

STATE OF NORTH CAROLINA

THE GENERAL COURT OF JUSTICE

JUDICIAL DISTRICT 35

DISTRICT COURT DIVISION

ADMINISTRATIVE ORDER -CIVIL

WHEREAS, the Governor of the State of North Carolina and the Chief Justice of the North Carolina Supreme Court have issued Orders for the courts to take appropriate measures to protect health and safety and minimize exposure to COVID-19. Said Orders severely restrict in person hearings that may be held in Civil District Court through 1 June 2020 (currently), and

WHEREAS, given how long restrictions limiting the numbers and types of hearings are and will be in place, it is necessary to ensure that the Court establish additional policies to address Civil matters in District Court and

WHEREAS the Judicial District Executive Committee continues to meet and consider safety and other issues as we move forward in this crisis and to that end has encouraged Local County specific work groups to be formed to work in consultation with public health officials and make recommendations and

WHEREAS it has become evident as the Courts move to expand operations in the 24th Judicial District there will be necessary limitations on the number and spacing of individuals in Courtrooms, an expanded need to use calendaring authority and other administrative procedures necessary to the safe and efficient administration of justice the Court hereby enters the following TEMPORARY Administrative Order for matters in Civil District Court in Judicial District 24. This Order is effective immediately and supersedes the Temporary Custody rules set to expire on 6/1/20 and shall continue for the months of June, July and August unless sooner rescinded, or modified or extended by Order. Nothing in this Order shall supersede any subsequent Order of the Chief Justice regarding Court operations.

1. The Court strongly encourages the use of appropriate mask or facial covering of the nose and mouth while in the Courtroom. This includes attorneys that appear before the Court and to Parties, Witnesses and other Court observers.
2. Court proceedings are open to the public unless closed by order. With significantly reduced seating capacities and distancing requirements, priority seating will be given to Parties and Witnesses under subpoena. Other spectators may be required to leave the Courtroom if additional seating is necessary.
3. The Court encourages the expanded use of remote hearings while authorized to provide safety for all participants and to minimize the number of people required to be in the courtroom.

4. The Court continues to encourage the use of Child Custody mediation which shall be done remotely or when permitted observing social distance and other alternative dispute resolutions that are available in other types of cases which may be conducted remotely or observing social distance.
5. The expanded use of pre-calendar calls prior to the court session in all counties, status and pretrial conferences, and pretrial orders will benefit all parties in assessment of priority and scheduling. The Court intends to have only one contested in-court proceeding and the necessary attendees to same in the Courtroom at a time. The Court may reasonably schedule uncontested matters in greater numbers subject to the space limitations of the particular courtroom. At the pre-calendar call attorneys and pro se litigants shall identify which cases are ready for trial, what motions are ready to be heard, and what the availability of remote hearing exists for the particular matter and for those matters that will require in court hearing the expected time required for the hearing. The Court shall set the order in which the cases will be called subject to scheduling conflicts.
6. Priority shall be given in Civil Court to cases involving issuance of Emergency ex-parte orders and the return hearings thereon, 50-B domestic violence cases seeking one year protective orders or renewal of same, Temporary Child Support, Post Separation Support, Contempt, Temporary Child Custody, and Summary Ejectment.
7. Cases involving Contempt shall be held in the Courtroom. One-year protective orders and Summary Ejectment shall be heard in the Courtroom unless both parties consent to a remote hearing. Other matters may be heard remotely if reasonably available unless specifically scheduled for the Courtroom by the presiding judge at pre-calendar call.
8. Each County will have a remote Pre-calendar call at which time priority and schedule will be set for the session and a determination of whether the matter can be heard remotely. All remote hearings shall be conducted via Webex.
9. Other types of hearings that may be heard remotely by Webex include pre and post-trial motions, Judicial settlement conferences, Status conferences, and Pre-Trial conferences.
10. Subject to limitations set forth below and availability of Clerks, permanent custody hearings, equitable distribution and alimony may be heard remotely.
11. Limitations on Remote Hearings
 - a. All parties **must consent to participate** by remote hearing utilizing webex if the proceeding would otherwise be required to be a live hearing (Example Permanent Custody Trial). If a matter can be handled (by law) without a live hearing (motions, temporary custody, temporary child support, post separation support, interim distribution, etc.), then consent of both parties to a webex hearing is **not required**.
 - b. All hearings and conferences are subject to the time limitations set out in the Local Rules, these Temporary rules for remote hearings or in the pretrial order.

