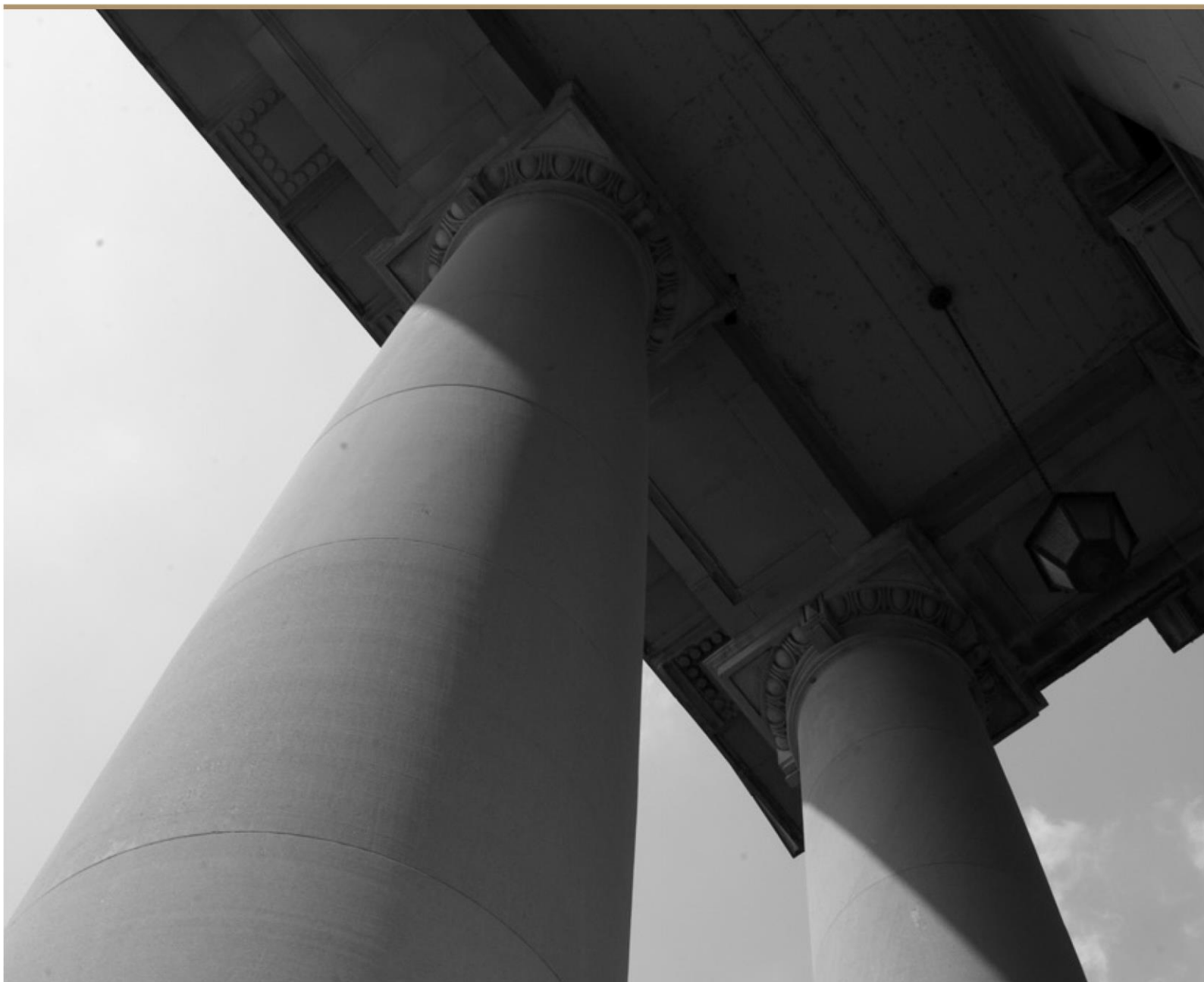




# COVID-19 REMOTE HEARING RESOURCE FOR DOMESTIC VIOLENCE MATTERS

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MAY 5, 2020



# INTRODUCTION

The COVID-19 outbreak has created unprecedented challenging times for our judicial system and for our world. Chief Justice Cheri Beasley has acted quickly to issue directives designed to aid our court partners in continuing to meet the demands of administering justice. One of the most difficult areas is domestic violence. With service agencies restricting in-person contact and courthouses altering their hours of operation, victims of violence can find it difficult to access our judicial system to obtain protective orders. Further, stay-at-home orders and restrictions on movement can leave victims no choice but to remain in the home with the perpetrator. We have seen an increase in requests for law enforcement responses to domestic violence, and recently the news has delivered horrifying accounts of domestic violence homicides and suicides in our communities.

