

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN RE:
CIVIL MOTIONS
SCHEDULING AND HEARING BY
VIDEOCONFERENCE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 23 R 278
2023 FEB 14 A.M.
MECKLENBURG CO. C.S.C.
BY _____
**ADMINISTRATIVE ORDER
AMENDING LOCAL RULE 12**

WHEREAS, Judicial District 26 seeks to ensure the fair and efficient administration of justice.

WHEREAS, the undersigned Senior Resident Superior Court Judge has inherent authority over the administrative supervision and operation of superior court in Judicial District 26 pursuant to N.C. Gen. Stat. § 7A-39.

WHEREAS, civil motions in superior court matters have been held remotely since May 29, 2020, pursuant to local Administrative Order 20 R 508 and Emergency Directive 3 of the Order of the Chief Justice of the Supreme Court of North Carolina.

WHEREAS, local Administrative Order 20 R 508 and Emergency Directive 3 have been rescinded.

WHEREAS, N.C. Gen. Stat. § 7A-49.6 was enacted on June 18, 2021, and permits judicial officials to conduct proceedings by remote audio and video transmission provided that the presiding official, and any other participants can see and hear each other, and each party involved in the audio and video transmission can communicate fully and confidentially with their attorney if the party is represented by an attorney.

WHEREAS, Cisco Webex is the audio and video transmission platform approved by the North Carolina Administrative Office of the Courts.

WHEREAS, there are continuing benefits associated with remote audio and video proceedings that improve access to justice and efficient court operations.

WHEREAS, this Administrative Order does not affect the court's authority to receive remote testimony pursuant to other statutes, including N.C. Gen. Stat. §§ 15A-1225.1, 15A-1225.2, 15A-1225.3, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f).

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that effective immediately, unless repealed, replaced, or rescinded by another applicable order, the

default method for hearing all civil motions in superior court will be by Webex videoconference ("Remote Hearing").

FURTHER, IT IS ORDERED that this Administrative Order is intended to supplement and, where inconsistent, replace Local Rule 12 as adopted on March 1, 2015.

IT IS FURTHER ORDERED that the following procedure shall be used to schedule and conduct civil motions in Superior Court:

1. Scheduling Civil Motions Hearings

- a. The requesting party/attorney must use [Justice Initiative's Court Calendar online scheduling system](#) to obtain a hearing date and time. Requests must include the following:
 - The case number and caption
 - The type of motion being requested
 - The total amount of time needed for the hearing, including arguments for all parties
 - The name of the attorney/party requesting the hearing
 - Which party the attorney represents
- b. If a party/ attorney does not have access to the Justice Initiative's Court Calendar online scheduling system, requests (including the above-listed information) may be emailed to the Caseflow Coordinator at Mecklenburg.Caseflow.Superior.Motions@nccourts.org; or if email is not an available option, parties may call the Caseflow Coordinator at 704-686-0190 to provide the required information, and the Caseflow Coordinator will schedule the hearing.
- c. The Cisco Webex dedicated URL for civil motions hearings is: nccourts.webex.com/meet/meckcr6310.sh. The Webex link will be included on the published court calendar.

To access the motion hearings, enter the link into your browser and select the "JOIN" tab.

If you are unable to attend by video, you may join via phone by calling: **1-415-655-0001** and using **Access code: 126 653 3213**.

- d. Each party/attorney is responsible for providing the Webex link to their client(s), witness(es), and other interested individuals, as applicable.
- e. The requesting party is responsible for sending a Notice of Hearing.

- f. Consistent with N.C. Gen. Stat. §§ 7A-95(c) and 7A-198(c), the clerk or the clerk's designee shall host the Webex proceedings. The clerk may also designate one or more judges as co-host(s) for each proceeding scheduled. The co-host is authorized to begin, conduct, and record the hearing if the host is not available. Any recording made will automatically be saved in the Webex account of the host.

2. Exemption from Remote Hearing; Request for In-Person Hearing

- a. At any time prior to or during a Remote Hearing, the presiding judge retains the discretionary authority to convert the Remote Hearing to an in-person or hybrid hearing by notifying the parties.
- b. Any party has a right to request an in-person hearing for good cause shown. To request an in-person hearing, a party must file a Motion for Exemption from Remote Hearing (Local Form [CCF-85A](#)) and serve the motion on all other parties pursuant to Rule 5 of the NC Rules of Civil Procedure; then deliver the filed motion and proposed order to the Caseflow Management Division of the Trial Court Administrator's Office no later than noon on the Wednesday preceding the start of the session in which the hearing is scheduled.
- c. If there is an objection to the motion for exemption, the objection must be filed and submitted to the Caseflow Management Division of the Trial Court Administrator's Office, within forty-eight (48) hours of the filing of the motion for exemption.
- d. Absent an objection, or if the judicial official or designee finds that the moving party has demonstrated good cause that outweighs the objection, the presiding judge shall conduct an in-person or hybrid hearing.
- e. Absent a motion for exemption or showing of good cause, the presiding judge shall conduct the proceeding remotely.

