



HONORABLE JESSE B. CALDWELL, III
SENIOR RESIDENT SUPERIOR COURT JUDGE

JUDICIAL DISTRICT 27A
GASTON COUNTY

325 DR MARTIN LUTHER KING JR WAY, SUITE 4112
GASTONIA, NC 28052

May 27, 2020

To: Gaston County Bar Members and the Public at Large

From: Hon. Jesse B. Caldwell, III, Senior Resident Superior Court Judge

Re: Updated Judicial District 27A Superior Court COVID-19 Response following Chief Justice Beasley's most recent orders Chief Justice Beasley's May 21-2020 Order(1) and Chief Justice Beasley's May 21-2020 Order(2):

As the court system approaches the June 1 date when our courts officially renew our work, it is important the all court personnel, members of the bar, and the public have an understanding of how we will re-open our doors, that with some exceptions, been shut for two and a half months. I hope this memorandum will assist in that regard.

Since late March, Gaston County courthouse officials have been meeting both in small numbers and as a group making plans on how to return to our mission in an appropriate and safe way. As we deal with issues and challenges which arise after June 1, we will be continuing to meet to identify problems and create effective solutions. We will also try to be proactive to foresee other issues that could materialize, and craft procedures to prevent them from occurring.

On May 21, Honorable Cheri Beasley, Chief Justice of the North Carolina Supreme Court issued new orders and emergency directives expanding North Carolina Court operations. The measures reflect many of the policies and procedures our courthouse team had already decided to implement. Her mandates also contain additional directives that we will ensure must be followed. This memorandum will review the contents of her rulings.

The Chief Justice has ordered that the Senior Resident Superior Court Judge for each judicial district shall be the individual in charge of enforcing and implementing her mandates. I pledge that I will endeavor to honor that trust by fully communicating and consulting with all of our court leaders. I am also happy to receive input from any attorney or citizen about any aspect of our operations.

Chief Justice Beasley has also commissioned a COVID-19 Task Force to make recommendations regarding necessary emergency directives and policy changes as the court system begins to expand its operations on June 1. This task force is co-chaired by Senior Resident Superior Court F. Donald Bridges, of Cleveland County, a 26 year veteran of Superior Court, and a friend to many of you. Judge Bridges welcomes your suggestions and input regarding positive and creative approaches that may be employed as we move into a new way of operating our state courts.

What follows is a summary of the Chief Justice's executive orders, as well as the procedures our courthouse team has agreed should control our operations:

ADMITTANCE TO AND MOVEMENT WITHIN THE COURTHOUSE AND COURTROOMS

Although none of us know what June 1 may bring to our courthouse, we need to prepare for a large outpouring of people who have been desperately waiting for almost three months to get into court to transact their business. Because of the need to continue to enforce social distancing directives, which are so important for limiting the spread of the coronavirus, Gaston County Sheriff Alan Cloninger will station deputy sheriffs outside of the courthouse to provide orderly admittance into our facility. Chief District Court Judge John Greenlee and I have entered an order, which will be posted at the courthouse entrance and throughout the building, giving the Sheriff and his deputies the legal authority to stage and control the coming and going of those who enter the building. The Sheriff and his agents will also be able to cue individuals for admittance according to priority of their purpose. For example, someone seeking a 50B Domestic Violence Protection Order may be allowed to enter before someone who wants a copy of a criminal or civil record.

The Sheriff and his deputies will also be empowered by the court order to remove anyone from the courtrooms or courthouse for violation of the rules of conduct and policies that are being implemented, or for inappropriate behavior or activity.

Several lawyers have asked if we could open the public emergency stairwells at the end of the hallway, to allow foot traffic to the building's upper floors, and to reduce elevator use and traffic. This sounds like a very good idea, and we have discussed this with the county officials and the Sheriff's office. Unfortunately, this is not a feasible option. These stairways were never designed for this purpose for a number of reasons, including security. There are no security cameras in this location, and there are many documented cases nationwide of witnesses and victims being assaulted and murdered on court stairwells as they leave the building after a hearing. This includes people being shot and thrown down stairwells to their deaths. This is particularly true in domestic violence cases. In addition, because the stairs are structured as 5 floors of open space, there is no way or one to prevent someone distraught over of a court ruling from committing suicide by leaping off the stairs from the top floor to the first.

