



To: Members of the 24<sup>th</sup> Judicial District Bar  
Citizens of Watauga, Avery, Mitchell, Yancey and Madison Counties

From: 24<sup>th</sup> Judicial District Executive Committee

Members:

Hon. Gary M. Gavenus, Senior Resident Superior Court Judge

Hon. Ted McEntire, Chief District Court Judge

Hon. Seth Banks, District Attorney

Hon. Diane Deal, Watauga County Clerk of Superior Court

Hon. Teresa Benfield, Avery County Clerk of Superior Court

Hon. Janet Cook, Mitchell County Clerk of Superior Court

Hon. Tammy McEntyre, Yancey County Clerk of Superior Court

Hon. Mark Cody, Madison County Clerk of Superior Court

Re: **ADMINISTRATIVE ORDER 20-2 Response to COVID-19**

By Order of the Chief Justice of the North Carolina Supreme Court, Superior Court and District Court Proceedings, including proceeding before Clerks of Superior Court, in the 24<sup>th</sup> Judicial District comprised of Watauga, Avery, Mitchell, Yancey and Madison counties, with limited exceptions, are suspended through and including June 1, 2020.

The emergency directive of the Chief Justice does not prohibit a judge or other judicial officer from exercising in chambers or *ex parte* jurisdiction conferred by law upon that judge or judicial officer, as provided by law.

Filing and other statutory deadlines, payment of monies owed, filing of reports for failure to comply and alternative means of service as set forth in the Chief Justice's Orders and Directives are incorporated herein by reference as if fully set out.

Court offices in the 24<sup>th</sup> Judicial District will remain open for the transaction of business. However, attorneys and other persons who do not have business in a courthouse should not enter a courthouse. Unless you are required to appear in person to conduct your courthouse business, attorneys and members of the public are strongly encouraged to use email and the telephone to communicate with courthouse staff. Those who do have business in a courthouse requiring a personal appearance should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

Please be advised that several counties have closed county buildings, including courthouses, to the public in an effort to control the transmission of COVID-19. In addition, offices of the Clerk of Superior Court and the District Attorney in each county have had to rotate staff to insure a safe working environment for all concerned. Therefore, although remaining open, you may be required to make an appointment to obtain access to the courthouse and to meet with the appropriate official, should an in-person meeting be required. Court office staff will be available to respond to attorney and citizen requests via email, telephone, or by appointment where in-person access is necessary.

On line Court services are available for handling some court business, including citation services, paying your ticket, court payments, and signing up for court date notifications and reminders.

**THIS ORDER SHALL REMAIN IN EFFECT UNTIL REVOKED OR RECINDED AND THROUGHOUT ANY SUBSEQUENT EXTENSIONS OF THE EMERGENCY DIRECTIVES AND IS SUBJECT TO IMMEDIATE MODIFICATION AS FUTURE CONDITIONS WARRANT.**

#### **CLERK OF SUPERIOR COURT**

- The Clerks office shall continue to maintain normal office hours to accept filings, until further notice.
- Guardianship hearings will be conducted as needed, subject to health precautions, including video testimony, as determined by the Clerk of Court.
- Involuntary Commitments will be conducted as needed, subject to health precautions, including video testimony, as determined by the Clerk of Court.
- Estate administration matters will be conducted remotely, and only emergency in-person meetings will be held subject to health precautions as determined by the Clerk of Court.
- Estate hearings shall be postponed until a date after June 1, 2020 unless the parties consent that the hearings be held remotely and in accordance with statutory safeguards.
- Special proceeding hearings and foreclosures (hearings and sales) shall be continued beyond June 1, 2020 unless the parties to the special proceeding consent that the hearing can be held remotely and in accordance with statutory safeguards.

**All non-suspended hearings before the Clerk shall be held subject to health precautions satisfactory to the presiding clerk. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible.**

#### **MAGISTRATE AND SMALL CLAIMS**

- Magistrate availability will remain unchanged in the District with normal office hours as previously scheduled and 24 hour availability through on call service, for Warrants for Arrest, Magistrate's Orders, Criminal Summons, Initial Appearances, Cash/Property Bonds, Involuntary Commitment Orders, Juvenile Petitions, and Secured and Non-Secured Custody Orders. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible. All appearances before a magistrate are subject to health precautions satisfactory to the presiding magistrate.
- All small claims court proceedings including summary ejectments are suspended until after June 1, 2020 and all pending matters will be continued to a date beyond June 1, 2020.
- Magistrates are encouraged to consider, in instances where there is not a danger to the community or individual safety and there is not a history of failing to appear, using criminal summons or other pretrial release conditions that would avoid the requirement of arrest and the posting of a secure bond to minimize the impact on the jail population of community spread during this emergency.
- The performance of weddings is suspended by Order of the Chief District Court Judge until further notice. Weddings shall only resume under conditions set by the Chief District Court Judge in a subsequent order.

