



**Things to Know
NCDRC**

UPDATE: March 11, 2021

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Orders by Chief Justice that effect NCDRC Programs

Order from the Chief Justice Paul Newby

Chief Justice Paul Newby signed an [Order](#) January 13, 2021, effective January 14, 2021, providing for the extension and modification of certain Emergency Directives. The Order did not extend Emergency Directive 1, therefore Emergency Directive 1 is no longer in effect. Chief Justice Newby's Order restored to local judicial officials substantial decision-making authority over when and how to conduct other in-person trials and proceedings. He asked that local officials and employees use caution and due regard for the COVID-19 situation. Therefore, mediation settlement conferences *may* be conducted in-person beginning on January 14, 2021. The information below is subject to change based on future orders from the Chief Justice and Governor Cooper. **Court-ordered mediations under Rule 4 of the MSC and FFS Dispute Resolution Commission's Program Rules must be conducted through the use of remote technology. However, in person mediations may be conducted if (i) the mediator, all parties, and any other persons required to attend agree to be physically present and agree to comply with all local, state, and federal safety guidelines OR (ii) the court orders in person mediation.** North Carolina is facing uncertain and unprecedented times, the safety of the mediator and all parties to the mediation remains paramount. **Mediations shall, to the fullest extent possible, be conducted remotely via video or teleconference.**

HISTORY:

On May 1, 2020, Chief Justice Beasley issued an order to extend the effect of the previously issued emergency directives until May 30, 2020. By law, the Chief Justice's emergency directives expire after 30 days unless renewed. **Emergency directive 1 states that all superior court and district court proceedings must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless the proceeding will be conducted remotely.** Please see the May 1 order for additional exceptions. **Therefore, court-ordered mediations under a DRC program may be conducted remotely, if the mediator, all parties, and any other persons required to attend agree to waive the requirement to be physically present and agree to hold the mediation using remote technology.** Please note, under the May 1, 2020 order emergency directive 3 (that does not apply to mediations) eliminates a consent requirement for judicial officials to conduct remote hearings using teleconference technology.

On April 13, 2020, Chief Justice Beasley entered an [order](#) extending the deadline for filings or acts that otherwise would be due within the period covered by the order, such that those acts will be treated as timely done if done by end of business on June 1. All mediation filings or actions, including filing the Report of Mediator form and Designation of Mediator form, that are due to be filed or to occur on or after March 16th and by June 1st will be deemed timely if done by June 1st. For example, if a deadline to mediate is July 1st, the deadline remains July 1st. If the deadline to mediate is April 31st, the completion of mediation by June 1st would be considered timely. For more information, please review the [April 14, 2020, Memo](#) to mediators.

Chief Justice Beasley issued an order containing emergency directives on April 2, 2020. The Chief's [order](#) follows Governor Roy Cooper issuance of [Executive Order 121](#) on March 27, 2020, directing all individuals in the state to stay in their place of residence subject to limited exceptions. Chief Justice Beasley's April 2nd order provides that "North Carolina's courts are a critical government function and are therefore exempt from the [Governor's] Order. Nevertheless, [the courts] are directed, to the extent practicable, to maintain social distancing requirements, including 'facilitating online or remote access by customers if possible.'" **The Chief's April 2nd order states that all superior court and district court proceedings must be scheduled or rescheduled for a date no sooner than 1 June 2020, unless the proceeding will be conducted remotely.** Please see the April 2nd Order for additional exceptions.

The Chief Justice issued an Order on March 19, 2020 providing that if a deadline to act in a court proceeding falls between March 16, 2020 and April 17, 2020 the act is deemed timely if completed before or on April 17, 2020.

A Memo issued by the Chief Justice and NCAOC Director on March 15, 2020 clarified court proceedings to include non-essential in-person meetings. This includes mediations.

The Chief Justice issued an Order on March 13, 2020, effective March 16, 2020, to schedule or reschedule all superior court and district court proceedings to a date no sooner than 30 days from the date the Order was issued, with few exceptions.

NC Mediations

Pre-litigation:

The Chief's orders do not cover pre-litigation mediations. However, best practices would be to either postpone all mediations until after the Chief's order expires or conduct the mediation telephonically.

NC Court-Ordered Mediations:

Court-ordered mediations under a DRC program may be conducted remotely, if the mediator, all parties, and any other persons required to attend agree to waive the requirement to be physically present and agree to hold the mediation using remote technology. Rule 4 of the MSC and FFS Rules provide a mediation may be conducted via electronic means with the agreement of all parties. If all parties do not consent to hold the mediation using remote technology, the matter shall be rescheduled until after June 1, 2020, in compliance with the Chief's order.

Cases that have NOT been Ordered to mediation, but have pending litigation, fall under the Chief's order, therefore mediators should refer back to the Court-Ordered Mediation guidelines, above. (Per NCAOC Office of General Counsel.)