Furthermore, the stairs lead outside of the first floor, where cameras cannot provide surveillance over the entire area. This could easily lend itself to a security breach should someone be leaving the building that way and thereby allow entrance of another individual through the stairwell. Moreover, these stairs lead to the basement and the 5th floor of the courthouse, places totally unauthorized for the public. There are no security resources to provide appropriate protection, and the Sheriff does not have sufficient deputy coverage to have them regularly stationed in the stairway areas. Thank you for understanding why this good faith suggestion is just not possible from a practical standpoint.

PUBLIC HEALTH MEASURES TO PREVENT VIRUS SPREAD

Chief Justice Beasley has dictated that court officials use every reasonable public health precaution to provide for and promote a sanitary and safe environment for justice. Accordingly, she has placed a number of restrictions to avoid crowded courtrooms and allow for social distancing:

- No session of court may be scheduled if it would result in the public being crowded into courtrooms or waiting in close proximity without social distancing.
- Courtroom seating and all areas where lines form will have visible markings, with six-foot intervals.

- The public areas of the courthouse will be cleaned throughout the day.
- Hand sanitizer* is to be provided at every entrance and exit *whenever possible.

MASKS

People entering the courthouse will be encouraged, but not required to wear masks. This is true for those in the courtroom as well. The importance of and use of masks is well known. For that reason, we considered making it mandatory for everyone in our courthouse to wear a mask. This subject has been thoroughly discussed, not just in our courthouse leaders' meetings, but in discussion groups with court officials in other counties, other Senior Resident Superior Court Judges, School of Government and Administrative Office of the Courts officials, and our Chief Justice.

Although there are several schools of thought on the subject, the majority opinion of court leaders is that while we should strongly encourage the use of wearing of masks in open court, we cannot constitutionally impose that requirement. Since our courts are mandated to be open to the public, the thinking is that unless we are able to furnish masks to anyone who does not have one, such a limitation on entering the courtroom would constitute a restraint to open access of the court system. It is viewed differently from controlling the behavior or dress of those in the courtroom, such as requiring pants to be hiked up or banning the use of cell phones in the courtroom. Forbidding someone from entering the court because they do not have a mask is tantamount to imposing an "admission ticket" to enter the courtroom. While we can impose safety measures like limiting the number of people in the courtroom, the prevailing thought among individuals I respect is that unless we furnish those who do not have a mask (and the court system had tried but failed to obtain this large a number of masks), we will be violating the United States and North Carolina Constitutions by declaring such a condition for court admittance.

SUPERIOR COURT COURTROOM PRACTICE AND PROTOCOL

Chief District Court Judge John Greenlee has issued orders and directives regarding the operation of the district courts, and I will naturally defer to him with respect to that court.

The Chief Justice has ruled that there will be no jury trials in North Carolina during the months of June and July of 2020.

The Chief Justice has additionally ordered that all Superior Court Judges be assigned to hold court in their home districts from June 1 through December 31, 2020. Therefore, all regularly scheduled sessions of Superior Court for the remainder of the year will be presided over by Resident Superior Court Judge David A. Phillips and me. In the event that special sessions of superior court are commissioned for specific cases, or there are matters in which both Judge Phillips and I must recuse ourselves, another superior court judge will handle those matters.

Two criminal sessions will be conducted the first week of superior court during the week of June 1. However, at the request of District Attorney Locke Bell, the courts will not actually begin business in open court until Wednesday, June 3. This will allow for two days of adjustment, re-entry, and effective discussion and dialogue between defense lawyers and assistant district attorneys about cases on calendars that week, as well as future dockets.