#### **DISTRICT COURT**

- District Court Judges shall be available during normal office hours as instructed by the Chief District Court Judge.
- All **PENDING CIVIL CASES** shall be continued beyond June 1, 2020 with the following exceptions:
  1. The court will hear returns on emergency custody orders that were entered *ex parte*, returns on secure and non-secure custody that were entered *ex parte*, and return hearings on *ex parte* domestic violence protective orders.
  2. The issuance of *ex parte* domestic violence protective orders.
  3. Bond hearings for child support show cause defendants in custody.
  4. Adjudication Hearings of Abuse, Neglect and Dependency and initial permanency planning hearings.
  5. Temporary Custody hearings using remote technology as designated in the Temporary Modification to Local Rules issued by the Chief District Court Judge.

**All such hearing to be held subject to health precautions satisfactory to the presiding judge. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible.**

- The District Court will be available for the consideration of whether to enter *ex parte* emergency custody orders as provided by statute.

- The District Court will also hear other emergency matters as provided by statute and provide for a return hearing on any *ex parte* order entered to provide due process.
- Regular non-emergency domestic violence, child custody, juvenile, child support and any other civil matters will be continued to a date beyond June 1, 2020.
- **Mediations** will be continued beyond June 1, 2020 unless all parties consent and are available to conduct them remotely.
- **Drug Treatment cases** including regularly scheduled staffings are continued until the first regularly scheduled session of drug treatment court beyond June 1, 2020. All offenders shall remain on probation and are expected to comply with probation and take all reasonable measures to maintain sobriety. Case management services will continue to be provided to the offenders but will be done through electronic, telephone, or other virtual method. DTC team members will remain available to discuss matters virtually but regular staffings will not occur.
- All District Court Arbitrations will be continued beyond June 1, 2020.
- All pending District Court **CRIMINAL CASES** will be continued to a date beyond June 1, 2020. New dates shall be determined in consultation with the Chief District Court Judge and the District Attorneys Office.
- Criminal matters that will be addressed by the District Court during the suspension period and any extensions are as follows:
  1. A bond hearing for those defendants who are in custody provided that 48 hour notice has been given to the State and the Court of the motion for a bond hearing.
  2. First Appearances
  3. Probable Cause Hearings in cases where the 15 day period has not been waived and there is a written demand filed by counsel and 48 hour notice given to the State.
  4. Judicial review of initial appearance bonds.
  5. Assignment of counsel to indigent defendants.
  6. Seven day hearings for probation violations where the defendant is being held in custody **solely** because of the pending probation violation.
  7. Matters which effect the due process rights of a party and have consent of all parties may be heard with the Consent of the presiding Judge using remote technology to insure safety.

**All such hearings to be held subject to health precautions satisfactory to the presiding judge. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible.**

## **SUPERIOR COURT**

- Superior Court Judges shall be available during normal business hours
- **ALL PENDING CIVIL AND CRIMINAL SUPERIOR COURT CASES ARE CONTINUED TO A DATE BEYOND June 1, 2020.** The Senior Resident Superior Court Judge in consultation with the District Attorney shall provide the dates for the continuation of Criminal Cases. The Senior Resident Superior Court Judge in consultation with the Superior Court Trial Coordinator shall provide the appropriate dates for the continuation of Civil Cases.

- **Criminal matters that will be addressed by the Superior Court** during the suspension period and any extensions are as follows:
  1. A bond hearing for those defendants who are in custody provided that 48 hour notice has been given to the State and the court of the motion for a bond hearing.
  2. Judicial review of appearance bonds.
  3. First Appearances that may be conducted in Superior Court and Assignment of counsel to indigent defendants.
  4. Seven day hearings for probation violations where the defendant is being held in custody **solely** because of the pending probation violation.
  5. Bond hearings for defendant's not in custody upon 48 hour notice to the opposing party (Counsel for Defendant/State) and the Court.

**All such criminal hearings will be held subject to health precautions satisfactory to the presiding judge. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible.**

- **Civil matters that may be addressed by the Superior Court** during the suspension period are as follows:
  1. Requests for Temporary Restraining Orders in the sole discretion of the presiding judge.
  2. Civil Hearings that may be conducted remotely by consent of the parties may be conducted in the sole discretion of the presiding judge.

**All such civil hearings approved by the presiding judge will be held subject to health precautions satisfactory to the presiding judge. Where available, remote technologies should be utilized as authorized by law and to the fullest extent possible.**

**Notwithstanding the above provisions, nothing herein shall prevent the Senior Resident Superior Court Judge or the Chief District Court Judge from handling a proceeding if the judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.**

**In accordance with the Chief Justice's Emergency Directive 3, all judicial officials in the 24<sup>th</sup> Judicial District are authorized to conduct proceedings by remote audio and video transmission, 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 a 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 counsel.

**The Clerks of Superior Court for each county shall post a notice at the entrance to every court facility in their county in accordance with the Chief Justice's Emergency Directive 2.**

**THE COOP leader in each county shall report the closing of all superior and district court closings in their county during suspension period and any extensions thereof.**