appropriate resolution approach. Some are implementing processes in which the litigants avoid contentious litigation and resolve the issues as quickly as possible. The Alaska Court System created the Early Resolution Program (ERP) to improve outcomes for families. The program identifies and triages newly filed contested divorce and custody cases involving two self-represented litigants, applying a non-adversarial process shortly after the case is filed. The author evaluated the Anchorage ERP and compared three years of ERP cases that settled to a control group composed of similarly situated cases that proceeded on the regular trial track before ERP began.

This article provides a look at the possible pathways a hypothetical family's case could take—ERP or the typical trial track—to understand the types of issues that need to be resolved and how the processes differ. It explains the prevalence of self-representation in divorce and custody cases in Anchorage, which is similar to much of what is seen in courts across the country. Providing the

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foundation for why the court system created ERP, there is discussion about the appropriateness of a problem-solving approach, the importance of caseload management and early intervention by the court, and the need for triage. There is a section outlining the Early Resolution Program, including the triage screening process. The evaluation is summarized, including the methodology and outcomes. Finally, the findings and conclusions are presented.

## **I. HYPOTHETICAL FAMILY AND POSSIBLE CASE PATHWAYS**

To understand the difference between a case that has an ERP hearing and a case that takes the usual adversarial case approach, it is helpful to consider a fictitious couple, Ms. W and Mr. H, whose situation represents a case commonly heard in the Alaska Court System. They have been married for 14 years. They have two children, aged 10 and 12. They split up four months ago after deciding their marriage was over. They own a home with a mortgage in which Mr. H has been living since they separated. Ms. W rented an apartment 15 minutes from the marital home. The children have been living with each parent one week at a time for alternating weeks. Ms. W is a teacher and has vested in the school district's pension. Mr. H is a manager in a home improvement store and has no retirement account. Their debts include medical bills, credit cards, and Ms. W's student loans.

Mr. H filed a divorce complaint in the Anchorage court on May 16, 2014, asking for shared decision making regarding the children, a parenting schedule with the children living with him Monday–Friday and with Ms. W Friday–Monday. He wants an even split of the marital property and debt. Ms. W filed an answer<sup>1</sup> on June 2, 2014. She asks for shared decision making regarding the children and a parenting schedule of weekly rotations between each parent. She wants Mr. H to keep the house and pay her one-half the equity and split the debt. She wants to keep her pension.

This case could take two different courses. One course would result in the divorce being completed within eight weeks of filing after one uncontested hearing, no postjudgment motions, and fewer case-processing steps by court staff. Another course would result in the divorce taking six months to resolve after a trial, a postjudgment motion to modify, and a higher number of case-processing steps.

### **A. COURSE 1: EARLY RESOLUTION PROGRAM**

If their case takes the first course, within one day after Ms. W files the answer, the file is routed to the Family Law Self-Help Center. That day, a staff attorney reviews the file to determine whether it meets the criteria for the Early Resolution Program (ERP). First, he determines whether the case involves two self-represented litigants. If so, he triages the case to determine whether it is suitable for ERP. Cases are referred to ERP unless there are factors that would exclude it from the program. If appropriate, the attorney schedules the case for an ERP hearing before a settlement judge in approximately three weeks along with up to nine other cases. He sends a notice of the early resolution hearing immediately after the triage is completed and the case is accepted, notifying the parties about the special opportunity to resolve their case quickly by working with legal professionals at the courthouse. The notice also advises the litigant about useful information to bring to court and the staff attorney's direct phone number for questions. Two days before the hearing, the staff attorney calls each party to remind them about the hearing, explain how ERP works, and explain the factors the judge uses to decide parenting issues and the division of marital property and debt. He also suggests information to gather to make the hearing process go more quickly, encourages the parties to think about workable solutions specific to the issues in the case, and asks them to discuss the issues before coming to court if possible, answering any questions.

Depending on the issues in the case, the parties may be assigned two volunteer unbundled attorneys or a court mediator to help them try to resolve the issues by agreement at the hearing. If the case

is similar to the approximately 80 percent of the cases that are heard in ERP, they reach a settlement in one hearing after working together for up to three hours. The parties go into the courtroom with their volunteer attorneys where a judge hears the terms of the agreement, asking any necessary questions. A staff attorney finalizes the final documents—findings of fact and conclusions of law, parenting plan, divorce decree, and child support order—in the courtroom during the hearing. The judge reviews and signs all the documents, which are then copied and distributed in the courtroom. The judge grants the divorce, and the parties leave the courtroom with all the documents in hand. The case is docketed in the case management system by the next day and the case is closed.

## **B. COURSE 2: ADVERSARIAL CASE APPROACH**

Alternatively, the case could take a different course if not referred to ERP. In this scenario, after Ms. W files the answer on June 2, 2014, the judge sets a 15-minute trial-setting conference for four to six weeks later, at which both self-represented parties are to appear. During the conference, the judge schedules a trial for February 27, 2015. Afterward, the judicial assistant types up a trial scheduling order that includes the trial date and time, noting the requirement to file trial briefs and witness lists and to exchange exhibits 45 days before trial.

On November 14, 2014, Ms. W files a motion requesting to take the children to Hawaii for winter break after Mr. H told her she could not take the children on vacation because he had different plans for them. She also files a supporting affidavit and proposed order. However, Ms. W fails to fill out the certificate of service section on the form indicating she provided Mr. H with a copy of her filing, so, on November 20, the court's civil department mails her a written deficiency notice alerting her that she needs to serve Mr. H again and file a completed certificate of service. On November 27, Ms. W sends Mr. H a copy of the filing and files a certificate of service that day. On December 9, Mr. H files an opposition to Ms. W's motion, along with an affidavit and proposed order, stating he did not want the children to go to Hawaii because their 95-year-old grandmother (his mother) was going to be visiting Anchorage over the holidays. On December 15, Ms. W files an expedited motion, affidavit, and proposed order, and an underlying motion, affidavit, and proposed order, asking the court to schedule a hearing on the vacation matter as soon as possible because she already purchased the Hawaii plane tickets and rented a condo on Maui for ten days, and they were supposed to depart on December 20.

The court schedules a hearing on December 19 for 30 minutes. After hearing each side's arguments, the judge rules from the bench and allows Ms. W to take the children to Hawaii. After the hearing, the judge listens to the electronic recording, writes up a two-page order, and gives it to his judicial assistant. She docketed the order in the electronic case management system, makes two copies to mail to each party, and puts the original order in the file.

By mid-January, the parties follow the trial scheduling order and each files the trial brief, witness list, and exchanged exhibits. On February 12, the parties appear at a 15-minute pretrial hearing where the judge tells them the trial will happen on the scheduled date. On February 27, the trial occurs over the course of four hours. At the trial's end, the judge takes the matter under advisement. On March 10, the judge reviews the notes he took during the trial and listens to parts of the testimony of the parties and some of their witnesses. After two and a half hours, he reaches a decision and drafts the required final documents. His judicial assistant makes the distribution copies, docketed the documents in the case management system, files the originals, and mails copies to the parties.

The implications for litigants and the court system are different depending on which course the case takes. A case that moves through Course 1 is there specifically because the triage screening process found the case suitable for ERP. The ERP process is geared toward helping parties settle their dispute without trial. The case gets into court quickly and likely resolves in one hearing. Cases that go the Course 2 route usually result in multiple appearances and a longer time until the case is over. No systemic screening process is involved and cases are treated generally as if they are destined for trial regardless of the issues or characteristics of an individual case. Elongating the parties'

interaction with each other and the court system is problematic, particularly when the majority of family law cases involve self-represented individuals.

## II. PREVALENCE OF SELF-REPRESENTATION IN ANCHORAGE DIVORCE AND CUSTODY CASES

"A traditional hallmark of civil litigation is the presence of competent attorneys zealously representing both parties."<sup>2</sup> "The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion."<sup>3</sup> It is widely believed that at least 75 percent of cases handled by civil courts nationally involve at least one self-represented litigant.<sup>4</sup> In the Anchorage court, the majority of contested divorce and custody cases involve at least one self-represented party, with the percentage ranging from 67 to 72 percent between 2010 and 2014. The percentage of cases with two self-represented parties increased from 38 to 45 percent over this five-year period.

People represent themselves for a variety of reasons. Many low-income and middle-income individuals, as well as small businesses, cannot afford to pay for attorneys. Others believe they can handle the matter themselves or want control over their cases.<sup>5</sup> The ready availability of information in books and online has fostered the perception that the legal process can be navigated without an attorney.<sup>6</sup> "[G]rowing numbers of people who use family courts simply do not want or trust lawyers to serve their best interests even when they can afford them."<sup>7</sup> These reasons for not hiring an attorney "reflect economic and social trends and are not likely to change in the near future."<sup>8</sup>

Self-represented litigants pose challenges for the court. They may be unfamiliar with court procedure, so they may make mistakes regarding the documents they file and may not know how to conduct themselves during hearings or trials. Judges may feel tension between instructing self-represented litigants about proper procedures that Alaska Supreme Court case law permits and not giving them legal advice that is clearly prohibited to maintain judicial neutrality.

## III. A PROBLEM-SOLVING APPROACH IN FAMILY LAW CASES

Courts generally use the adversarial model to resolve divorce and custody cases. The adversarial system relies on the court and the litigants engaging in a rational fact-finding process to reach legally appropriate and final decisions for legal disputes. Court rules provide the procedures for opposing parties to make their respective arguments and introduce supporting evidence so the judge is able to issue an impartial final decision. The adversarial model, however, is not suited to resolve family law disputes. "Although adversary procedures are rooted in due process of law and perform essential social functions, they do not meet the needs of many reorganizing families who look to the courts for solution."<sup>9</sup> "As family law scholars repeatedly explain, adversarial procedures are uniquely costly and counterproductive in resolving custody disputes."<sup>10</sup> The process "bears with it significant emotional and financial cost."<sup>11</sup> It facilitates one parent's alleging that the other parent engages in bad behavior and deficient parenting to elevate his or her position, exacerbating existing hostility and engendering long-term mutual distrust. As one critic characterized it, "The formal nature of the courts pits the parties against one another like two scorpions in a bottle, at a time when they are most angry and hostile toward one another."<sup>12</sup> Jane Murphy and Jana Singer write extensively about how the adversarial process used in family dispute resolution harms children, parents, families, the judicial system, and lawyers and undermines confidence in the legal system.<sup>13</sup> Interestingly, litigants tend to express dissatisfaction with the adversarial process, even when they prevail at trial.<sup>14</sup> "There is a profound consensus that the emotional costs of adversarial custody proceedings are intolerably high."<sup>15</sup>

Reform efforts in domestic relations courts reflect this understanding. As Professor Singer observes, courts are undergoing a "paradigm shift" away from a "law-oriented and judge-focused

adversary model” toward “a more collaborative, interdisciplinary, and forward-looking family dispute resolution regime.”<sup>16</sup> Recognizing that family disputes are not well served by the adversarial system, the Conference of State Court Administrators (COSCA) issued a white paper that called upon court leaders to consider a problem-solving approach to family cases:

To aid litigants in reaching acceptable outcomes to these very personal disputes, court leaders must examine the management of family cases and the underlying system used to resolve these cases. If courts are to help families fashion outcomes that are both legally appropriate and practically workable, court leaders must de-emphasize the adversarial model of dispute resolution and place greater weight on a “problem-solving” approach to family cases. Court leaders must ask what the current system does—through its processes, procedures, attitudes, and lack of resources and services—to aggravate the problems seen in family cases[.]<sup>17</sup>

COSCA called for

creating a judicial environment that identifies and minimizes the wide-ranging negative effect that these cases can have on the parties, both during the court process and afterwards. To the extent that courts can soften the adversarial nature of family proceedings by encouraging restorative, problem-solving resolution processes, they will help the litigants reach outcomes that are more acceptable to everyone.<sup>18</sup>

In resolving family law disputes, the court system’s role “as adjudicator is compatible with being a convener, mediator, facilitator, service provider, and case manager.”<sup>19</sup> A problem-solving approach to family cases envisions the judge and court staff as viewing “their roles and actions as defined by both the law and the unique needs of each family.”<sup>20</sup>

Research suggests that attempts by courts to formulate problem-solving focused alternatives to the adversarial process for separating and divorcing parents have yielded positive results.<sup>21</sup>

#### IV. CASEFLOW MANAGEMENT: EARLY INTERVENTION

In creating a problem-solving approach to family cases, it is critical to think carefully about caseload management. “Effective caseload management is the process through which courts move all cases from filing to disposition. Judicial branch supervision and management is imperative to manage the time and events involved in the life of a case.”<sup>22</sup>

A basic principle of caseload management is that the court should control the progress of cases, with no unreasonable interruption in its procedural progress from initiation through disposition.<sup>23</sup> Courts should give attention to civil cases at the earliest possible point, resulting in earlier settlements.<sup>24</sup> Steelman et al. provide the following:

The objectives of early intervention are to make the point of case resolution happen as early in the case process as is reasonable, and to reduce the costs for the parties and the court of getting to case resolution. This reflects recognition that most cases are resolved by negotiated settlement or plea, while only a small percentage of cases are actually resolved by the binding decision of a judge or jury after a trial.<sup>25</sup>

It is important to avoid delay in family cases because the adjudication style can be distinguished from other criminal and civil case types. “Instead, family cases are dominated by what has been called ‘diagnostic adjudication,’” which focuses on the proactive role of the court in defining the issues and fashioning appropriate remedies.<sup>26</sup> Specific caseload management techniques recommended for divorce cases to promote more prompt justice as outlined in Steelman et al. include the following:

- Recognize emotional issues;
- Adopt and follow time standards;



- Adopt appropriate measures for self-represented litigants because the majority of cases are likely to have one or both parties representing themselves;
- Exercise control over the scheduling of case events;
- Develop simplified procedures to expedite uncontested cases;
- Screen cases early for assignment to differentiated case management tracks;
- Give careful attention in divorce decrees to property, custody, visitation, and support questions; and
- Give management attention to contested postdisposition matters.<sup>27</sup>

As Richard Zorza's article on the need for court simplification to enhance civil access and justice transformation provides:

Speedy resolution, while not the only goal, is important to litigants. Speed is also closely related to total cost. For poor and middle-income people, each hearing or step may represent lost wages, or even the threat of a lost job, as well as incidental travel and childcare expenses. To the extent that advocacy costs are being incurred, those also increase with longer case processing time. Finally, extra time adds complexity and, thus, other costs. Several decades of caseflow management data give us the tools to assess this criterion and a history of attempts to control timelines.<sup>28</sup>

## V. DIFFERENTIATED CASE MANAGEMENT AND TRIAGE

Many courts have recognized the value of differentiated case management (DCM) to control case progress, to reduce the time to resolution, and to reduce costs for litigants. DCM is "a technique courts can use to tailor the case management process to the requirements of individual cases."<sup>29</sup> Central to the DCM approach is the recognition that many cases should proceed through the court system at a faster pace than other cases if appropriate pathways are provided. Cases should not "wait for disposition simply on the basis of the chronological order of their filing."<sup>30</sup>

The next step in the evolution of case management beyond DCM is a "more refined triage based upon issues raised rather than case type."<sup>31</sup> In the context of courts, case triage is a more aggressive form of case management that identifies the appropriate resolution approach for a specific case based on its issues and characteristics. Some have defined triage as

a process of rational distribution of resources based on litigant need and case complexity to assure all litigants have equal access to justice. In other words, triage should be designed to sort resources and people to enable the most just, accurate and efficient result for all.<sup>32</sup>

"Triage is necessary to match the right issues with the right adjudicatory processes."<sup>33</sup> As such, four cases of the same case type might go into four different tracks: one may receive a problem-solving approach of a settlement calendar; one may receive mediation services; one may be in the early neutral evaluation track; and one may receive the full adversarial treatment processing for a trial.

Numerous stakeholders, including court administrators, judicial officers, and legal service providers, increasingly recognize the importance of triage within the legal system.<sup>34</sup> Identifying the most appropriate process at the outset has three significant benefits. It may save parties from repeated visits for multiple family court service processes, it avoids delays, and it reduces the escalating polarization and associated entrenchment of positions that can accompany repeated failed settlement attempts through multiple processes.

Screening criteria are needed, as well as a consistent methodology, that could be used by different staff members to arrive at the same resolution track despite who is doing the screening. Different courts and organizations have embarked on developing screening tools.<sup>35</sup>

The Connecticut Judicial Branch Court Support Services Division pioneered a combination of an intake process, the Family Civil Intake Screen, and a menu of services that include mediation, a conflict resolution conference (CRC),<sup>36</sup> a brief issue-focused evaluation (IFE),<sup>37</sup> and a full

evaluation.<sup>38</sup> The Family Civil Intake Screen was designed to “streamline families into appropriate services by paving more efficient and appropriate paths through the family court system based on each family’s needs.”<sup>39</sup> The screen includes questions that address the level of conflict, communication and cooperation, complexity of issues, and level of dangerousness.<sup>40</sup>

## VI. EARLY RESOLUTION PROGRAM

In 2009, inspired by her experience with problem-solving drug courts, Anchorage Superior Court Judge Stephanie Joannides wanted to manage her family law cases involving self-represented parties differently and more efficiently. She partnered with the author, who is the director of the court’s statewide Family Law Self-Help Center (FLSHC), to create a new program called the Early Resolution Program (ERP) to manage contested divorce and custody cases with two self-represented litigants. Katherine Alteneder, who was working at the Alaska Pro Bono Program (APBP), offered to bring unbundled volunteer attorneys into the program and to help figure out the case-screening process.<sup>41</sup> The unbundled volunteer attorneys would advise and represent self-represented litigants at the ERP hearings and negotiate with the other party’s volunteer attorney in the spirit of settlement. This unbundled representation would be for the ERP hearing only; extensive training materials and limited-scope representation agreements were developed to facilitate this limited-scope work. In addition to partnering with APBP, Wendy Lyford, the court’s mediation program coordinator, offered to provide mediators from the court’s Child Custody Visitation and Mediation Program, as appropriate, to parents needing assistance with parenting plans at the ERP hearings.

The court system anticipated that early intervention in the case process and the help of legal professionals would encourage parties to settle their issues rather than go through a protracted court trial. The result would be faster resolutions in which the parties created their own solutions after benefiting from legal advice, mediation or a settlement conference, and a lessening of workload for the courts.

In ERP, an FLSHC staff attorney conducts a triage process with every newly filed contested divorce and custody case involving two self-represented litigants. The attorney screens the case to determine suitability for the program and, if included, assigns the appropriate free legal resource—volunteer unbundled attorneys, mediator, or settlement judge—to help resolve the case. Upon acceptance, the FLSHC attorney sends each party a plain-language scheduling notice to appear at an ERP hearing that includes information about the program. Attendance at the hearing is required, but the case is usually removed from ERP if one or both parties hire an attorney.<sup>42</sup> Six to nine cases are placed on the court calendar for the same hearing time slot. The process is swift, and the parties often leave the courtroom with all issues resolved and signed copies of all the necessary final paperwork.

After a six-month pilot, in mid-2011, the program became institutionalized in the Anchorage court. As of September 2018, over 1,200 cases had been heard in the Anchorage ERP. Three other court locations also run ERP calendars. After screening, over half of the eligible cases are included in the program. Approximately 80 percent resolve by agreement.

### A. ERP TRIAGE

Effectively triaging divorce and custody cases involving self-represented litigants to determine the appropriate resolution approach is a hot topic in family law.<sup>43</sup> The Alaska ERP screens cases to determine whether the case could resolve by agreement with the assistance of volunteer attorneys, mediators, and/or a settlement judge soon after the case is filed. An FLSHC staff attorney conducts a simple two-level triage process using readily available information for each newly filed contested divorce and custody case involving two self-represented litigants. Level 1 looks for reasons to exclude a case, and, if included, Level 2 determines which legal resource—volunteer unbundled attorneys, mediator, or settlement judge—is appropriate to help the parties resolve the issues.

The Level 1 screening starts after an answer is filed because both parties are participating in the case, which is necessary to reach an agreement. The screening reviews the court file, which typically includes the complaint and answer that provides information about the marital property and debt in a divorce, and the parties' positions on parenting plans for children of the relationship (i.e., how decisions about the children should be made, what living schedules the children should have with each parent, and information about each party's earnings and tax returns). The screening also reviews each party's individual court case histories as reflected in the electronic court case management system, including domestic violence, criminal, child protection, mental commitments, small claims, evictions, and other divorce or custody cases with different partners.

Importantly, the screening process does not weigh heavily the level of conflict between the parties or their positions on the issues because the adversarial process likely contributes to the parties' conflict. Moreover, ERP staff attorneys have observed that the parties' positions are not necessarily reliable indicators of what they really want or expect to happen when the case is decided. Some parties have reported that their positions represent what they think they should request. Their position may also be the result of posturing or may be based on a misunderstanding of what the legal terms *legal custody* and *physical custody* actually mean. Instead, the screener looks for reasons to exclude a case from ERP, believing that most cases could benefit from a settlement process if provided appropriate resources. Some factors that may cause a case to be screened out as inappropriate include current and serious domestic violence incidents, especially if there are minor children involved;<sup>44</sup> issues requiring evidentiary findings, such as a challenge to the court's jurisdiction or disputed valuation of marital property; a pending child abuse or neglect case; or a nonparent who has asserted that he or she should be awarded custody.

Regardless of whether the parties agree on any issues, the case will be included in ERP if a workable solution seems obvious (e.g., disputes regarding legal decision-making authority, living schedule issues that do not involve contested relocation, and low-value assets/debts, although division of retirement accounts and marital homes is common). In addition, important factors are the length of marriage and separation, the age of the children, and whether the list of marital property and debt is similar, even if the values or proposed allocations are different.

The second level determines the appropriate legal resource for the individual case: two volunteer unbundled attorneys, a mediator, or a settlement judge. Assignment depends on several considerations, including the issues involved and how close the parties' positions are to the realistic range of possible outcomes given the facts of the case and the legal framework.

If the staff attorney determines that the parties would benefit from legal advice because one or both parties' positions are extreme or unrealistic given the legal framework, there is known or alleged domestic violence, or a party seems particularly indecisive, a free volunteer unbundled attorney is provided to each litigant for the hearing. The volunteer attorneys provide limited-scope representation, advising their client for the ERP hearing only and negotiating with the opposing party's volunteer attorney to see whether any agreements can be reached. Sometimes, due to the issues in the case (e.g., a long marriage with no minor children but many items of marital property to address), a volunteer attorney may function as a neutral, not advising either party, but acting as a mediator to help facilitate communication. Also, if there are not enough volunteer attorneys to be assigned to each party at a particular hearing, one attorney may work as a neutral to see whether any issues can be resolved.

Cases involving parties with children are often assigned a mediator from the court's Child Custody Visitation and Mediation Program if it is determined they could benefit from talking through the details of a parenting plan or need assistance communicating. Young parents of babies are particularly suited for mediation because they have many years to co-parent during a child's minority period. Also, parents of teenagers are good candidates for mediation; the teen's preference is often strongly indicative of what the final parenting arrangement will be to avoid runaway situations when teens do not want a certain living arrangement.

Some cases are not assigned attorneys or mediators if there is nothing in dispute or relatively few or simple issues need to be decided and they work directly with the settlement judge. At every

hearing, there are usually one or two cases in which the parties had short marriages, had no children, and agree there is no property or debt to be divided. The settlement judge can finalize such cases very quickly. In some cases, it is determined that the “black robe effect” will be helpful to educate parties about the reality of their proposed positions and attorneys, or the mediator can ask the judge to talk to the parties to explain an issue, such as how child support is calculated, or to present options.

If the parties reach an agreement, the ERP judge makes sure it meets the legal requirements and the parties memorialize it on the record. During the hearing, an FLSHC staff attorney drafts the final orders based on the agreement that the judge signs at the hearing’s conclusion and distributes them to the parties in the courtroom.

## **B. EVALUATION FOCUS**

Once a triage tool or screening process is implemented, it is important to track the outcomes of the cases to determine whether the tool meets its intended objectives. In 2015–2016, an evaluation was conducted to determine whether there were differences between ERP cases and cases that proceed through the typical adversarial process with respect to

- time to disposition from the answer filing date to the disposition date;
- number of processing steps conducted by court staff and the judge and amount of time associated with those steps; and
- number of motions to modify filed within two years of the case disposition.

Shorter time to disposition and fewer case-processing steps that take less time overall provide evidence of enhanced case-processing efficiency. Resolving cases more quickly results in reduced time for litigants engaging in their court cases and thus facilitates their transition to life after court. To determine whether litigants are satisfied with the case resolution, the number and timing of post-judgment motions to modify can be reviewed. The assumption is that parties file motions to modify soon after the final judgment if they are unhappy with the outcome. Reviewing the number of motions to modify can be useful when comparing two different case-processing methods, particularly when one process emphasizes quick disposition.

## **VII. METHODS**

The evaluation goal was to determine whether ERP cases that resolve by settlement have better outcomes than similarly situated cases that do not go through ERP and proceed through the typical trial process. There was an abundance of information collected for ERP cases since the program began in December 2010, including case outcomes, time to disposition, and the number of motions to modify. This evaluation looked at 299 ERP cases that resolved by settlement from 2011 to 2013.

It was not possible to create a control group from cases that occurred during the same time period as the ERP cases because they would not be comparable. The cases from 2011 to 2013 that were not accepted into ERP were rejected because they had disqualifying characteristics. To find a group of cases in which to compare the relevant outcomes, a random sample of 392 divorce and custody cases from 2007 to 2009, prior to ERP implementation, was screened using the same screening methodology as ERP cases.<sup>45</sup> The screening looked at the documents in the file until the answer filing date and ignored everything filed after that date. In addition, a search of the court’s electronic case management system occurred for each party to the case using a name search to determine each of their court case histories until the date of the answer. From that group of 392 screened cases, 228 would have been “accepted” into ERP, had it existed at the time.

## **A. TIME TO DISPOSITION AND MOTIONS TO MODIFY**

Reports generated from the court's case management system calculated (1) the time from the answer filing date to the disposition date and (2) the number of motions to modify filed within two years of the disposition date for the cases in the ERP group and the control group.

## **B. CASE-PROCESSING STEPS AND TIME TO PROCESS CASE**

It was not possible to calculate the precise number of steps and associated amount of time for each case in the ERP group and the control group because that information was not collected when the cases moved through the system. As such, a proxy of the average case's processing steps was determined for ERP and for cases that proceeded through the typical process before the assigned judge in 2015–16 when this evaluation occurred. The number of steps to process an ERP case and a typical divorce or custody case was determined for each process. Each step was identified, and the amount of time in minutes to conduct each associated step was calculated. The total number of processing steps and total minutes for all steps were added together for an ERP case and for a typical divorce or custody case.