3. Decorum and Etiquette in Remote Hearings

- a. The decorum of a Remote Hearing shall be the same decorum as an in-person hearing conducted in a courtroom (e.g., eating, drinking, smoking, and profanity are prohibited).
- b. The attire for attorneys in a Remote Hearing shall be the same as an in-person hearing. Parties and witnesses should appear in business casual attire.

- c. An attorney, party, or witness in a Remote Hearing should have an appropriate background and a suitably quiet location.
- d. All attorneys and parties are encouraged to access the Remote Hearings at least five (5) minutes prior to the scheduled start time of the hearing.
- e. Attorneys/parties shall identify themselves before speaking. During a Remote Hearing, attorneys and parties who are not testifying or speaking should mute their microphones. The Host or co-Host reserves the right to “mute” a party or attorney who fails to mute themselves if it causes feedback, echoing, or is otherwise noisy, disruptive, or distracting.
- f. If more than one person in the same location will be participating remotely in the Remote Hearing, they must (i) share a device, (ii) ensure proper muting to avoid audio malfunction, or (iii) participate from separate rooms to ensure audio quality.

4. Confidential Attorney-Client Communications During Remote Hearings

- a. If an attorney and client are participating in a Remote Hearing from separate locations, they may communicate privately, for example via text message or email, during the hearing, provided however, parties may not communicate with counsel while they are testifying via any mechanism or medium other than the audio and video technology seen and heard by all other participants, unless specifically permitted by the court to communicate privately during testimony.
- b. If a party wishes to communicate confidentially with their attorney and cannot do so by text message or email, the presiding judge should be informed, and they shall permit such confidential communication, by enabling a breakout session through Webex or taking a break to allow for telephonic communication or such other appropriate means.
- c. The Webex “chat” feature should be used with care for attorney-client communications because it is possible a user may privately chat with the wrong person or may inadvertently chat with “all” when attempting a confidential communication. For this reason, attorneys are encouraged not to use the “private” chat feature of Webex, but rather to request a breakout session or use their own mobile phones, email, or some other method to ensure private communication.

5. Briefs, Exhibits, and Evidence

Failure to comply with the provisions set out regarding submission of briefs, exhibits, and evidence may result in the submission not being considered, a continuance of the hearing, or other action in the discretion of the presiding judge.

a. Briefs and Exhibits

- i. All briefs, exhibits, affidavits, etc. must be emailed to D26.Briefs@nccourts.org no later than two (2) business days prior to the hearing on the motion.
- ii. Absent stipulation or agreement among the parties, all submissions shall be served on counsel of record and self-represented litigants in compliance with Rule 5 of the NC Rules of Civil Procedure.
- iii. Attorneys or parties desiring to present evidence in real time shall either use the “share” option in Webex. Exhibits that are admitted during the hearing and that were not submitted prior to the hearing must be provided to the courtroom clerk within twenty-four (24) hours after the court session concludes and in the same format as offered into evidence during the remote proceeding (e.g., documents shall be printed out and in paper form, photos may be printed or on a disc or flash drive, and videos shall be on a flash drive, DVD, or other medium capable of retention). Any non-documentary exhibit offered into evidence in a remote proceeding (e.g., by displaying it on camera for all participants) shall be delivered to the clerk as presented and appropriately packaged for long-term preservation. The clerk has no responsibility to take custody of or retain exhibits that are neither offered nor admitted.

b. Testimony

- i. The clerk shall administer oaths to witnesses during a remote proceeding. Affirmation may be used in lieu of swearing a witness. The person administering the oath must be able to see and hear the witness.
- ii. Witnesses should be in a room alone when testifying in a Remote Hearing, when feasible. Parties may be accompanied by their attorney if the attorney and party so choose. If a person will be in the room with a testifying witness, the attorney or witness shall advise the presiding judge prior to the witness’ testimony. No person, including an attorney, may communicate with a witness about the witness’ testimony while the witness is testifying via any mechanism or medium other than the audio and video technology seen and heard by all other participants, unless

specifically permitted by the court to communicate privately during testimony.

If, while testifying, a witness wishes to communicate confidentially with their attorney, the presiding judge should be informed and they may permit such confidential communication by enabling a breakout session through Webex or by taking a break to allow for telephonic communication or such other appropriate means.