With Chief Justice Beasley's [Order](#) of May 1 further expanding the emergency directives through May 30, including authorizing the use of technology to conduct remote hearings, the time has come to leverage existing technology to provide access to justice for families in crisis. The purpose of this guide is to assist our courthouse communities in how to leverage this technology and how to procedurally adapt to what is our new normal, at least through May 30

This document includes suggested procedural guidelines for domestic violence cases, provisions to enhance safety measures within the courthouse, and technological guidance so as to maximize on the available working hours. It is intended to assist our hardworking courthouse community partners by providing malleable measures to conduct hearings for domestic violence protective order applications, both for the ex parte and for the returns. In this way, judicial partners are provided with suggestions and alternatives so they can continue to conduct business and stay safe.

## **About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

## **About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.



# Implementation Strategies for the Emergency Order and Recommended Court Procedure

## Section 1: Emergency Directive 1

Courthouses remain open to those seeking to obtain emergency relief in the form of a domestic violence protective order. Furthermore, the chief district court judge can conduct in-person proceedings if he or she determines that such proceedings can be conducted under conditions that protect the health and safety of all participants.

### A. Courtroom Health and Safety

The possibility of intimidation, disruption, or violence always exists when parties in a domestic violence case are together in the same courthouse or courtroom. Violence and tension increase in the time span surrounding court dates. With the additional stress introduced by a viral pandemic, a hearing on a domestic violence protective order can be especially dangerous.

- **Review Current Seating Arrangements** to ensure that parties continue to maintain separation, but also practice social distancing in conformity with the CDC [guidelines](#).
- **Continue Staggered Departures** not only to increase the plaintiff's safety once s/he leaves the courthouse, but also to practice health measures by controlling the ingress and egress from the courtroom. Judges can require the defendant to remain in the courtroom at an appropriate social distance from others for a sufficient period of time to ensure the plaintiff has had an opportunity to leave the courthouse property.
- **Maintaining Separate Waiting Areas and/or Separate Entrance and Exit Paths** can be accomplished by leveraging outdoor areas that may be cordoned off for this purpose. Cooperative communication with law enforcement to maintain observation and control over this area is recommended. In this way, not only can parties feel secure, but health measures can be enforced as well. Many courthouse communities have already created outdoor waiting areas for plaintiffs and defendants to restrict the number of litigants who have access to the courthouse and/or courtroom and to ensure proper health and safety measures are observed. Court officers then notify the parties when their matter is called.



- **Parties Waiting to Enter Domestic Violence Court Should Not Be Left Together Unsupervised in Hallways, Conference Rooms, or other Common Areas.** If courts are restricting entry into the courtrooms but do not have dedicated waiting areas such as the ones described, courthouse staff should work with law enforcement to ensure that there is oversight and situational awareness of parties convening in shared or common areas, for the safety and well-being of all parties and witnesses.
- **Clear Communication with Court Officers** should occur to ensure that all partners are on the same page procedurally. The court should work with court officers and their supervising agency regarding security in both the courthouse and the courtroom and any outdoor area used to accommodate those awaiting their proceeding.

## B. Courthouse Health and Safety

As Chief Justice Beasley's Order states, courthouses remain open to those seeking emergency relief, such as a domestic violence protective order or other injunctive relief. The need to remain safe, however, is paramount for all involved, including our courthouse partners.

- **Emergency Directive 2** states that clerks of superior court shall post a [notice](#) at the entrance to every court facility in their county directing that anyone who has likely been exposed to the COVID-19 virus should not enter the courthouse. Rather, 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.
- **Signage** has been developed and distributed to all clerks of superior court that specifically addresses accessing court facilities for domestic violence protective order applications and hearings. These [signs](#) should be prominently affixed at the entrance to every court facility in the county.
- **Clerks and Courthouse Staff** should be cautious before restricting a plaintiff's access to the courthouse on the basis of a report by a third party that a plaintiff has been exposed to or is sick with COVID-19 symptoms. The reporter may be a defendant or someone acting on behalf of a defendant trying to limit victim access to the courts.



## Section 2: Emergency Directive 3

Remote audio and video transmissions for the conducting of court business is not new. The 14 counties that utilize the eCourts Civil Domestic Violence System (ECCDV) already use audio and video conferencing technology. The authority to use such technology is clearly outlined by G.S. 50B-2(e). However, the statute also states that this technology is not available for return hearings. Chief Justice Beasley's Emergency Order temporarily overrides this statutory mandate with certain exceptions.