ERP case-processing steps are relatively uniform. There are slight variations depending on whether a case is a divorce with or without children and with or without property. Non-ERP cases can vary depending on the issues in the case and the judge hearing the case, but the typical divorce or custody case often follows a similar case processing pathway. For purposes of this analysis, six cases were assumed to be heard during an ERP hearing. Also, the case-processing steps for the typical divorce and custody group involve the following three courtroom events:

- an initial status conference or trial scheduling conference;
- a trial call or pretrial hearing; and
- a trial/settlement conference.

The analysis assumes no motions are filed requiring additional hearings.

For ERP and typical divorce and custody cases, every step to process a case was identified. This involved tracking a case file from initiation to closing by identifying each step a file takes, including court staff and judge tasks and associated average amount of time in minutes to perform that task. The tasks and time were calculated by observation and self-reporting by appropriate staff and judges.

## **VIII. FINDINGS**

Cases that resolved through ERP compared to the typical trial track had different metrics. Table 1 summarizes the findings. The time to disposition from the answer filing date varied significantly between the cases that settled in ERP compared to those in the control group that resolved before the assigned judge. The mean time to disposition from the answer filing date for ERP cases was 50 days and 172 days for the control group, a statistically significant difference. ERP cases resolved three to four times faster than the control group cases. This difference can be attributed to the ERP process that screens cases as soon as the answer is filed and subsequently schedules a hearing a few weeks later, at which most cases resolve by agreement.<sup>46</sup>

There was also a difference in the number of motions to modify filed within two years of the disposition. This outcome was chosen as a proxy for litigant satisfaction based on the belief that dissatisfied litigants file motions to modify soon after the disposition, essentially as a way to express buyer's remorse to a settlement. ERP cases had .18 motions and the control group cases had .22 motions. There was not a statistically significant difference between the two outcomes. The very low number of motions to modify in both groups indicates that filing one was a relatively rare

**Table 1**  
Overview of Findings

	<i>ERP Case</i>	<i>Control Group</i>
Time to disposition, mean	50 days	172 days
Time to disposition, median	42 days	104 days
Time to disposition, standard deviation	33	199
# of motions to modify	.18	.22
# of motions to modify, standard deviation	.51	.80
	<b><i>ERP Case</i></b>	<b><i>Typical Divorce or Custody Case</i></b>
# Case-processing steps—divorce w/o children (may have property/debt to divide)	28 steps	49 steps
# Case-processing steps—divorce w/children (and no property/debt) and custody between unmarried parents	30 steps	49 steps
# Case-processing steps—divorce w/children and property/debt to divide	30 steps	49 steps
Time to process—divorce w/o children (may have property/debt to divide)	219 minutes	1,038 minutes
Time to process—divorce w/children (and no property/debt) and custody between unmarried parents	260 minutes	1,053 minutes
Time to process—divorce w/children and property/debt to divide	265 minutes	1,053 minutes
Weighted average time to process a divorce or custody case	240 minutes	1,047 minutes

occurrence and most cases did not include a postjudgment motion in the two-year time frame. This result suggests that ERP cases, which resolved significantly more quickly than typical divorce and custody cases, did not result in more dissatisfaction. In other words, any concerns that the ERP process is too quick and parties do not have enough time to think about the issues are not reflected in additional postjudgment motion activity, and fewer motions result.

The number of processing steps and staff time per case varied significantly between ERP cases and typical divorce and custody cases. From filing to disposition, there are 28 or 30 processing steps in ERP cases depending on whether child custody is at issue, taking a total of 240 minutes (4 hours) of staff time. A typical non-ERP divorce or custody case has 49 processing steps which takes 1,047 minutes (17.45 hours). ERP cases have 39 percent fewer processing steps and save greater than 13 hours per case. The ERP process is more efficient than the typical case processing for two main reasons. First, once the staff attorney screens and accepts a case into ERP, the file stays with the attorney, eliminating many case-processing steps that occur in typical cases. Second, there are great efficiencies in scheduling multiple cases during the same ERP hearing block, especially when most cases resolve in one court event.

## IX. CONCLUSIONS

The Early Resolution Program was designed to address many issues of interest to the Alaska Court System—self-representation in family law cases, the need to triage to determine the appropriate resolution approach, the importance of early intervention, and the desire to use a simplified process and a problem-solving approach. This evaluation shows that ERP has been an effective way to resolve newly filed contested divorce and custody cases involving two self-represented parties. It resulted in much faster resolutions for litigants and court staff than similarly situated cases that are resolved in the typical adversarial fashion. ERP cases involve many fewer case-processing steps and

substantially less staff time. ERP cases have similar levels of satisfaction as typical divorce and custody cases, as represented by the number of motions to modify filed within two years of disposition. This evaluation showed that ERP has been an effective and efficient way to resolve newly filed contested divorce and custody cases involving two self-represented parties.

## NOTES

1. In a contested divorce and custody case, the plaintiff starts the case by filing a complaint and other required documents and serving the documents to the defendant. The defendant has 20 days to file an answer to the complaint, responding to each of the plaintiff's requests and also including counterclaims that assert his or her own requests. If the defendant does not file an answer within 20 days, the plaintiff may file an application for a default judgment.

2. Paula Hannaford-Agor, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, Nat'l Ctr. For State Courts iv (2016), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

3. *Id.* at vi.

4. Self-Represented Litigation Network, *SRLN Brief: How Many SRLs?*, <https://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015>.

5. CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, HANDLING CASES INVOLVING SELF-REPRESENTED LITIGANTS, A BENCHGUIDE FOR JUDICIAL OFFICERS, 1–3 (2007).

6. CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON SELF-REPRESENTED LITIGATION 1 (2000).

7. Andrew Schepard, *Tragedy and Hope*, 40 FAM. CT. REV. 5, 6 (2002).

8. See HANNAFORD-AGOR, *supra* note 3, at 1–2.

9. Rebecca Love Kourlis, Melinda Taylor, Andrew Schepard, & Marcia Kline Pruett, *IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce*, 51 FAM. CT. REV. 351, 354 (2013).

10. Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. REV. 1099, 1107 (2014).

11. Kourlis et al., *supra* note 9.

12. Janet Weinstein, *And Never the Twain Shall Meet Again: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 132–33 (1997).

13. JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION*, Chapter 2 (2015).

14. Kourlis et al., *supra* note 9, at 360.

15. Aviel, *supra* note 10, at 1108.

16. *Id.* (citing Singer and Murphy).

17. CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON EFFECTIVE MANAGEMENT OF FAMILY LAW CASES 1–2 (2002).

18. *Id.* at 6.

19. *Id.* at 5.

20. *Id.* at 6.

21. Kourlis et al., *supra* note 9, at 362.

22. NAT'L JUDICIAL COLLEGE, *FAIR, TIMELY, ECONOMICAL JUSTICE: ACHIEVING JUSTICE THROUGH EFFECTIVE CASEFLOW MANAGEMENT* 4 (2009).

23. DAVID C. STEELMAN, NAT'L CENTER FOR STATE COURTS, *IMPROVING CASEFLOW MANAGEMENT: A BRIEF GUIDE* 7 (2008).

24. DAVID C. STEELMAN, JOHN A. GOERDT, & JAMES E. McMILLAN, NAT'L CENTER FOR STATE COURTS, *CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM* 25 (2004).

25. *Id.* at 3.

26. *Id.* at 43.

27. *Id.* at 49–51.

28. Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 859–60 (2012).

29. BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, *DIFFERENTIATED CASE MANAGEMENT: PROGRAM BRIEF* 1 (1993).

30. BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, *DIFFERENTIATED CASE MANAGEMENT: IMPLEMENTATION MANUAL* 1 (1993).

31. THOMAS M. CLARKE & VICTOR E. FLANGO, *Case Triage for the 21st Century*, in NAT'L CENTER FOR STATE COURTS, *FUTURE TRENDS IN STATE COURTS 2011: A SPECIAL FOCUS ON ACCESS TO JUSTICE* 146 (2011).

32. THOMAS CLARKE, RICHARD ZORZA, & KATHERINE ALTENEDER, *TRIAGE PROTOCOLS FOR LITIGANT PORTALS: A COORDINATED STRATEGY BETWEEN COURTS AND SERVICE PROVIDERS* 1 (2013); see also Richard Zorza, *The Access to Justice "Sorting Hat": Towards a System of Triage and Intake That Maximizes Access and Outcomes*, 89 DENV. U. L. REV. 859 (2012) (providing a comprehensive discussion of legal triage).

33. Victor E. Flango & Thomas M. Clarke, *Which Disputes Belong in Court?* 50 JUDGES J. 22, (2011).

34. See CLARKE & FLANGO, *supra* note 31, at 1.

35. See Michael Saini, *Triage in Family Law: Presentation to the Nat'l Center for State Courts*, <https://prezi.com/3ujqwzohap6/saini-2014-triage-in-family-law-presentation-to-the-national-centre-for-state-courts/> (last visited Apr. 11, 2019) (including examples of growing work in this area around the world, in Canada, New Zealand, and Australia); see also HILL USER FRIENDLY JUSTICE, <http://www.hill.org/project/rechtwijzer> (last visited Jan. 4, 2016) (specifically Rechtwijzer 2.0, an interactive online justice application from the Netherlands that was part triage, getting consumers to legal resources, and part dispute resolution from 2014).

36. The CRC blends mediation and negotiation processes with the primary goal of helping the parties reach a resolution. If the parties cannot reach a resolution, a court counselor may direct the process, obtain collateral information relevant to the case, and offer suggestions as well as recommendations. Attorneys are usually present during the CRC.

37. The IFE is a nonconfidential process of evaluating a limited issue impacting a family and/or a parenting plan. The goal is to define and explore the issue causing difficulties for the family, gather information regarding only this issue, and provide a recommendation to the parents and the court regarding a resolution to the dispute. It is limited in scope, involvement, and duration.

38. MARCIA K. PRUETT & MEGAN DURELL, FAMILY CIVIL INTAKE SCREEN AND SERVICES EVALUATION: FINAL OUTCOMES REPORT. CONNECTICUT JUD. BRANCH CT. SUPPORT SERVS. DIV. (2009).

39. *Id.* at 4.

40. Peter Salem, Debra Kulak, & Robin M. Deutsch, *Triaging Family Court Services: The Connecticut Judicial Branch's Family Civil Intake Screen*, 27 PACE L. REV. 741, 758–61 (2006).

41. The volunteer attorney component of ERP transitioned later to be under the auspices of Alaska Legal Services Corporation.

42. Occasionally if one party hires an attorney, that attorney and client agree to participate in ERP and work toward a settlement with a volunteer attorney representing the other side.

43. In 2013, the State Justice Institute funded a project to identify case triage strategies for case types with high numbers of self-represented litigants. See *supra* note 31, Clarke et al. See also THOMAS M. CLARKE, NAT'L CENTER FOR STATE COURTS, BUILDING A LITIGANT PORTAL, BUSINESS AND TECHNICAL REQUIREMENTS (2015) (providing the business and technical requirements for building a litigant portal as a vehicle for case triage); VICTOR FLANGO & THOMAS CLARKE, REIMAGINING COURTS: A DESIGN FOR THE TWENTY-FIRST CENTURY (2015) (discussing triage in the majority of the book).

44. Alaska Statute 25.24.150(g) includes a rebuttable presumption that a parent with a history of domestic violence cannot get anything more than supervised visitation, unless specific time-intensive conditions are met. A history of domestic violence is defined as more than one domestic violence incident or a domestic violence incident resulting in serious physical injury (AS 25.24.150(h)). If it is clear that the presumption applies in a divorce with children or a custody case between unmarried parents, the case is excluded from ERP. The rationale is that there is nothing the parents can negotiate to resolve the custody issue, except for the parent with the domestic violence history agreeing to have supervised visitation and completing the required programs.

45. It was necessary to determine the sample size needed, so a power analysis was conducted that considered the standard deviations for both the range of numbers in the time to disposition data set and the number of motions to modify data set. The power analysis revealed that at least 100 cases were required to be in the control group to arrive at a valid comparison for the time to disposition, but 200 cases were required to be in the control group to arrive at a valid comparison for the number of motions to modify. Based on the historical screening acceptance rate of 50 to 60% for cases found suitable for inclusion in ERP, close to 400 cases needed to be screened to arrive at a control group of at least 200 cases.

46. Some ERP cases return for a second ERP hearing if they reach an interim agreement and want to see how it goes for a period of time before finalizing it, or if they are making progress but need to gather more information, such as to find out whether a house can be refinanced into one spouse's name before reaching an agreement on the property.

*Stacey Marz is the Alaska Court System Director of Self-Help and Language Access Services. She directs the Family Law Self-Help Center that provides remote facilitated statewide self-help services. She creates content and maintains the court's self-help websites and plain-language forms. She also oversees the court's mediation and court-based parenting coordinator programs. Stacey works on access to justice initiatives, including triage, simplification projects, and language access. This includes ODR and the Legal Navigator technology projects. She also trains judicial officers and court staff on how to work effectively with self-represented litigants and limited-English-proficient litigants through interpreters. Stacey is a member of the Alaska Supreme Court's Civil Rules, Family Rules, and Access to Justice Committees. She chairs the WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) court improvement subcommittee. Stacey co-coordinates the SRLN national working group on simplification of court processes. She is a Fellow to the NCSC Institute for Court Management. Prior to working for the courts, Stacey was a staff attorney for Alaska Legal Services and a public interest environmental attorney. She clerked for the Alaska Supreme Court after graduating from the University of Oregon School of Law.*





# **“CHANGE WITHOUT FEAR” WEBINAR SLIDE DECK**



## **Webinar: CHANGE WITHOUT FEAR**

### **JAI Forum: Change in the Age of Digitization and COVID19**

By Chase B. Saunders SaundersLawPLLC ©2020

This is the first of what we hope will be a series of MCB Webinars focusing on how we respond to the unprecedented changes which face each and everyone of us. This is part of the JusticeAccessInitiative project sponsored by your MCB.

### **Introduction of Change Without Fear**

As a profession, we find ourselves in a transformational moment best described by two ancient sayings, one from the East and one from the West. From the East, we are subject to the ancient Chinese curse, "may you live in interesting times". From the West, we are subject to the Ecclesiastical admonition, "to everything there is a season and a time to every purpose".

The pandemic has forced civilization to change at an accelerated pace. From total shutdown to the birth of a new normal, how we spend our time, how we give it purpose is of immediate importance! For the practicing lawyer, this is a Darwinian Moment....a moment when you learn if your practice is essential or non-essential.

As a species our adaptation to rapid change is an existential necessity. As guardians of the rule of law, it is a moment requiring that we embrace change. Adaptation is a mental exercise. It is an essential part of mental health.

Our most immediate task is to examine HOW we can reopen, reawaken, and reform the justice system. There have been no efforts to this end in NC in 50 years when the unified court system was created. The system and rules under which we operate were enacted in the age of carbon paper and the eight-track tape. It is an analog anachronism in a world which is digitizing. This is an issue which affects your professional mental health, your practice, your clients, and the legal system which we are charged with maintaining. It is about a health community.

As a profession, we are in another transformational moment driven by technology. It is the age of the digitization of all forms of business activity and professional services. If any activity is repetitive task, software can do it and somewhere, someone will figure out how to do it. It will be commoditized. And that includes legal services. This process has been accelerated by the COVID19 pandemic which has had the immediate effect of restricting access to justice and equal protection of the laws without recourse.

In response to the crisis, the judicial executives have adopted a position calling for “remote” proceedings as a matter of preference. By definition, “remote” means “distant” and that choice of positions compels and requires that we not create distance which denies access to justice.

We must address this systemic crisis facing the administration and access to justice for all at the same time as we address the change in the model of practice. Technology will have to be employed to help the system function.

As lawyers, we rely on precedent which is the historic consensus of those who have gone before us concerning appropriate norms embodied in a series of enforced codifications called the rule of law.

Precedent and practice always change over time. Sometimes glacially and sometimes instantly. Events such as the pandemic are changing us instantly. Technology is being used to help us survive these events.

Technology changes practice and creates procedural precedent. Let me illustrate this with one slide which pictures the devices which changed the practice of law as I have observed it in Mecklenburg County over almost 50 years. I call it “A Sentimental Journey” – 21<sup>st</sup> C Digitization: Technology and the Law.

Once you appreciate the changes of the past 50 years and the precedent of how it was practiced by earlier generations of lawyers, you can better appreciate situation you and we now face, only the rate is 50X!

This will give you hope and help adjust your frame of mind to REBOOT YOUR PRACTICE.

My remarks will segue into those of Professor Susan Luck who will share insights into the PROCESS OF CHANGE WITHOUT FEAR. How do you develop the frame of mind to adapt to the new world

And if you want to explore what 100 years of change looks like and the future as the practice moves from digitization to artificial intelligence, review that portion of this paper entitled the 2020s, Decade of Digitation – Change agents affecting the practice of law .

State Bar Councilor Eben Rawls will comment on the ethical issues associated with change.

Let’s begin with some history to give you a sense of where you fit into the continuum of time as a lawyer.

### Index

**First** we will look at the center institution in each city representative of the rule of law.....the County Courthouse. We will take a **Historic tour of The Eight Mecklenburg County Courthouses** from 1766 to 2020.....Page 3

**Second**, we will examine the **History of Technology and Its Impact on the Local Practice of Law** in a “Sentimental Journey”..... Page 14

**Third**, we will examine the current decade and the acceleration of change. **The 2020 Decade: The Digitization of the Practice of Law.....** Page 19 As a part of that, there is a speculative look at **The Coming Virtual Legal System – 2030 and Beyond** ..... Page 21

Finally, we will segue in anticipation of the remarks concerning how to adopt an attitude of change with a final thought concerning the future of the attorney entitled, **Counselor at Law: The Need for Recombinant Thinking...** Page 21

## **Context: History of the Eight Mecklenburg County Courthouses**

# **THE ROLE OF THE MECKLENBURG COUNTY COURTHOUSE**

**1766 to 2020**

## **A TRADITION OF LIBERTY**

By Chase B. Saunders, retired former Senior Resident Superior Court Judge. Thanks to James Williams, researcher and re-enactor, par excellence, the Office of the former Trial Court Administrator, The Sally and Russell Robinson Collection at the Charlotte Mecklenburg Public Library, Charles Keller for photographs, and the sketch of the Square by architect Jack Boyte, who lived a life as a tireless advocate of historic preservation in Charlotte-Mecklenburg, this information is provided.

### **INTRODUCTION**

You are invited to visit that local, living symbol of the rule of law. Your courthouse. The Mecklenburg County Courthouse....one of one hundred in the State of North Carolina.

Your County Courthouse is the place where that covenant between the people and the sovereign branches of government purchased with blood, sweat, and tears is renewed on a daily basis. Concurrent with legislative and executive authority, a judiciary is empowered to apply the laws which form that covenant to each of us in order to ensure conformity with long standing concepts based upon common sense for the common good.

The law is the sum total of the collective wisdom of the elders based upon over 10,000 years of human interaction. A law is but the general acceptance or codification of a rule meant to provide some sort of equity in dealing with a controversy arising out of the interaction of a group of individuals. Many of our rules were born out of tragedy and suffering....criminal laws. Others were born out of daily business and personal interaction....civil laws. Regardless of their type, the consensus of people over time that a rule was equitable led to the concept of precedence, or the presumption that the rule should be followed. And over time, the place where those rules were enforced and challenged moved from the house of the leading citizen, to the village gates, to the foot of the king, and now to the county courthouse.

In this County, tens of thousands of people walk through these doors come to encounter justice in matters great and small...more than some 1,000 per day. This is the only civil institution in our lives which tries to treat everyone in accord with the same rules, regardless of rank. And this could not be done without the dedicated people who administer that justice work within the confine of her walls. Those public servants deserve our thanks. For even as we need water for life, and sewers for protection from plague and disease, we need courts to protect us from the worst behaviors associated with the human condition.

For a few moments, journey with me as we visit the time and places of justice in Mecklenburg County.

## The First MECKLENBURG COUNTY COURTHOUSE



The First Mecklenburg County Courthouse, 1766 to 1810

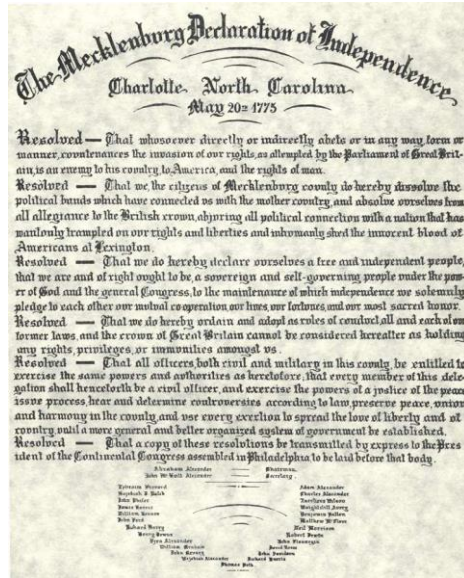
From the establishment of Mecklenburg County in 1762 until Charlotte was founded in 1766, judicial proceedings were conducted in one or two-day sessions four times a year for in a variety of homes, taverns and other places. According to local tradition, such sessions were often held in the home of Thomas Spratt, one of the earliest settlers in the present day Charlotte area.

The first official courthouse building in Mecklenburg County was completed on or about November 3, 1766 and was located in the small village of Charlotte, at the intersection of its two main streets, Trade Street and Tryon Street (which still hold those names today). Such a location for courthouses, at the center of commerce in a village or town, was common in England at this time.

This First Courthouse was a log cabin, built on ten-foot tall brick pillars. This tradition of raising the courthouse or main town market building was borrowed from the England, and provided an open space at the center of a town that could be used for the selling of animals, produce and other goods. Additionally, in the center of the open space, a post was driven into the ground to mark the middle of the town, from which distances to other towns, river fords, and other destinations of interest could be measured.

In addition to its role as a place of revolutionary-era judicial proceedings and commerce, this First Courthouse was tied to certain historical happenings in Mecklenburg County. On May 19, 1775, the representatives meeting at the courthouse first heard the news of the skirmishes with the British at Lexington and Concord. Tradition says they debated and approved the Mecklenburg Declaration of Independence, and heard it read from the courthouse steps the following day (May 20, 1775).

## Mecklenburg Declaration of Independence

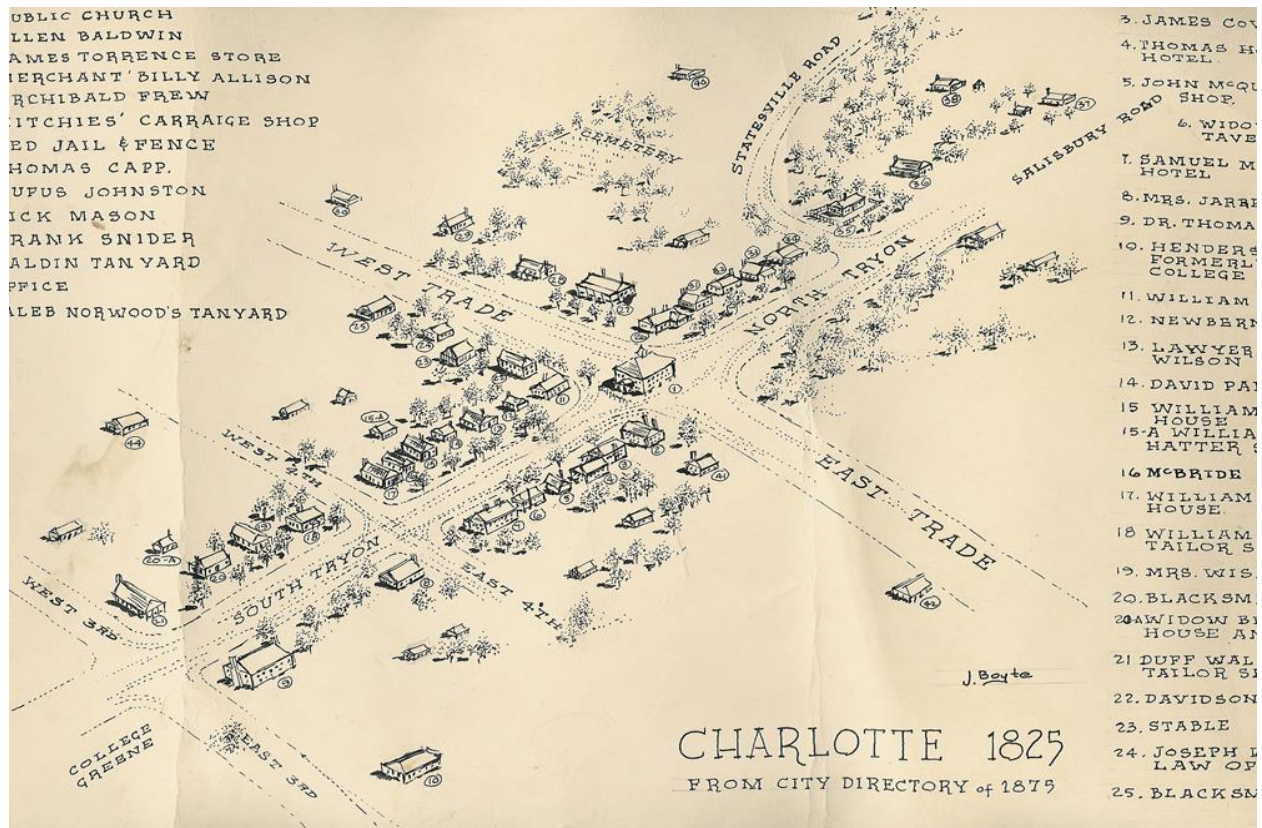


The representatives later met at the courthouse to write the Mecklenburg Resolves of May 31, 1775 and dispatched Captain James Jack to the Continental Congress in Philadelphia with both documents. A monument, the Spirit of Mecklenburg, features a bronze of Captain James Jack. It is located at the intersection of 4<sup>th</sup> Street and Kings Drive across from the CPCC campus. During the Revolutionary War, in September 1780, Lord Charles Cornwallis was met by a band of 150 soldiers led by Col. William R. Davie ( who went on to found the University of North Carolina at Chapel Hill ) at the Mecklenburg County Courthouse in the “Battle of Charlotte” where he prevailed and occupied the town for a short time. Lord Cornwallis preferred to set up his headquarters in the house of Thomas Polk and used the second floor of the courthouse as a threshing floor for the grain his troops gathered from the surrounding countryside. Charlotte laid claim to the title “the hornet’s nest” for its Revolutionary War zeal for a skirmish at the McIntyre farm where the family beehives were disturbed.

The space under the courthouse was enclosed in 1779 “So as to keep out Suttlers, Horses, Sheep, Hogs and all other things that may have any tendency to Make it disagreeable”. This was later described as a stone wall 3½ feet high. The best evidence we have today is that the courthouse was built of logs on brick pillars and later covered with boards. However, a British Officer described it as a brick building, Light Horse Harry Lee said it was made of stone, and American General Joseph Graham said it was a frame building on brick pillars 10 feet high with a rock wall 3½ feet high between the pillars. In 1783 the building was covered with boards, leading it to be later described as a frame building.