Mediation Deadlines

Under the Chief's order issued April 13, 2020, any court processes, or actions required to be done from March 16 to June 1, will be deemed timely if completed by June 1, 2020. Therefore, all Orders to Mediate with a mediation deadline between March 16 to June 1, is postponed to June 1, 2020. For example, if a deadline to mediate is July 1st, the deadline remains July 1st. If the deadline to mediate is March 31st, the mediation deadline is now June 1.

*Message from court-staff: "Mediation deadlines in district are always 30 days prior to the scheduled trial date unless they are condemnation cases or a DSO for a med-mal or wrongful death is entered that states otherwise. If the trial is continued, the deadline is automatically extended and no need for unnecessary paperwork".

*Please note, this may not be the case in all districts. Please refer to the local rules in your district.

Court Filings

Chief Justice Beasley issued an Order on April 13, 2020, extending all filing deadlines. All mediation and filing deadlines, including the Report of Mediator form due between March 16th and June 1 will be deemed as filed timely if filed on or before June 1.

North Carolina Industrial Commission

COVID-19 Update: Parties Must Appear Remotely for Mediations Conducted Prior to June 1, 2020

Consistent with Chief Justice Beasley's April 2, 2020 Order, all mediations held in Industrial Commission cases prior to June 1, 2020 shall be conducted with all parties appearing remotely or, in the alternative, be rescheduled for a date on or after June 1, 2020. If all parties do not consent to appear remotely, then the mediation must be rescheduled for a date on or after June 1, 2020.

Updated: April 15, 2020

COVID-19 Response: Industrial Commission Filing Deadline Policy

The Industrial Commission has received some inquiries from attorneys regarding its current filing deadline policy. At this time, the Commission has not granted an automatic, blanket extension of filing deadlines for the following reasons:

1. Parties may utilize the Industrial Commission's Electronic Document Filing Portal ("EDFP") to electronically file forms, responses, briefs, contentions, proposed opinions and awards/decisions and orders, proposed orders, and all other filings or documents to which a filing deadline applies. (Any attorney who is not registered to utilize EDFP but wishes to do so you can find more information on the [EDFP Registration Instructions](#) website.

2. **The Industrial Commission continues to allow *pro se* plaintiffs and *pro se* non-insured employers to file all documents by facsimile, U.S. Mail, private courier service, or hand delivery; and**
3. **Any party wishing to obtain an extension of a filing deadline for a reason related to COVID-19, or otherwise for good cause, may file a motion for an extension of time as allowed by applicable rules and statutes.**

NC Arbitration

Court ordered arbitration hearings should be continued under the Chief's ordered.

Federal Court Mediations

Staff has reached out to all Federal Courts regarding mediations, below are the response(s) we have receive to date. Check back for updates:

Q: "Can federal mediations be conducted remotely? If not, what about scheduled face-to-face mediations, can they be postponed and rescheduled?"

A: Western District: Yes – we will allow mediations to be conducted remotely during this time. Our attorneys set the mediation dates themselves to make sure they meet deadlines in the case management orders so the Court would not be involved in continuing a mediation itself – but rather other deadlines in the case that completion of mediation would affect. Our Local Rules provide that we are governed by the N.C. Mediation Rules so because of that we will also allow mediations to be conducted remotely during this time.

(1) Rules Governing Mediation. If a mediated settlement conference is ordered, it shall be governed by the *Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions* promulgated by the North Carolina Supreme Court pursuant to N.C. Gen. Stat. § 7A-38.1 (the "Mediation Rules"), and by these Local Rules

A: Eastern District: Yes, the EDNC will allow mediations to be conducted remotely during this time, as long as all parties agree. For More information, please visit the [Eastern District website](#) for up-to-date Orders.

A: Middle District: Please visit the [Middle District website](#) for up-to-date Orders.

North Carolina Business Courts

On March 23, 2020, Chief Justice Cheri Beasley issued an [Order](#) declaring catastrophic conditions resulting from the public health threat posed by COVID-19. Chief Business Court Judge Louis A Bledsoe, III, entered an Order on March 23, 2020, following Chief Justice

Beasley's orders declaring that catastrophic conditions exist throughout the State resulting from the public health threat posed by COVID-19. In Judge Bledsoe's Order, it states "that all pleadings, motions, or other documents and papers that were or are due to be filed in any action currently pending in the NC Business Court on or after 16 March 2020 and before the close of business on 17 April 2020 shall be timely filed if they are filed before the close of business on 17 April 2020".

*Mediations are not directly addressed in Judge Bledsoe's Order, however the N.C. Business Court follows The Supreme Court of N.C. Rules for Settlement Conference and other Settlement Procedures in Superior Court. If all parties do not consent to hold the mediation using remote technology, the conference will need to be rescheduled in compliance with Chief Justice Beasley's order issued on March 13th.

North Carolina Notaries

On March 11, 2021, House Bill 196, [S.L. 2021-3](#), was signed into law by the Governor. As a result of Sections of NCGS 10B-25, **emergency video notarization now expires at 12:01 AM on December 31, 2021**, and NCGS 10B Article 3, emergency video witnessing now expires on December 31, 2021. The sections became effective March 1, 2021.