6. Record of Hearing / Official Transcript

- a. As provided in N.C. Gen. Stat. §§ 7A-95(c) and 7A-198(c), the clerk, the clerk's designee, or the court reporter will create a record of the court proceeding via the Liberty Recording system (operated by the clerk or clerk's designee), Webex recording (operated by the clerk or clerk's designee), and/or by one of several techniques employed by court reporters. The clerk, as the custodian of each of these types of recordings, shall maintain and preserve each recording made by the clerk, the clerk's designee, or the court reporter pursuant to N.C. Gen. Stat. §§ 7A-95(c) and 7A-198(c).
- b. The court reporter maintains the responsibility for preparing the official transcript from the recording(s) prepared by the court reporter, Liberty recording, and/or Webex recording. Only a person on the NCAOC Court Reporters and Approved Transcriptionist List may prepare the official transcript from the recording(s) prepared by the court reporter, Liberty recording, and/or the Webex recording.

7. Public Access

- a. In accordance with Section 19 of Article I of the Constitution of North Carolina, these proceedings are open to the public.
- b. To facilitate public access to the Remote Hearing, the Webex link shall be listed on the court calendar published for the session. Any person who wishes to obtain access to a hearing may also visit [Mecklenburg County's Remote Hearings webpage](#) on NCcourts.gov to obtain a link to the Webex proceeding. All spectators must access the hearing via the appropriate hearing link at the time set for the hearing.
- c. The parties, attorneys, witnesses, spectators, public, and media shall refrain from making any recordings, videos, or photographs of any hearing, absent approval by the presiding judge under Rule 15 of the General Rules of Practice and the 26th Judicial District's Local Rules Governing Photography, Filming, and Audio Recording within the Mecklenburg County Courthouse. The presiding judge may permit or prohibit "electronic coverage" and "electronic media coverage" as provided in Rule 15 of the General Rules of

Practice and the 26th Judicial District's Local Rules referenced above. Failure to comply with a judge's prohibition of electronic coverage or electronic media coverage may result in ejection from the hearing and appropriate sanctions to include contempt. Rule 15(i) of the General Rules of Practice provides that recordings by the media or the public permitted by the court, if any, including film, video tape, still photographs or audio reproductions, shall not be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

- d. Spectator cameras may be enabled, and microphones shall be muted during a Remote Hearing. Spectators shall not speak or otherwise communicate with any party or witness during the hearing. Spectators shall not utilize the chat feature or interfere with the hearing in any way. The presiding judge will provide instructions to all parties and spectators to protect the integrity of the hearing. Once the presiding judge begins instructions for the participants, the Webex hearing may be locked, and additional spectators may be prohibited from joining the hearing.
- e. Any spectator, witness, or participant who violates orders given by the presiding judge pertaining to the use of Webex, who contacts testifying witnesses or parties, who photographs, records or videos the proceeding (without permission of the presiding judge), or who disrupts the proceeding is subject to being ejected from the hearing and may not be allowed to rejoin the hearing in the presiding judge's discretion. They are also subject to appropriate sanctions to include contempt.

8. Spoken Foreign Language Interpreters

Requests for spoken foreign language interpretation should be submitted to the Language Access Coordinator using the online request form at <https://www.nccourts.gov/request-for-spoken-foreign-language-court-interpreter>. Such requests should be submitted as soon as the attorney/party is aware of the need for an interpreter to allow sufficient time to schedule the interpreter.

If the interpretation cannot be adequately accommodated in a Remote Hearing, the proceeding shall be held in-person. If, at any time during a Remote Hearing, the interpretation cannot be conveyed to either the court or the party, the hearing shall be delayed to address interpretation or continued to another court session.

Note: Sign language interpreters are not spoken foreign language interpreters and instead are addressed in Section 9.

9. Requests for Accommodations Under the Americans with Disabilities Act

Reasonable accommodations are determined on an individual basis and may include, but are not limited to, the use of licensed interpreters (e.g., sign language interpreters, deaf blind interpreters), periodic breaks, or captioning. Reasonable accommodation requests should be submitted to the Disability Access Coordinator either in-person, at 704-686-0268, by email at Mecklenburg.DAC@nccourts.org, or via the online request form at <https://www.nccourts.gov/form/disability-access-request>. Such requests should be submitted as soon as the attorney/party is aware of the need for an accommodation to allow sufficient time to review the request and arrange for a reasonable accommodation.

If a reasonable accommodation cannot be provided in a Remote Hearing, the proceeding shall be held in-person or hybrid. If, at any time during a Remote Hearing, the reasonable accommodation can no longer be provided, the hearing shall be delayed to address the reasonable accommodation or continued to another court session.

This, the 14th day of February, 2023.

Carla Archie

The Honorable Carla Archie
Senior Resident Superior Court Judge