## The Second MECKLENBURG COUNTY COURTHOUSE



### The Second Mecklenburg County Courthouse, 1810 to 1845

In the 1875 Charlotte City Directory there is a description of Charlotte 50 years before:

"The Court House stood in the middle of the public square, formed by the intersection of Trade and Tryon streets; it was a square brick building, hipped roof (the old log building which existed in 1775, had been removed) terminating with a cupola on top. The whipping post, stocks and pillory stood in the middle of the street...in full view of the judge's bench, where he could see his sentence executed. For many years the Sheriff and Clerks of the Superior and County Courts, and the Register of Deeds, kept their offices at their houses in the country...until the Legislature passed an act requiring them to be kept at the Court House. Then it was that the upper story of the Court House was cut up into offices, and thereby spoiling the only good ball room in town, as all the public balls or dances were held in the second story of the Court House, and all the preaching was done in the lower story in the Court room. Ministers of all denominations, when they came to Charlotte, preached in the Court House."

Over the years the second courthouse was repaired and improved in various ways including "plain Porticoes over each of the Court House doors & have the same finished with steps & painted..." Later the roof was covered with tin and a bell was installed in the cupola.

The Second Courthouse was built by John Dow in 1810, at the northwest corner of Trade and Tryon streets. This Second Courthouse was a square brick building with a hipped roof, topped with a cupola. The courthouse was built by John Dow in 1810 and by 1812 he still had not been paid all he was owed for constructing it. By April 1841, this Second Courthouse was considered to be in disrepair and too small for the growing county. At that time, the Magistrates appointed a Committee to build a new courthouse, which was to be completed in January, 1842

## The Third MECKLENBURG COUNTY COURTHOUSE



The Third Mecklenburg County Courthouse, 1845 to 1897

By April 1841 the second courthouse was considered to be in disrepair and too small for the growing county. The Magistrates appointed a Committee to build a new courthouse. In July 1841 this committee reported the probable costs; the Magistrates decided not to build a new one and appointed a committee to repair the old one. In October 1841 the committee reported that it was impractical to repair the old courthouse and the Magistrates appointed a committee to build a new one. In January, 1842 the Magistrates proceeded to lay “an additional Tax of 12½ cents on Each Poll [voter] and 6 cents additional Tax on the \$100 Valuation of Land for Building a Court House...”

Completed in 1845, the third courthouse was constructed on the northeast corner of Trade and Church Streets, where the Marriot Hotel now stands, and the contract called for it to be completed by January, 1842. It was an imposing brick structure, 44 feet wide and 66 feet deep, with four large columns across the front and two flights of stairs in the portico rising to the second floor. Its construction was not without controversy. The contractor for this courthouse was a Mr. John Dameron. He received a number of progress payments, but after losing two court cases and an appeal to the Mecklenburg County Court, he failed to receive the final 30%. Testimony from the commissioners in charge of getting the courthouse built was that he was late, over budget and required constant supervision, and did not deserve the final payment. Mr. Dameron blamed the commissioners for not buying the property on schedule so that he could start on time and for constantly changing the specifications. In April, 1846 the Court appointed a committee to recover and repair the court house. Just one year after it had been built!

This Third Courthouse was more specialized for its judicial functions in the community. Its larger size (44 feet wide and 66 feet deep) provided ample room for the official offices and administrative functions of the time. A distinctive feature of the courthouse property was the large water tower or standpipe, which stood immediately behind it. This water tower was a vertical pipe, approximately 17 feet in diameter, which stood twice as high as the Third Courthouse and looked more like a chimney to it than a water tower. The water tower, which was built in 1881, provided the necessary water pressure to operate the first running water facilities in Charlotte and appears in every known photograph of this building. By 1870, Mecklenburg County had plans for a new courthouse, but such plans would not be realized for an additional two decades, during which time, the Third Courthouse, diligently served as the center of judicial proceedings for the community. Its 52-year history as the official Mecklenburg County Courthouse makes the Third Courthouse the longest serving courthouse (to-date) in County history.



## The Fourth MECKLENBURG COUNTY COURTHOUSE



The Fourth Mecklenburg County Courthouse, 1897 to 1928

This Fourth Courthouse, designed by architect Frank Pierce Milburn, was completed in 1897 and was located at 301 South Tryon Street (on the same property where Queens College had been established in 1771) and now the site of a local bank. The main entrance had an open portico surmounted by a large dome. The Independence Monument graced the courtyard in front of the Courthouse.

The plans for the Fourth Courthouse were initiated nearly three decades prior to its completion. In 1870, the Charlotte City Directory stated that the Mecklenburg County Commissioners had “purchased the grounds and made all arrangements for the erection of a very handsome Court House in the city of Charlotte, which will cost, grounds and all, \$75,000. This building will be located on the corner of Third and Tryon Streets.” Despite this optimism, this Fourth Courthouse was actually built 27 years later at that site for \$52,500.

This Fourth Courthouse was nearly three times the size of the Third Courthouse, with its footprint stretching 75 feet by 120 feet. Despite its large relative size, this Fourth Courthouse had a relatively short tenor, as the Charlotte continued to expand at a rapid pace. and the Courthouse was used for many purposes. In 1891 the Charlotte News reported that a mob had taken over the jury room in the courthouse for the purpose of consuming at least 86 watermelons and strewing the rinds and seeds all over the floor. By the early 1920's, judges and other court officials as well as Charlotte citizens began a campaign for a new courthouse to meet the growing demands of the city and county government and to reflect Charlotte's recently-attained status as the largest city in North Carolina. After much public debate, the idea of a single municipal building housing both city hall and the courts was rejected. The City of Charlotte built a new city hall, which opened in 1925, while the county officials continued to debate whether to repair this Fourth Courthouse or to build a new one. Ultimately they decided in favor of a new building.

## The Fifth MECKLENBURG COUNTY COURTHOUSE



Mecklenburg County Courthouse, Charlotte, North Carolina

### The Fifth Mecklenburg County Courthouse, 1928 to 1978

By 1909 there was again courthouse trouble. On January 25, 1909, The Charlotte Daily Observer reported that a Women's Club Committee had visited the courthouse and was appalled by the dirt, smells, and general uncleanliness, not to mention the tobacco spit all over the floors, including the court room. By 1917 judges and other court officials were calling for a new courthouse due to the crowded conditions in the present one, especially in the areas used to store the various court records.

In the early 1920s there was a movement to build a new structure combining the City Hall and the County Courthouse which the County Commissioners supported and the city leaders opposed. They went to Raleigh to get a special law passed to allow this level of City-County consolidation and the question was put to the voters. The City voters approved the idea, but the county voters did not and the referendum failed. The City of Charlotte built a new city hall which opened in 1925 while the county courts continued to debate whether to repair the old courthouse or to build a new one.

The Fifth Courthouse was located at 700 East Trade Street next to the new city hall. The building was completed in January 1928 at a cost of \$1,250,000 million dollars and was dedicated on March 10, 1928. The Courthouse was designed by noted architect Louis H. Asbury, a Charlotte native who also built the Myers Park United Methodist Church. The Courthouse's neoclassical style—which is considered a uniquely American style, was a popular choice at that time for public buildings. In an article in *Southern Architect*, architect M. E. Boyer extolled the “orderly functions of an excellent courthouse plan” and described the exterior columns and windows in glowing terms, commenting that “The fad of modernistic architecture is again resisted!”

It was an imposing three-story, rectangular limestone building, topped with a recessed structure that served as the county's jail until the 1960's. It was supported by a foundation constructed of locally-quarried granite.

This Fifth Courthouse featured an underground tunnel used to transport prisoners from the garage to seven courtrooms, a county museum on the third floor, a kitchen which served the jail, the Sheriff, Register of Deeds, judges, Clerk of Superior Court, District Attorney, County police, Magistrates, Probation, file storage, the Grand Jury and, on occasion, county jurors. The rooftop jail was the most popular part of the courthouse for visitors and was considered a masterful solution to the concerns of nearby residents.

## The LAW BUILDING



### The Law Building

The Law Building was constructed on property located immediately to the east of the building. All of the practicing attorneys in Charlotte had offices there. Featuring a bank ( to handle the trust accounts and make loans to lawyers between fees ) and a coffee shop ( which acted as a personnel agency ) a Charlottean could hire a criminal lawyer ( on the lower floors ) or a business lawyer ( on the upper floors ). From the open windows of the trial courtrooms in the Courthouse through the open windows of the law building, one could listen to the legal business of Charlotte on a hot summer day. The building continued to serve the Bar until the growth cycle of the 1980s brought money and banking towers to Charlotte. With that advent, the building showed its age and was demolished so that the land could serve as a part of the footprint of a new jail.

## The Sixth MECKLENBURG COUNTY COURTHOUSE



The Sixth Mecklenburg County Courthouse, 1978 to 2007

During the 1970's and 1980's, the area bordered by Third Street and East Trade Streets became a center for government and court buildings, including the fourteen story Charlotte-Mecklenburg Government Center (1989), a civil courts building, a criminal courts building and an underground intake center (which became the Mecklenburg County Sheriff's Office), located adjacent to the Mecklenburg County Jail. This area was officially named the Mecklenburg County Courthouse Complex in the late 1980's. It faced Marshall Park and the Education Center. A statue of Martin Luther King was erected in the 1970s across from the Courthouse.

On May 19, 1978, the Sixth Mecklenburg County Courthouse opened at 800 East Fourth Street, across from the Fifth Courthouse. This was the first county courthouse to be located off of either Trade or Tryon Streets. There was much controversy concerning the need and cost for a new courthouse. Accordingly, a smaller amount than necessary was allocated and a spare facility was built. At the time it was constructed, for a total cost of \$5.3 million dollars, the architecture of the Sixth Mecklenburg County Courthouse received much acclaim due to the modernistic design of south-facing Cordoba limestone and north-facing glass window walls. It was noted that the openness of the judicial system which was expressed in the openness of the north light galleries.

Harry C. Wolf FAIA, of Wolf Associates, was the architect of the Sixth Mecklenburg County Courthouse, he received the AIA National Honor Award for excellence in architectural design for his work.



## The Seventh MECKLENBURG COUNTY COURTHOUSE



The Seventh Mecklenburg County Courthouse, 1989 to 2007

The Seventh Mecklenburg County Courthouse was dedicated on April 10, 1989 during National County Government Week. County Commission Chairman Rod Audrey and Sis Kaplan from the Citizens Criminal Justice Commission cut the ribbon at the ceremony. An official public art project, which is located adjacent to the Courthouse building, was also dedicated at that time. The art project features the depiction of a courtroom scene using 12 trees, shrubs, a fountain ( which was shut down for liability reasons ), and 12 rocks to represent the judge, jury, defendants, attorneys, and spectators. The Courthouse was built for \$10 million dollars; the art project cost about four hundred thousand dollars. During a private ceremony, an administrative courtroom in the Seventh Mecklenburg County Courthouse was dedicated in honor of former Senior Resident Superior Court Judge Frank Snapp.

The Seventh Mecklenburg County Courthouse, known as the Criminal Courts Building, housed all of the criminal courts, judicial offices, Sheriff's Office, attorney conference rooms, and, for several years, the Citizens Criminal Justice Commission. Prisoners were transported to it via a secured tunnel connected to the jail.

## The Eighth MECKLENBURG COUNTY COURTHOUSE



The Eighth Mecklenburg County Courthouse, 2007-

On February 9, 2007, the newest Mecklenburg County Courthouse, located at 832 East Fourth Street, was dedicated in a ceremony presided over by the Chair of the County Commissioners, Jennifer Roberts and Senior Resident Judge Robert P. Johnston. Dignitaries in attendance included N.C. Chief Justice Sarah Parker and Attorney General Roy Cooper.

Designed by architects Schenkel & Shultz, HDR Architecture, and Kallmann, McKinnell & Wood, using high quality materials and providing room for growth, the Eighth Courthouse should serve the citizens of Mecklenburg County for many years to come. After ten years of planning and three years of construction, the Eighth Mecklenburg County Courthouse houses all of Mecklenburg County's Courts in a single building for the first time since 1970. It cost \$148 million dollars to construct. The courtrooms and departments are organized in an area of 588,000 square feet around a central atrium. It soars through six stories and provides natural light and orientation throughout the public spaces. Artists Helmick and Schecter created the public art piece which is displayed in the atrium and entitled "*The Persistence of Vision*" at a cost of \$480,000.00. It featured a complex, computerized mobile made up of many small heads which cycled into one large three-dimensional head when it worked. On the outside and inside walls of the building are inscribed phrases, selected by noted N.C. Poet Laureate Fred Chappell and Robin Brailsford, descriptive of the theme *We Hold These Truths*. The Eighth Mecklenburg County Courthouse is the result of many hours of hard work on the part of hundreds of individuals including many from the Courts, the County, and the Mecklenburg County Bar association in addition to architects, artists, and builders. It is nine stories high and has the capacity, upon a full build out, to house forty-seven courtrooms. The functionality of this structure recaptured the tradition of majesty and grandeur in courthouse design.

# 21<sup>st</sup> C Digitization: Technology and the Law

History of Technology and Its Impact on the Local Practice of Law

## “ A Sentimental Journey”



Let's take a sentimental journey and look at technology and its impact in North Carolina from 1972 to the present. The journey begins in Mecklenburg County where I started my legal career as an Assistant District Attorney before service as both the Chief District and Senior Resident Superior Court Judge. Let us look at the devices and the resulting behavioral changes which affected the civil practice. As a part of what I call a “sentimental journey”, let us engage in some forecasting about the future.

### Welcome to analog world of 1972

- Manual typewriters and carbon paper prevailed.
- Indictments were typed and replicated on a manual mimeograph machine.
- Secretaries used, state of the art IBM Selectric typewriters with an automated track ball
- All corrections were by tape or white out.
- There were no computers, no screens, no cords, and no email.
- Day runners were in paper notebooks.
- Copiers were a novelty.
- The Clerk's office had a mainframe computer which did not work and it was used as a bookshelf for the General Statutes.
- All phones were landlines with a telephone booth in the basement of the courthouse.
- If you wanted to converse over the air, you used a CB radio.
- You could walk the backs halls of the courthouse and get judges to sign orders.
- And unrelated to technology, lawyers smoked and there were still spittoons in the halls.

### **The analog world civil practice**

- There were about 600 lawyers in Mecklenburg County.
- The newly adopted rules of civil procedure gained recognition.
- Lawyers filed complaints with no more than four pages and answers of no more than two.
- Discovery consisted of a few paper documents and perhaps photographs.
- Research was done in a law library with searches through books and Advance Sheets.
- A lawyer calendaring committee handled case scheduling.
- Shorthand was used to memorialize court proceedings.
- Lawyers did some of everything from title work to court appearances.
- All records were kept in paper files.
- Lawyers talked with each other and settled cases over the telephone.

### **Welcome to the analog changing world of the 1980s**

- All the stuff used in the 70s was phasing out.
- Word processors began to show up with information stored on floppy discs.
- Administrative day runners were still in notebooks tracking more details.
- Automotive, plug-in cellphones were available for the technologically savvy.
- Pagers came into common use as the real-time messaging service.
- A Michael Douglas brick cellphone cost about \$4,000.00.
- Lexus and Nexus arrived to facilitate legal research.
- The MAC computer showed up in a few offices.
- A 15 pound Gateway ( with the cow logo )notebook computer became available with Microsoft Office software. IBM and Dell offered other models.
- FAX machines came into frequent use.

### **Analog world of civil practice**

- Complaints started to expand to twenty or forty pages with corresponding answers.
- Discovery began to expand with more depositions, requests for production, etc., etc.
- Discovery dumping practices of voluminous boxes of documents began.
- Plaintiffs and Defense lawyers formed associations for education and lobbying.
- Lawyers unwilling to do more paperwork changed their practice models.
- Trial court administrators were hired to replace volunteer bar committees in case and calendar management.
- Online research with Nexus and Lexis with law library backup became the norm.
- Time sheets became the norm.
- Specialization emerged.
- Firms began to merge.
- The Business Court was created.
- Mandatory continuing education was established.



- Record keeping with paper files began the shift to electronic scanning and storage.

### **Welcome to the decade of the conversion from analog to digital – the 1990s**

- In the Nineties, digitization exploded.
- AOL was available.
- Yahoo was created.
- The internet and web were new.
- The Palm Pilot launched.
- The Blackberry followed two years later.
- Laptops became lighter with track point buttons instead of a mouse
- Flip phones were available.
- There were no Apps.
- Printers and copiers were miniaturized and were available on the desktop.
- Email came into use.
- Law libraries with shelves of books and Advance Sheets were phasing out.
- Fax machines were miniaturized and available on the desktop.
- Blackberries were the new day runners and all firms were networked with central databases
- Early websites emerged.
- Google was launched.

### **Digital world of civil practice**

- Discovery wars became the norm.
- Motions courts were set up to handle the volume.
- Specialists continued their rise.
- Lawyers data was kept on mainframe computers.
- Lawyers were networked into the mainframe firm proprietary database.
- Big local firms merged with out of state firms.
- Email was the norm.
- Wifi became partially available in the courthouse.
- Lawyers needed to go through security checks to enter the courthouse.
- Judges were only accessible in the courtroom as back halls were locked off.
- Federal courts digitized calendaring.
- Fewer cases were tried as expenses rose.
- Mediation and case settlement conferences came into use.
- Lawyers began to advertise.
- Trial court administration handled more operational matters such as calendaring, jury intake custody mediation, and pro se administration.
- Records were digitally stored and accessed.
- Government records started coming on line for user access.

### **Digital world of the first decade of the 2000s**

- Law offices were fully computerized.
- Facebook was founded.
- There were few law libraries with hard copy books.
- The internet burgeoned with access to search engines.
- Every lawyer had or appeared on a website.
- Firms hired technical and marketing experts.
- The flip phone phased out as the smart phone made its appearance
- The smart phone became a computer with word processing and transmission features.
- Early apps were created.
- Online advertising became available.
- Wifi became available in most courthouses and law offices.
- Laptops, Desktops, and networked systems were the norm.
- Templates, research, forms, and spreadsheets were the norm.

### **Digital world of civil practice**

- Discovery was accelerated at all levels from pleadings to depositions.
- Electronic discovery, confidentiality and protective orders became routine.
- Lawyers communicated more frequently by email than by telephone.
- Lawyer advertising proliferated.
- Passwords were introduced as file security.
- Email was the major form of communication with texting on the rise.
- Firms continued to merge and host more specialists.
- Few attorneys went to court.
- Mediation was the means by which most cases were settled if not negotiated.
- Internet research made more types of information available formerly on Lexus/Nexus
- Trial court administration expanded to handle higher volume from population growth and 5,000 attorneys.
- Lawyer advertising proliferated.
- Passwords were introduced as file security.

### **Digital world of 2010s**

- The internet is omnipresent.
- Everyone's data is subject to compromise.
- Search platforms became dominant and part of the language.
- Social media becomes the norm with frequent use of FACEBOOK, LINKED IN, etc.
- Twitter, Instagram, and texting were preferred for instant messaging.
- Attorneys are connected by wifi and network umbilical cords to their offices.
- Firm documents were stored or backed up "in the cloud".
- Instant searches for information, legal and non-legal was available at your fingertips.
- Smartphones with Apps dominated the specialized data access portals.

- Smartphones contained a camera.
- Swiping no longer meant stealing.

#### **Digital world of civil practice**

- Everyone can marketed using a variety of platforms.
- Firms continue to merge and operate 24/7.
- There is full connectivity and access to information 24/7.
- Firm cybersecurity is an existential concern with all information subject to hacking.
- Most cases are resolved out of court.
- Civil justice is still only available to those who can pay.
- There is more case management with greater security concerns for court data.
- Attorneys are required to manage electronic discovery and big data.
- Discovery includes expanded searches of texts, metadata, social media files, etc.
- Lawyers email judges more frequently than communicating with letters.
- Clients can connected with counsel 24/7.
- Lawyers are learning how to practice faster, better, and at lower cost.

#### **Welcome to the digital ecosystem and practice in the 2020s and beyond**

- AI will provide legal advice from Alexa's grandchildren and from robot assistants.
- Solutions to providing legal advice to those without money will be implemented.
- The age of high-accuracy templates for drafting complaints will be the norm.
- The age of complaint and answer analysis programs will be the norm.
- The age of contract scanning and analysis.
- The age of predictive analytic applications and machine learning to provide better advice is upon us.
- Mega document scanning and analytical programs ( million document devices ) are in use.
- Repetitive tasks will be soft-wared and available via Google, Amazon, and other services.
- Routine legal matters which can be handled in house or in financial institutions will be.
- Predictive analytics will be applied to problem solving.
- Clients will be able to shop for legal services and compare pricing as they do online in retail.
- 24/7 client attorney audio-video access online with clients will be the norm.
- Remote video conference client contact will be the preferred method for routine attorney-client contact.
- Alternative models for problem solving will be recognized as the old system is re-imagined.
- Other businesses will provide legal services.
- Arbitration will be more frequently used.
- Innovative radical change, not imitation, will be the key to survival.
- Relationship formation and maintenance will be crucial to successful legal counseling
- There are now about 6,000 lawyers in Mecklenburg County.

But legal counseling , relationship counseling, cannot be softwared. Your future is in legal counseling and the skills associated with that are not replaceable. And mediation and arbitration are also a part of

the service package. Computers, at least until the synchronicity, will not be able to give advice and at any rate will never possess the human touch. We will talk about that later.

The most immediate task is to examine HOW we can reopen, reawaken, and reform the justice system. There have been no efforts to this end in NC in 50 years when the unified court system was created. The system and rules under which we operate were enacted in the age of carbon paper and the eight track tape. It is an analog anachronism in a world which is digitizing. This is an issue which affects your professional mental health, your practice, your clients, and the legal system which we are charged with maintaining. It is about a health community.

## **The 2020 Decade: The Digitization of the Practice of Law**

### **Change agents affecting the practice of law**

As we begin to focus on HOW we change, it is helpful to look at the technology which has affected the human condition and driven change. To that we can now add the threats to the human condition which impedes certain changes and accelerates other changes.

<b>The Roaring 1920s</b>	<b>The 2020s: Decade of Digitization</b>
<ul style="list-style-type: none"> <li>• From horses to the Automobile Age</li> <li>• Electrification of houses</li> <li>• Indoor plumbing and municipal water</li> <li>• Refrigeration</li> <li>• Mail order catalogues</li> <li>• The telephone in the home</li> <li>• The radio in the home</li> </ul>	<ul style="list-style-type: none"> <li>• Instant access to global information</li> <li>• Digitation of mass: internet of things</li> <li>• Last mile solution to home delivery</li> <li>• Virtual business</li> <li>• Data analytical mining of preferences</li> <li>• Global supply chain</li> <li>• Virtual education</li> <li>• The end of personal privacy</li> <li>• The age of defamation</li> <li>• The personalization of cyberattacks</li> <li>• Video medicine</li> <li>• Virtual travel</li> </ul>
	<b>Disruptive Stressors</b>
<b>Covid 19 Systemic Consequences</b>	<b>User Access Covid19 Consequences</b>
<ol style="list-style-type: none"> <li>1. Immediate denial of access <ol style="list-style-type: none"> <li>a. Criminal Courts <ol style="list-style-type: none"> <li>i. Intake</li> <li>ii. Jail</li> </ol> </li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Need for a user-focused system</li> <li>2. Need for a user responsive system</li> <li>3. Hundreds of thousands of hours of transaction and trial time loss</li> </ol>

<ul style="list-style-type: none"> <li>iii. Preliminary hearings</li> <li>iv. Bench trials</li> <li>v. Jury Trials</li> <li>b. Civil Courts <ul style="list-style-type: none"> <li>i. Magistrate services <ul style="list-style-type: none"> <li>a. Ejectments</li> <li>b. General Civil</li> </ul> </li> <li>ii. District court <ul style="list-style-type: none"> <li>a. Family</li> <li>b. Commitments</li> <li>c. General Civil</li> <li>d. Jury Trials</li> </ul> </li> <li>iii. Superior Court <ul style="list-style-type: none"> <li>a. Jury trials</li> </ul> </li> </ul> </li> <li>c. Civil Administration <ul style="list-style-type: none"> <li>i. Restrictions on access <ul style="list-style-type: none"> <li>a. Filings</li> <li>b. Estates</li> <li>c. Judgment records</li> <li>d. Court files</li> <li>e. Collections</li> </ul> </li> <li>ii. Register of deeds</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>4. Backlog buildup</li> <li>5. Restrictions on access to records</li> <li>6. Restrictions on transaction services</li> <li>7. Deprivation of property rights</li> <li>8. Restrictions on court availability</li> <li>9. Denial of civil jury trial rights</li> <li>10. Reduction in services to pre-21<sup>st</sup> Century levels</li> <li>11. Caseload increases</li> <li>12. Reductions in courtroom numbers</li> <li>13. Reduction in service delivery</li> <li>14. Remote procedure conversion</li> <li>15. Remote user access issues</li> <li>16. Digital divide</li> <li>17. New causes of action created</li> <li>18. New normal conversion</li> <li>19. Immediate need for innovation</li> <li>20. Need for additional resources <ul style="list-style-type: none"> <li>i. Software</li> <li>ii. Courtrooms</li> <li>iii. Digital access</li> <li>iv. New procedures</li> <li>v. Training and Education</li> </ul> </li> <li>21. New expectations <ul style="list-style-type: none"> <li>i. All trials online all the time</li> <li>ii. Juror resources</li> <li>iii. Chatbots like Dominos!</li> </ul> </li> <li>22. User-focused design resources systems</li> <li>23. A User-focused expectation</li> </ul>
	<p>NCSC CCJ Resolution 2 Change Guidelines</p> <ul style="list-style-type: none"> <li>1. Ensure that principles of due process, procedural fairness, transparency, and equal access must be satisfied when adopting new technologies.</li> <li>2. Focus on the user experience</li> <li>3. Prioritize court-user driven technology – how the user reacts to it</li> <li>4. Embrace flexibility with a willingness to adapt to change</li> <li>5. Adopt a remote-first with a willingness to adapt to change</li> </ul>

	6. Take an open, data-driven, and transparent approach to implementing and maintaining Court processes and supporting technologies

In order change, we must begin the conversation. For the post pandemic court system to change, we must examine the value propositions and the due process solutions which can be enabled by technology.

