



# COVID-19 PROPOSED HEARING PRIORITIES FULL DETAIL OF WORKING GROUP RESPONSES

May 2020

*Below are the full detailed responses of constituent working groups regarding a proposed prioritization of hearing types following the resumption of limited court operations on June 1, 2020. Items listed in these full submissions were deemed “high, medium or low” on the accompanying Excel summary not solely based on a determination of importance, but also with consideration given to what is realistic and safe with respect to timing.*

## **Chambers of Chief Justice Beasley**

### Criminal Actions and Infractions

The following proceedings are examples of some that may be heard under the Chief Justice’s Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. Issue of search warrants under Chapter 15A, Article 11; of administrative inspection warrants under Chapter 15, Article 4A; of nontestimonial identification orders under Chapter 15A, Article 14; and of orders under Chapter 15A, Articles 12 and 16.
2. Determination of eligibility for and conditions of pretrial release under Chapter 15A, Article 26.
  - a. When determining conditions of release, in the interest of minimizing the risk of infection resulting from confinement of defendants in local jails, judicial officials are reminded of the statutory presumption against secured bonds in N.C.G.S. § 15A-534(b).
3. Issue of criminal process under Chapter 15A, Article 17.
  - a. In the interest of minimizing the risk of infection resulting from confinement of defendants in local jails, judicial officials are reminded of the statutory presumption in favor of criminal summons instead of warrants for arrest, as provided in N.C.G.S. § 15A-304(d)(1).
4. Initial appearances under N.C.G.S. § 15A-511.
5. First appearances under Chapter 15A, Article 29.
6. Probable cause hearings under Chapter 15A, Article 30.
  - a. Probable cause hearings for defendants not in custody may be postponed unless the proceeding can be conducted remotely.
7. Hearings on motions for modification of conditions of release (bond hearings) under Chapter 15A, Article 26.
8. Proceedings to appoint counsel for indigent defendants under Chapter 7A, Article 36, that occur outside the context of the preliminary proceedings listed in this section may be conducted in chambers or *ex parte*, as needed.



9. Preliminary hearings on probation violations under N.C.G.S. § 15A-1345(d) and revocation hearings under N.C.G.S. § 15A-1345(e) for probationers who are in custody pending their revocation hearings.
10. Extradition proceedings under Chapter 15A, Article 37.
11. Arraignments under Chapter 15A, Article 51 for defendants in custody.
12. Proceedings to determine or review a defendant's capacity to proceed under Chapter 15A, Article 56.
13. Proceedings on petitions for writs of habeas corpus pursuant to Chapter 17.

To the extent feasible, proceedings should be conducted remotely, provided that the criminal defendant has given informed consent to remote appearance. NCAOC has provided a standard colloquy and form to be used in documenting that informed consent has been given.

Judicial officials are encouraged to consider interim fee applications for private assigned counsel.

Judicial officials are encouraged to stay enforcement of pending orders for arrest resulting from a failure to appear when the underlying charge was a misdemeanor or low-level felony.

Pursuant to the Chief Justice's Emergency Directive 7, failure to pay a legal financial obligation shall not be considered willful during the pendency of the catastrophic conditions declaration. Judicial officials should not issue an order for arrest based on a failure to pay a legal financial obligation, including child support obligations, and are encouraged to stay enforcement of pending orders for arrest resulting from a failure pay a legal financial obligation.

#### Civil Actions

The following proceedings are examples of some that may be heard under the Chief Justice's Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. Incompetency proceedings under Chapter 35A, Article 1.
2. Civil actions to review or extend a quarantine or isolation order pursuant to N.C.G.S. § 130A-145.
3. All proceedings for the issue of, modification of, enforcement of, renewal of, and relief from domestic violence protective orders under Chapter 50B, civil no-contact orders under Chapter 50C, and workplace violence prevention orders under Chapter 95, Article 23.
4. *Ex parte* and emergency hearings pursuant to Chapter 108A, Articles 6 and 6A, for the protection of abused, neglected, or exploited disabled adults. Petitions for subpoenas to obtain financial records of older or disabled adults under Article 6A are addressed under Special Proceedings, below.
5. Proceedings for temporary restraining orders (TROs) under N.C.G.S. § 1A-1, Rule 65(b).
6. Proceedings pursuant to N.C.G.S. § 20-13.3(d2) and N.C.G.S. § 20-16.5(g) challenging civil revocation orders, proceedings on petitions for the issuance of a limited driving privilege, and





proceedings on the return of seized motor vehicles and other conveyances under N.C.G.S. § 18B-504, N.C.G.S. §§ 20-28.2 and 20-28.3, and N.C.G.S. § 90-112.1.

