



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: NC Judicial Branch

FROM: Trey Allen, NCAOC General Counsel
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SUBJECT: Existing Authority for Remote Judicial Proceedings

The Office of General Counsel has received several recent inquiries from judicial officials regarding the continued use of audio and video transmissions to conduct court proceedings remotely. This memorandum summarizes the existing legal authority for some remote proceedings.

Emergency Directive 3 (Remote Hearing Authority)

In general, [Emergency Directive 3 of Chief Justice Newby's 14 January 2021 COVID-19 order](#) permits judicial officials to conduct court proceedings using remote audio and video transmissions, so long as the officials "safeguard the constitutional rights of those persons involved in the proceeding[s] and preserve the integrity of the judicial process." The authority granted by Emergency Directive 3 is subject to important requirements and limitations. For example, if a criminal defendant's right to confront witnesses is implicated, audio and video transmissions are not allowed unless the defendant has waived the right to in-person confrontation.

Emergency Directive 3 does not extend to jury proceedings or to "proceedings in which the use of remote audio and video transmissions is already permitted by law." Therefore, where a statute already provides for the use of audio and video transmissions, the proceeding is governed by that statute, not by Emergency Directive 3.

Unless renewed by Chief Justice Newby, Emergency Directive 3 will expire on 12 February 2021.

Remote Proceedings Under Applicable Statutes

The following statutes authorize the use of audio and video transmissions in designated proceedings:

- [G.S. 7B-1906\(h\)](#) (continued custody review hearing)
- [G.S. 15A-245\(a\)\(3\)](#) (search warrant)
- [G.S. 15A-304\(d\)\(3\)](#) (arrest warrant)
- [G.S. 15A-511\(a1\)](#) (initial appearance)
- [G.S. 15A-532\(b\) & \(c\)](#) (release conditions)
- [G.S. 15A-601\(a1\) & \(a2\)](#) (first appearance)
- [G.S. 15A-941\(b\) & \(c\)](#) (arraignment)

- [G.S. 50B-2\(e\)](#) (ex parte domestic violence protective order)
- [G.S. 50C-6\(e\)](#) (ex parte civil no-contact order)
- [G.S. 122C-268\(g\)](#) (inpatient commitment)

For any remote proceeding covered by a statute listed above, judicial officials must comply with the statute's provisions. Emergency Directive 3 does not apply.

Most of the statutes direct judicial officials not to use audio and video transmissions without first obtaining NCAOC approval of the procedures and type of equipment. On 13 March 2020, in an effort to minimize the number of in-person court proceedings during the COVID-19 pandemic, the NCAOC issued the NCAOC Temporary A/V Policy available [here](#). This policy grants temporary pre-approval for audio and video transmissions where (1) a statute authorizes their use in the hearing in question and (2) the procedures and equipment satisfy basic criteria set out in the policy.

The NCAOC Temporary A/V Policy will remain in effect until rescinded by the NCAOC's Director.

Conclusion

Judicial officials may continue using audio and video transmissions to conduct many kinds of court proceedings under Emergency Directive 3. Unless extended, however, Emergency Directive 3 will expire on 12 February 2021. Emergency Directive 3 does not extend to proceedings for which audio and video transmissions are already allowed by statute. Where such a statute applies, judicial officials should follow its provisions. Some statutes in this category require judicial officials to obtain NCAOC approval for the use of audio and video transmissions. The NCAOC Temporary A/V Policy temporarily pre-approves audio and video transmissions in proceedings subject to those statutes. The pre-approval will remain in effect until rescinded by the NCAOC's Director.

Court officials with technical questions regarding audio and video equipment and procedures should contact the NCAOC Help Desk at (919) 890-2407.