### The Coming Virtual Legal System – 2030 and Beyond

Value Propositions	Due Process Changes
<ul style="list-style-type: none"> <li>• Equal protection of the law</li> <li>• Due process of law</li> <li>• Access to justice for all</li> <li>• Right to a speedy trial</li> <li>• Recognition of value of time to users</li> <li>• Technology can assist justice</li> <li>• Systemic change is necessary</li> <li>• Systemic process triage is essential</li> </ul>	<ul style="list-style-type: none"> <li>• Virtual hearings</li> <li>• Virtual depositions</li> <li>• Digital trial event scheduling</li> <li>• Digital Rules of Court</li> <li>• Jury trial case system templates</li> <li>• Cellphone hearings and due process</li> <li>• Due process = managing discovery</li> <li>• Presumption of remote processes</li> <li>• Time settings adjusted to the 21<sup>st</sup> C</li> <li>• Case progress tracking with sanctions</li> <li>• Justice system infrastructure</li> <li>• Systemic conversion to digital</li> <li>• A time-triage managed system</li> <li>• Digital dispute resolution platforms</li> <li>• Alternative justice models</li> <li>• Online arbitrations</li> <li>• 5G justice</li> </ul>

### Counselor at Law: The Need for Recombinant Thinking

Legal counseling , relationship counseling, cannot be soft-wared. Your future is in legal counseling and the skills associated with that are not replaceable. And mediation and arbitration are also a part of the service package. Computers, at least until the synchronicity, will not be able to give advice and at any rate will never possess the human touch. We will talk about that later.

The “new normal” for practice will require you to personalize your client’s issues learning new skills.

- Your clients will want a personal, close relationship in a world of remote practice
- With good advice delivered quickly
- With adherence to compliance considerations
- And creative solutions

There is a description of this skill set.....it is called “recombinant thinking” to produce “recombinant innovation”. It is also called multi-disciplinary thinking. Recombinant thinking is a positive approach to managing change by which you look for innovative approaches in other areas which can be applied to your practice.

Here are the steps associated with it:

- Examine the components of your existing model.
- Gather information about innovative “seed ideas” from other disciplines and models.
- Determine how other disciplines and models can be recombined with your model to make it better.
- Engage in this process with regularity so that your innovations accumulate.

Recombinant thinking requires you, as a 21<sup>st</sup> C lawyer to:

- Avoid living in a cocoon
- Avoid being caught in an echo chamber
- Become multi-disciplinary
- Understand that cross business sector growth is the business paradigm to which you must aspire
- Develop a more aggressive skill set
- And not let Lawyer Alexa or Google, or some other service take your practice

The beneficial opportunity lies here:

- By embracing the future, you can become a new type of lawyer.
- You can become less encumbered by the routine.
- And you will be empowered to use your analytical and empathetic skillsets to grow your practice.

### **The More Things Change.....**

**Almost fifty years ago, I remember the anxiety of older lawyers as the new technology emerged and compelled change. But with each change, there were new opportunities to service clients and the community. And those attorneys who embraced change prospered.**

**Business and “change process” Professor Susan Luck is going to educate us on the mental steps we take as we begin the process of personal change.**

Note: For a thorough analysis of the impact of digitization of 21<sup>st</sup> Century business institutions, and a source from which quotes were drawn , read *THE SECOND MACHINE AGE* by Erik Brynjolfsson and Andrew McAfee. © Chase Boone Saunders 2020



## SELECTED ARTICLES



# Considerations in Resuming Court Operations

## A Pandemic Resource from NCSC

May 1, 2020 | Version #1



1. **Judge and Court Staff Health – how the courts will ensure judges and court staff do not enter the courthouse if they are sick or show signs or symptoms of being sick and will limit judges and court staff from exposure to the degree possible.**

Courts should take precautions to ensure judges and courts staff do not enter the courthouse when there is a likelihood that they may have COVID-19, and courts should take reasonable steps to protect judges and court staff from contracting COVID-19. Courts should consider encourage teleworking for judges and court staff whenever possible and feasible.

2. **Scheduling – how the courts will coordinate scheduling to reduce occupancy in the courthouse to the lowest degree possible.**

In-person proceedings must be scheduled to reduce the number of people entering or congregating in the courthouse at any one period of time. Judges in counties and cities with multiple judges in a courthouse must coordinate scheduling of any in-person proceedings to reduce the number of people in the courthouse at one time.

3. **Criteria for In-Person Hearings**

Courts should continue remote proceedings in all cases where it is possible and practicable. Courts should establish criteria that will provide clear guidance on when an in-person hearing will be held (if a remote proceeding is not possible or impracticable).

4. **Vulnerable Populations – how the courts will work with vulnerable individuals and those who live with or are caregivers for vulnerable individuals and provide accommodations to reduce the appearance of those individuals at the courthouse.**

Vulnerable individuals are those over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems that are compromised, such as by chemotherapy for cancer or other conditions requiring such therapy.

**5. Social Distancing – how the courts will ensure that adequate social distancing of at least 6 feet will be maintained for all individuals in a courthouse.**

Courts should consider how to ensure distancing in public common areas, galleries of courtrooms, wells of the courtroom, hallways, elevators, restrooms, or other locations where the public might gather. Special attention should be given to scheduling in buildings with multiple courtrooms, as common areas such as halls and elevators may become crowded in such a way that it is impossible to maintain appropriate social distancing.

**6. Hygiene – how the courts will ensure that individuals in the courthouse will have access to supplies to maintain high levels of hygiene**

Courts should consider having hand sanitizer dispensers available at various locations around the courthouse, including at the entry and exits from the building and courtrooms. Courts should ensure that tissues are available for public use in courtrooms and other public areas. Courts should post readily visible signage reminding individuals of best hygiene protocols.

**7. Screening – how the courts will ensure temperature screening of all individuals entering the courthouse or courtroom areas**

Individuals feeling feverish or with measured temperatures equal to or greater than 100°F, or with new or worsening signs or symptoms of COVID-19 such as cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, loss of taste or smell, diarrhea, or having known close contact with a person who is confirmed to have COVID-19 must not be permitted entry. Special attention should be given to how inmates from jail facilities who may be transported to a courtroom will be screened, including consideration of a lower threshold temperature of 99.6°F as an indicator of symptoms. Screeners should be provided appropriate face protection and gloves.

**8. Face coverings – how the courts will ensure face coverings over the nose and mouth are worn**

Cloth face coverings, at a minimum, are highly recommended for individuals while in the courthouse. Courts should consider requiring face coverings, and should consider providing face coverings for those seeking entrance to a court facility. Should an individual be in the courthouse for lengthy periods of time, surgical face masks should be considered.

**9. Cleaning – how the courts will ensure frequent and appropriate cleaning of surfaces in and around courtrooms and common areas**

Sanitizing should be routinely and more regularly performed, including when a transition of participants occurs within a courtroom (i.e. between hearings).

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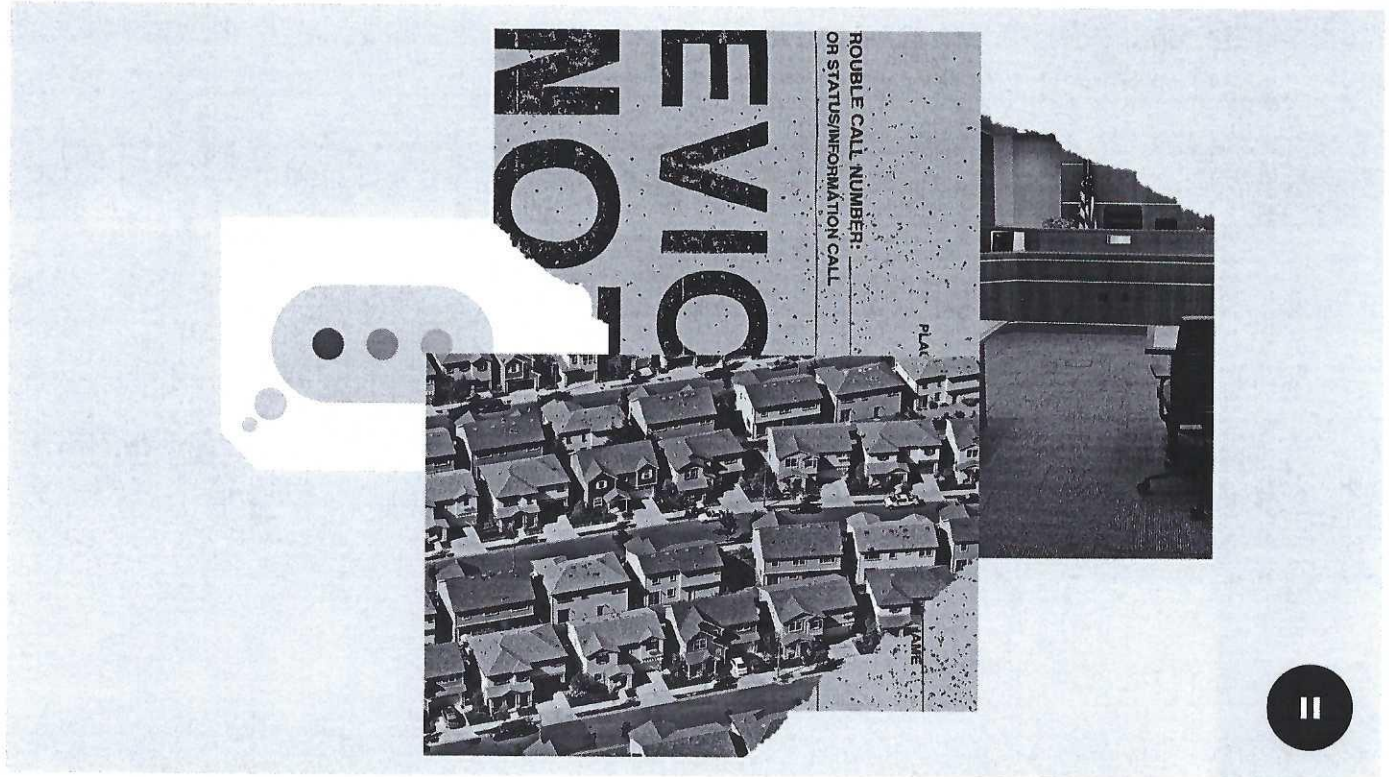


PHOTO-ILLUSTRATION: SAM WHITNEY; GETTY IMAGES

MICHAEL WATERS IDEAS 08.28.2020 07:00 AM

# To Stop the Eviction Tsunami, We Need Online Chats

Tenants who get dragged to court are often at a disadvantage. But a new system, known as online dispute resolution, gives them a better shot.

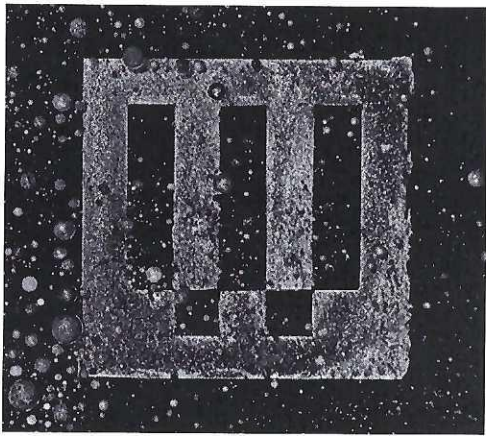
ASK TODD NUCCIO, Iowa's state court administrator, how the pandemic is going to impact



renters, and he'll tell it to you bluntly: Iowa might soon be staring down an "eviction tsunami." Across the country, an estimated 32 percent of American households missed their rent payments in July. The number of eviction filings per week is still well below pre-pandemic levels, but depending on whom you ask, 12 million to 29 million renters might be at risk of ending up in court before the end of the year. But Nuccio has a weirdly simple plan to help address this awful tide: He'll pull tenants and their landlords into an online legal chat.

Nuccio and his team are racing to test the process—known as online dispute resolution, or ODR—in Iowa's Story County. Here's one way that it might work: Before a hearing is requested, either a landlord or tenant can register on the state court website to have their case be handled via chat; the other party then gets an invite, and a mediator joins if asked. This way, the eviction isn't tossed right into the daunting, rapid churn of courtroom hearings; or worse, forced into default.

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In Iowa, eviction hearings tend to happen very quickly—eight days after the initial filing, or up to 15 if the tenant asks for an extension. That turnaround is especially cruel in a pandemic, where 10 percent of Americans are out of work and likely lack the financial resources to find a new home right away. Some experts have predicted a 45-percent surge in homelessness.

The standard process also tilts the outcome of the hearings in the landlords' favor. First, there's a huge gap in legal fluency. More than 95 percent of landlords and debt collectors show up to court with lawyers, as compared to only 5 to 15 percent of debtors and tenants.

The pace of the proceedings, too, puts tenants on their heels, with very little time to learn the law or attempt negotiation. Dozens of tenants will arrive at eviction court each morning, Nuccio said. "Everyone shows up at 9 o'clock, and you have a room full of people, and you go through them one at a time." The assembly line approach leaves unrepresented tenants especially vulnerable. In the words of public-interest lawyer Hannah E. M. Lieberman, "judgments are entered without meaningful scrutiny of their substantive or procedural correctness."

Many people facing eviction don't even make it that far. In California, about 40 percent of cases result in default judgments against the tenant, because they failed to show up at their hearing. In

Seattle, that number is 48 percent; in Philadelphia, it's 54 percent. Not all of these tenants are no-shows because they lack a valid counterargument; in fact, research suggests that a significant proportion of people who get evicted by default may have a worthy, but unused, defense.

Nuccio's online system could really help. Instead of asking tenants to show up in person, on schedule, at a crowded courthouse, they're invited to communicate instead through what looks like an advanced version of iMessage, with color-coded chat bubbles for the mediator, the plaintiff, and the defendant. These exchanges don't need to happen in real time: a harried party can type a message whenever they have a moment free. Judges in Utah, where ODR is used for small claims cases, refer to the platform as "pajama court," with one noting, "You [can] do it at 2 o'clock in the morning, in your robe, in your slippers, from the comfort of your home." Another plus is that the system kicks in before anyone has to go to fully-dressed court. If ODR fails, the two parties can proceed to a formal hearing as usual.

The ease of access in this online system could help drive down the number of default judgments, presuming both sides act in good faith. Will it, though? "We don't have enough long term research to be able to answer that question yet, but intellectually it makes sense to me," said Danielle Hirsch, a consultant at the National Center for State Courts.

The case for using online legal chats is even clearer when it comes to lower-stakes disputes, such as those concerning traffic tickets. Even when they don't deserve a ticket, drivers may end up paying to avoid the hassle of an interaction with the courts. "A lot of times people have to sit for a full day to contest their ticket, and a lot of times they don't contest it," said Amy Schmitz, a law professor at the University of Missouri who studies ODR.

In states like Michigan, Connecticut, and Arizona, which have been piloting online chats for traffic citations, there is some evidence of better outcomes. In Michigan, an initial estimate found that an ODR system called Matterhorn cut the rate of defaults on traffic tickets from 20 percent to 2 percent. Meanwhile, Utah's pajama court for small-claims cases has seen rates of default drop from 71 percent to 54 percent.

Over the last several months—and with the possible eviction tsunami looming—more and more localities have started experimenting with ODR for cases involving landlord/tenant disputes. The most comprehensive of these is probably Michigan's MI-Resolve platform, which launched across the state in July. It has handled about 300 cases so far, so far limited to small claims and certain kinds of low-stakes landlord-tenant disputes, such as the return of a security deposit. The state is



planning to expand the platform to take eviction cases in the coming weeks.

**The fact that something as simple as an online chat could help keep people in their homes invites certain, deeper questions.**

Nuccio's pilot program in Story County, Iowa is building on those ideas. It's also adding something new, by directing users of the system to community organizations such as Iowa Legal Aid, Story County Legal Aid, and Iowa Community Alliances. These groups can connect distressed tenants with volunteer lawyers, or help them access public assistance programs. In other words, the ODR platform is meant to function something like an eviction diversion program.

"We want the tenants to understand that they do have rights, they do have a defense, but the bottom line is to get at the underlying issues and supply them with the tools to keep their homes," said Nuccio.

In theory, ODR can shrink the power imbalance between landlords and the tenants whom they're trying to evict. But the system can only do so much. In one scenario, both parties may get online, but there's nothing to guarantee that they'll actually resolve their dispute. In another, landlords who know they have the edge in formal hearings—particularly the ones who are filing large numbers of evictions—could ignore the platform altogether.


These tiny pilot programs can't solve our current crisis. But they might presage a much bigger revamp of an eviction court system that remains inaccessible to the working-class people balancing jobs and childcare that it so often targets. The fact that something as simple as an online chat could help keep people in their homes invites certain, deeper questions: Why do we churn through eviction cases in such high numbers—and so quickly? Why do we make it so difficult for defendants to appear in person? How can it be fair that landlords almost always have lawyers and tenants almost never do?

Imagine an ODR system that, unlike Story County's, actually required landlords to use it before filing for an eviction. Would a virtual legal discussion, overseen by a mediator or legal aid volunteer (or both), give tenants a fighting chance against some evictions cases? At the very least, it might act as a filter, and a means of keeping the most tractable cases from overwhelming state eviction courts.

“The most exciting thing about ODR is the idea of trying to innovate and change rules to make it easier for all parties,” said Hirsch, the consultant for the National Center for State Courts. The online tools could end up as a “Trojan horse that helps modernize courts because you’re thinking about things in a new way.”

*Photographs: Serhii Brovko/Getty Images; Steve Proehl/Getty Images*

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Michael Waters is a freelance writer whose work has appeared in *Buzzfeed*, *The Atlantic*, *Gizmodo*, *The Outline*, *Vox*, *Atlas Obscura*, and other publications.

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## Featured Video



WATCH

## Parents, Schools, Kids and the Digital Divide

Stories to help you understand the future of

As parents and schools face another round of homeschooling due to Covid-19, the digital divide may get worse. WIRED's Nicholas Thompson, Pia Ceres and Adrienne So discuss the challenges and potential solutions.

TOPICS

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- Courts may wish to give each juror a poly / plastic folder that can be easily cleaned with a disinfecting wipe, into which the juror may deposit writing instruments and notebooks during court recesses.

## 5. Additional Considerations

- Before reopening after being closed for a prolonged period of time, it is advisable to take certain precautions to decrease the risk of mold or Legionnaire's Disease and to ensure ventilation systems are operating properly.

- *"Buildings should be assessed for mold and excess moisture.*
- *A building HVAC system that has not been active during a prolonged shutdown should be operated for at least 48 to 72 hours (known as a "flush out" period) before occupants return.*
- *After a building is reopened and occupied, routine (e.g., weekly) checks of the HVAC system are recommended to ensure operating efficiency.*
- *Develop a comprehensive water management program (WMP) for your water system and all devices that use water. Guidance to help with this process is available from CDC and others."*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/php/building-water-system.html>

## ADDITIONAL RECOMMENDATIONS ON TECHNOLOGY AND COURT INNOVATIONS

The Technology and Innovations Working Group of the Task Force was tasked with examining the types of proceedings that can be conducted remotely, whether legislative changes are needed to support that effort, and whether there are additional equipment needs, and with identifying innovations in court scheduling and operations based on technology. Based on the working group's recommendations, the Task Force's June 12, 2020 report included a series of recommendations to the Chief Justice, the NCAOC, and local court officials for their consideration for immediate implementation.

In this section of this report, the Task Force makes a series of additional intermediate and long-term recommendations to the Chief Justice, the NCAOC, and local court officials for their consideration. As the Chief Justice and the NCAOC deem appropriate, some of these recommendations may be better suited for additional discussion and consideration by the State Judicial Council.

It bears repeating in this second report that the NCAOC is currently developing an eCourts Integrated Case Management System (ICMS) that will enable all case types to be handled electronically from filing to disposition, thereby expanding access to the courts for all North Carolinians. The COVID-19 pandemic has highlighted the critical need for our courts to move away from paper and toward electronic management of our caseload, and the Task Force urges the General Assembly to fully fund this important and timely initiative. The Task Force recommends that ICMS continue to be developed and configured to accommodate its recommendations, as adopted by the Chief Justice, and that NCAOC request sufficient funding to implement those recommendations that are adopted, including funding for



the hardware, software, and training needed to make North Carolina courts more accessible to attorneys, litigants, and the public.

Particularly in light of the NCAOC resources that are currently dedicated to ICMS implementation, the Task Force understands that there may be technological or resource barriers to implementing some of the following recommendations. In addition, recommendations should only be implemented if they are consistent with principles of fairness, equal access, and unbiased justice.

## Select Immediate Recommendations

The immediate recommendations in the Task Force's June 12, 2020 report were intended to be those that could be implemented with existing technology, that had little to no associated costs, or that could be authorized through an emergency directive. However, upon further examination of those recommendations, the Task Force has determined that the following immediate recommendations from its June 12, 2020 report may require technological enhancements:<sup>3</sup>

12. Recommend convening the chief district court judges to consider expanding the list of waivable offenses in criminal matters.
14. Remind courts to ensure public access to court proceedings held remotely, which may be achieved by providing information on the calendar that interested parties contact the appropriate court personnel to receive a link to the live session.
17. Recommend secure audio / visual communications from all jails and prisons to permit attorney / client communications, as well as remote hearings.
18. Provide attorneys and their clients a private means of communication *during* court hearings.
21. Recommend the following changes to calendaring / docketing of court matters:
  - b. Use morning and afternoon calendars instead of single, day-long calendars. In criminal cases, district attorneys should consider defense attorneys that practice in multiple counties and allow for attorney scheduling to accommodate it (e.g., group cases by attorney blocks).
  - c. Use "time certain" scheduling:
    - i. In a district court traffic setting, schedule only the number of defendants that can safely fit in a courtroom for social distancing at different intervals (e.g., 40 defendants at 9 a.m., 40 at 11 a.m., etc.).
    - ii. If current technology does not permit this practice, the Task Force recommends exploring options for implementing this capability as soon as possible.
  - e. Schedule cases by attorney / parties (e.g., Attorney Smith's cases scheduled at 9 a.m.).
  - f. If remote hearings are not possible for "high-risk" individuals, consider scheduling a block of time for "high-risk" individuals to appear in court.

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<sup>3</sup> The numbering in this section repeats the numbering from the Task Force's original June 12, 2020 report to avoid confusion.





## Intermediate Recommendations

Based on the Technology and Innovations Working Group's recommendations, the Task Force makes the following additional intermediate recommendations with a proposed implementation date of no sooner than October 2020. Implementation of the first set of intermediate recommendations below should not require changes to existing technology or statutes or rules:

1. Recommend local policies for motions (or types of motions) to be addressed on written motion, without oral argument. Civil examples include motions to compel, motions to dismiss, motions to continue or for peremptory setting, and other administrative matters.
2. Request that appropriate representatives of the superior court judges, district court judges, clerks of superior court, court managers, and other stakeholders identify high volume / narrow discretion issues that may be fairly resolved using existing public-facing technology, including Online Dispute Resolution (ODR).
3. Evaluate programs for the support of self-represented litigants (e.g., ODR) and assess the use of such programs more widely in our courts.
4. Modify the North Carolina Uniform Citation (form AOC-CR-500) to include fields for a cell phone number and email address for the defendant or develop an alternate mechanism to collect this information in a way that protects the confidentiality of defendants.
5. Request that NCAOC prepare training platforms to teach attorneys and the public how to use Webex to interface with the courts and judicial system.
6. To reduce courthouse traffic, consider an emergency directive during a specified time period to waive the fine / penalty that is established pursuant to N.C.G.S. § 7A-148 for those defendants who elect to waive a trial or hearing, plead guilty or responsible, and pay the cost of their ticket without entering the courthouse (e.g., pay online) prior to their first court date.
7. Find other venues for jury trials or other high-volume court sessions.
8. Explore / consider temporary changes to improve the jury process for civil cases, such as:
  - a. Requiring jurors to watch the juror orientation video online prior to appearing for service; and
  - b. Encouraging the use of online juror questionnaires, and perhaps case-specific questionnaires, prior to appearing for service to reduce time in court.

The following additional intermediate recommendations may require enhancements to NCAOC's existing technology and / or new technology:

1. Establish a portal (computer terminal or iPad) at each courthouse for public use that would allow individuals without home computer access to participate remotely in a hearing outside of the courtroom.
2. Enable self-represented defendants to negotiate with a prosecutor prior to court (e.g., for certain traffic and low-level misdemeanor cases) by iPlea, Webex, or other technologies.
3. Authorize / permit limited driving privilege (LDP) petitions and other filings required in association with LDP petitions to be submitted electronically and for associated costs to be paid online.
4. Eliminate calendar calls and replace them with a digital / phone / kiosk-based check-in system.
5. Following the senior resident superior court judges' survey of jails and correctional facilities to determine the capability of attorney / client video conferences that the Task Force recommended in





its June 12, 2020 report, create a database describing each facility's capacity and contact information in order to allow remote contact with inmates by counsel for attorney-client communications and for court proceedings. Encourage each district's COVID-19 coordinator to make reasonable efforts to bring video capacity to facilities without this technology.

6. Explore / consider temporary changes to improve the jury process for civil cases, such as:
  - a. Conducting voir dire remotely, with computers / kiosks in the courthouse for those who cannot connect from home; and
  - b. Conducting remote civil jury trials.

Finally, the following additional intermediate recommendations would likely require statutory or rule changes, such as changes to the rules of civil procedure, rules of general practice, or the rules governing alternative dispute resolution:

1. Consider requesting that the legislature expand the scope of N.C.G.S. § 1A-1, Rule 53 to specify that alimony, child custody, child support, and equitable distribution issues may be referred by district court judges.
2. Amend paragraph 4 of Rule 6 of the General Rules of Practice to reflect that arguments of any motion may be accomplished by means of a "telephone, remote, online, or electronic" conference without requiring counsel to appear in court in person.
3. Amend the Rules of the Dispute Resolution Commission to permanently authorize remote district and superior court mediations. Require, absent a showing of good cause, remote mediations for superior court matters and district court family financial matters. In-person mediations can be held if social distancing can be observed and upon consent of all parties or order of the court.
4. Amend the Rules of Court Ordered Arbitration to allow for remote arbitration hearings and for in-person arbitrations to occur at locations other than the courthouse.
5. Establish statewide rules for the remote handling of all forms of evidence (e.g., marking / identifying, introduction, and live witness testimony), including the remote swearing of witnesses.
6. Explore / consider temporary changes to improve the jury process for civil cases, such as mandating / encouraging smaller civil juries and reducing the number of civil peremptory challenges and / or setting a reasonable time limit for voir dire.

## Long-Term Recommendations

Based on the Technology and Innovations Working Group's recommendations, the Task Force makes the following long-term recommendations with a proposed implementation date of no sooner than 2021. Most of these recommendations will require enhancements to NCAOC's existing technology and / or statutory or rule changes:

1. Provide for the permanent ability to swear witnesses remotely for both civil and criminal cases (including for search warrants).
2. Provide for the permanent ability of judges, at a minimum, to sign documents electronically. The ability of law enforcement officers (for search warrants) and lawyers to sign documents electronically would also be beneficial.
3. In superior court, with the consent of all parties, permit remote criminal bench trials and civil bench and jury trials.