Please visit the [North Carolina Secretary of State](#) website for information on emergency video notarization requirements, emergency notarization notary certificates and emergency notarization notary journal template.

HISTORY:

On March 1, 2021, the temporary emergency video notarization law, signed into effect by Governor Cooper on May 4, 2020, expired.

Pursuant to the NC Secretary of State's website:

VIDEO NOTARIZATION TO EXPIRE The General Assembly has not finalized action on the extension of the temporary emergency video notarization law, and will not do so before the law sunsets on Monday. We anticipate the General Assembly will be supportive of the extension and we expect it to be part of the upcoming COVID-related budget bill to be rolled out next week. However, other items in the bill are still being negotiated and the temporary emergency remote notarization will expire, even if it is for a short time. The law will expire at 12:01 a.m. on Monday, March 1, 2021. After this time, all notarial acts will revert to the original law requiring in-person presence by the principal signers.

Also expiring will be the time extension permitting an appointee to appear before a Register of Deeds within 90 days to take the oath of office. That time will revert back to 45 days.

Please visit the [North Carolina Secretary of State](#) website for information.

On May 4, 2020, Governor Cooper signed Senate Bill 704 into effect, providing for Emergency Video Notarizations.

Pursuant to Senate Bill 704, in consultation with and at the recommendation of Secretary of State Elaine F. Marshall, all Notaries Public as public officers of the State of North Carolina may temporarily perform emergency video notarizations until Aug. 1, 2020, so that notarial acts will not impede crucial business transactions, real estate transactions, medical documents, court documents, and most other important document notarizations. The following temporary emergency video notarization requirements were passed by the General Assembly and signed by Governor Cooper on May 4, 2020. They take effect immediately and will sunset on August 1, 2020.

Please visit the [North Carolina Secretary of State](#) website for information on emergency video notarization requirements, emergency notarization notary certificates and emergency notarization notary journal template.

On March 19, 2020, the [North Carolina Secretary of State](#) published the following helpful hints for notaries. Any questions regarding notaries, should be directed to the Secretary of State's email: notary@sosnc.gov.

North Carolina Notaries

During these uncertain times around the Covid-19 crisis, we wanted to provide our notaries with guidance on how to practice social distancing while complying with the in-person personal appearance requirements of the North Carolina notary law.

The statutory purpose of the notary law is to protect the public from fraud and forgery N.C.G.S. 10B-2(1)(3) and it is indeed in times such as this when notaries have to be even more vigilant as there are certainly those among us that seek to perpetrate all manner of fraud when people are most vulnerable would be evildoers relish opportunities to strike when we are at our most vulnerable.

It would take an unlikely statutory change to remove the requirement for the notary and the principal signer to be in "close physical proximity" during a notarization, see N.C.G.S. 10B-20(c)(1), N.C.G.S. 10B-3(16). However, with a little thought and preplanning, notaries can employ social distancing practices to reduce the amount of physical contact and time they need to spend with the signer.

Below are a number of steps that can be taken to reduce exposure during a notarization while satisfying the statutory requirements for a legal notarization:

Wear gloves and a mask – provide them for the principal signers also

Eliminate physical contact – do not shake hands

Do not share pens – have them bring their own, sanitize after usage or gift them

Keep a safe distance from the principal at all times (minimum of 6 feet) – Standing at the opposite ends of a 6’ conference table or passing documents through a bank teller’s glass window satisfies the personal appearance requirement

Do not touch the identification – view it from the desk/table top

Arrange the documents such that each document needing to be notarized is grouped together, the amount of time being spent with the signer can be dramatically reduced

Have the signer sign all signatures that require an acknowledgment prior to meeting the notary (Acknowledged signatures do not need to be signed in front of the notary they simply must be acknowledged)

Identify each page requiring a signature to be notarized prior to the notarial act so you can have the signer acknowledge each signature simultaneously i.e. “Do you acknowledge that you willingly signed page 2, 4, 6, 8 & 12?”

In the case where an oath is required on any of the documents, the signature would need to be made in the presence of the notary who would also need to administer an oath or an affirmation. When multiple oaths are required the notary may administer one single oath for all of the documents i.e. “Do you swear that the information on pages 1, 3, 5, and 9 is true, so help you God?”

After positively identifying the principal and administering the oath/affirmation or taking their acknowledgment, the notary may relocate to another room to complete the notarial certificate(s) as the law does not require the certificates to be completed in the presence of the principal signer N.C.G.S.10B-20(C)(1). Use sticky tabs to indicate where the principal needs to sign your journal.

Thank you for your continuing efforts to provide the best possible service to our citizens during this difficult time and stay safe.

As always, if you are unsure of anything as we try and navigate through this together, please reach out to the Department at notary@sosnc.gov. We are always happy to help.