We will conduct court business throughout the month of June, except for the week of June 15. No statewide court was originally scheduled for that week anyway, as it was set for the Superior Court Judges' Conference. Although an on-location conference has been cancelled due to COVID-19 precautions, plans have been formulated to offer judges distance learning seminars and continuing judicial education classes, as we are required to maintain hours of continuing education in the same manner as do bar members. So, Judge Phillips and I will not be available to hold court the week of June 15.

We will hold two civil terms of Superior Court in June. These will be the weeks of June 8 and 22 (See Exhibit A attached hereto). We will have live motions hearings during these sessions. During the past two months, our district has been hearing certain motions on the WebEx platform, as authorized by the Chief Justice and following appropriate administrative directives. This would not have been possible without the great assistance and leadership of Trial Court Coordinator Jennifer Wehunt. We have been hearing matters such as minor settlements and structured settlement transfers. By use of this technology, we have already saved about 5 hours' worth of open court hearings once we recommence in June. We have not felt comfortable hearing matters like summary judgement motions, or motions involving the presentation of evidence or receipt of exhibits, preferring that these kinds of motions are best heard live, in open court.

During limited civil sessions in June and July, once civil matters have been heard, court will convert to criminal business for the remainder of the week.

District Attorney Locke Bell's plan is to have two teams of two district attorneys in each court per week. Each day, both assistant district attorneys will have 5 cases each of matters to expected to reach final disposition through guilty pleas. That would hopefully allow for each of the two courtrooms to dispose of 10 cases per day, and 50 cases each week, for a sum total of 100 cases at the end of each week of superior court sessions.

Although there will be no jury trials during June or July, if lawyers have a criminal or civil case they wish to try as a bench trial without a jury, we should be able to accommodate the attorneys. Of course, in criminal cases, there are certain statutory requirements that must be met in each case prior to a bench trial. However, assuming proper procedures are followed, Judge Phillips and I believe we could work with you in this respect.

MODIFICATIONS OF EXISTING RULES OF CONDUCT AND COURTROOM OPERATION

The coronavirus pandemic has necessitated at least some temporary modifications to long established rules of conduct and courtroom operation. We ask that you please understand the reasons for these changes, and work with us in making them work.

As previously noted above, we strongly encourage everyone in the courtroom to wear a mask. Again, we will not require it. We regret that we do not have masks for those who are present who would want one. All inmates from the Gaston County jail will be provided with and therefore required to wear a mask in court.

Our court reporters have shared that they are having difficulty in deciphering what is being said when parties or attorneys are wearing masks. They have therefore requested that counsel either speak very loudly, clearly and slowly, or pull your mask down upon speaking.

They have also said that because of the added difficulty of reporting proceedings with the implementation of mask wearing, it is even more critical to avoid unnecessary chatter at counsel table. As long-time trial lawyers, Judge Phillips and I surely understand the need for lawyers to confer in the courtroom about matters on the docket, such as defense counsel and district attorney fine tuning a plea deal. I believe he and both are fairly lenient about such background conversations occurring during actual court business. However, we are in a new world now, and we believe the court reporters' request is reasonable. Consequently, please either ensure that any such conversations are not distractive, or step outside the courtroom to have your discussions.

We will allow seating in all courts, both district and superior, on alternate pews or rows. Each of the rows upon which spectators can be seated will be marked at 6 feet intervals.

Although both district and superior court calendars will be shorter than those we are used to hearing, we will typically not be able to allow everyone with an interest in every case to be seated in the courtroom throughout the court sessions. Therefore, some parties and their families and supporters may be asked to wait outside the courtroom until their case is called. At that time, both the parties and those with them may enter the courtroom. Our Sheriff will provide waiting accommodations, both in the hallways and on benches, as well as the jury assembly room on the 4th floor, which will be available until August, since we are not holding jury trials during June and July. People in all waiting venues will practice social distancing practices.