4. Consider the use of deposition testimony in criminal trials (for testimonial purposes, not for purposes of discovery).
5. Encourage the increased use of civil advisory or provisional jury trials in civil cases as allowed by N.C.G.S. § 1A-1, Rule 39(c).
6. Make all necessary rule and statutory modifications, such as N.C.G.S. § 1A-1, Rule 53, to authorize trial courts to refer custody, child support, alimony, and equitable distribution cases to referees / arbitrators and to select the referee / arbitrator if the parties do not agree.
7. Expand remote application for electronic filing of N.C.G.S. Chapter 50B relief to all North Carolina counties.
8. Based on the recommendations of the superior court judges, district court judges, clerks of superior court, court managers, and other stakeholders, and using examples from other jurisdictions as models, design and implement pilot program(s) for ODR.
9. Develop triage programs for district courts. "Triage" in this context is a process of screening cases prior to and at the time of filing and diverting them into pathways within the judicial system based on the level of services needed. The three pathways are: a) streamlined (involving minimal judicial resources); b) tailored (involving pairing services); and c) judicial / specialized (involving greater need for judicial management and intervention). The triage process may include ODR for streamlined or tailored cases.<sup>4</sup>
10. Create or expand notification systems (text / paging systems) to allow defendants, witnesses, litigants, attorneys, and jurors to receive instant notification when a civil or criminal case is ready to be heard.
11. Improve the current Court Date Notification System (ACEN) to allow for notification of time and date of both civil and criminal hearings. This would allow for instant notification when cases on high-volume dockets need to be rescheduled throughout the day (e.g., a case to be heard at 9 a.m. is postponed to 1 p.m. the same day).
12. Direct this Task Force, the State Judicial Council, or a new group with representatives appointed by the Chief Justice from the statewide organizations for senior resident superior court judges, chief district court judges, clerks of superior court, court managers, and the bar, to establish metrics for the evaluation of initiatives taken in response to the COVID-19 pandemic and to communicate with those groups about the effectiveness of those initiatives.

Because the additional ideas below require thoughtful analysis and input from a wide variety of stakeholders, the Task Force further recommends that the State Judicial Council give consideration to other, more fundamental long-term changes to the jury process. It may be appropriate to pilot some of these changes, to permit them only during declared states of emergency, or to otherwise assess their efficacy before permanently implementing them:

1. Consider reducing the size of the jury panel when the most serious charge is a misdemeanor or Class H or I felony.

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<sup>4</sup> For information about triage programs, see [CCJ/COSCA Family Justice Initiative Virtual Triage, Pathways, and COVID-19](#) (Nat'l Center for State Courts Apr. 6, 2020); [A Model Process for Family Justice Initiative Pathways](#) (Nat'l Center for State Courts 2019); and [Family Justice Initiative: The Landscape of Domestic Relations Cases in State Courts](#) (Nat'l Center for State Courts 2018). In addition, Stacey Marz, [Faster and as Satisfying: An Evaluation of Alaska's Early Resolution Triage Program](#) (Family Court Review Oct. 23, 2019) is available in Appendix E (reprinted with permission of the author).



2. Consider reducing the number of peremptory challenges in civil and criminal cases if the size of the jury panel is reduced to a six-person jury.
3. Rather than an appeal to superior court after a misdemeanor conviction in district court, consider permitting an “appeal” to a district court jury trial with a limited sized jury and a different presiding judge.
4. Create new and efficient ways to handle juror orientation, juror deferrals and excuses, and jury selection remotely.

## CONCLUSIONS

As the Task Force stated in its June 12, 2020 report, adapting our state’s court system to the current pandemic conditions is a challenge that none of us has had to meet before, and we must be patient with each other as we all seek to adjust the way we do business. As we explore new innovations as a result of this pandemic, we must always do so in ways that are designed to protect the safety of the public, the bar, and our Judicial Branch personnel. In addition to the specific recommendations contained in its June 12, 2020 report and this second report, the Task Force recommends that the State Judicial Council consider and address long-term improvements in court processes, both with respect to needs that have arisen from the COVID-19 pandemic and other deficiencies that have been highlighted by recent events in this country and state.





# Guidance for Conducting Civil Jury Trials During the



# Pandemic

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By the ABOTA COVID-19 Task Force

American Board  
of Trial Advocates



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## Facing an Invisible Threat

**Foreword by Luther J. Battiste, III**  
**National President**

The coronavirus pandemic has posed a unique threat to the innumerable ways that America operates, and perhaps the most telling challenge for our legal system is how we will conduct trials going forward. In these difficult months, keeping citizens safe has been the primary concern for the nation. Unfortunately, the closing of each courtroom has affected thousands of people whose day in court will be delayed. COVID-19 has challenged the way we all think about the legal system. Little did any of us know that the threat to the courthouse door was going to come from an invisible force. The following white paper will address many assorted hurdles attendant to the reopening of our courts.

Dealing with COVID-19 has presented personal and professional obstacles for each of us. I want to thank the authors of this white paper, who accepted the challenge with enthusiasm and commitment, which symbolized their effort. It should also be pointed out that each member of the Task Force immediately accepted the request to serve without any hesitation. As I have found with all ABOTA members, they hold an understanding of the needs of the organization and the overarching essential requirement that the civil jury trial is key to our democracy. Simply, thank you to the Task Force and much appreciation for the willingness to place themselves in the jurors' shoes to understand the realities of what they are facing. I would like to give particular credit to Steve Quattlebaum for agreeing to chair the Task Force and for providing great leadership and demonstrating a profound understanding of the workings of the jury trial system. Additionally, I wish to thank our scientific advisors, John Swartzberg, M.D., Christopher Kuhlman, Ph.D., CIH, DABT and Paul Nony, Ph.D., CIH, CSP, who so generously devoted their time and expertise to this effort.

How did the white paper come to be? To address the multiple issues related to getting trials up and running again, ABOTA quickly formed a team dedicated to the pandemic response, known as the ABOTA COVID-19 Task Force (ACTF). The ABOTA National Executive Committee recommended this approach, believing that a small group of ABOTA members representing a cross section of lawyers was most likely to develop a creative, pragmatic way to address the problems impacting the

legal profession, the judicial system and the public. The ACTF represents a balance of plaintiff and defense members who are geographically distributed across the country. It was important to have the bench represented, and lawyers who could advise on a number of different areas, including legislation and technology.

The ACTF was asked to assess the pandemic as it related to civil jury trials and take a number of action steps. Of course, with a never-ending news cycle and unforeseen problems caused by the pandemic, adjusting on the fly became a third component of the ACTF. The assembled team quickly understood that a guiding document was needed — not necessarily to serve as an authoritative how-to manual — but to offer a set of guiding principles and resources that provide the criteria for decision making going forward. While the “new normal” has become a catch phrase during the pandemic, resolving disputes by jury trial is an institution that needs to be preserved. The ACTF was needed to address the many issues — and many may be an understatement. We knew that we needed to form a hub that will constantly assess the situation as it evolves.

Finally, the ACTF understands that the nature of the pandemic will change course constantly. The white paper will serve as a way to help the courts and law firms make difficult decisions, and the authors make it clear that the current uncertainty may necessitate adapting the document as needed. Because of the nature of a pandemic, the ACTF acknowledges that it is better to err on the side of caution — especially when it comes to keeping jurors, court administrators, employees and judges healthy.

The process of reopening the courts will lead us to new actions and new adjustments. The American experiment in self-government is certainly being tested, yet we remain confident that our system will thrive. Madison reminded us of the need for “a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.”

A functioning, effective civil justice system is an important element to the legal system. These are unprecedented times. The good news is that if we adopt responsive and responsible behaviors, we can protect our courtrooms . . . and we will return to civil jury trials soon. ■

## Table of Contents

Foreword .....	3
I. Introduction .....	5
II. General Principles Embodied by the Seventh Amendment of the Constitution of the United States and the Federal Rules of Civil Procedure .....	6
III. Faster Jury Trials .....	6
IV. General Safety Practices for Courthouses .....	6
V. Pre-Trial Stage .....	8
VI. Trial .....	8
A. Jury Selection and <i>Voir Dire</i> .....	8
B. Opening Statements and Closing Arguments .....	9
C. Presentation of Evidence: Testimony and Exhibits .....	10
1. Presentation of Witness Testimony .....	10
a. Testimony Taken in Open Court .....	10
b. Deposition Testimony .....	11
i. Taking Depositions by Remote Means .....	11
ii. Admission of Deposition Testimony at Trial .....	12
2. Presentation of Exhibits .....	13
D. Jury Deliberations .....	13
VII. Conclusion .....	14
VIII. Resources for Information .....	14
Pre-Trial Checklist .....	16
General Order Regarding Rules of Conduct for Trial Participants .....	17



## I. Introduction

The American Board of Trial Advocates (ABOTA) is committed to the preservation of the trial by jury in civil cases as guaranteed by the Seventh Amendment to the Constitution of the United States. Conducting civil jury trials in the presence of health threats and necessary restrictions caused by the novel coronavirus (COVID-19) global pandemic is a challenging undertaking for the courts. Special procedures are required to protect jurors, court employees, litigants, witnesses, lawyers and the public. This white paper focuses on these challenges and procedural alternatives and innovations that will allow civil jury trials to proceed safely.

ABOTA is an organization consisting of more than 7,600 trial lawyers from all 50 states. As such, ABOTA is particularly well-suited to assist the courts in addressing the legal, practical and technological challenges that must be addressed to conduct civil jury trials during the pandemic. To that end, ABOTA National President Luther J. Battiste, III, empaneled an ABOTA COVID-19 Task Force (ACTF) charged with the duty to prepare this white paper to serve as recommended guidelines for courts and practitioners so that civil jury trials may resume. These suggested guidelines are designed to maximize the safety of all participants in civil jury trials, while providing a fair forum for adjudication by juries as guaranteed by the Seventh Amendment.

This white paper is limited in scope to the issues related to civil jury trials. This paper is not intended to address court hearings, status and settlement conferences and non-jury trials. In many such proceedings, the participants appear through virtual video conferencing platforms, and there has been much discussion about utilizing these virtual platforms to conduct jury trials. Nor is this paper intended to address criminal jury trials, which present their own unique issues.

In this white paper, the ACTF has specifically addressed issues related to both live (in-person) appearances and virtual participation. The ACTF acknowledges that virtual appearances eliminate the risks associated with in-person attendance. However, the members are unanimous in their preference for live (in-person) trials whenever and wherever possible. In the opinion of the ACTF, live trials provide jurors with the best opportunity to evaluate witnesses, weigh the evidence and engage in robust deliberation. Therefore, while this white paper discusses virtual alternatives, such as video livestreaming, we believe that in-court, in-person jury trials are most consistent with the constitutional rights granted by the Seventh Amendment.

In preparing these guidelines, the ACTF recognized that circumstances surrounding the pandemic differ

widely throughout the country. Urban areas such as New York City, Chicago, Boston, Los Angeles and Detroit have experienced many more cases of COVID-19 than other areas. Jury service in some localities requires use of public transportation, such as subways and buses, that present different risks than modes of transportation in other areas of the country. In short, circumstances vary state to state, and even among communities within each state; each court will be presented with problems specific to the jurisdiction, courthouse facility and even the type of case to be heard. Because a white paper such as this cannot anticipate or address all such circumstances, the guidance and recommendations provided herein have been prepared to address the fundamental principles involved in civil jury trials. It is the hope of the ACTF that this publication will provide our courts with information, ideas and innovations that provide a functional approach to conducting civil jury trials under these challenging circumstances.

Our white paper begins with a discussion of general principles embodied by the Seventh Amendment to the Constitution of the United States and the Federal Rules of Civil Procedure, followed by a discussion of general safety practices for courthouses. The paper then addresses specific issues that arise in the following stages of a civil jury trial:

1. Pre-trial hearings and conferences
2. Jury selection and *voir dire*
3. Opening statements and closing arguments
4. Presentation of evidence
5. Jury deliberations.

The paper concludes with a listing of resources that offer information for further consideration, such as court-issued mandates and orders related to jury trials during COVID-19 and resource services such as the National Center for State Courts and the federal courts. We have also prepared a best practices, pre-trial checklist that courts may find useful as a reference and a model order addressing proper conduct for all participants involved in civil jury trials. Additionally, there is an accompanying editorial by Judge Jerome B. Abrams, of the ACTF, pertaining to the importance of governmental funding of the courts during this crisis.

Even during a global pandemic, it is vital to our democracy that our justice system function in a manner consistent with the principles upon which it was founded. This includes the resolution of civil disputes through the means of trial by jury as guaranteed by the Seventh Amendment. As James Madison wrote in 1789, "Trial by jury in civil cases is as essential to secure the liberty of



the people as any one of the preexistent rights of nature.” To the extent this guidance assists in the preservation and continuity of civil jury trials, we are pleased to have contributed to the protection of these freedoms.

## II. General Principles Embodied by the Seventh Amendment of the Constitution of the United States and the Federal Rules of Civil Procedure

Rule 1 of the Federal Rules of Civil Procedure provides, “These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Rule 38 of the Federal Rules of Civil Procedure echoes the Seventh Amendment’s preservation of jury trials principle and states, “The right of trial by jury as declared by the Seventh Amendment to the Constitution — or as provided by a federal statute — is preserved to the parties inviolate.” Thus, it is clear that the Seventh Amendment and the Federal Rules of Civil Procedure require a construction that provides for speedy resolution of disputes, so long as it is just. While COVID-19 presents many challenges, the courts must maintain the ability to resolve civil disputes efficiently and in a just manner that does not deprive any party or participant of liberty or due process.

## III. Faster Jury Trials

ABOTA, the National Center for State Courts (NCSC) and the Institute for Advancement of the American Legal System (IAALS) have a long-term commitment to the preservation of the civil jury trial and providing less expensive and time-consuming ways to achieve civil justice. In collaboration, our three organizations published *A Return to Trials: Implementing Effective Short, Summary and Expedited Civil Action Programs*, providing “How to” guidelines for presenting jury trials more efficiently.<sup>1</sup>

With the uncertainties our trial courts currently face, the time is right for efforts to provide the public, the bench and the bar with access to faster, shorter and expedited civil jury trials that honor the importance of trial by jury while saving precious court resources and addressing an expected backlog of civil cases.

Many jurisdictions already have procedures, rules and statutes that sanction more efficient jury trials, but they are

rarely used. While varied, these rules generally encourage shorter trials through agreement, cooperation, stipulation and pre-trial rulings. Significant attributes are (1) focusing on key issues, (2) agreed or judicially-defined limits on trial presentations in terms of time, witnesses, evidence, etc. and, in some cases, (3) smaller jury panels. The parties often stipulate to modify the rules to accommodate particular case concerns. Judges, jurors and litigants favor concentration on the real issues to be decided by the jury, as well as reduced time and expense through a streamlined process that seeks to avoid redundant and unnecessary evidence. Links to jurisdictional rules and statutes can be found in the “Resources for Information – Faster, Summary and Expedited Jury Trials” section of this white paper.

## IV. General Safety Practices for Courthouses

As of the publication of this paper, approximately 1.8 million individuals have been infected with the virus in the United States and more than 112,000 have died as a result. Worldwide, more than 7 million people have been infected by the virus and deaths have exceeded 407,000. The current available science indicates that the spread of the virus occurs by respiratory transmission and personal contact. Beginning around March 17, 2020, courts throughout the United States limited or closed public access to courthouses in order to avoid and minimize spread of the infection. Now, more than two months later, the country is working toward increasing in-person services. As our courts do the same, steps must be taken to identify infected individuals before entry to courthouses; maintain physical distancing and air flow when people are inside; use available personal protective equipment inside the courtroom; maintain cleanliness; and provide ongoing education about safe and hygienic practices within the courthouse.

There are general safety precautions courthouses can utilize to aid in the safe participation through all stages of a trial. Many of these depend upon the circumstances of the courthouse, courtroom, community and the duration of the case. While not specific to courthouses, details about such measures have been well considered by the Centers for Disease Control (CDC) Coronavirus 2019 Community Mitigation Strategies and have been adopted by some courts. Court publications regarding procedures and rules are referenced in the final section of this paper. Specific recommended screening requirements are published

<sup>1</sup> See INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (2012), [https://iaals.du.edu/sites/default/files/documents/publications/a\\_return\\_to\\_trials\\_implementing\\_effective\\_short\\_summary\\_and\\_expedited\\_civil\\_action\\_programs.pdf](https://iaals.du.edu/sites/default/files/documents/publications/a_return_to_trials_implementing_effective_short_summary_and_expedited_civil_action_programs.pdf).



## **Blind to Justice? A Vision of Restoring Our Courts**

**By the Hon. Jerome B. Abrams**

*Minnesota Chapter, American Board of Trial Advocates*

How quickly we lose sight of what really matters to our collective well-being.

Despite the intensely sad reports of illness and death, and even the spiritually uplifting stories of selflessness from health care workers to grocery clerks — in times of this pandemic we are so overwhelmed by crisis that we don't see many other important losses. The death of loved ones, elimination of jobs, failing businesses, and limits on personal freedom easily occupy our thinking. There is no escape. In every aspect of daily life we are reminded that the spread of an invisible foe causes us to become unsettled in ways unthinkable before its arrival.

Even more anxiety producing for all of us should be how jaded we have become in our response. Those risking their lives, to prevent this evil agent from taking the lives of others don't view it as a "hoax." Nor do those who view their personal safety measured by their spiritual or economic security fully accept why all the fuss — especially when it is causing their personal ruin. Since we have no experience with any of this disruption to our "normal" lives there is no guide to our personal response.

We view the impact of the pandemic on our lives first and foremost in personal terms. A more sinister consequence of COVID-19 is how this virus attacks our institutions. The disease has produced another symptom: we have been temporarily blinded to the needs of our system of justice.

Despite the claims of cynics, there is no plan to deprive Americans of their access to justice. To the contrary, courts are carefully restoring what we can, how we can, consistent with the best advice to keep us safe while returning to "normal." The justice system struggles mightily to protect the public's rights under the law. We now have a broader view that justice — as a product of the courts — isn't confined to what happens at the courthouse. Remote hearings, video sessions, and some limited in-court hearings all temporarily bridge the gap. Yet we cannot avoid a return to the physical location where justice is arguably best served.

What we need to see with clarity is the cost, in dollars, of what it takes to operate our system of justice under the cloud of COVID-19. There are many plans to reopen courts based on sound principles invariably maximizing justice and public health. These plans must be tailored to thousands of locations nationwide, in accordance with a myriad of laws and procedural rules that insure fairness. It is neither easy nor inexpensive.

The virus has unsettled the courts in addition to the public they serve. There is more than a hint of uncertainty over court funding. We have overlooked many aspects of our return to a purported "normal" existence, including how we fund our most basic local institutions. Courts outside the Federal system, with a handful of exceptions, rely on a mix of funding sources all deeply impacted by the pandemic. Whether it's a decline in state or local revenues, user or service-related fees, courts on their own are powerless to provide for their own future needs. Despite being less than 3% of the cost of government in most states, the needed improvements for in-person resumption of service will cost more, take longer, etc. This is particularly vexing when the funding sources for these needed changes have themselves less money. Compounding the resource challenge is that most state and local funders have their own increased demands and reduced revenue, but unlike their Federal counterparts cannot operate with a deficit or borrow money.

Civil justice is an essential commodity. Its return is not only dependent on developing a means for the safe return of our in-person processes, including civil jury trials, but will not happen in the absence of significant funding. Times are tough everywhere. Our return to "normal" may end with a vaccine — but begins with restoring our system of justice — among the many institutions that bring us a sense of order.



and regularly updated by the CDC.<sup>2</sup> Some of the more universal screening requirements include the following: First, before entering the courthouse, all jurors, lawyers, witnesses and staff should be screened through a series of questions regarding health and exposure. Each person's temperature should be checked for temperatures above 100.3 Fahrenheit. Further, all persons should be required to wear masks meeting the requirements of the court upon entering the courthouse. It is true for everyone. This is especially true for jurors who may be confined to tighter spaces than are lawyers and witnesses. The courtrooms should undergo sanitation each day, including but not limited to wiping down high-touch surfaces such as chairs, tables, door handles, etc., with disinfectant wipes such as those included on the EPA's List N found at <https://www.epa.gov/pesticide-registration/list-n-disinfectant-use-against-sars-cov-2>. The courtroom can be marked to indicate where counsel should stand when addressing the court or jury to ensure social distancing at all times. The Court may prohibit the use of a shared podium. Similarly, courts should utilize all available space in the courtroom to ensure adequate social distancing. Jurors must remain a minimum of six feet apart at all times. Finally, courthouses should prohibit attorneys from approaching witnesses, staff and the judge during all phases of the trial, absent specific leave of the Court. In all circumstances, as mentioned, a minimum social distance of six feet should be required.

These courthouse safety procedures should be discussed with the lawyers as part of a pre-trial conference so that all parties understand what conduct during trial is acceptable. The lawyers should be tasked with the duty of informing their clients and witnesses of the proper procedures. Written protocols or rules should be provided to all participants and may be in the form of a court order. An up-to-date listing of actions by individual federal courts can be found at "Judiciary Preparedness for Coronavirus."<sup>3</sup>

There are also specific ways courts can help limit juror exposure to contagions. Some of the following measures may be used:

1. Avoid having jurors report until actually needed. For example, if the court anticipates any other business will be conducted such as a civil settlement, guilty plea, or parole revocation, schedule jurors to arrive after such matters have concluded.

2. Limit the number of jurors assembled in one location by asking jurors to report for service on a staggered schedule.
3. Provide hand sanitizer and masks to jurors.
4. Consider impaneling extra alternates to guard against delays or mistrials for any reason.
5. Require that jurors report directly to a courtroom as opposed to a jury assembly room.
6. To the extent possible, avoid passing exhibits between jurors (please see below).
7. Require jurors to report by phone each morning of trial confirming that the juror has not experienced any symptoms consistent with COVID-19. The manifestations of COVID-19 are protean. If a juror reports symptoms consistent with COVID-19 by phone, the juror should not be allowed to come to the courthouse. If a juror experiences symptoms consistent with COVID-19 while at the courthouse, the juror should be subject to immediate quarantine and a test administered. To walk through this: If a person becomes ill, he or she will be immediately removed from the room and courthouse, sent home and asked to contact a physician. The court cannot tell someone with symptoms to go into quarantine or get a test. The juror should be excused and, if alternates are impaneled, an alternate juror should be substituted.
8. To the extent possible, certain restrooms should be designated for juror-only use and should be cleaned with disinfectant after each break, lunch and at the end of the day. Ideally, restrooms should have an open window. If that is not possible, engineering should address the air flow in the restrooms. These places are particularly problematic as many people use restrooms and they are usually small rooms. Additionally, disinfectant wipes should be readily available in the jury room and the restroom for use throughout the day.

<sup>2</sup> See *FAQs for Businesses: Reducing the Spread of COVID-19 in Workplaces*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html> (last visited June 1, 2020) (providing guidance based on the question "Should we be screening employees for COVID-19 symptoms (such as temperature checks)? What is the best way to do that?").

<sup>3</sup> *Judiciary Preparedness for Coronavirus (COVID-19)*, UNITED STATES COURTS, <https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19> (last visited June 1, 2020).



## V. Pre-Trial Stage

Rule 16 provides for various issues to be addressed at pre-trial conferences. The conference should be robust in order to address as many issues as possible in advance of trial in order to maintain a physical distance of six feet and avoid community contact of exhibits. Included among the issues that should be addressed are:

1. Where lawyers will question jurors during *voir dire* and witnesses during trial such that all persons are more than six feet apart
2. The location of the court reporter (if a court reporter is present)
3. Handling as many evidentiary disputes as practicable by motions *in limine* in order to minimize bench conferences
4. Ways to eliminate or minimize exhibits being passed among lawyers, judges, witnesses, clerks, bailiffs and jurors. If possible, project the exhibits on screens so that jurors do not have to touch any items. Otherwise, attorneys should consider providing each juror with their own set of pre-marked exhibits. For unique evidence that may require handling by lawyers, jurors and others, special precautions should be taken to minimize the risk of contamination.

## VI. Trial

Rule 77(a) of the Federal Rules of Civil Procedure provides, “Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom . . . .” While this rule is clear, every trial must be conducted in open court, there are various other rules (discussed in the “Presentation of Evidence: Testimony and Exhibits” section *infra*) that provide for the possibility of testimony via pre-recorded depositions (Rule 32) or real-time videoconferencing (Rule 43). Rule 77(a), however, seems to preclude the possibility of a completely online trial in which the lawyers and jurors participate from a remote location. Arguably, an online trial is a “private trial” within the meaning of Rule 77(a), unless there is public access to the trial. There is no legal precedent in support of a completely virtual (remote) trial.

The following subsections set forth considerations for live civil jury trials.

### A. Jury Selection and *Voir Dire*

The pandemic presents particularly difficult challenges to the process of jury selection and *voir dire*, both of which have traditionally been accomplished by mass gathering. This section is intended to provide recommendations for jury selection from the time the venire panel enters the courtroom where the trial is being conducted until the jury is sworn in. This section recognizes that this process varies from jurisdiction to jurisdiction and from state to federal courts. There are at least three ways to manage jury selection during periods of health crises including physical protections, using technology platforms, right sizing jury pools or any combination of the above.

Jury selection is governed by Rule 47 of the Federal Rules of Civil Procedure and various state rules of civil procedure. Rule 47(a) provides, “The court may permit the parties or their attorneys to examine prospective jurors or may itself do so . . . .” Thus, the language of this rule broadly addresses the “who” but fails to address the “how” or “where.” Must jury selection take place during open court? Even absent consent by the parties, does a trial judge have the discretion to conduct jury selection online? Simply put, there is nothing in the text of Rule 47 that addresses or suggests that the examination of prospective jurors must be done in person, in open court, or that it may not be done online, through the use of technology.

There is no reported case that specifically addresses the question as to whether *voir dire* can be held online in a virtual setting. While in-person gathering is preferable during *voir dire*, the law does not prohibit other methods of questioning a jury panel. For example, federal judges have long used written initial juror questionnaires, the answers to which were obtained from jurors prior to the formation of the venire for a particular case. Rule 47(a) authorizes the court to conduct *voir dire* without any attorneys asking questions, as do the rules in some states. Closed jury selection has even been endorsed when the following criteria are met: (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.<sup>4</sup>

Whether the jury selection process is conducted in person or through a virtual or remote platform, it should ensure the protection of prospective jurors. Local (e.g.