Because all filing deadlines have been extended until June 1, 2020, entry of default and default judgments pursuant to N.C.G.S. § 1A-1, Rule 55, should not occur until after June 1, 2020.

#### Juvenile (Civil) Actions

The following proceedings are examples of some that may be heard under the Chief Justice's Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. Any abuse, neglect, or dependency hearing already in progress before March 16, 2020.
2. Non-secure hearings under N.C.G.S. §§ 7B-504 and 7B-506 (including consent to juvenile medical care under N.C.G.S. § 7B-505.1).
3. Adjudicatory hearings under N.C.G.S. § 7B-801(c).
4. Initial permanency planning hearings under N.C.G.S. §§ 7B-901(d), -906.1(d)(3), or -906.1(a).
5. Any uncontested hearing in which an order may be entered through stipulations or consent. Judicial officials are particularly encouraged to prioritize those matters where reunification with a parent, guardian, or custodian is planned.
6. Petitions for judicial waiver of parental consent under N.C.G.S. § 7B-200(7) and Chapter 90, Article 1A, Part 2.
7. Petitions under N.C.G.S. § 7B-303 to cease obstruction or interference with an assessment.
8. Proceedings for judicial authorization of emergency treatment under N.C.G.S. § 7B-3600.
9. Any motions or petitions of an emergency nature that, in the discretion of the presiding judge, require the court to proceed immediately in order to ensure the health and safety of the minor.

#### Delinquency/Undisciplined Actions

The following proceedings are examples of some that may be heard under the Chief Justice's Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. Any delinquency or undisciplined juvenile hearing already in progress before March 16, 2020.
2. First appearances under N.C.G.S. § 7B-1808(a).
3. Initial nonsecure and secure custody review hearings under N.C.G.S. § 7B-1906(a).
4. Subsequent nonsecure and secure custody review hearings under N.C.G.S. § 7B-1906(b) and (b1), unless the juvenile is alleged to be delinquent and consents to a waiver of a subsequent hearing.
5. Probable cause hearings under N.C.G.S. § 7B-2202(a), unless waived by the juvenile.
6. Hearings related to extension of confinement in a youth development center under N.C.G.S. § 7B-2515.
7. Detention hearings under the Interstate Compact for Juveniles, ICJ Rule 7-105.





Judicial officials are encouraged to utilize remote proceedings and to otherwise limit to the greatest extent feasible the need for physical appearance of a youth who is currently in a youth development center.

### Estates

The following proceedings are examples of some that may be heard under the Chief Justice's Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. For guardianship estates, all guardianship proceedings for incompetent adults under Chapter 35A.
2. Minor guardianship proceedings pursuant to Chapter 35A, Article 6; proceedings for the appointment of standby guardians for minors pursuant to Chapter 35A, Article 21; and proceedings to transfer a guardianship to or from another state pursuant to N.C.G.S. § 35B-30 and 35B-31.
3. In decedents' estates, clerks of superior court continue to exercise jurisdiction and discretion over scheduling in the probate of wills and the administration of decedents' estates and are encouraged to continue processing estates matters while observing appropriate social distancing guidelines. Clerks are encouraged to proceed with any hearing in which delay is likely to result in immediate, irreparable harm or prejudice to any party.
4. Proceedings regarding powers of attorney under N.C.G.S. § 32C-1-116.
5. Trust proceedings under Chapter 36C, Article 2, in which delay is likely to result in immediate, irreparable harm or prejudice to any party.

### Special Proceedings

The following proceedings are examples of some that may be heard under the Chief Justice's Emergency Directives. Judicial officials should take steps to conduct these proceedings in a manner that protects the health and safety of all participants to the greatest extent possible.

1. Proceedings to permit the sterilization of an incompetent adult under N.C.G.S. § 35A-1245.
2. Proceedings for the appointment of a guardian or issuance of a protective order under N.C.G.S. § 35B-18(a).
3. Proceedings for the appointment of a personal representative for mismanaged public assistance under N.C.G.S. § 108A-37.
4. Proceedings for the issue of subpoenas to obtain financial records of older or disabled adults under Chapter 108A, Article 6A.
5. All proceedings related to civil commitments under Chapter 122C of the General Statutes, including, but not limited to, judicial review of voluntary admissions and involuntary commitments.