GRAND JURY

Our courtroom leaders worked well in establishing a highly successful session of Gaston County Grand Jury B on May 18. To provide for social distancing and appropriate safety concerns, the Grand Jury met in the large County Commissioners' room. It was configured with chairs set more than 6 feet apart for each of the jurors, at 5 tables shaped in a U shape. Officers were either outside the courthouse or waiting in the courthouse cafeteria. Masks, gloves, sanitary wipes, etc. were made available to the jurors. The room was totally secured, and no one was present except those who were allowed to be there under the law. The grand jury considered 157 cases that day.

Both Grand Jury A and B will meet in the Commissioners' room in June, for transaction of appropriate business, following the same practices of the May 18 session.

ADDITIONAL DIRECTIVES OF THE CHIEF JUSTICE

Chief Justice Beasley's orders and directives of May 21, 2020 provided for other temporary changes in business practices as they relate to the courts. To discourage unnecessary courthouse traffic, she has urged that attorneys and litigants file documents and pleadings by mail, and given a 5 day grace period for filings submitted by mail.

To allow for more flexibility in creating court calendars, she has provided that they may be published with less advance notice. Thus, a calendar may now be published with only 2 weeks' notice, as opposed to 4 weeks.

The Chief Justice has also designated that attorneys may take additional secured leave from the court. Therefore, any secured leave taken prior to May 21 will not be counted against the 3 weeks of secured leave an attorney may take each year. Of course, lawyers must still comply with the appropriate notice and reporting requirements.

Chief Justice Beasley also gave each Clerk of Court authority to set other requirements for interaction with their offices. These include such practices as setting up a physical drop box for filings, and limit hours of operation and require appointments. Naturally, I will defer to Clerk of Court Larry Brown on the operation and business practices of his office.

We are living in a historic time, unprecedented for any of us. We are facing new challenges in the way we conduct business that has been transacted in the same way for well over 250 years. I am extremely impressed with the strong and fair leadership of the Chief Justice and the Administrative Office of the Courts during this time of crisis and confusion. I am equally enthusiastic about the harmonious and cooperative spirit of all of Gaston County's court officials as well as the cooperation of our brothers and sisters of the bar.

As we embark upon reopening our courts, I am sure we will need to review, revisit and refine some of the policies and practices we have put into effect. Moreover, we will need to address problems that we have not yet foreseen. I nevertheless am fully confident that we will rise to such occasion, and find effective and creative ways to address whatever is needed.

I sincerely thank each of you for your continuing cooperation and good will.

Be safe!

This memo shall be treated as an **Order of the Court**, and is effective immediately.

This the 27th day of May, 2020.

Jesse B. Caldwell, III
Senior Resident Superior Court Judge

Exhibit A



1 / 1



66.7%



Modified Sessions of Superior Court For 2020 COVID-19 Affected Duration Gaston County Judicial District 27A				
June 1	Criminal Admin <u>Grand Jury A</u>	Judge	CALDWELL	4C
June 1	Criminal Admin	Judge	PHILLIPS	4B
June 8	Criminal Admin <u>Grand Jury B</u>	Judge	CALDWELL	4C
June 8	Civil Motions/Criminal Admin	Judge	PHILLIPS	4B
June 15	To Be Determined			
June 22	Criminal Admin	Judge	CALDWELL	4C
June 22	Civil Motions/Criminal Admin	Judge	PHILLIPS	4B
June 29*	Criminal Admin (Probation?)	Judge	CALDWELL	4C
July 6	Criminal Admin <u>Select Grand Jury A</u>	Judge	PHILLIPS	4C
July 6	Criminal Admin	Judge	CALDWELL	4B
July 13	Criminal Admin	Judge	PHILLIPS	4C
July 13	Criminal Admin	Judge	CALDWELL	4B
July 20	Criminal Admin <u>Select Grand Jury B</u>	Judge	PHILLIPS	4C
July 20	Civil Motions/Criminal Admin	Judge	CALDWELL	4B
July 27	Criminal Admin (Probation?)	Judge	PHILLIPS	4C
July 27	Civil Motions/Criminal Admin	Judge	CALDWELL	4B