12. Remote hearing Exhibits.

- a. Exhibits must be served on the opposing party two business days prior to the hearing. All exhibits must be marked (i.e. Plaintiff's Exhibit 1,2,3 or Defendant's Exhibit 1,2,3). No unmarked documents will be accepted. **Further, each party must deliver a sealed envelope (case number on the outside of the envelope) containing hard copies of their proposed exhibits to the Clerk's office two business days prior to the start of the hearing (which must be marked as set forth above, e.g. Plaintiff's Exhibit 1, 2, 3). Failure to comply with these procedures may result in a proposed exhibit not being admitted into evidence, at the discretion of the presiding judge.**
- b. An exhibit does not have to be displayed on the screen in order to be introduced into evidence. If a party wants to display an exhibit on the WEBEX screen during the hearing, they must have access to a saved copy on their computer or have worked with the Clerk in advance to ensure access to an electronic copy.
- c. Remote hearings are generally not appropriate for cases involving voluminous records and the presiding judge has the discretion to decline a remote hearing or pause it and resume in person if documents become too difficult.
- d. Cases involving DSS records, sensitive mental health or medical records may not be appropriate for remote hearings. The presiding judge, after consultation with counsel and parties in a pretrial conference, has discretion to determine that a remote hearing is not appropriate.
- e. Just because an exhibit is produced correctly, does not mean it is admissible. The Rules of Evidence apply and parties are free to object to exhibits during the hearing.

13. Scheduling Remote Hearings

- a. Remote Hearings for Temporary Custody – The moving party shall contact the Clerk who will notify the Judge's office to schedule a remote hearing. The moving party shall serve a Notice of Remote Hearing on all parties.
- b. Remote Hearings by Consent - If all parties consent to a remote hearing, they shall submit the Request for Remote Hearing to the Clerk. The Clerk will coordinate with the Judge's office to schedule the remote hearing and send a Notice of Remote Hearing to all parties.
- c. Other Remote Hearings – For other remote hearings where consent is not required, any party can contact Clerk to request a remote hearing. The Clerk, after consultation with the assigned judge, will schedule the remote hearing. The party requesting the remote hearing shall serve a Notice of Remote Hearing on all parties.
- d. Upon receipt of the Notice of Remote Hearing, all attorneys and self-represented parties must contact the Clerk and District Court Judge's Office within 10 days to report an email address for the webex invite or to advise if they have no email access. Attorneys who regularly practice in

District Court 24 Civil Court and have an email address on file do not have to contact the Clerk and Judge's office every time.

e. Thereafter, the Clerk or their designee will send the webex invite to counsel of record and self-represented litigants. Attorneys are responsible for forwarding the link to their clients and to all necessary witnesses for the hearing. Self-represented litigants are responsible for forwarding the link to any witness they desire to have testify. Attorneys and self-represented litigants may also forward the link for the hearing to people they desire to observe the hearing.

14. Recording Remote Hearings

a. All hearings will be recorded by the Clerk or designee through webex and by the clerk through the courtroom recording system unless AOC and the Clerk of Superior Court determines that the webex recording meets the standard for recordation of hearings. Webex recordings will be immediately sent to the assigned courtroom clerk and will be maintained by the Clerk of Court. Attorneys, parties, and spectators are not permitted to record the proceeding. Requests for recordings can be made through the Clerk's office.

15. Attendance at Remote Hearings

a. All parties must access the hearing at the start time of the hearing. All parties and counsel must be able to be seen and heard by all other parties, unless the judge waives this requirement for good cause. All spectators must have accessed the hearing at the start time of the hearing or they won't be able to join the hearing after it has begun.

b. **Spectators:** All members of the public who have accessed the hearing on the internet must have their video ON. All spectators must have their microphone muted and they shall not speak or otherwise communicate with any party or witness during the hearing. They shall further not utilize the chat feature or in any way interfere with the hearing. Spectators shall be seated and still. If a spectator violates these rules, they are subject to expulsion from the hearing and also to being held in contempt of court.