<sup>4</sup> The Advisory Committees to the Federal Rules of Civil Procedure have commented on Fed. R. Civ. P. 47 on four occasions since its enactment: 1937, 1966, 1991 and 2007. None of those commentaries have addressed remote jury selection outside of open court or virtual jury selection in the age of technology. Relatedly, 28 U.S.C. §§ 1861-1870 contain detailed provisions concerning such matters as the manner of drawing jurors from the wheel, improper criterion for disqualifying people from the jury pool (e.g., race, religion), randomly selected venire, frequency of service and numbers of challenges. None of these provisions reference or imply a requirement that jury selection occur in open court.



county) health authorities have the prime responsibility and their dicta must be followed. They can choose to defer to the State Health Department. The CDC is only advisory.

If *voir dire* is conducted in person, the court must provide for the considerations discussed in Section IV, as well as social distancing, appropriate hygiene and disinfection protocols, temperature/symptom checks, use of face masks and gloves, plexiglass dividers and use of non-courthouse facilities when available, such as auditoriums, theaters and large meeting facilities.

In order to minimize the amount of time that jurors must spend in person, hardship challenges could be handled in writing or by telephone request before the prospective jurors report for service. For example, the jury summons can be fashioned to direct prospective jurors to call or email the court on a certain date and time. The judge can rule on the request prior to reporting in person. In order to minimize the number of people occupying the same space during *voir dire*, the court may limit the number of prospective jurors called at a time.

Despite these protective measures, there are a series of limitations and challenges with jury selection during the pandemic, including but not limited to the following: physical barriers that may impact the efficiency of the jury selection process; a reduction in the diversity of prospective jurors appearing for jury service due to transportation issues (mass transport has been limited or unavailable during the pandemic); fears of contracting COVID-19 resulting in a “chilling” effect on jury participation; in the case of remote jury selection, difficulty in effectively assessing a prospective juror’s reactions, body language and non-verbal affect and assuring the quality and veracity of responses by potential jurors since they are not participating in person; and limitations based upon technology not being available to all socio-economic groups.

Jury selection using a virtual platform may be an option for some courts. The process for jury selection might include the following concepts. First, the jury summons would inquire of prospective jurors whether they have a working computer with a camera and internet access. If the requisite technology is unavailable, they would be directed to a government center to complete the process on a computer with the necessary amenities to complete the process in a safe environment. Second, an online jury questionnaire would be completed following remote administration of the oath by the presiding judge. Then, completed juror questionnaires would be available for review and discussion/determinations as to disqualification for cause, hardship, etc. Jury selection

could proceed with the venire panel logging into a portal (ex. Zoom or Microsoft Teams) for oral *voir dire* to be conducted. The court could also schedule *voir dire* of limited groups or even oral individual questioning via virtual or live appearances.

Judges will have to be mindful about reminding jurors to participate in the jury selection in a private location, away from distractions including others who live in their household. Some inappropriate conduct may not be visible to judges, e.g., if a prospective juror is searching the internet, watching a film or reading other documents during the *voir dire*. Such conduct may be particularly harmful if the prospective juror is investigating the case during the *voir dire*. Judges will need to remind the prospective jurors of their oath, but there may not be any way for the judges to be alerted to such conduct.

Other challenges include the ability to assure the veracity of the prospective jurors’ responses because they are not physically present before their peers, attorneys and the judge; the ability to evaluate the prospective jurors due to limitations in registering non-verbal communication and making direct eye contact; and the lack of diverse prospective jurors due to unavailability and access to technology.

## B. Opening Statements and Closing Arguments

Once an appropriate forum is selected for an in-person jury trial, opening statements and closing arguments can proceed in accordance with the general health safety recommendations stated in Section IV, including seating jurors in the gallery. Because of physical distancing requirements, challenges that may arise include logistical issues with the jurors being able to see and hear the evidence and the witnesses. For auditory issues, the courtroom may need to be equipped with microphones and speakers. If exhibits are being displayed during opening and closing arguments, parties may need to use multiple screens. Regular breaks should be taken to maintain air flow in the forum. Courts may also elect to install plexiglass shields in front of and to the sides of jurors and the witness box to provide additional protection.<sup>5</sup>

Some courts have discussed the possibility of having sworn jurors watch the proceedings through a closed-circuit television from a separate room, away from the attorneys, court reporter, clerk staff and judge. This is not ideal, but it would permit the court to control the sworn jurors’ environment and allow the jurors to see the dynamic between the parties and the witness. Having more than one camera view of the courtroom would be helpful to the finders of fact. Additionally, the court would

<sup>5</sup> The scientific advisors to the ACTF wish to make clear that plexiglass shields and barriers should be used in addition to, and not in lieu of, proper face masks and coverings.



need a camera and television screen in order to see the jurors and be assured that they are attentive and able to ask questions or make requests, as well as compliant with jury instructions and health and safety rules. Alternatively, an authorized court agent could be present with the jurors and alternates to monitor and assist with any juror request.

### C. Presentation of Evidence: Testimony and Exhibits

There are two parts to this section. First, there is a discussion of ways courts can ensure adequate presentation of testimony. Second, there is a discussion of ways to present exhibits to reduce or eliminate the physical handling and transfer of exhibits between courtroom participants and controlled movement in the courtroom.

#### 1. Presentation of Witness Testimony

##### a. Testimony Taken in Open Court

Under Rule 43, witness testimony must be taken in open court. The fundamental role of the jury is to determine the facts by judging the credibility of witnesses and weighing the evidence introduced at trial. In order to execute its main function, seeing and hearing the witness in person is critical. The Legislature recognized that “[t]he very ceremony of trial and the presence of the factfinder may exert a powerful force for truth telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition.”<sup>6</sup> Every jurisdiction has specific jury instructions for judging witness credibility. Uniform in the instructions is the judgment of the manner in which the witness testified — how the witness looked, acted and spoke during testimony. Actions that affect credibility include looking at documents, counsel, or other persons in the courtroom during testimony. A fulsome opportunity to assess all aspects of the demeanor of witnesses is vital to the process of weighing credibility.

Rule 43 also recognizes that compelling circumstances may warrant remote testimony, but that appropriate safeguards to promote truth and veracity must be present.<sup>7</sup> The Advisory Committee instructed: “Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons

present with the witness. Accurate transmission likewise must be assured.” It also instructed that “[r]emote transmission must be approached cautiously.”<sup>8</sup> Further, depositions are preferred over remote live transmission: “Ordinarily depositions, including video depositions, provide a superior means of securing the testimony of a witness who is beyond the reach of a trial subpoena, or of resolving difficulties in scheduling a trial that can be attended by all witnesses. Deposition procedures ensure the opportunity of all parties to be represented while the witness is testifying.”<sup>9</sup>

In deciding whether to permit testimony in open court by contemporaneous transmission from a different location, courts have relied heavily on the comments to Rule 43.<sup>10</sup> The following notes are informative: “The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place. Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other — and perhaps more important — witnesses might not be available at a later time.”<sup>11</sup> Further, “[g]ood cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties’ agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.”<sup>12</sup>

If the court permits remote testimony, the initial safeguard considerations include:

1. Verifying the identity of the witness.
2. Assuring that the remote technology will work.
3. Identifying evidentiary objections prior to testimony.
4. Identifying any documents or exhibits to be used with the witness during testimony.
5. Providing such exhibits to the witness.

<sup>6</sup> FED. R. CIV. P. 43, Notes of the Advisory Committee (1996).

<sup>7</sup> FED. R. CIV. P. 43.

<sup>8</sup> FED. R. CIV. P. 43, Notes of the Advisory Committee (1996).

<sup>9</sup> *Id.*

<sup>10</sup> See e.g., *Nexen Petroleum U.S.A., Inc. v. Ensco Offshore Co.*, No. 6:13-00604, 2015 WL 6511879, at \*9–10 (W.D. La. Oct. 27, 2015).

<sup>11</sup> FED. R. CIV. P. 43, Notes of the Advisory Committee (1996).

<sup>12</sup> *Id.*



6. Ensuring that the witness will be alone and has only the approved exhibits in that room during the testimony.

7. Ensuring that the witness does not access the internet or have contact with outside parties during the testimony. In order to fulfill these requirements, the Court may order the witness to report to a secure location with an authorized court agent, such as a notary public or law enforcement officer. This can be accomplished at a remote federal courthouse or other government building. The authorized court agent will verify the identity of the witness and monitor the witness throughout the testimony. If the witness engages in any inappropriate conduct, the authorized court agent will report to the court immediately.<sup>13</sup> There is legal authority for ordering that the party requesting remote testimony pay for the costs associated with it.<sup>14</sup>

#### b. Deposition Testimony

Depositions are addressed because they are such a key part of the discovery process and frequently are the means by which testimony is presented at trial. Under Federal Rule of Civil Procedure 32, depositions are an alternate means of presenting testimony at trial.

#### i. Taking Depositions by Remote Means

When the witness, the lawyers and the court reporter cannot be in the same room due to the pandemic or another reason, there are practical and legal issues. The first is administering the oath.

Rule 28(a)(1) provides, a deposition must be taken before: (A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or (B) a person appointed by the court where the action is pending to administer oaths and take testimony.

Must the officer administering the oath be in the same room as the witness? The traditional answer is yes unless the parties consent otherwise.<sup>15</sup> Rule 29 allows parties to consent to taking depositions in any manner they choose.

Rule 30(b) allows parties to video record depositions and, either on consent or by court order, for depositions to be taken by remote means. These methods have become very important in this COVID-19 era. Under Rule 30(b)(4), depositions by remote means are presumptively valid forms of discovery and the movant need only show a legitimate reason for proceeding in this manner, such as financial hardship; thus a pandemic should suffice. The burden then shifts to the party opposing the deposition by remote means.<sup>16</sup>

<sup>13</sup> In *Alcalá v. Hernández*, No. 4:14-cv-04176-RBH-TER, 2015 WL 1893291, at \*3 (D.S.C. Apr. 27, 2015), the District Court of South Carolina laid out several safeguards that would ensure the witnesses were appropriately identified and prevented from outside influence. First, the court required the petitioner and witness to report to a local government office in his native Mexico. Second, upon arrival, the petitioner and the witness would provide documentation to verify their identities with the court prior to their testimony. Third, the court staff then helped the petitioner and witness troubleshoot their technology in advance of the trial. Fourth, the petitioner and witness were ordered to testify separately, in a closed room, free of any outside influence. Fifth, any documentary evidence presented to the petitioner and witness was pre-marked and provided to them to facilitate their testimony. Finally, the court ordered the petitioner (through counsel) to pay any costs associated with the remote testimony. See *In re RFC & ResCap Liquidating Tr. Action*, No. 0:13-cv-3451 (SRN/HB), 2020 WL 1280931, at \*3–4 (D. Minn. Mar. 13, 2020) (In light of the coronavirus, the court stated it would conduct the final two days of trial remotely at a future date. The Court was advised by IT that the most reliable and secure video link would be obtained at other federal courthouses, and thus directed the parties to conduct cross-examinations from a local federal courthouse of their choice. The parties were ordered to identify the courthouse and the lead IT videoconferencing person from each courthouse so that IT could communicate with them promptly.); see also *Ji v. Jling Inc.*, No. 15-CV-4194 (SIL), 2017 WL 6501865, at \*3 (E.D.N.Y. Dec. 19, 2017) (The court directed that, with the exception of a videographer with no knowledge of the substantive facts of the case, the witness be alone in the room where he was to testify unless the court directed otherwise, and he may not converse with anyone about his testimony during the course of his testimony.); *Lopez v. Miller*, 915 F. Supp. 2d 373, 396 n.9 (E.D.N.Y. 2013) (stating that “everyone in the courtroom was able to see and hear [the witness] and the people with him”); *Flores v. Alvarado*, No. 3:17-cv-514-RJC-DSC, 2018 WL 1697314, at \*2 (W.D.N.C. Apr. 6, 2018) (In a case involving a minor witness in El Salvador, the court found video conferencing was appropriate, but required that the petitioner testify from a private room, free from outside influence, and that petitioner’s counsel be responsible for making sure the technological steps were in place to make the remote videoconference feasible, and may work with courthouse staff to accomplish that objective.); *In re Rand Int’l Leisure Prods., LLC*, No. 10-71497-ast, 2010 Bankr. LEXIS 1986, at \*14 (E.D.N.Y. June 16, 2010) (limiting who could be present during remote testimony to an attorney who was prohibited from conferring with the witness, a videoconference operator, and a translator, if necessary); *Mission Capital Works, Inc. v. SC Rests., Inc.*, No. C-07-1807, 2008 WL 5100313, at \*1 n.12 (W.D. Wash. Dec. 3, 2008); *Scott Timber, Inc. v. United States*, 93 Fed. Cl. 498, 501 (2010) (approving as a reasonable safeguard the requirement that no one other than the witness be present during remote testimony and provide documentary evidence in advance).

<sup>14</sup> *Monserate v. K. K. Mach. Co.*, No. 10–3732, 2013 WL 1412194, at \*4 (E.D.N.Y. Apr. 8, 2013).

<sup>15</sup> See *Aquino v. Auto. Serv. Indus. Ass’n*, 93 F. Supp. 2d 922, 923–24 (N.D. Ill. 2000) (“The most logical and obvious construction of these rules requires the notary or court reporter to be in the presence of the deponent during the telephonic deposition, rather than in the presence of the attorneys conducting the examination.”); see also *United States v. Ruiz-Castro*, 92 F.3d 1519, 1533 (10th Cir. 1996) (overruled on other grounds); *Kaufman v. Equifax LLC*, CV 14-148-BLG-DLC-CSO, 2015 U.S. Dist. Lexis 141815 (D. Mont. Oct. 16, 2015); *Menovick v. BASF Corp.*, No. 09-12096, 2010 WL 4867408 (E.D. Mich. Nov. 23, 2010); *Phye v. Thill*, No. 06-1309-MLB, 2007 WL 2681106, at \*1 (D. Kan. Sept. 7, 2007).

<sup>16</sup> See *Anguile v. Gerhart*, No. 93-934, 1993 WL 414665, at \*2 (D.N.J. Oct. 7, 1993) (quoting *Jahr v. IU Intern. Corp.*, 109 F.R.D. 429, 430-431 (M.D.N.C. 1986)) (“The Court finds that Rule 30(b)(7) [now Rule 31, Deposition by Written Questions] should be construed *in para materia* with subsection (b)(4). Both have a joint purpose of reducing the cost of federal litigation by providing alternatives to traditional stenographic depositions. The courts have not required a showing of extraordinary circumstances before granting Rule 30(b)(4) motions. . . . Thus, upon giving a legitimate reason for taking a deposition telephonically, the movant need not further show an extraordinary need for the deposition. Rather, the burden is on the opposing party to establish why the deposition should not be conducted telephonically.”).



In the past two months, there have been abundant federal trial court decisions adjudicating disputes about whether depositions should be postponed because lawyers cannot be in the room with the witness or whether those should proceed by remote means. The courts have most often sided with the parties wishing to proceed remotely.<sup>17</sup> While it might be preferable to be present with the witness, sacrificing that is a small price to pay for continuing to move a case toward its necessary prompt disposition by trial or otherwise. Courts have noted that the end is not in sight or assured when it comes to the pandemic. The ACTF strongly encourages the use of remote means for depositions if to do otherwise would result in any delay in taking depositions.

## ii. Admission of Deposition Testimony at Trial

Rule 32 does not provide a means for a party to offer into evidence at trial its own witness's deposition testimony without a showing of "unavailability." Rule 32(a)(4) provides:

A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds: (A) that the witness is dead; (B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition; (C) that the witness cannot attend or testify because of age, illness, infirmity,

or imprisonment; (D) that the party offering the deposition could not procure the witness's attendance by subpoena; or (E) on motion and notice, that exceptional circumstances make it desirable — in the interest of justice and with due regard to the importance of live testimony in open court — to permit the deposition to be used.

It seems likely that the circumstances of a pandemic would warrant a finding that a witness is "unavailable" within the meaning of this rule, but there are no reported cases on that point yet. A person at significant risk to acquire the virus or to suffer serious complications from the virus likely constitutes one who "cannot attend" under sub-paragraph (C). The courts freely allow the use of depositions under Rule 32(a)(4)(C) when there is appropriate documentation from a physician advising against travel.<sup>18</sup> A pandemic could also constitute "exceptional circumstances" under sub-paragraph (E). During a pandemic-generated national emergency and for 30 days thereafter, the answer is probably yes.<sup>19</sup> Beyond that, it likely depends on local conditions and the circumstances of the witness. The trial judge will be afforded broad discretion.

Courts have considered a number of factors when determining whether exceptional circumstances warrant the use of deposition testimony in lieu of live testimony at trial, including: substantial delay caused by witness's travel, travel expenses,<sup>21</sup> the importance of assessing the witness's credibility,<sup>22</sup> and the opposing party's ability to

<sup>17</sup> See e.g., *Jae Props., Inc. v. Amtax Holdings 2001-XX, LLC*, No. 19cv2075-JAH-LL, 2020 U.S. Dist. LEXIS 83418 (S.D. Cal. May 12, 2020); *Djurdjevich v. Flat Rate Movers, Ltd.*, No. 17-CV-261 (AIN) (BCM), 2020 U.S. Dist. LEXIS 82428 (S.D.N.Y. May 8, 2020); *United States ex rel. Chen v. K.O.O. Constr., Inc.*, No. 17-CV-261, 2020 WL 2319119 (S.D.N.Y. May 8, 2020); *Cavanaugh v. Cty. of San Diego*, No. 18cv2557-BEN-LL, 2020 U.S. Dist. LEXIS 80792 (S.D. Cal. May 7, 2020); *Moncreiff v. San Diego Unified Sch. Dist.*, No. 19cv1030-GPC-LL, 2020 U.S. Dist. LEXIS 76393 (Apr. 30, 2020); *Grano v. Sodexo Mgmt.*, No. 18cv1818-GPC(BM), 2020 U.S. Dist. LEXIS 72862 (S.D. Cal. Apr. 24, 2020).

<sup>18</sup> See, e.g., *Scarfarotti v. Bache & Co., Inc.*, 438 F. Supp. 199, 202 (S.D.N.Y. 1977) ("We find Carzo's deposition testimony admissible . . . Carzo became ill and upon doctor's advice did not make the trip from Utica, N.Y. to Manhattan. Nothing to the contrary was advanced. We accept the explanation. We receive this witness' testimony by way of deposition (plaintiffs had full opportunity to question him at that time).").

<sup>19</sup> Cf. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, Section 15002.

<sup>20</sup> See, e.g., *Bickel v. Korean Air Lines Co., Ltd.*, 96 F.3d 151, 155 (6th Cir. 1996) ("While, in retrospect, it appears that the two experts could have wound up their testimony in Washington, caught an evening flight to Detroit, and been available to testify there the following morning, we must review the district court's decision with an appreciation for the difficulties of ensuring the smooth progression of the proceedings in its court. When the court initially decided to allow the videotaped testimony, it did not know that the experts would finish their testimony in Washington in time to appear in Detroit. Once [the party opposing the use of the depositions] informed the court [of that fact], the plaintiff was already in the middle of offering the videotaped testimony. Ordering the plaintiff to produce one or both of the witnesses for live testimony could have resulted in a substantial delay. Considering that the testimony that the experts would have given 'live' was substantially the same as the testimony on videotape, and that the videotaped testimony occurred at a prior trial in this same case, we are not 'firmly convinced' that the district court erred in allowing the videotaped testimony to continue.").

<sup>21</sup> See *Robinson v. Food Serv. of Belton, Inc.*, 415 F. Supp. 2d 1232, 1238–39 (D. Kan. 2005) ("[Plaintiff] claimed damages in the amount of roughly \$500.00. In all likelihood, it would have cost [her] more than that to travel to Kansas City to attend trial, including airfare and hotel expenses. This fact weighs in favor of permitting [Plaintiff] to present her testimony via deposition."); *Borchardt v. United States*, 133 F.R.D. 547 (E.D. Wis. 1991) (Cost differential of \$375 for deposition testimony of witness and between \$1,000 and 1,250 for live testimony of witness was "exceptional circumstance" under Rule 32(a)(3)(E) where plaintiff's total claim was only \$12,402.); *Lopez v. NTL, LLC*, 748 F. Supp. 2d 471 (D. Md. 2010) (addressing the analogous issue of whether witnesses should be permitted to testify via videoconferencing at trial pursuant to Rule 43, discussed below — Plaintiffs demonstrated good cause to use videoconferencing in lieu of live testimony at trial in Maryland for those laborers who resided in Honduras, where Honduran workers made less than \$7,000 a year, forcing them to travel to the United States would impose substantial hardship, and defendant would not be prejudiced since each witness would testify in open court, under oath and face cross-examination.).

<sup>22</sup> See *Robinson*, 415 F. Supp. 2d at 1237–39 ("In other words, unlike many cases where the key factual issues turn on the credibility and demeanor of the plaintiff, in this case the jury was able to resolve those factual issues irrespective of [Plaintiff's] testimony, as numerous other plaintiffs testified to the same core facts."); Compare *Garcia-Martinez v. City and County of Denver* 392 F.3d 1187, 1191 (10th Cir. 2004) ("When the 'key factual issues' at trial turn on the 'credibility' and 'demeanor' of the witness, we prefer the finder of fact to observe live testimony of the witness.").



have fully cross-examined the witness at deposition.<sup>23</sup> A showing of prejudice resulting from the exclusion of the deposition testimony is not enough to prove exceptional circumstances.<sup>24</sup> Nor is the fact that a witness may assert his Fifth Amendment privilege.<sup>25</sup> And, not surprisingly, the substitution of videotaped deposition testimony will not be allowed if it appears it is being requested for tactical reasons.<sup>26</sup> Note, however, this rule explicitly recognizes “the importance of live testimony in open court.”<sup>27</sup>

## 2. Presentation of Exhibits

Many of the issues that arise with regard to the presentation of exhibits are discussed elsewhere in this paper. However, there are some main points to note. First, each juror should have available his or her own set of paper exhibits to the extent the number of exhibits is not so great as to make this impractical. Alternatively, each juror should be able to view the exhibits on a screen or handheld tablet device. For tangible exhibits, jurors and other participants should not ordinarily be allowed to touch the exhibit. If jurors are allowed to touch exhibits, they should be instructed on proper hand sanitization and provided with sanitizer. Disposable gloves may also be provided, but the science advisors to the ACTF discourage the use of gloves because it is recognized that gloves provide a false sense of security. Thus, if gloves are provided, jurors should be carefully instructed regarding their proper use and hand sanitization, especially after removing the gloves (this is when hands often get contaminated from the gloves). Moreover, courts should take proper precautions regarding the use of foam board exhibits, as well as paper flip charts and white boards. Finally, as noted in the pre-trial section above, courts should discourage side bar or bench conferences and discussions that must take place outside the presence of the jury due to the difficulties of maintaining proper distancing as well as delays.

## D. Jury Deliberations

The discussion in this section contemplates that sworn jurors and alternates are gathered in person. Jury deliberation is of the utmost importance because it is the time for the jury to think together, discuss the evidence, reason and make a collective and informed decision. Providing an appropriate setting for this process is key to retaining the civil jury trial as the truly democratic, bedrock component of our judicial system. There are various concerns regarding the deliberation room. First, the court should ensure that the deliberation room is large enough to accommodate all deliberating jurors with designated positions identified and located at least six feet apart. All jurors must be able to see, hear, listen, reason with one another, debate and deliberate together without outside interruptions. There should not be any outside presence in the deliberation room. The sanctity of the deliberation process must be protected in all situations.

A cardinal principle of jury deliberations is that they shall remain private and secret to protect deliberations from improper influence.<sup>28</sup> Second, all jurors should wear masks while in the deliberation room and should be required to use hand sanitizer upon entry and exit.

While deliberating, the court should provide the equipment required for the projection on a large screen of all exhibits and jury instructions, assuming local practice provides for access to exhibits and jury instructions during deliberations. If the hardware is available, jurors should be provided with individual sets of the exhibits or tablets with electronic copies of all exhibits and access to all physical exhibits, such as products and examples. Alternatively, admitted physical exhibits could be placed on a central table with protective measures to allow for disinfection to prevent contamination. These measures might include a protocol to utilize hand sanitizer and air drying before handling an exhibit. Finally, copies of the verdict forms should be provided to each juror. It is also important that there be adequate court staff available to respond to juror questions and requests.

<sup>23</sup> See *Robinson*, 415 F. Supp. 2d at 1238–39 (“Finally, defendants do not suggest that they were unable to cross-examine [Plaintiff] fully. In fact, defendants were aware at the start of [her] deposition that [she] might be called to basic training and that the possibility existed that [she] might not be present at trial. Defendants do not suggest any particularized reason for preferring the live testimony of [Plaintiff]. They do not, for example, suggest that her demeanor at the deposition cast doubt on her credibility or any other reason to prefer [her] live testimony.”).

<sup>24</sup> *Griman v. Makousky*, 76 F.3d 151, 153–54 (7th Cir. 1996) (“Even ‘serious prejudice’ from the exclusion of a deposition has been held not to be an exceptional circumstance in and of itself. *Angelo v. Armstrong World Industries, Inc.*, 11 F.3d 957, 963–64 (10th Cir.1993); see also *Allgeier v. United States*, 909 F.2d 869, 876 (6th Cir.1990) . . . . [I]t is not only a party’s need for the evidence in the deposition, but also the nature of the circumstances that have made the deponent unavailable to testify, that determines whether the circumstances can be thought exceptional. Indeed, if harm were all that mattered, there would be no need for any of the other subsections. Even in *Huff v. Marine Tank Testing Corp.*, 631 F.2d 1140, 1142–43 (4th Cir.1980), the case that goes furthest in interpreting ‘exceptional circumstances’ in Rule 32(a)(3)(E) liberally, the unexpected disappearance of the key witnesses was an exceptional, and in the circumstances exceptionally harmful, event . . . . The release and subsequent disappearance of a jail inmate [here] are not an exceptional combination of events.”).

<sup>25</sup> *Banks v. Yokemick*, 144 F. Supp. 2d 272, 288–89 (S.D.N.Y. 2001).

<sup>26</sup> *In re Vioxx Products Liability Litigation*, 439 F. Supp. 2d 640, 643 (E.D. La. 2006).

<sup>27</sup> Fed. R. Civ. P. 32(a)(4)(E); see also *Griman v. Makousky*, 76 F.3d 151, 153–54 (7th Cir. 1996) (noting the “strong preference of Anglo-American courts for live testimony, especially in a case that turns on the credibility of testimony contradicted by other witnesses”).

<sup>28</sup> *United States v. Virginia Election Corp.*, 335 F.2d 868, 872 (4th Cir. 1964).

## VII. Conclusion

It is important, even in the midst of a global pandemic, that our justice system function in a manner consistent with those principles upon which our country was founded. Due to the complexities and challenges presented by COVID-19, it is now more important than ever that those involved in the judicial process take every possible step to ensure the preservation of civil trial by jury as guaranteed by the Seventh Amendment. By the utilization of these and other measures and safeguards, it is eminently feasible that civil jury trials can be conducted in a safe and effective manner.