## **District Court Judges**

### District Criminal Court

Note: The group recommends a meeting of key stakeholders to plan expansion of court operations in each district: the chief district court judge, the district attorney, the clerk of superior court, the sheriff, representative(s) of the private defense bar, and the public defender, where applicable.

Stakeholders should make decisions based on local needs and priorities, considering the following factors and case classifications:

1. Cases involving defendants in custody, including pleas, bond hearings, and other pretrial matters
2. Cases involving individual victims
3. Class A1 and 1 misdemeanors
4. Cases with statutory time requirements for hearing:
  - a. DWI cases involving vehicle seizure (G.S. 20-28.3(m))
  - b. Probable cause hearings (G.S. 15A-606)
  - c. Probation violation preliminary hearings (G.S. 15A-1345(c))
5. Chapter 20 cases with high importance to public safety
  - a. Misdemeanor death by vehicle (G.S. 20-141.4)
  - b. Driving while impaired (G.S. 20-138.1)
  - c. Passing stopped school bus (G.S. 20-217)
6. Case age
7. Civil matters arising out of criminal cases
  - a. Vehicle seizures (G.S. 20-28.3)
  - b. Limited driving privileges (G.S. 20-20.1; G.S. 20-179.3)
  - c. District Court review of pretrial civil license revocations (G.S. 20-16.5(g))
8. Procedures to allow district attorney or defense to add on cases in the interests of justice

Regarding administrative traffic court:

- The group does not deem it feasible to process large numbers of traffic cases in district courts in the near future
- Local circumstances may allow attorneys to process cases with the district attorney by appointment, or by other means that allow for social distancing
- Virtual hearings, appearance by waiver, and other online procedures should be adopted as appropriate to local districts, and communicated to the bar and public

### Domestic Court Priorities

Note: Depending on how domestic cases are heard in your district or county, it may be possible to equally prioritize multiple case types in separate courts and/or at separate sessions. In Gaston County we have separate sessions and courts for IV-D Child Support and 50B cases as not to mingle them with other temporary domestic courts. According to Judge Gavin, Randolph County does the same.





1. 50b cases
2. Temporary Custody
3. Temporary Child Support
4. Contempt related to child custody/visitation or child support
5. Post Separation Support
6. Interim Distribution
7. Divorce from Bed and Board
8. Permanent Hearings on Equitable Distribution, Alimony, Child Custody and Child Support

---Although not listed--- Any matters that can be heard without contest and with minimal parties being present should be mixed in with the priority cases. Such as Divorces (encourage summary judgment), motions to withdraw, consent orders etc.....

District Civil Court Priorities  
Summary Ejectments

**Conference of District Attorneys**

Phase 1 – “High”

Phase 1 (tentatively through May 8)		
Statewide	Courthouse-wide	Inside the DA's Office
Stay At Home order remains in place, people can leave home for commercial activity	Superior Court Hearings: continue to only have PV first appearances, bond hearings, & in-custody pleas	Continue to work in shifts; staff may elect to work on unassigned days and must sign in (vulnerable employees continue working from home)
Those retailers and services will need to implement social distancing, cleaning, and other protocols	Superior Court Admin: require defense attorneys to file updates (similar to the homicide calendar)	Employees with shared work spaces must alternate day in, must sanitize surfaces on way out
Gatherings limited to no more than 10 people	Grand Jury: sporadic as scheduled by Senior Resident Superior Court Judge	Only individual permitted in their work space/office; document exchange occurs in common areas
Parks can open subject to gathering limits	Felony District Court: continue to only handle in-custody cases	Face coverings required when not in individual offices
Face coverings recommended in public	Regular District Court: continue to handle in-custody defendants and any other case by waiver where sentence does not result in incarceration	Restrict access to the DA's Office to only employees and use outside space for meetings/WebEx
Restrictions remain in place for nursing homes and other congregate living settings	Traffic Court: continue to promote, only handle i-plea & ECAD	
Encourage continued teleworking	Temperature monitoring and facemask distribution by nurse at entrance	





Phase 2 – “Medium”