16. Miscellaneous Remote Hearing Rules

a. All other pertinent rules of Civil Procedure and Local Rules will apply to the hearing.

b. Business casual or business attire is appropriate dress for parties and counsel.

c. All participants must be able to be seen and heard by all other participants (unless the judge waives this requirement for good cause shown). Lack of access to video/audio by a party may be a reason for the judge to waive this requirement for that party. During the hearing, parties that are not testifying should have their microphones muted. Attorneys may have their microphone on at all times but shall work to limit background noise.

d. Witnesses should be in a room alone during testimony, when feasible. Parties may be in a room with their attorney if the attorney and party so choose. If a person will be in the room with a testifying witness, the witness shall advise the judge prior to the witness' testimony. No

person, including an attorney, may communicate with a witness about their testimony during the testimony.

e. If they are in separate locations, attorneys and parties may communicate privately via text or email during the hearing, **provided however, parties may not communicate with counsel while they are testifying. No one may communicate with witnesses privately during the hearing without court permission. No one other than attorneys participating in the hearing shall utilize the chat feature of webex during the hearing.**

f. **Chamber conferences with children will not be allowed.** Any testimony by a child shall be live and subject to cross examination. If a child is called as a witness during the hearing, the party with physical custody must leave the room the child is testifying in if there is an alternate way that party can continue to view the hearing. If leaving the room would make it impossible for the party to continue viewing the hearing, the party must be seated, be silent, and shall not communicate in any way (oral, written, or gestures) with the child during the child's testimony. The parties should expect the judge to ask about these logistics and to reiterate these requirements prior to the testimony of the child.

g. To the maximum extent possible, minor children who are the subject of the hearing shall not observe or listen to the hearing. Parties and witnesses shall not share the invite link with the child and shall not have the child in the room while testimony is ongoing. If it is necessary to take short breaks for parties to address the needs of minor children given that they are not in school, said breaks will be provided. If a minor child testifies, the child shall leave the room as soon as their testimony is concluded and not view the remainder of the hearing.

h. If an interpreter is needed, please notify the Clerk at the time of scheduling. AOC is making interpreters available but advance coordination is required.

17. Temporary Child Custody Hearings Any party who requests temporary relief regarding custody or visitation can contact the Clerk to schedule a temporary hearing that shall be conducted remotely. The Clerk, after consultation with the District Court Judge's Office will issue a date for the remote hearing set within 15-45 days, whenever possible, from the request for the remote hearing. The moving party shall serve a Notice of Remote Hearing on all other parties. The parties shall comply with the Guidelines for Remote Hearings as adopted by this Court.

18. Temporary Hearings by Affidavit Any party who requests temporary relief regarding child support or postseparation support can contact the Clerk to schedule a temporary hearing that shall be conducted by affidavit. The Clerk, after consultation with the District Court Judge's office will issue a date for the Affidavit Hearing set within 30 - 45 days, whenever possible, from the request for the affidavit hearing. The moving party shall serve notice of this date on all parties along with a copy of this Rule. The Affidavit hearing shall consist of 60 minutes equally divided between the parties during which time the parties may cross examine the other party regarding their affidavit or present the rebuttal testimony of their client regarding the Affidavits that have been filed. Both parties shall be available to provide testimony during this remote hearing.

19. Affidavits For hearings regarding temporary child support, the parties must comply with the exchange of income and insurance information. For hearings regarding postseparation support, the parties must complete and submit a financial affidavit form and exchange income information. In addition, each party may submit testimony affidavits that are made on the personal knowledge of the witness, that set forth facts that would be admissible in evidence and that show the witness is competent to testify to the matters stated in the affidavit. Any supporting documents or exhibits must be attached to an affidavit that establishes a proper foundation for admissibility pursuant to the Rules of Evidence. The court will indicate in its ruling which attachments were considered or excluded from consideration.