## VIII. Resources for Information

### Trial Lawyer Associations

ABOTA COVID-19 Task Force Announcement  
ABOTA COVID-19 Task Force Committee  
ABOTA COVID-19 Task Force Charge  
American College of Trial Lawyers Task Force  
on Advocacy in the 21st Century  
Statement of Purpose, April 10, 2020  
A Return to Trials: Implementing  
Effective Short, Summary, and Expedited Civil  
Action Programs  
BYU Law Review, Reviving the Civil Jury Trial:  
Implementing Short, Summary, and Expedited  
Trial Programs  
California ABOTA Chapter Letter to  
Judge Joyce Hindrichs Re: CAL-ABOTA's Call  
to Improve Accessibility to the Courts During the  
Pandemic, May 15, 2020  
Federal Rules of Civil Procedure  
ABOTA COVID-19 Task Force  
Foundation Funding Request from Miami Chapter  
Jurisdictions with Faster, Summary or Expedited  
Jury Trials Rules and Statutes  
Recommended Best Practices for Jury Trials  
ABOTA Ohio Chapter, May 8, 2020

### Orders and Advisories Issued by Various Courts

Amended Court Order Regarding Procedures in the  
Conduct of Courtroom Proceedings During  
Coronavirus Emergency Period  
Lake County Common Pleas Court  
General Division

Best Practices Memorandum  
Supreme Court of Florida, May 11, 2020  
Corrected Order Regarding Illinois Courts  
Response to COVID-19 Emergency/Impact on  
Discovery, Supreme Court of Illinois, M.R.30370  
Face Covering Order  
United States Court of Appeals for the  
Seventh Circuit, United States District Court for  
the Northern District of Illinois  
First Amended Bexar County Civil District Courts  
COVID-19 Court Operations Plan  
The District Courts of Bexar County  
Jury Letter Regarding Upcoming Jury Service in  
the Era of Coronavirus, United States District Court  
Eastern District of Texas, May 6, 2020  
Massachusetts Court Update, Supreme Judicial Court  
Appeals Court, and Trial Court, May 14, 2020  
Memo Regarding Court Operations During the  
Next Six Weeks, The Supreme Court of  
South Carolina, April 24, 2020  
Order No. 2020-4 Regarding Court Operations  
During the COVID-19 Pandemic  
United States District Court, Western District  
of Arkansas  
Order Five Regarding Court Operations  
During the COVID-19 Pandemic  
United States District Court for  
The Eastern District of Arkansas  
Order Regarding Illinois Courts Response to  
COVID-19 Emergency/Impact on Discovery  
Supreme Court of Illinois  
Order Regarding Pretrial Procedures in Civil Cases  
United States District Court for The Eastern  
District of Texas  
Order Regarding Temporary Order Regarding  
Civil Litigation and Rules of Civil Procedure in  
Circuit Court, Supreme Court of Appeals of  
West Virginia, Docket No. 20-Rules-04  
Per Curiam Order Regarding Response to the  
COVID-19 Pandemic Eviction Filings  
Supreme Court of Arkansas, 2020 Ark. 187  
Press Release Regarding Court Reopening  
Superior Court of California  
County of Contra Costa, May 13, 2020  
Response to the COVID-19 Pandemic  
Supreme Court Arkansas



Temporary Order Regarding Civil Litigation  
and Rules of Civil Procedure in Circuit Court  
Docket No. 20-Rules-04, Supreme Court of  
Appeals of West Virginia

Response to the COVID-19 Pandemic  
Supreme Court Arkansas

Temporary Order Regarding Civil Litigation  
and Rules of Civil Procedure in Circuit Court  
Docket No. 20-Rules-04, Supreme Court of Appeals  
of West Virginia

*Voir Dire* During COVID-19 Ohio Order,  
Lake County Common Pleas Court, General Division

Use of Personal Protective Equipment in  
County Court Facilities (Supreme Ct. of  
South Carolina May 26, 2020)

#### **Court Administration**

Federal Judiciary COVID-19 Recovery Guidelines  
United States Courts, April 24, 2020

Remote Participation in Bankruptcy Court Proceedings  
Federal Judicial Center

Minutes Workgroup on the Continuity of  
Court Operations and Proceedings During  
and After COVID-19

Pandemic Influenza Bench Book for  
Virginia's Court System by Supreme Court of  
Virginia's Pandemic Flu Preparedness Commission  
Revised July 2017

#### **Articles of Interest**

@TheCenter: Will Remote Hearings Improve  
Appearance Rates? By NCSC

Could Zoom Jury Trials Become the Norm  
During the Coronavirus Pandemic By Matt Reynolds  
May 11, 2020, ABA Journal

COVID Task Force Regarding Opening  
Witness Exam and Closing

Draft Communications Plan NCSC  
COVID-19 Juror Outreach Project

Managing Juries and Jury trials During COVID-19  
NCSC Center for Jury Studies

'Most Troublesome' Issue: Experiment Tests  
Remote Jury Trial with COVID-19 Around  
By Catherine Wilson, Daily Business Review  
May 14, 2020

Online Jury Trial Considerations  
Prepared by the OCP Task Force

Proposed Changes to FRCP 30 Regarding  
Remote Depositions from Bruce R. Pfaff

Remote Courtrooms Here to Stay as  
Judges Tackle Backlogs by Aebra Coe, Law360

#### **Cases Cited**

*Feng Wang v. A & W Travel, Inc.*  
130 A.D.3d 974, 14 N.Y.S.3d 459 (2015)

*Gabriel v. Johnston's L.P. Gas Service, Inc.*  
98 A.D.3d 168, 947 N.Y.S.2d 716 (2012)

*William A. Brewer, III v. Lennox Hearth  
Products, LLC, et al.*  
Consolidated Brief filed May 8, 2020, No. 18-0426  
Supreme Court of Texas

*Wygocki v. Milford Plaza Hotel*  
38 A.D.3d 237, 831 N.Y.S.2d 381 (2007)

*Yu Hui Chen v. Chen Li Zhi*  
81 A.D.3d 818, 916 N.Y.S.2d 525 (2011)

#### **Other**

Congressional Research Service,  
Federal Jury Trial and Covid-19  
116th Congress Key Person Contact List May 2020

## Pre-Trial Checklist

- ☐ Requirement of personal protective equipment (masks, shields, gloves, sanitizer, plexiglass dividers)
- ☐ Screening of all participants for temperature, exposure risks, other symptoms
- ☐ Procedure for jury orientation
- ☐ Procedure for jury screening
- ☐ Seating of the jury panel
- ☐ *Voir dire* procedure and the use of jury questionnaires
- ☐ Communication of for-cause strikes
- ☐ Communication of preemptory strikes
- ☐ Seating of jury
- ☐ Public access
- ☐ Seating of counsel
- ☐ Whether movement in the courtroom and use of the podium is allowed
- ☐ Procedure for use and disinfection of common equipment such as white board, document presenter (Elmo), enlarged exhibits and physical exhibits or demonstratives
- ☐ Presentation of documentary exhibits (paper or electronic)
- ☐ Handling of documentary exhibits
- ☐ Jury breaks and bathroom protocol and disinfecting facilities
- ☐ Anticipation of objections
- ☐ Procedure for side bar conferences with court
- ☐ Disclosure of exhibits in advance for direct and cross-examination
- ☐ Breaks and protocol during breaks
- ☐ Number of cleanings (wipe downs) of the courtroom that will occur each day
- ☐ Sanitary storage of jury exhibit books, notebooks and other items at night
- ☐ Consequences of positive testing or symptomology of any participant during trial (mistrial, adjournment, testing of all participants exposed?)
- ☐ Bathroom protocol and cleaning





## **General Order Regarding Rules of Conduct for Trial Participants**

The court hereby issues the following order regarding conduct applicable to all trial participants in this Court, including but not limited to lawyers, clients, witnesses, client representatives, members of the jury, court reporters, law clerks, and security personnel:

1. All entrances to the courthouse must be well marked with restrictions.
2. Start times must be altered to allow for slower admission of persons into the courthouse.
3. All persons entering the courthouse will be screened. This screening will include a non-invasive temperature check for temperature exceeding 100.3 and a series of questions regarding known exposure circumstances, recent illnesses and travel. Any persons who have traveled to a high-risk area in the preceding fourteen (14) days will be denied entry to the courthouse.
4. All persons in the courthouse must stay a minimum of six feet away from all other persons at all times. Exceptions to this rule may only be granted by the trial judge. For example, counsel may be permitted to approach a testifying witness for limited purposes. In this instance, the court may direct that counsel and the witness must cease speaking and wear their respective face masks. The Court may also require other measures to avoid encroachment within six feet, such as leaving an exhibit on a table to be retrieved by the witness.
5. All persons in the courthouse must wear an approved mask at all times unless an exception is granted by the presiding judge. (Specifications for masks may be designated by the Court). Due to difficulty of hearing speakers with masks, people may be permitted by the Court to speak and testify free from obstruction (i.e. without a mask or through the use of a transparent facial mask, face shield, or Plexiglass partitioning).
6. Personnel in the courtroom will be limited to as few as possible as determined by the Court.
7. Media may require remote viewing options to reduce the number of persons in the courtroom.
8. Witnesses must be on call or scheduled for their appearance to reduce exposure and unnecessary waiting.
9. The jury will only be brought to the courtroom for trial. Waiting pools of jurors are discouraged.
10. The use of shared podiums found in courtrooms will only be allowed by permission of the court.
11. Counsel, along with their clients and client representatives, must stay at their designated counsel table at all times except when speaking. Breaks will be liberally given to allow counsel to speak to their clients without the risk of being overheard.
12. Sidebar conferences are not permitted absent specific approval of the court. Participants may need to remove themselves from the courtroom and use a room that allows for proper social distancing.
13. When counsel is speaking, he or she should stay at his or her designated counsel table, or alternatively, must remain on the designated mark in the courtroom.

14. Physical handling and transfer of exhibits is discouraged. All exhibits, with the exception of tangible exhibits that cannot be reproduced for the purpose of trial, must be shown electronically. All trial participants must have adequate viewing of the electronic exhibits either by shared screen in the courtroom or individual screens or tablets.

15. If a tangible exhibit must be passed among jurors, they will be provided hand sanitizer, instructed on the proper hand hygiene and offered court-supplied, disposable gloves. Further, jurors will be instructed to avoid touching of the face, eyes and mouth. Court personnel will assist in the proper handling and disinfecting of exhibits.

16. Each juror will be given his or her own copy of exhibits unless the volume or other characteristics of the exhibit render individual copies impracticable. In such cases, precautions will be taken to protect against transfer of contamination.

17. During breaks or deliberations, jurors will be taken into a jury room where there is adequate space to maintain a minimum distance between one another of six feet. Before entering the deliberation room, jurors will be required to use hand sanitizer. Upon exiting the deliberation room, jurors will be required to use hand sanitizer. As previously stated, jurors must wear masks at all times, including when speaking in the deliberation room.

18. Breaks generally will be longer to allow for staggered trips to the restroom.

19. Courthouse cleaning crews will be responsible for ensuring that each courtroom undergoes cleaning each day, including but not limited to wiping down all chairs, tables, door handles, etc. with disinfectant solution or wipes.

20. Bathrooms designated for jurors' use will be cleaned and disinfected by court personnel after the morning and afternoon breaks, lunch and close of court business for the day. Disinfectant wipes will be available for use by jurors in the jury room and bathrooms.

21. Courthouse security is empowered to enforce social distancing and other orders including the removal of persons showing signs of COVID-19.

The foregoing rules have been recognized by this Court as necessary to ensure adequate protection of all trial participants. Failure to comply with these rules of conduct constitutes a violation of a court order.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name of judge

\_\_\_\_\_  
Name of court



ABOTA has a Rapid Response email  
which is dedicated to COVID-19 efforts.

Should you have any questions or  
issues that you would like to have  
addressed, please send us an email  
at **RapidResponse@abota.org**.



Save Our Juries is a public awareness  
campaign sponsored by the American  
Board of Trial Advocates. Save Our Juries  
educates and mobilizes citizens in the  
fight to save our disappearing Seventh  
Amendment right. ABOTA's mission is  
to protect and preserve the civil jury  
system. Please explore [saveourjuries.org](http://saveourjuries.org)  
and follow Save Our Juries on Twitter @  
[saveourjuries](https://twitter.com/saveourjuries).

American Board  
of Trial Advocates



# VIRTUAL JUSTICE

**Online Courts During COVID-19**

**ALBERT FOX CAHN, ESQ. &  
MELISSA GIDDINGS**

**JULY 23, 2020**

## INTRODUCTION

The suspension of in-person court across the country has prompted the legal profession to turn to technology, with many judges now conducting business remotely via video and teleconferencing to ensure ongoing access to justice. Courts at all levels, from local trial courts to the Supreme Court of the United States, have chosen to permit legal proceedings to move forward using remote technology, with new methods and techniques being developed rapidly.<sup>1</sup>

On March 31, the Judicial Conference of the United States announced that it had “temporarily approved the use of video and teleconferencing for certain criminal proceedings and access via teleconferencing for civil proceedings during the COVID-19 national emergency.”<sup>2</sup> In April, the United States Supreme Court determined that it would “hear oral arguments by telephone conference on May 4, 5, 6, 11, 12 and 13 in a limited number of previously postponed cases.”<sup>3</sup> While video was not made available, CSPAN streamed audio of the arguments.<sup>4</sup>

Earlier this year, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) allowed chief judges to authorize, with the consent of defendants, the use of video or telephone conferencing in certain criminal proceedings in response to the COVID-19 pandemic.<sup>5</sup> Courts have interpreted this authorization to include traditional participants, such as defendants, lawyers, probation and pretrial services officers, and court personnel, as well as observers of such proceedings, such as victims, family members, the public, and the press, by remote access. The language in the Act provides that the authorization of video and telephone conferencing will either end 30 days after the date on which the national emergency ends, or the date when the Judicial Conference finds that the federal courts are no longer materially affected.<sup>6</sup>

In New York, trial courts initially focused on conducting “arraignments, bail applications, orders of protection and other essential and emergency criminal, family and civil matters” using

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<sup>1</sup> See Rebecca Pirius, *Virtual Criminal Court Appearances in the Time of the Coronavirus*, NOLO (May 6, 2020), <https://www.nolo.com/legal-encyclopedia/virtual-criminal-court-appearances-in-the-time-of-the-coronavirus.html>; Nicole Black, *COVID-19 Forces the Legal Profession’s Hand and Technology Adoption Increases Exponentially*, ABOVE THE LAW (Apr. 16, 2020), <https://abovethelaw.com/2020/04/covid-19-forces-the-legal-professions-hand-and-technology-adoption-increases-exponentially/>.

<sup>2</sup> *Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic*, U.S. COURTS (Mar. 31, 2020), <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.

<sup>3</sup> Press Release, Supreme Court of the United States (Apr. 13, 2020), [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-13-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20).

<sup>4</sup> Oral Arguments, CSPAN, <https://www.c-span.org/supremeCourt/>.

<sup>5</sup> *Judiciary Provides Public, Media Access to Electronic Court Proceedings*, U.S. COURTS (Apr. 3, 2020), <https://www.uscourts.gov/news/2020/04/03/judiciary-provides-public-media-access-electronic-court-proceedings>.

<sup>6</sup> *Judiciary Authorizes Video*, *supra* note 2.



remote methods.<sup>7</sup> But by the end of April, New York State Courts expanded that effort to include pending tort, asbestos, commercial, matrimonial, trusts and estates, felony, family and other cases.<sup>8</sup>

Remote hearings and trial have not been seamless proceedings, and this nationwide experiment in virtual justice has the potential to cause significant harm to perceived and actual fairness, as well as to individual rights to privacy, in the course of determining best practices. As courts increasingly adopt emerging technologies in response to COVID-19 they are certain to consider long-term uses.<sup>9</sup> The legal community must work to ensure fairness to all parties and the integrity of the process when technology is used in the courtroom. Key questions include whether the court's chosen platform provides adequate security, both in terms of who has access and how data is stored; how access rights will be managed or limited in instances that call for heightened confidentiality; whether the platform offers private options for consultations between counsel and their clients during the course of a proceeding; whether and how participants can display documents or other media to other participants; and whether a session or any involved correspondence or display is recorded.

## I. Platforms in Use

In the first weeks of moving proceedings online, many courts across the country have turned to videoconferencing platforms already in wide use. As of the end of April, Iowa is using GoToMeeting; New York, Oregon, and Puerto Rico are using Skype for Business; Oregon and Wyoming are using Microsoft Teams; Colorado, New Hampshire, Oregon, Pennsylvania, Tennessee, Utah, and Virginia are using WebEx; and Alabama, Michigan, New Jersey, Tennessee, and Texas are using Zoom.<sup>10</sup>

A number of other litigation-focused platforms are also on the market. Courtcall, one of the most frequently used teleconferencing platforms prior to the pandemic, has seen a sharp increase in requests for remote hearings in March and April.<sup>11</sup> Courtcall users have access to audio and video conferencing capabilities, as well as choosing between "Open Court" and "Privacy" mode (where

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<sup>7</sup> Press Release, N.Y. State Unified Court System, *Virtual Courts Expanded Beyond the Limited Category of Essential and Emergency Matters* (Apr. 13, 2020), [https://www.nycourts.gov/LegacyPDFS/press/PDFs/PR20\\_15virtualcourtstortsetc.pdf](https://www.nycourts.gov/LegacyPDFS/press/PDFs/PR20_15virtualcourtstortsetc.pdf).

<sup>8</sup> See David Brand, *All Court Functions Are Now Conducted Remotely in New York*, QUEENS EAGLE (Apr. 7, 2020), <https://queenseagle.com/all/all-court-functions-are-now-conducted-remotely-in-new-york>.

<sup>9</sup> See, e.g., Raychel Lean, *Get Used to Online Litigation: It Could Become Florida's New Normal*, LAW.COM (Mar. 25, 2020), <https://www.law.com/dailybusinessreview/2020/03/25/get-used-to-online-litigation-it-could-become-floridas-new-normal/>.

<sup>10</sup> See *Coronavirus and the Courts*, NAT'L CTR. FOR STATE COURTS, <https://www.ncsc.org/newsroom/public-health-emergency>; *Tennessee Judges Take Lead in Using Technology to Weather Pandemic*, COURT NEWS (Apr. 23, 2020), <https://us1.campaign-archive.com/?e=b2de395411&u=726c22e195595bb5150eb4c3b&id=96df3947ea>.

<sup>11</sup> *Courts Across the Country Are Returning to CourtCall's Business Grade Solutions*, PR NEWswire (Apr. 16, 2020), <https://finance.yahoo.com/news/courts-across-country-returning-courtcalls-210200958.html>.

calls can only be heard by a specified participant). A Courtcall operator connects litigants and judges and handles adding or dropping parties.

Smaller tech companies provide a variety of court-related services, from discovery management and document review<sup>12</sup> to verification services for images and digital documents.<sup>13</sup> Palm Beach County, Florida has been utilizing an AI-empowered software to classify and docket e-filed documents. Their use of the software has gradually expanded over time, and the system is now docketing around 12,000 filings a week.<sup>14</sup> Courts in Michigan have been using Matterhorn, a cloud-based platform, to facilitate online dispute resolution for traffic and civil infractions, warrant resolution, for small claims cases, to assess ability to pay, and for domestic/family cases.<sup>15</sup> In Jefferson Parish, Louisiana, courts are using a LawDroid-supported text-based chatbot to check in on probationers, and Documate to support remote entering of pleas.<sup>16</sup> These capabilities are likely to be incorporated more widely as courts adapt to and expand their virtual efforts.

## II. Current and Anticipated Issues

There are several immediate concerns with virtual court proceedings.<sup>17</sup> Many litigants and defendants lack the hardware and / or internet connectivity to participate. There are also significant privacy threats from the integrated recording capability on many video conference platforms. Courts must account for the digital divide as well as security vulnerabilities, potential fraud, and the risk of manipulated audio / video in evaluating online courts.

### A. Recording and public access

In making court proceedings easier to access remotely, there is a loss of practical obscurity – an idea recognizing that “there is a privacy interest in information that is not secret but is otherwise

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<sup>12</sup> See, e.g., *NightOwl Discovery Recognized Among the 20 Most Promising Legal Technology Solution Providers of 2016* by CIO Review, Bus. Wire (Jun. 21, 2016), <https://www.businesswire.com/news/home/20160621005049/en/NightOwl-Discovery-recognized-20-Promising-Legal-Technology>.

<sup>13</sup> See Jason Tashea, *Some States Are Allowing People and Companies to Use Blockchain to Authenticate Documents*, ABA J. (Sept. 1, 2019), <https://www.abajournal.com/magazine/article/best-evidence> (discussing companies like TruePic and Attestiv that provide digital document verification services).

<sup>14</sup> Lisa Embley, INTRODUCTION TO AI FOR COURTS, NAT’L CTR. FOR STATE COURTS, 10 (Mar. 2020), [https://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/2020-04-02%20Intro%20to%20AI%20for%20Courts\\_final.ashx](https://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/2020-04-02%20Intro%20to%20AI%20for%20Courts_final.ashx).

<sup>15</sup> See About Us, MATTERHORN, <https://getmatterhorn.com/about-us/>. See also JUST TECHNOLOGY, CTR. FOR COURT INNOVATION 38 (Mar. 2019), <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/just-technology.pdf>.

<sup>16</sup> Bob Ambrogi, *How One Tech-Savvy Judge Jury-Rigged an Online Court*, LAWNEXT (Apr. 27, 2020), <https://www.lawsitesblog.com/2020/04/on-the-latest-lawnext-how-one-tech-savvy-judge-jury-rigged-an-online-court.html>.

<sup>17</sup> See Veronica Combs, *Judges and Lawyers Learn Zoom Rules in Real Time During Coronavirus Crisis*, TECHREPUBLIC (Apr. 23, 2020), <https://www.techrepublic.com/article/judges-and-lawyers-learn-zoom-rules-in-real-time-during-coronavirus-crisis/>.

difficult to obtain.”<sup>18</sup> While the right to a fair and public trial is constitutionally guaranteed, remote proceedings necessarily change the nature of open courtrooms. A typical trial has natural barriers to third-party observation such as time and travel built in, which are missing when courts utilize platforms like YouTube and Zoom to broadcast proceedings. Physical courtrooms also afford privacy protections missing from remote court, as observers are less likely to remain anonymous or successfully tape proceedings when present in person. When court is conducted online, anyone can watch, and nothing technically prevents a viewer from recording a hearing for personal use.<sup>19</sup>

For example, in Texas, courts balance the need to be the exclusive retainer of court transcripts against the need for public accessibility to hearings by streaming proceedings live on YouTube before deleting the videos. Ahead of a proceeding, Texas courts provide an access code for the meeting, a teleconference line for those without computer access, and its YouTube channel for live streaming.<sup>20</sup> The Administrative Director of the Texas Office of Court Administration has said that some judges begin their virtual hearings by forbidding anyone participating or watching from recording.<sup>21</sup> In New York, state courts spokesman Lucian Chalfen confirmed that the plan for more virtual court conferences doesn’t include any provision for the public or press to obtain remote access, and that also is not currently under consideration.<sup>22</sup>

If virtual court is open to the public for remote viewing and security cannot control for viewers’ uses of video capturing technology, there is potential for rebroadcasting, recording testimony, and photographing shared evidence by anyone with internet access, which violates party and witness privacy rights. Improper recordings can occur even if public access is controlled and monitored, like in New York, because judges or court officers may not be able to determine or limit the participants involved in a proceeding. With any number of participants, a virtual court may struggle to determine if someone is making an unauthorized recording, let alone identify whom and impose proper sanctions.

Outside of public recording, there is the question of whether a recording of virtual proceedings will be incorporated into the official court record, and how and where custodians will maintain that record. Technical questions about this storage include the physical location of the stored data (e.g., is it on court servers, it is held by a third-party data storage center), the encryption

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<sup>18</sup> Patrick C. File, *A History of Practical Obscurity: Clarifying and Contemplating the Twentieth Century Roots of a Digital Age Concept of Privacy*, 6 U. BALT. J. MEDIA L. & ETHICS 4 (2017).

<sup>19</sup> See Shelly Banjo, *Digital Courtrooms Put Justice on YouTube, Zoom*, BLOOMBERG (Apr. 7, 2020), <https://www.bloomberg.com/news/newsletters/2020-04-07/digital-courtrooms-put-justice-on-youtube-zoom>.

<sup>20</sup> Maggie Burreson, James Carlos McFall, and Brian Oates, *COVID-19 and Cameras in the Courtroom: Could the Pandemic and Emerging Technologies Usher in a New Era of Judicial Transparency?*, JD SUPRA (Apr. 21, 2020), <https://www.jdsupra.com/legalnews/covid-19-and-cameras-in-the-courtroom-67237/>.

<sup>21</sup> Angela Morris, *Judges Rush to Learn Video Conferencing as Shelter-In-Place Orders Spread Across Texas Metros*, LAW.COM (Mar. 24, 2020), <https://www.law.com/texaslawyer/2020/03/24/judges-rush-to-learn-video-conferencing-as-shelter-in-place-orders-spread-across-texas-metros/?slreturn=20200231060744>.

<sup>22</sup> Bridget Murphy, *Advocates: Public Access to Virtual Courtrooms Worrisome as NY Expands Electronic Proceedings*, NEWSDAY (Apr. 11, 2020), <https://www.newsday.com/news/health/coronavirus/coronavirus-nassau-courts-1.43782179>.



of that data, and the technical access controls placed around it. This reflects an ongoing concern with maintaining online court records. If a request for court records need not be made in person at a courthouse, but instead can be completed online, parties' and witnesses' risk personal information that may routinely be recorded, where it would be redacted from traditional court transcripts.<sup>23</sup>

*B. Communications between counsel and client*

To tackle the issue with private communications between counsel and their clients, platforms offer options such as breakout or sidebar rooms, direct instant messaging, or separate audio lines for in-trial communications. With each, there remains the question of how they are secured and whether those interactions are recorded. If a chosen platform does not have these capabilities, attorneys may need to resort to requesting a break so they may speak to their clients, or clients may struggle to alert their attorney to a question they may have.

Texas courts are also utilizing Zoom's "breakout rooms" function to purportedly create a private space for attorneys to speak with their clients; the court coordinator in Houston creates these breakout rooms for each case number on a docket.<sup>24</sup> However, the "private" designation deserves close scrutiny. Hosts of Zoom meetings may still manage these breakout rooms, and the aforementioned risks of unauthorized recording still apply. Further, Zoom technology has security issues; the company has previously misrepresented its product's level of security and has not been clear about when robust encryption features will be rolled out for all users.<sup>25</sup> Zoom also offers auto-transcription features for conversations that may convert a user's speech to text and provide it to meeting hosts without a user's knowledge.<sup>26</sup> All of these privacy and security risks, if known to the counsel or to the client, could influence the candor needed in these interactions. But perhaps worse is an alternative scenario in which counsel and client communicate under a false belief that their communications are not at risk of interception or recording.