### Phase 2 (at least 2-3 weeks after Phase 1)

Statewide	Courthouse-wide	Inside the DA's Office
Stay At Home order with strong encouragement for vulnerable populations to continue staying at home	Superior Court Hearings: add bench trials, hearings w/ witnesses to PV first appearances, bond hearings, & in-custody pleas	Phase in staff to supplement staggered teams to meet increased work demands
Allow limited opening of restaurants, bars, and other businesses that can follow strict safety protocols (reduced capacity)	Superior Court Admin: out-of-custody pleas & hearings resume; 30 minute plea times & number of people in the courtroom continues to be limited	Have a minimum of two teams that never meet or work together simultaneously
Allow gathering at houses of worship and entertainment venues at reduced capacity	Grand Jury: begins to resume normal schedule	Employees with shared work spaces must alternate day in, must sanitize surfaces on way out
Increase in number of people allowed at gatherings	Felony District Court: adds out-of-custody, but limit on number	Only individual permitted in their work space/office; document exchange occurs in common areas
Open public playgrounds	Regular District Court: same as FDC	Face coverings required when not in individual offices
Restrictions remain in place for nursing homes and other congregate living settings	Traffic Court: continue to promote, only handle i-plea & ECAD	Restrict access to the DA's Office to only employees and use outside space for meetings/WebEx

Phase 3 – “Low”

### Phase 3 (at least 4-6 weeks after Phase 2)

Statewide	Courthouse-wide	Inside the DA's Office
Lessen restrictions for vulnerable populations with encouragement to continue practicing physical distancing	Superior Court Hearings: jury trials (with new physical distancing rules) resume	Either everyone back in the office (with new physical distancing for vulnerable) OR half-and-half (depending on expert recs)
Allow increased capacity at restaurants, bars, other businesses, houses of worship, and entertainment venues	Writs from DAC resume	
Further increase the number of people allowed at gatherings	GJ, Felony & Regular DC continue, but w/ continued distancing	
Continue rigorous restrictions on nursing homes and other congregate care settings	Traffic Court: public come in at staggered times, attorneys at their own times	





### Regarding the Resumption of Jury Trials

The Chief Justice shall permit District Attorneys to calendar cases for jury trials beginning August 3, 2020.

The Governor has currently implemented Phase I of re-opening North Carolina. If positive projections continue, he will implement Phase II of re-opening May 22<sup>nd</sup>. He has indicated that our state may stay in Phase II for two to four weeks. If we enter into Phase III by the third week of June, then state operations will have been fully open at least 5 weeks by the time jury trials are allowed to resume August 3<sup>rd</sup>. This period of time, from June 1<sup>st</sup> to August 3<sup>rd</sup>, should give District Attorneys, Judges, Defense Counsel and Clerks enough time to prepare for any jury trials that are set.

District Attorneys should set such cases that are ready to proceed with consultation from all parties. Certain case types should not be exempted on a statewide basis because individual districts vary greatly in their readiness to proceed and it is a local decision which cases to calendar based upon input from the parties involved. Any cases can be continued as determined by a Superior Court Judge that the case comes before in the district.

While our environment could change at any time and adjustments might need to be made or timelines adjusted, it is in the interest of justice that a date certain be set so that parties can be appropriately prepare.

### **Association of Court Managers**

#### District Court Criminal

##### **A. Criminal**

a. Admin	Medium
b. Misdemeanor	Medium
c. DWI	Medium
d. Traffic/Infractions/Disposition	Medium
e. First Appearances	High
f. Felony Probable Cause	High
g. Bond Forfeiture	Low
h. Expunction	Low
i. Drug Treatment	High
j. DWI Treatment	High
k. Veterans Court	High
l. Domestic Violence Bond Hearings	High
m. Probation Violation	High
n. H&I Felonies	Low
o. Citizen-initiated Complaints	Medium
p. Pleas	High