### A. Availability of Existing Technology

- **WebEx Technology**
  - Members of the judiciary and the clerk of superior court's office in each county in North Carolina have access to WebEx technology. If you do not have this application on your AOC issued laptop, please see the following link:  
<https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/WebEx-resources-online-audio-video-technology>
  - WebEx is currently in use by members of the clerk's office, the judiciary, and domestic violence service agencies to hold ex parte hearings in the ECCDV counties. This technology can be leveraged to hold any hearing in a DVPO action pursuant to Chief Justice Beasley's Emergency Order, and at the discretion of the chief district court judge. You only need a WebEx account if you will be hosting a hearing. Participants do not need to install WebEx and can access the hearing via a link sent by the host.
- **Successful installation of WebEx.** Once WebEx is successfully installed, you can access full user instructions at <https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/WebEx-resources-online-audio-video-technology>



## B. Allowable Usage of Technology and Procedural Safeguards

Emergency Directive 3 clearly states that judicial officials who conduct a remote proceeding must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. The safeguards suggested that are specifically applicable to domestic violence proceedings are discussed below.

- **Usage of WebEx with DV Agency Partners.** If the local domestic violence service agency chooses to partner with the court to provide plaintiffs locations from which to attend their WebEx hearing(s), it is incumbent upon those advocates to ensure that plaintiffs understand that technology is being leveraged for the process, and the pros and cons of the technology method, so that meaningful consent can be given.
- **Usage of WebEx without DV Agency Partners.** If the litigants are using WebEx technology to engage in domestic violence hearing(s), it is incumbent on the court to notify the parties of the usage of this technology and that the proceedings are being recorded.
- **If the Proceeding is Required By Law to be Confidential, then Confidentiality in the Remote Proceeding Must be Maintained.** Courts are traditionally a public forum, and most DVPO hearings are open to the public. Special accommodation can be made for those that mandate confidential hearings, or hearings closed to the public in compliance with Emergency Directive 1. The Office on Violence Against Women only references 18 U.S.C. § 2265(d)(3) in differentiating between the confidentiality of certain protective order information and material and the hearing itself. Courts are prohibited, by this section, from making protective order information publicly available on the internet by streaming a public hearing. However, a court can hold a protective order hearing via the internet using a privately shared link that leverages a closed technology method. WebEx is a foundational component of the NCAOC technology strategy and is the only videoconferencing / meeting technology that the Technology Services Division (TSD) supports securely over the network. Only those that are sent the link are capable of attending the WebEx hearing, thus ensuring safety and confidentiality.



- **If the Proceeding is Required By Law to be Recorded, then the Remote Proceeding Must be Recorded.**
  - **Recording of Ex Parte Hearings.** Ex parte hearings are not required to be recorded by law so a remotely held ex parte would not need to be recorded. See G.S. 7A-198(e).
  - **Recording of DVPO Hearings.** DVPO or return hearings are required to be recorded by law and by Rule 19 of the Rules of Recordkeeping. Accordingly, a remotely held DVPO hearing would need to be recorded. The WebEx technology is capable of recording a remotely held hearing that can be downloaded and distributed in an MP4 format. Full recording instructions are available at <https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/WebEx-resources-online-audio-video-technology>
- **Each Party to a Remote Hearing Must Be Able to Communicate Fully and Confidentially with His or Her Attorney if They are Represented by an Attorney.**
  - If the party is represented by an attorney, the link to the WebEx hearing can be sent to the attorney as well. Further, the party can participate in the WebEx hearing from their attorney's office, while observing proper COVID-19 social distancing policies and procedures.
  - WebEx has a chat function that allows participants to send and receive messages either to the entire group or to designated participants. This function should always be turned off by the host during a domestic violence proceeding to prevent inappropriate communication and harassment by one or both of the parties.
  - WebEx has both a mute function and a video disabling function that would allow for a party to participate in a confidential conversation with their attorney during the hearing. At the beginning of the proceeding, all parties should be instructed to mute until it becomes necessary that they be heard. This will cut down on extraneous noise during the hearing.

