

10 MAY 2021
ORDER OF THE CHIEF JUSTICE
OF THE SUPREME COURT OF NORTH CAROLINA

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.” The Judicial Branch is committed to this constitutional mandate. Over the past year, the Judicial Branch has faced the challenge of fulfilling this mandate while prioritizing and protecting the health and safety of judicial officials and employees and the public.

In January of this year, I issued an [order](#) extending a number of emergency directives in response to the public health threat posed by the COVID-19 pandemic. On 6 January 2021, I requested that Governor Cooper designate courthouse personnel as frontline essential workers. Courthouse personnel received that designation and early access to the COVID-19 vaccine beginning 3 March 2021. The public can now access the vaccine as well.

Given the availability of the vaccine, the immediate threat of COVID-19 is lessening, and many aspects of life are moving toward pre-pandemic normal. Nonetheless, the COVID-19 outbreak resulted in catastrophic conditions as defined by N.C.G.S. § 7A-39(b)(2) and created health and safety concerns that have contributed to an accumulation of pending cases in our judicial system. I 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. Given the grave impact of further delaying justice, it is imperative that the Judicial Branch do its best to continue to move closer to fully opening the courts.

The order I issue today continues to recognize that local courthouses are in the best position to address health and safety concerns. It also continues to provide the tools necessary to administer justice without delay while implementing appropriate safety precautions. I hereby extend for an additional thirty-day period only those emergency directives that are necessary to continue to fulfill our constitutional mandate while protecting stakeholders and the public.

Disagreements among local judicial officials over proposed safety precautions should be referred to the senior resident superior court judge for resolution. Senior resident superior court judges are strongly encouraged to do whatever they can to resume jury trials without delay. To do so, they must weigh local conditions against the exceedingly negative impacts of further delaying justice.

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.

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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.

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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. In consultation with local health officials, each senior resident superior court judge shall ensure that proper safety protocols are met depending on the courthouse location, which can include social distancing requirements.

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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 will not be renewed following the expiration of this order.** 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.

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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. 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, affiant, 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.

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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 6 June 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 10 May 2021. Issued this the 7th day of May, 2021.



Paul Newby
Chief Justice
Supreme Court of North Carolina