## District Court Civil

<b>B. Civil</b>	
<b>a. General Civil</b>	
i. Magistrates/Small Claims (ejectments)	High
ii. Jury	Low
iii. Nonjury	Medium
iv. Motions	Medium
v. Minor Settlements	High
vi. Tax Delinquency	Low
<b>b. Arbitration</b>	Low
<b>c. Domestic</b>	
i. Divorce	Medium
ii. Custody	High
1. Ex Parte Temporary Custody	High
2. Temporary Custody	High
iii. Child Support	Medium
iv. Post Separation Support/Alimony	Medium
v. Equitable Distribution	Medium
<b>d. Domestic Violence</b>	High
i. Ex Parte Temporary hearing	High
ii. Permanent hearing	High
iii. No-Contact	High
1. Ex Parte Temporary hearing	High
2. Permanent hearing	High
<b>e. Child Support</b>	Medium
i. Establishment	Medium
ii. Enforcement	Medium
iii. Motions	Low
<b>f. Juvenile</b>	High
i. Abused, Neglected, Dependency	High
1. Non-secure Custody Petitions	High
2. Compliance petitions	High
3. Obstruction Petitions	High
4. Adj/Disp/Reviews	High
ii. Delinquency/Undisciplined	High
1. First Appearances	High
2. Secured Custody Petitions	High
3. Adj/Disp/Reviews	High
iii. Non-secured Custody	High
iv. Emancipation	Medium
v. Termination of Parental Rights	Medium
vi. Judicial Waivers	High
<b>g. Involuntary Commitment hearings</b>	High





Superior Court Criminal

**(CRIMINAL)**

<b>PRIORITY</b>	<b>COURT TYPE</b> <i>*Statutory priority noted below the type, if applicable</i>
High	A. Administrative Sessions
Low	B. Misdemeanor Appeals
High	C. First Appearances
High	D. PVs – In-custody/Jail cases
Medium	E. PVs – Not in custody
High	F. PV Arrest Review <i>* PV preliminary review must occur within 7 days of arrest for P.C.</i>
High	G. Pleas – In-Custody/Jail cases
Medium High	H. Pleas – Not in custody
Medium High	I. Jury Trials
Low Medium	J. Non-Jury Trials
Medium High	K. Motions
High	L. Grand Jury
Low Medium	M. Innocence Commission Referred Cases
Low	N. Sex Offender Registry Hearings
Medium	O. Bond Modifications
High	P. Review and Issuance of Search Warrants
High	Q. Review and Issuance of LEO Orders (phone orders)
Medium	R. Motions for Appropriate Relief (or related Evidentiary Hearings)
High	S. Writs of Habeas Corpus
Medium	T. Specialty Courts (drug court/90-96 hearings, Veterans Treatment Court, etc.)





Superior Court Civil

**KEY**

NCBC = North Carolina Business Court

BCR = Business Court Rules

**(CIVIL)**

<u>Priority</u>	<u>Hearing Type</u>
	<i>*Statutory priority noted below the type, if applicable</i>
Medium High	A. Jury Trials
Medium High	B. Non-Jury Trials
High	C. Settlement Approvals
High	D. Motions (split between dispositive, emergency, contempt, TROs, etc.)  BCR 9.3 Case Management Conferences BCR 10.9 Discovery Disputes NCBC Status Conferences
Low High	E. Petitions for Release of Law Enforcement Agency Recording  <i>* Statutory priority under N.C.G.S. 132-1.4A(f): petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.</i>
High Medium	F. Appeals from the Clerk (i.e. Foreclosure, Incompetency)
High	G. Will Caveats
High Low	H. Facial Constitutional Challenges to acts of the General Assembly (i.e. 3JP cases)
Medium	I. Administrative Sessions
Medium High	J. Swearing-In of New Attorneys and Judges
Medium	K. Administrative Appeals
High	L. Judicial Review of State Board Decisions (i.e. appeal of State Board of Elections decision)
Low	M. Gun Permit Denial Appeals





## Juvenile and Family Matters

### **(FAMILY COURT/JUVENILE COURT)**

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\*\* = Indicative of High Priority

#### CUSTODY\*\*

- Ex Parte – Emergency
- Temporary
- Permanent

#### DOMESTIC VIOLENCE\*\*

- Ex Parte
- Return Hearing

#### CHILD SUPPORT

- Temporary
- Permanent

#### POST-SEPARATION SUPPORT

#### INTERIM DISTRIBUTION (TRO)

#### TEMPORARY RESTRAINING ORDERS

#### CONTEMPT

- First Appearance
- Hearing

#### EQUITABLE DISTRIBUTION and ALIMONY

- Initial Status Conference
- Final Pre-Trial Conference
- Trial

#### INVOLUNTARY COMMITMENTS

#### JUVENILE

- Abuse/Neglect/Dependency\*\*
  - First Appearances
- Non-Secure Custody Hearings
- Delinquency