20. Affirmation Affidavits shall be notarized. While the Chief Justice's Emergency Directive is in place (currently through June 1), the following affirmation may be substituted for a notarized signature:

I affirm, under the penalties for perjury, that the foregoing representations are true.

Signed _____

21. Filing of Affidavits Both parties shall file testimony affidavits and any attachments with the Clerk of Court at least 14 days prior to the scheduled hearing. Both parties shall file any rebuttal affidavits and any attachments with the Clerk of Court at least 7 days prior to the scheduled hearing. Rebuttal affidavits shall be limited to rebutting information included in the opposing party's testimony affidavit(s). Rebuttal affidavits must cite the specific portion of the testimony affidavit that is being rebutted.

22. Service of Affidavits Testimony affidavits and any attachments shall be served on all other parties. Service may be by personal delivery, fax or mail. Testimony affidavits and any attachments may be served by email to any party that consents to be served by email. A Certificate of Service shall be filed with the Clerk of Court.

23. Arguments Written arguments, including any objections to affidavits or attachments, shall be submitted to the District Court Judge assigned to the hearing and served on all other parties at least 3 days prior to the scheduled hearing. Written arguments may be submitted and served by personal delivery, fax, mail or email. Written arguments shall not be filed with the Clerk of Court, but a Certificate of Service shall be filed.

24. Failure to Comply The court, in its discretion, may decline consideration of any affidavit or argument that fails to comply with these rules or any other governing rules of procedure or evidence.

25. Supplemental Affidavits The court, in its discretion, may request supplemental affidavits.

26. Expedited Affidavit Hearing If both parties file and serve all affidavits and arguments earlier than the deadlines require, the parties may submit a written request to the Clerk requesting that the temporary hearing by affidavit be conducted earlier than the scheduled

hearing date. The Clerk shall notify the District Court Judge's office to determine availability for an earlier hearing.

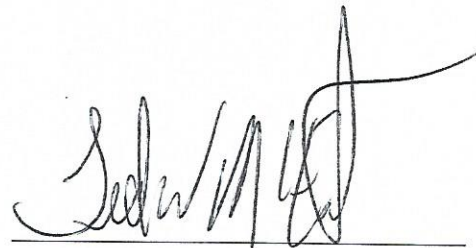
27. Presence at the Affidavit Hearing Parties and attorneys shall be present remotely at a temporary affidavit hearing unless both parties agree in writing to waive this requirement in which case the matter will be decided upon the Affidavits and written arguments presented..

28. Time Limits Interim distribution hearings shall be limited to one hour. Temporary custody hearings shall be limited to one hour. Each party shall be allocated one-half of the time to be used for direct examination of the party's witnesses, cross-examination of the other party's witnesses, examination of affidavits, opening and closing statements. It is anticipated that most temporary hearings will conclude within these time limits because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Judge for good cause.

29. IV-D Court. The Court shall enforce the general rule for only one contested hearing in the Courtroom at a time. This will require child support officials and attorneys to negotiate matters prior to the court date. The Court encourages the use of remote and affidavit hearings in temporary support and motion hearings. The Clerk may have one morning and one afternoon webex session per court date that may be used for the hearing of multiple cases and issues if needed. Contested hearings including contempt shall be scheduled with a designated priority prior to the session. Those individuals needing to be advised will be done first and then the first contested hearing may be started. Please take notice that the calendar call will be done at the end of the session and process issued. This is a substantial departure from previous practice but at this time is necessary due to space and safety limitations.

30. Juvenile Court – The Court recognizes that many of the hearings in juvenile court will require in court hearings unless there is consent. The Court will continue to do nonsecure custody hearings remotely when available. Following this Court's directive that only one contested case will have attendees in the Courtroom at a time it is important to schedule these sessions in advance. To that end the Court implements the pre-calendar procedure for the Court and counsel to set an order of cases to be called and the approximate time that each needs to be in the Courtroom. The Court encourages the use of remote hearing for this pre-calendar call and for those matters where consent is given.

This the 14 Day of May, 2020.



Ted W. McEntire
Chief District Court Judge