**Finally, Nothing in Emergency Directive 3 Prevents Judicial Officials from Conducting In-Person Proceedings Consistent with Emergency Directive 1.** If the confidentiality of the matter is essential and cannot be accomplished via WebEx, or some other irregularity exists, an in-person proceeding can still occur as long as it is consistent with Emergency Directive 1 and adheres to CDC guidelines. This discretion, for domestic violence matters, is bested with the chief district court judge and can be applied on a



case-by-case basis. The usage of WebEx technology, however, should alleviate courthouse and courtroom traffic such that those few in-person matters could no longer pose a significant health and safety risk to the courthouse community.

## C. Implementation Guidelines and Protocols

Implementation of WebEx usage for remote hearings will require a coordinated effort between all judicial partners. From the receipt of the documents through issuance of the DVPO, members of the clerk's office and the judiciary will have to develop a set of procedural practices that maximize efficiency and effectiveness with reduced courthouse hours and reduced staff.

- **Language Access Services.**
  - If a litigant or witness is limited English proficient, a [Request for Spoken Foreign Language Court Interpreter](#) must be submitted to ensure a court interpreter is assigned to provide services during the remote hearing. It should be noted on the request form that the hearing will be held remotely via WebEx.
  - Once an interpreter is assigned, the local language access coordinator (LAC) will send an iCalendar to the requestor or other person designated in the request form which will contain the interpreter's name, email address, and telephone number. The WebEx invitation will need to include the interpreter's email address in order for the interpreter to provide services.
  - For short hearings where the consecutive mode of interpretation will be used, the interpreter should remain unmuted in order to perform the interpreter's functions, to report impediments, and to interpret what is being said after the speaker has finished speaking. All speakers should be instructed to speak in short, but full and complete, thoughts before pausing to allow the interpreter to interpret.
- **Initiating the WebEx Hearing.**
  - Designate a time of day when the court will hold these WebEx hearings.
  - Obtain an email address for each party and make sure the WebEx invitation is sent to all parties.
  - Obtain email addresses for any attorneys of record and make sure the WebEx invitation is sent to any attorneys of record.





- Call the day before the scheduled WebEx hearing, if feasible, to remind the litigants of their scheduled hearing. They also will receive a calendar reminder that is automated.
- **Conduct the WebEx Hearing.**
  - The host will initiate the WebEx hearing by starting the hearing. See Rule 19.3 of the Rules of Recordkeeping.
  - The host will be able to record the hearing and control the chat and mute functions.
  - Upon completion of the WebEx hearing, please remind participants to leave the meeting. This will ensure that any further communication between the parties, or the parties and the court, is terminated.
  - If the WebEx hearing is conducted in any location other than a courtroom or judicial office, please be mindful of privacy considerations. Please do not have other family members or anything that might make the personal life of the judicial official easily identifiable. Our goal is to leverage WebEx to enhance safety, not compromise it by unknowingly allowing litigants a peek inside a judge's personal life or home environment.
  - Complete instructions are available at <https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/WebEx-resources-online-audio-video-technology>

### **Section 3: Emergency Directive 6**

Emergency Directive 6 allows for alteration of service rules to include electronic service, notwithstanding [Rule 5](#) of the North Carolina Rules of Civil Procedure. Specific requirements, however, are attached to the usage of electronic service and each of these will be outlined in detail below.

#### **A. Allowable Electronic Service**

Emergency Directive 6 provides that, notwithstanding Rule 5, service may be made electronically upon parties and their attorneys with certain requirements.

#### **B. Party Consent to Electronic Service**

Service of court documents upon a party may be accomplished by email if the party has consented in writing to receiving the documents via email.

- The email address provided by the party can either be included in the consent or otherwise on record with the court in the case.



- To preserve confidentiality in the case, the plaintiff's email should be recorded on a separate consent that is not available to the defendant. If the consent is requested as part of the court record, the email address of the plaintiff should be masked as personal identifying information.
- The email must be timestamped by 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. A document timestamped after 5:00 P.M. Eastern Time on a regular business day will be deemed to have been served on the next business day.

### **C. Attorney Consent to Electronic Service**

If the attorney has consented to service by electronic means in writing, then service may be effectuated by email with certain requirements.

- The email address provided by the attorney can either be included in the consent or otherwise on record with the court in the case.
- The email must be timestamped by 5:00 P.M. Eastern Time on a regular business day to be considered served on that day. A document timestamped after 5:00 P.M. Eastern Time on a regular business day will be deemed to have been served on the next business day.

### **D. Multiple Parties and Electronic Service**

If one or more persons are served by email, then the certificate of service shall show the email address of each person so served.

- To preserve confidentiality in the case, the plaintiff's email address should be masked if possible, to prevent the defendant from making direct contact.