## Members of the Family Law Bar

1. Domestic Violence Chapter 50B matters [high]
2. Emergency Custody Hearings [high]
3. Contempt Hearings [high]
4. Temporary child support, support modification and PSS hearings [high]
5. 50-20 i1 motions for interim distributions, and hearings for injunctions [high]
6. Temporary Custody hearings [high]
7. Concluding trials in progress [high: As compared with starting new trials these matters should have priority]
8. Unopposed motions, absolute divorces, motions to withdraw and consent orders [medium: because these are easy and do not need an in-person hearing]
9. Trials for alimony, initial custody determinations and equitable distribution [low: because these trials will require more time and typically more witnesses and exhibits. We anticipate that these may need to be triaged to determine if they should be referred for an out of court evidentiary hearing to resolve of one, some or all issues]

### Phase 1

June 1, 2020 until such time as the courts acquire safety infrastructure, modification of rules and statutes and protocols for new procedures. These phases may not be specifically defined at this point. Family lawyers have identified their priorities in terms of issues we believe District Courts should deal with first because they are the most urgent for our clients. Here is how we suggest they can be heard. Note: The attorney fee issue should be included in all matters in which the statute provides for attorney fees.

1. Domestic Violence Chapter 50B matters [high]  
These cases are already being addressed virtually in many districts at least upon initiation. Plaintiffs go to a safe place, electronically transmit their claims to the court and the court conducts a virtual ex parte hearing to determine how to rule on the motion for a protective order. This technology and the infrastructure is not available statewide, but it is certainly proven to work.  
  
This is not a criminal proceeding. In addition to social distancing there is a safety issue for alleged victims that supports conducting the evidentiary hearings for these matters remotely. This would require a portal for pro-se defendants. In cases where attorneys represent parties, if social distancing is possible those cases can be handled in court. These would be the highest priority cases in view of family lawyers. Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff.
2. Emergency Custody Hearings  
There is a very limited basis for a court to order a change in the status quo prior to the service of a complaint for custody. These ex parte orders are required to return for hearing promptly. Until the infrastructure and requisite rules changes are in place for virtual evidentiary hearings, these matters will require in person judicial attention in court with appropriate safety measures.





Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff. These are the second highest priority issues for family lawyers.

### 3. Contempt Hearings

Show cause orders may be issued upon submission of verified pleadings alone or with a remote ex parte conference using the telephone or video conferencing infrastructure in place already. The procedures applicable to criminal trial proceedings will apply to contempt hearings since there is both a civil and criminal remedy available. Family lawyers are experiencing widespread frustration among our clients. Litigants are violating court orders with impunity as they do not expect judicial intervention. Unless the courts make enforcement of orders a priority, there is a risk of widespread failure to comply. Not only is this bad for our clients who depend on compliance but is a threat to the rule of law. The fair administration of justice fundamentally depends upon the equitable enforcement of the court's orders. For this reason, family lawyers prioritize hearings upon the issue of enforcement of court orders above all other matters aside from the emergency matters set out above. Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff.

### 4. Temporary child support, support modification and PSS hearings

These issues have not been addressed in most if not all courts since March 13. All hearings pending at that time and all new filings are waiting for disposition. Based on our relatively recent experience with economic upheaval in 2008, the experience in other countries in the wake of COVID-19 and just plain common sense, it is reasonable to expect not only an increase in dissolution of marriages and separation of parents with children as a result of the stress caused by this social and economic disruption. We can also expect a substantial increase in pro-se filings. The courts have the present statutory authority to render orders for post separation support based upon affidavits without a hearing. There is no authority for the court to render orders establishing or modifying child support or setting or modifying alimony without an evidentiary hearing.

Family lawyers believe these issues to be an important priority. The economic fallout of this pandemic has been swift and devastating. The unemployment rate is 14% nationwide. Many economists predict unemployment will meet or exceed the jobless rate in the great depression before year end. The pandemic creates serious household disruption for families with children. There will be significant demand for both modification and establishment of financial orders. Families, especially children will be harmed if the courts cannot meet this demand.

Generally, these issues may be resolved with relatively few documents and could be done remotely. There are already model procedures for remote hearings planned for use in Guilford County and perhaps other districts. Most if not all districts are equipped with laptops and licenses for WebEx. Many judges use Zoom. We need a template for a protocol for conducting these hearings remotely, authority for judge to order remote hearings and staggered scheduling





to reduce the need for use of courthouse facilities. When remote hearings are not possible, the courts should use in court time for these matters in the next order of priority.