Similarly, tele- and video-conferencing platforms limit the ability of an attorney to approach the bench and discuss legal issues with the judge and opposing counsel without being heard by witnesses or non-party observers. Private communication options may thus introduce concerns

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<sup>23</sup> See Jacquelyn Burkell & Jane Bailey, *Revisiting the Open Court Principle in an Era of Online Publication: Questioning Presumptive Public Access to Parties and Witnesses' Personal Information*, FIMS PUBLICATIONS 144 (2017), <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1164&context=fimspub> ("[M]aintaining a default in favour of presumptive access could have devastating consequences for privacy, without substantially contributing to the fundamental underlying objective of the open court principle: that is, transparency and accountability of the justice system.").

<sup>24</sup> Morris, *Judges Rush to Learn Video Conferencing*, *supra* note 21.

<sup>25</sup> Nick Statt, *Zoom Says Free Users Will Get End-to-End Encryption After All*, VERGE (Jun. 17, 2020), <https://www.theverge.com/2020/6/17/21294355/zoom-security-end-to-end-encryptoin-beta-release-july-2020-new-feature>.

<sup>26</sup> Jon Porter, *This Tool Automatically Transcribes Your Zoom Meetings as They Happen*, VERGE (Apr. 23, 2020), <https://www.theverge.com/2020/4/23/21232385/otter-ai-live-video-meeting-notes-zoom-transcription-annotation-teams>.

about *ex parte* communications. It is difficult, if not impossible, for a court to conduct a sidebar conference without including unwanted participants or sacrificing client comfort.

*C. Remote identity verification and potential for fraud*

Parties to an online court proceeding may be asked to verify their identity by providing sensitive personal information, biometric data, or facial scans. Judges in Marion County, Oregon already sign into their virtual court systems using facial recognition.<sup>27</sup> Video manipulation software, including ‘deepfake’ technology, poses problems for both verifying that litigants or witnesses are who they say they are during virtual proceedings and preventing any party from claiming their representations were fraudulent after the proceedings.

Courts in the United States may draw from international counterparts in China, just as many other U.S. institutions have drawn from Chinese responses to COVID-19. To verify the identification of parties, courts may use an approach seen in China, where the Beijing Internet Court requires litigants to set up an online account using their national identity cards and a facial recognition system before bringing a case remotely.<sup>28</sup> So long as a litigant’s biometric features and the data on their ID match their information as registered with the capital’s public security bureau, they can add their contact details and information related to the case to the virtual system. In August 2019, at the end of its first year of operations, the Beijing Internet Court had remotely identified litigants in this manner over 200,000 times.<sup>29</sup> Other courts in China ask litigants to download a mobile application from the court’s website to their remote device for use during a hearing.

*D. Transmission of sensitive files*

Virtual courts must grapple with how evidence is introduced, authenticated, and stored. Beyond evidentiary concerns, documents and payments associated with various court hearings will need to be transmitted to other parties and the court, and litigants must ask themselves if they are prepared to upload personal files or transmit fees via online court websites run both by government agencies and an opaque web of private vendors.

Presenting witness testimony during a virtual hearing may require compelling a witness to appear or administering an oath to a remote witness. As of now, it is unclear whether a court may compel a witness to appear electronically at a remote hearing, even if that witness is within close proximity to the courthouse. Existing laws governing subpoena process were written with in-person court

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<sup>27</sup> Embley, AIFOR COURTS, *supra* note 14.

<sup>28</sup> Cao Yin, *Cybercourts Ease Judicial Workloads, Provide Better Rulings*, CHINADAILY (Apr. 8, 2020), [http://www.chinadaily.com.cn/a/201904/08/WS5caa8ba7a3104842260b4c40\\_2.html](http://www.chinadaily.com.cn/a/201904/08/WS5caa8ba7a3104842260b4c40_2.html).

<sup>29</sup> Guodong Du, *How the Beijing Internet Court Develops and Runs its IT System: Inside China’s Internet Courts Series-04*, China Justice Observer (Oct. 6, 2019), <https://www.chinajusticeobserver.com/a/how-the-beijing-internet-court-develops-and-runs-its-it-system>.

hearings in mind, and courts may not have the inherent power to compel other actions, such as virtual attendance, without the passage of new statutes.

*E. Ease of use and technology error*

Participants who are unfamiliar with the platform used to facilitate remote hearings are likely to make mistakes, such as having trouble connecting, speaking on mute, or sharing confidential information. Such mistakes can have a determinative impact on the proceeding. Virtual proceedings may be particularly challenging in large, multi-party cases as the risk of technological interruptions or errors as well as human interruptions (e.g., cross-talking) or errors (e.g., speaking on mute) increases.

Even without user-based error, the technology itself can malfunction or fail to meet the needs of every party. Longstanding platforms still sometimes suffer from poor image or sound quality, and insufficient bandwidth can exacerbate those issues. Glitches disrupt the flow of trial and hearings, as participants may need to interrupt a speaker to alert them to an issue or a speaker may need to repeat information or verify that it was conveyed. Interruptions also may lead to unreliable transcription from a court reporter who is trying to follow the speaker. If a speaker has a distinctive dialect or accent, virtual transmission of their speech creates a greater likelihood of errors or misinterpretation in the court record, either on the part of court reporters or AI transcription technology. This problem, which is already seen during in-person court proceedings, can have far-reaching and harmful consequences for a defendant.<sup>30</sup>

### **III. Emerging Technologies**

To meet the needs of the parties involved in a virtual court proceeding, companies are developing artificial intelligence, leveraging biometric indicators, and building up existing streaming and speech translation technologies. Many court technology systems today already utilize one or more forms of AI, and many are likewise turning to new methods for the submission of court documents.

*A. Blockchain*

Even before the pandemic created a demand for virtual court-assisting technologies, states such as Vermont, Arizona, Ohio, and Delaware allowed parties to use blockchain to authenticate evidence, relevant documents, and signatures.<sup>31</sup>

As blockchain grows in popularity to secure and validate records, users should consider security vulnerabilities and privacy issues unique to this technology. Proponents of blockchain say its value is found in decentralized storage that guarantees the immutability and transparency of a

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<sup>30</sup> See, e.g., John Eligon, *Speaking Black Dialect in Courtrooms Can Have Striking Consequences*, N.Y. TIMES (Jan. 25, 2019), <https://www.nytimes.com/2019/01/25/us/black-dialect-courtrooms.html>.

<sup>31</sup> Jason Tashea, *Some States are Allowing People and Companies to Use Blockchain to Authenticate Documents*, ABA J. (Sept. 1, 2019), <https://www.abajournal.com/magazine/article/best-evidence>.

record. But decentralization means a greater attack surface for potential hackers, and the immutability of a blockchain record means it can be impossible to reverse a malicious event, such as a fabricated transaction. Access to blockchain data is controlled by a user's unique key, though if a user does not store that key safely then anyone who gains access to the key can access the record. It is easy to imagine a blockchain-utilizing litigant who is not on the bleeding edge of technology to store their key on an unencrypted flash drive, on a shared computer, or in a notepad kept in plain view – any one of which is vulnerable to theft or hacking.

Another implication for court records and litigation-specific documents using blockchain is the perpetuity of the data. Once written onto a blockchain, the data resides there permanently. If a court requires personal data be retained for no longer than necessary, or if a litigant does not want that data affiliated with a record beyond what is needed for authentication purposes, they cannot control the deletion of the data, as immutability is an oft-touted selling point decentralization. To allow for deletions would require less decentralization, and as decentralization diminishes so too do the purported security benefits. While blockchain may ensure reliability, it is squarely at odds with privacy considerations.

### *B. Deepfakes*

Distrust around digital records has persisted with the advent and ease of photoshopping. Altered evidence can still be introduced if the authenticating party is itself fooled or is lying. In the coming years, courts must also be mindful of emerging AI technology around deepfakes, which allows a user to manipulate images and audio in real time. While this technology is nascent today, it is rapidly advancing and may soon pose a potent threat to trust in online communication.

Programs such as Avatarify – publicly available as code on Github – superimpose another's face onto a user in real time and is already being utilized on conferencing platforms.<sup>32</sup> While face-swap technologies like Avatarify use an algorithm trained on another's image, usually requiring several photos of the person's face that you're trying to animate, technology like First Order Motion approaches deepfakes inversely, manipulating a user's photo by way of video of another person without any prior training on the target image.<sup>33</sup>

AI software companies like SenseTime can create deepfakes from audio sources by using a third party's audio clip and video of the user to generate footage of the user saying the words from the recording. This can not only allow a person to fabricate their identity but can allow a litigant or witness to use their own voice to make the claim that they said something different than what the opposing party claims.

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<sup>32</sup> Samantha Cole, *This Open-Source Program Deepfakes You During Zoom Meetings, in Real Time*, VICE (Apr. 16, 2020), [https://www.vice.com/en\\_us/article/g5xagy/this-open-source-program-deepfakes-you-during-zoom-meetings-in-real-time](https://www.vice.com/en_us/article/g5xagy/this-open-source-program-deepfakes-you-during-zoom-meetings-in-real-time).

<sup>33</sup> Samantha Cole, *Facebook Takes a Stand on Political Deepfakes, a Problem That Doesn't Exist*, VICE (Jan. 7, 2020), [https://www.vice.com/en\\_us/article/939wpx/facebook-new-deepfakes-policy](https://www.vice.com/en_us/article/939wpx/facebook-new-deepfakes-policy).

Not only can successful deepfakes find their way into evidence, potentially condemning the innocent or exonerating the guilty, but the mere existence of deepfakes allows litigants and their attorneys to cast doubt on video or audio that is legitimate.<sup>34</sup>

#### IV. The Digital Divide

Perhaps the most obvious area of concern in moving court hearings and trials online is the digital divide, which perpetuates unfairness in access to proceedings or timely case resolutions due to disparities in tech ownership or familiarity. A low-quality internet connection or outdated hardware can result in transmission delays, degraded sound and image quality, and loss of connectivity, making a litigant look less truthful and persuasive.<sup>35</sup>

Not all litigants or their attorneys have access to the same technological capabilities. Similarly, not every geographical region has bandwidth or internet speeds that can facilitate video conferencing, and poor audio or visual quality winds up prejudicing the disadvantaged party. Low-income residents in both rural and urban areas are likely to be impacted by the digital divide. Rural Americans may also live in digital deserts, or entire communities that are not served by a single internet provider; in 2019, the FCC estimated that 5 million Americans lived in such deserts.<sup>36</sup> A still larger subset of the population lacks access to high-speed or broadband internet, and as their neighbors remain sheltered in place at home, the bandwidth available for video conferencing only diminishes.

National origin also affects the likelihood of home access to the internet and digital technology. According to 2013 US Census data, 84.7% of English-speaking households have access to a computer, and 75.5% of that population have some internet subscription; however, only 63.9% of limited English-speaking households have computers, and only 51.4% have some internet subscription.<sup>37</sup>

It can be argued that two major digital divides exist: an access divide and a skills divide.<sup>38</sup> Poor literacy in internet use and digital technology may affect not only procedural efficacy, but the perception of fairness in virtual court. Studies have shown that both case outcome and the ease of

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<sup>34</sup> See Theodore F. Claypoole, *AI and Evidence: Let's Start to Worry*, NAT'L LAW REV. (July 17, 2020), <https://www.natlawreview.com/article/ai-and-evidence-let-s-start-to-worry>.

<sup>35</sup> The Legal Assistance Foundation of Metropolitan Chicago & The Chicago Appleseed Fund for Justice, VIDEOCONFERENCING IN REMOVAL PROCEEDINGS: A CASE STUDY OF THE CHICAGO IMMIGRATION COURT, 37, 45-6 (2005), [http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport\\_080205.pdf](http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport_080205.pdf).

<sup>36</sup> Amrita Khalid, *America's Digital Divide is Even More Urgent During the Pandemic*, QUARTZ (Apr. 9, 2020), <https://qz.com/1836040/americas-digital-divide-is-more-urgent-during-a-pandemic/>.

<sup>37</sup> Alison Rogers, *Building the Superhighway for Information and Commerce: How the e-Government Can Save Money by Building Bridges Across the Digital Divide*, 22 MICH. J. RACE & L. 163, 166 (2016). See generally Joshua Friedman & Gary Norman, *The Norman/Friedman Principle: Equal Rights to Information and Technology Access*, 18 TEX. J. ON C.L. & C.R. 47 (2012).

<sup>38</sup> See, e.g., France Bélanger & Lemuria Carter, *The Impact of the Digital Divide on e-Government Use*, Communications of the ACM, Vol. 52 No. 4, 132-35 (2009), <https://cacm.acm.org/magazines/2009/4/22970-the-impact-of-the-digital-divide-on-e-government-use/fulltext>.

use of an online system correlate to litigants' perceived fairness of court proceedings and their emotion toward court officials.<sup>39</sup>

A recent letter from various legal services organizations around New York City asks the Office of Court Administration to be mindful of the potential adverse impact of virtual appearances on pro se litigants. In writing the letter, the organizations were concerned with a lack of meaningful participation due to technological obstacles, going so far as to recommend that cases involving pro se parties be excluded from virtual appearances for nonessential matters unless the parties specifically request otherwise.<sup>40</sup>

*A. Immigration court as an example*

U.S. courts have been exercising video-conference hearings for decades, but the extent of video conferencing in civil and criminal court proceedings is still fairly limited. A corner of the justice system where remote hearings has been conducted with frequency is immigration removal hearings.<sup>41</sup> The Immigration and Nationality Act allows for the use of videoconferencing in conducting removal hearings. Virtual hearings inevitably skew the perceptions and behavior of the involved parties by either removing or over-emphasizing non-verbal cues, failing to properly simulate normal eye contact, or exaggerating features. This can obstruct the fact-finding process and prevent accurate assessments of credibility and demeanor based on common in-person experiences. One study of immigration removal hearings conducted by video conference found that nearly 45% of these hearings suffered from image freezing, transmission delays, or poor sound quality, which affected the transmission and resulted in “the immigrant appear[ing] less truthful” and “emotions less clearly communicated.”<sup>42</sup>

Respondents relying on interpreters had a greater frequency of problems created or exacerbated by videoconferencing and were more likely to receive negative dispositions.<sup>43</sup> Interpretive difficulties generally affect the quality and ultimate outcomes of immigration proceedings,<sup>44</sup> and these problems are only exacerbated if communication with an interpreter and a respondent must be mediated through tele- and video-conferencing equipment.

Research suggests that factfinders evaluate televised testimony as less credible than in-court testimony, and that “testify[ing] through a video monitor is less persuasive because it is a less direct

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<sup>39</sup> Youyang Hou et al., *Factors in Fairness and Emotion in Online Case Resolution Systems*, ACM Conference on Human Factors in Computing Systems (2017), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2995&context=articles>.

<sup>40</sup> *Email: Implementation of Virtual Court Appearances in Nonessential Matters*, New Yorkers for Responsible Lending (Apr. 15, 2020), <http://www.nyrl.org/wp-content/uploads/2019/01/2020.4.15-NYRL-Ltr-re-virtual-appearances.pdf>.

<sup>41</sup> Ayelet Sela, *Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation*, 26 CORNELL J.L. & PUB. POL'Y 331, 342-43 (2016).

<sup>42</sup> VIDEOCONFERENCING IN REMOVAL PROCEEDINGS, *supra* note 35.

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., Deborah E. Anker, *Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 19 N.Y.U. REV. L. & SOC. CHANGE 433, 505-15 (1992).



form of communication.” For instance, a debriefing session found that jurors had difficulty following the video-conferenced testimony of a non-English speaker, and in a study of virtual immigration hearings, attorneys expressed concern that “videoconferencing undermined the judge’s ability to assess the immigrant’s credibility” and complained that “split-second delays in the video transmission made the image ‘choppier’ in a subtle way and made the immigrant appear less truthful.” Relatedly, “judges were likely to feel more emotionally distant from and apathetic to an immigrant on a television screen”, implying that even without notable technological difficulties, videoconferencing is likely to have a detrimental effect on a respondent.<sup>45</sup>

### *B. Due process considerations*

Research has suggested that video testimony is less effective than in-person testimony at conveying crucial information, and technical problems can adversely affect respondents. Distortion created in the course of virtual proceedings violates due process, particularly when it is outcome determinative. While technology may be one means of improving access to courts, such access can be devalued if it does not amount to a meaningful chance to be heard.<sup>46</sup>

Defense attorneys, legal scholars, and judges have argued that the use of tele- or videoconferencing impairs the fairness and integrity of criminal proceedings in a variety of ways.<sup>47</sup> Remote appearances diminish the court's ability to assess matters such as credibility, competence, understanding, physical and psychological wellbeing, and voluntariness of any waivers of rights that the defendant may be called upon to make. Any combination of these determinations raises serious procedural due process concerns.

Studies comparing credibility judgments and other assessments of live versus televised child witnesses have found that the method of receiving the testimony affected witness ratings; in one study, mock jurors rated child witnesses who testified in person as more accurate, intelligent, attractive, and honest than children who testified on closed circuit television.<sup>48</sup>

Physical separation inevitably impairs the effectiveness of counsel. When an attorney and their client are physically separated during a hearing, the defendant cannot discretely communicate with or pass notes to counsel, which represents an infringement of the Sixth Amendment right to counsel. The deprivation of an in-person confrontation between a testifying witness and a defendant arguably violates the Sixth Amendment's Confrontation Clause.

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<sup>45</sup> *Developments in the Law – Access to Courts*, 122 HARV. L. REV. 1151, 1185 (2009).

<sup>46</sup> *Id.* at 1155-56.

<sup>47</sup> Shari Diamond et al., *Centennial Symposium: A Century of Criminal Justice: II. “Justice” in Action: Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. CRIM. L. & CRIMINOLOGY 869, 878-79 (2010).

<sup>48</sup> Holly K. Orcutt et al., *Detecting Deception in Children's Testimony: Factfinders' Ability to Reach the Truth in Open Court and Closed-Circuit Trials*, 25 LAW & HUM. BEHAV. 339 (2001); see also Gail S. Goodman et. al., *Face-to-Face Confrontation: Effects of Closed Circuit Technology on Children's Eyewitness Testimony*, 22 LAW & HUM. BEHAV. 165 (1998).

Remote conferencing between attorneys and their incarcerated clients is even more dubious. Sherry Levin Wallach, an attorney with the Westchester County Legal Aid Society, says that “as it exists, any video conferencing done with our clients [in prison] is ‘on the blocks,’ meaning that for them it’s not private. Without that privacy, very little can get accomplished — you can’t even do a full initial interview of an individual.”<sup>49</sup>

Communicating via remote means from the beginning greatly reduces the quality of the attorney-client relationship, as in-person interactions foster trust and build the relationship necessary for effective assistance. Attorneys cannot fully gauge a client’s mental and emotional state remotely, and neither party can use nonverbal cues to communicate during a proceeding – both of which are necessary to effective communication.<sup>50</sup>

Attorneys and their detained clients are likely to be discouraged by the numerous logistical and technical difficulties associated with litigating cases virtually, such as unpredictable interruptions in the video feed and the impossibility of confidential attorney-client communication. Physical separation from other participants such as judges and prosecutors may result in a defendant’s decreased understanding of their rights, and remote judges and counsel may struggle to advise them of those rights effectively. Litigants are also more likely to waive those rights if physically separated from the courtroom audience, including family and members of the community offering support.<sup>51</sup>

A study conducted in Cook County, Illinois, found that felony defendants appearing virtually experienced a 51-percent increase in the average bond amount set at the bail hearing during the study period, which significantly exceeded the 13-percent increase in bond amount experienced by the felony defendants who appeared in person for bail hearings.<sup>52</sup> Litigants may decline to participate in remote video appearances if they perceive the virtual court system as unjust.

Fairness and due process protections are perhaps more obvious concerns for remote criminal hearings, but civil litigants should also consider whether and how they can present the same case remotely as they would in person. A virtual hearing does not provide the same experience or nonverbal information as an in-person hearing.

Finally, virtual courts pose an issue for the public right of access. For many courts, remote hearings are difficult to make available to the public with the same level of access that in-person hearings in a public courthouse allow. Some courts may allow hearings to be recorded and posted

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<sup>49</sup> Matthew Krumholtz, *Criminal Lawyers Scramble to Deal with New Challenges Amid Coronavirus*, N.Y. STATE BAR. ASSOC. (Mar. 20, 2020), <https://nysba.org/criminal-lawyers-scramble-to-deal-with-new-challenges-amid-coronavirus/>.

<sup>50</sup> See Jamiles Lartey, *The Judge Will See You on Zoom, but the Public is Mostly Left Out*, MARSHALL PROJECT (Apr. 13, 2020), <https://www.themarshallproject.org/2020/04/13/the-judge-will-see-you-on-zoom-but-the-public-is-mostly-left-out>; Kacey Marr, *The Right to “Skype”: The Due Process Concerns of Videoconferencing at Parole Revocation Hearings*, 81 U. CIN. L. REV. 1515, 1533-34 (2013).

<sup>51</sup> Ingrid Eagly, *Remote Adjudication in Immigration*, 109 NW. U.L. REV. 933, 934 (2015).

<sup>52</sup> Brian Jackson et al., *Future-Proofing Justice*, RAND CORP. 23 (2017), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1700/RR1748/RAND\\_RR1748.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1700/RR1748/RAND_RR1748.pdf).



online, while others may allow the public to view a streamed proceeding in a controlled area. While courts struggle to prevent the public from making unauthorized recordings, it cannot come at the expense of public accountability, which has long served as a crucial check on the courts.

## V. Best Practices

Courts should clearly communicate what technologies they use and how individuals' personal information will be impacted, empowering participants to hold operators of virtual court to account for errors and abuses.<sup>53</sup> New technology should also ensure that mistakes can be quickly detected and rectified.

Courts must go beyond conventional terms of service, ensuring that every person whose privacy is impacted by virtual courts can provide truly informed consent. When the judiciary falls short of this, burying far-reaching terms in lengthy legalistic documents, they undermine the integrity of the judiciary itself. As an example of what not to do, Michigan Cyber Court's user agreement long-stated that "[g]iven the nature of this online process and the state of the art of internet-based communications technologies, parties should assume that information provided through the course of the mediation will not be kept confidential, unless otherwise agreed."<sup>54</sup>

Courts should be especially sensitive to the confidentiality of litigants and evidence, such as conversations protected by the attorney-client privilege and evidence subject to a protective order. Computer hacking concerns are only heightened with the use of new technology when conducting a remote hearing involving sensitive information, financial data, and the like. To guard against potential hacking of any digital portion of remote litigation, an independent government watchdog must conduct routine and impartial security audits. There must be contingency plans for malfunctions and system failures, both during virtual proceedings and in the long term. To prevent litigant error or uncertainty, there is a need to standardize across jurisdictions when it comes to preserving, securing, and storing data – particularly when it comes to maintaining official court records.

Attorneys must also assess potential privilege issues triggered by remote proceedings. If a chosen platform allows party monitoring in its user agreement, participants may unknowingly waive privilege by engaging in attorney-client communications in virtual breakout rooms or private chats. Courts have held in the past that third-party electronic monitoring may reduce a party's reasonable expectation of privacy, and courts should address these issues on the front end by agreement with participants and the technology provider before engaging in remote proceedings to mitigate any risk of later claims.<sup>55</sup>

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<sup>53</sup> JUST TECHNOLOGY, *supra* note 15.

<sup>54</sup> Saby Ghoshray, *Charging the Future of Online Dispute Resolution: An Analysis of the Constitutional and Jurisdictional Quandry*, 38 U. TOL. L. REV. 317, fn.12 (2006).

<sup>55</sup> See Barrett Robin, *Coronavirus: What Happens to My Lawsuit Now?*, DLA PIPER (Apr. 1, 2020), <https://www.dlapiper.com/en/europe/insights/publications/2020/04/coronavirus-what-happens-to-my-lawsuit-now/>.

Many people still have huge difficulties in accessing the technology required to appear virtually. As stated by FCC Commissioner Jessica Rosenworcel, the scope of the digital divide exposed during COVID-19 is "an inflection point for action."<sup>56</sup> While some internet service providers are working to expand their coverage or bandwidth as vast swaths of America move online, we shouldn't have to rely on industry generosity for internet access. To reduce the impact of the digital divide long term, lawmakers and judges at every level of our legal system must come together to support the national infrastructure needed basic and meaningful access to virtual courts. In the immediate, virtual appearances should be voluntary only. Just as e-filing experienced initially failed to consider the needs of unrepresented parties, so too will virtual court. There should thus be a presumption that pro se litigants are excluded from virtual appearances unless they specifically request to "opt in" to virtual participation.

Public access must be meaningful. Practical considerations include ensuring that the listing information for all virtual hearings is available online and that the public has controlled access to a means to view virtual hearings in real time.<sup>57</sup> But making virtual court proceedings publicly accessible "could have devastating consequences for privacy, without substantially contributing to the fundamental underlying objective of the open court principle: that is, transparency and accountability of the justice system."<sup>58</sup> Policy responses should involve balancing the need for open courts and respect for the privacy interests of court participants. To the extent that a jurisdiction does not authorize proceedings to be recorded, courts will need to take special precautions to ensure that virtual participants do not make and disseminate any unauthorized recordings.

Virtual court cannot provide the same experience or non-verbal information as an in-person hearing. Any provision of remote access must take into account privacy, fairness, and due process concerns as this technology is introduced.

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<sup>56</sup> WEBINAR: WHAT'S BEING DONE TO ADDRESS THE GROWING U.S. DIGITAL DIVIDE?, BROOKINGS INST. 19 (Apr. 8, 2020), [https://www.brookings.edu/wp-content/uploads/2020/04/20200408\\_digital\\_divide\\_transcript.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/20200408_digital_divide_transcript.pdf).

<sup>57</sup> See Justin Safayeni, *Even in the Age of COVID-19, Justice Requires Open Courts*, CTR. FOR FREE EXPRESSION (Mar. 31, 2020), <https://cfe.ryerson.ca/blog/2020/03/even-age-covid-19-justice-requires-open-courts>.

<sup>58</sup> Amy Salyzyn, "Trial by Zoom": What Virtual Hearings Might Mean for Open Courts, Participant Privacy and the Integrity of Court Proceedings, SLAW (Apr. 17, 2020), <http://www.slw.ca/2020/04/17/trial-by-zoom-what-virtual-hearings-might-mean-for-open-courts-participant-privacy-and-the-integrity-of-court-proceedings/> (quoting Jane Bailey and Jacquelyn Burkell). See also Bailey & Burkell, *supra* note 23.



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