5. 50-20 i1 motions for interim distributions, and hearings for injunctions

Under the present circumstances one party may have control of assets that should be shared, or liabilities should be apportioned pending the final equitable distribution. The court has the authority to make orders for interim distribution based upon information presented in chambers. These issues may be handled using telephone or videoconferencing by requiring the submission of written materials using e-mail.

The delay in equitable distribution cases makes it more important than usual for courts to impose orders to prevent the waste, disappearance or conversion of property subject to distribution. The court can enter a temporary order ex parte however absent agreement an evidentiary hearing is required for injunctive relief pending an order for equitable distribution. The court can conduct these hearings remotely. If this is not possible, the family law bar asks the court to use court time to resolve these issues in the next order of priority.

6. Temporary Custody hearings

Absent allegations of substantial risk of bodily injury, sexual abuse or abduction, the court may only order a change in the status quo for a child with notice and an evidentiary hearing. Until the infrastructure is available for these hearings to be conducted remotely, the court will need to use in person court time to resolve these issues. These issues involve discerning the best interests of children. Family lawyers expect that the social and economic turmoil caused by the pandemic places children at relatively higher risk presently. We believe these issues deserve priority for court time.

7. Unopposed motions, absolute divorces, motions to withdraw and consent orders

These tasks are not priorities. However, they are squarely within what the courts can do now and in Phase 1. Consent orders require no notice. Motions including motions for summary judgement for divorce, unopposed motions and motions to withdraw only require notice. These properly noticed motions may be resolved without a hearing. Pursuant to N.C.G.S. 50-10(e) the Clerk of Court may enter a decree of absolute divorce without a hearing.

8. Other non-evidentiary motions

These motions can be resolved based on briefs and affidavits in the discretion of the court if authorized by an appropriate rule.

9. Concluding trials in progress

If the courts have time to meet all of their other responsibilities and the priority matters listed above, the family law bar recommends that the first trials scheduled in phase one be the trials started before March 13 and interrupted as a result of the pandemic. Requiring the litigants in these cases to wait in line behind those cases scheduled for hearing after them and potentially cases filed after trials were started is both unfair to the litigants and inefficient for the court.





#### 10. Family law case triage

Phase 1 is a perfect time for judges to sort and manage cases. There are sample protocols available for dividing cases into ones that are simple to resolve, need some technical assistance or require substantial judicial intervention. It is easy for courts to arrange for lawyers to meet with the court by phone or teleconference to identify issues that the court can resolve without evidence, to identify bottleneck issues that may be referred or to discuss and decide if all or part of a case should be referred and to establish deadlines. The court has authority under Rule 53 to refer some matters. That authority could be expanded by rule to permit the court to keep cases moving toward resolution without requiring people to come to the courthouse.

#### 11. The Chief Justice uses her emergency rulemaking authority to:

- a. Prescribe rules for remote evidentiary hearings;
- b. Authorize trial courts to mandate that hearings be held remotely;
- c. Authorize courts to refer issues of equitable distribution, alimony and child custody to referees/arbitrators; and
- d. Seek such statutory revisions as needed to authorize the continuation of these practices after the emergency.

### Phase 2

During phase 2, the courts will need to constantly adjust and rebalance resources to meet priority tasks. Judges and personnel may have to deviate from their routines to deal with spikes in criminal, traffic, probation violations, IV-D child support and eviction appeals as well as dealing with short staffed support in the Clerk's office and Sheriff's Department. Across the state the courts will need to repair, replace or create new infrastructure to support a different and hopefully better way to dispose of family law matters. This will likely include but not be limited to the following:

- Acquisition of hardware and software needed to conduct remote proceedings
- Constantly evaluating technological advances and gauging public acceptance of technology
- Development of rules and protocols to govern remote evidentiary hearings
- Training for the judges, court personnel, attorneys and the public about new technology and procedures
- Developing more user-friendly public interface methods that replace face to face meetings (chat, phone, e-mail, web postings, instructional videos...)
- Working with public health officials to further modify physical facilities to accommodate social distancing, people working remotely, logistics, reallocation of space, signage and myriad other unanticipated issues
- Securing permanent rule and statute modifications needed to ramp up new processes and continue them beyond the state of emergency
- Prioritizing and allocating scarce resources to immediate, intermediate and long-term responses to the pandemic
- Mobilizing and organizing the stakeholders into a productive collaborative mutually supportive group working to make the district courts more responsive, equitable and accessible than before.





- Developing a metric to evaluate what is tried, what succeeds and what fails around the state and sharing that information.
- Helping each other deal with the stress this is causing and the inevitable letdown we will feel when the adrenaline disappears.

During phase 2 some courts may be able to safely accommodate more face to face proceedings. Courts that initiated innovative practices should share the results so those successful processes and modifications can be tweaked and put into play in similar environments. Hopefully, the innovation forced upon us by the pandemic will create the space, time and inclination to go further to improve courts with innovation.

Family lawyers favored making matters other than new trials the immediate priority in Phase I. In Phase 2 the objective is to provide trial judges the tools they need to deal with the anticipated spike in new family law cases particularly new pro-se cases. In the family law arena, courts spend their largest blocks of time on high conflict custody cases, alimony cases, equitable distribution cases and at times cases involving both equitable distribution and alimony. The court must manage multiple witnesses, sequencing of experts, and the sometimes-disruptive schedules of witnesses, parties and attorneys. These types of trials often take days, sometimes weeks to complete particularly when judges are required to deal with other issues during the trial. After the evidence is presented and arguments are concluded, the judge must review the evidence and formulate an order, publish the order, deal with comments and enter the order.

In order to devote adequate time to these trials, courts resort to either modifying their rotation, seeking a special judge or conducting hearings piecemeal over months. It is reasonable to suppose that the resources needed for the pandemic will make it even more difficult for courts to deal with these cases. The courts will need special judges and retired judges to help deal with spikes in routine matters. So, these resources may not be available for complex cases. Moreover, there may not be space available for the trial even if there is a judge.

Family lawyers propose that the Chief Justice expand the reference rules and make other rulemaking changes needed to permit courts to mandate that parties litigate all or some of their issues before a referee/arbitrator. If they cannot agree, then the court should have the authority to appoint one. This will not be an option in every case, but it certainly will be in many cases. Upon the return of the reference, the court can determine whether to accept the referee's reasoned ruling or not. If the court accepts it, then the issue is resolved at the trial court level. The court may provide for an interim allocation of property to finance the reference if that is necessary. The Chief Justice should ask the legislature to change any statutes that prevent this innovation from continuing past the pandemic.

During Phase 2 we anticipate that there may be innovations to be tried that may involve more planning and maybe pilot projects before they are ready to adopt. We anticipate that particular districts may need specific programs tailored to their needs. Family law attorneys need to participate in the design and execution of those programs. During Phase 2 we expect to see a great deal more remote calendar





calls, scheduling conferences, staggered motion hearings, remote evidentiary hearings and trials as judges, attorneys and the public become accustomed to the new way of doing things.

### Phase 3

We may find ourselves bouncing back and forth between phases. Phase 3 should include changes in buildings, technology and workforce to accommodate the innovations that will be institutionalized. More important, the fear of change that is inherent in the customs and processes that link the courts of today with the first courts will relax a bit and allow the judicial branch to hold fast to the principles of fairness, equal access, and unbiased justice while embracing innovation. In the Family Law arena, the courts should explore:

- Online dispute resolution for IV-D child support cases (Michigan model)
- Making family support services such as parenting coordinators, parenting educators and guardians ad litem available state-wide for Chapter 50 custody matters

### **Superior Court Judges**

The Superior Court Work Group endorses the work of the Court Managers Work Group as a tool that can be provided to local judges for their use in the exercise of individual discretion in identifying priorities for local Case Management.

As an additional tool for local Superior Court Judges, this group is drafting a checklist of general considerations, taking into account special concerns relating to COVID-19, that may be used by local judges in crafting local policies and practice for Case Management during this expansion period.

We recognize that increased demand during coming months for courtroom space, coupled with scheduling demands placed upon lawyers, will create an increased number of scheduling conflicts. We consider that the issue of scheduling conflicts is addressed adequately by Rule 3.1 of the General Rules of Practice: Guidelines for Resolving Scheduling Conflicts. Specific note is given to the fact that under Rule 3.1, priority is granted with respect to the nature of the proceeding rather than the trial division in which the case is pending. The Rule further provides that nothing in those guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

