



JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

June 11, 2020

Task Force Co Chair, the Honorable F. Donald Bridges, convened the meeting at 2:30 p.m. by WebEx.

Reminder of Open Meeting and Roll Call:

Judge Bridges stated that the meeting is subject to North Carolina's open meetings laws and that a livestream had been made available to the public and members of the media. North Carolina Administrative Office of the Courts (NCAOC) Research and Planning Associate Emily Mehta took roll call. The following Task Force members were present via WebEx:

- The Honorable F. Donald Bridges, Co-Chair, District 27B Senior Resident Superior Court Judge.
- The Honorable Jay Corpening, Co-Chair, District 5 Chief District Court Judge.
- The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge, was not present for roll call but joined the meeting at 3:38 p.m.
- The Honorable Teresa Vincent, District 18 Chief District Court Judge, was not present for roll call but joined the meeting at 3:20 p.m.
- The Honorable Billy West, District 14 District Attorney.
- The Honorable Robert Evans, District 8 District Attorney.
- The Honorable Marsha Johnson, Harnett County Clerk of Superior Court.
- The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court, was not present for roll call but joined the meeting at 2:34 p.m.
- Kinsley Craig, District 27B Trial Court Coordinator.
- Kellie Myers, District 10 Trial Court Administrator.
- The Honorable Jennifer Harjo, New Hanover County Public Defender.
- John McCabe, Attorney and Appointee of the North Carolina Advocates for Justice (NCAJ).
- Wade Harrison, Attorney and Appointee of the North Carolina Bar Association (NCBA).
- Patrick Weede, Attorney and Appointee of the NCBA.
- JD Keister, Attorney and Appointee of the North Carolina Association of Defense Attorneys (NCADA).

The Honorable Jason Cheek, Davidson County Magistrate, was unable to attend. The Honorable Chuck Henry, District 4 Senior Resident Superior Court Judge, and the Honorable R. Allen Baddour, District 15B Resident Superior Court Judge, were present via WebEx. A number of additional people joined the WebEx as representatives of NCAOC and the School of Government (SOG) in their capacity as advisers and staff to the Task Force, as did Richmond County Sheriff James Clemmons.



Approval of June 4, 2020 Task Force Meeting Minutes:

Attorney Harrison moved to approve the minutes of the June 4, 2020 meeting, and District Attorney Evans seconded the motion. All Task Force members who were present approved the meeting minutes by a roll call vote.

Update from Virus Fatigue Working Group:

SOG Professor Jim Drennan said the working group's "Caring for You" products were finalized yesterday. Professor Drennan said he is proud of those products, and he hopes the Task Force members will use them in whatever ways they can to support the court system actors in the field. Professor Drennan said there is a video and one longer document, as well as two one-page documents. He said the longer document is the heart of it, and NCAOC's Communications Division did a wonderful job putting it into a visually appealing format.

Professor Drennan said he expects the Chief Justice and NCAOC Director to distribute those materials to the field later in the day and, once that is done, they can be made available to other groups that might want to use them, such as the NCBA. He added that the longer document has been edited slightly since the last version the Task Force saw to reflect the increased stress for many people in the court system as the new national crisis has raised awareness about how some people view the justice system. Professor Drennan thanked the members of the Virus Fatigue Working Group and the NCAOC staff who supported their efforts.

Judge Bridges thanked Professor Drennan and everyone who worked on these resources. He said the products are outstanding and he is as proud of this work as anything else the Task Force has done. He added that he has reviewed numerous reports from similar groups in other states, and this aspect of the Task Force's work is unique and creative. Judge Corpening agreed.

Intermediate and Long-Term Recommendations:

Best Safety Practices Working Group:

Trial Court Administrator Myers said the Best Safety Practices Working Group circulated a draft document earlier in the day that contained recommendations about jury management and jury trials. She added that the working group held a meeting after that document was shared to discuss some of the issues raised in it. Trial Court Administrator Myers said the working group's objective was to make safety recommendations that are evidence based and appropriate for the courts, noting that they relied heavily on their public health advisor from the North Carolina Department of Health and Human Services (NCDHHS). She said the overall recommendation from the public health advisor was that in-person jury trials should not occur unless there are appropriate safety precautions in place. Trial Court Administrator Myers turned to the working group's draft and noted that the sections highlighted in yellow are areas of concern for some members because of either practical limitations and / or constitutional questions.





Trial Court Administrator Myers said the document is divided into two parts. The first part addresses jury management issues, such as reporting practices, excuses and deferrals, and jury assembly. The second part addresses proceedings that would typically take place in the courtroom, including jury selection and trials. Trial Court Administrator Myers said the Task Force co-chairs plan to attach the previously approved best safety practices for in-person court proceedings from the first interim report as an appendix to these recommendations, so the working group tried to focus solely on jury trials.

Trial Court Administrator Myers noted that the working group has reached consensus about recommending that jurors wear face coverings in jury assembly areas, so the highlighted concerns on the second page of the draft will be moved to the section on in-court proceedings. She said the highlighted sections on the fourth page are where there is not full consensus. Trial Court Administrator Myers said the draft includes language from the federal guidance about jury trials indicating that presiding judicial officials need to weigh the rights of the defendant against the health and safety of everyone in the courtroom. She suggested that the working group revise that section to more clearly set forth those two interests and to give judicial officials guidance on weighing those competing interests.

Trial Court Administrator Myers asked Public Defender Harjo to share the constitutional concerns she has raised regarding face coverings. Public Defender Harjo said she has experienced some court hearings with attorneys and others wearing masks, and she believes it will be impossible to have criminal jury trials like that. She said defendants facing criminal jury trials have constitutional protections and conducting a jury trial is as much an art as it is a science. Public Defender Harjo said criminal defense attorneys need to be able to see the jurors' faces, and the jurors need to be able to see the lawyers' and witnesses' faces to make decisions about credibility. She added that jurors who have to sit through court all day wearing masks will be uncomfortable and have difficulty concentrating. Public Defender Harjo said she wears masks to court, but she takes them off when she is addressing the judge because it is difficult to hear and understand people through masks. She said wearing masks in trials will interfere with lawyers' ability to participate and see how jurors are reacting to evidence and could create prejudicial impressions in some jurors.

Public Defender Harjo said she has some of the same concerns about plexiglass barriers, noting that they cause a glare that can interfere with the ability to observe facial expressions. In addition, her understanding from health officials is that air particles can travel over and under the plexiglass barriers, so she would be concerned about the safety of anyone relying solely on such a barrier for protection while sitting in a closed room for a long period of time.

Public Defender Harjo said she believes the court system should wait until criminal jury trials can be held safely without masks, so that the defendants will get the constitutional protections to which they are entitled. She said, if a defendant wants to waive those protections, he or she has a right to do so and can choose to proceed with a bench trial or ask the court to determine what safety precautions can be put in place for a jury trial. However, until the courts can assure the accused that their constitutional rights to a fair trial will be protected, she believes jury trials where the defendant does not consent need to wait. She added that she believes that is the opinion of the criminal defense bar as a whole. Attorney Weede





asked whether the working group's public health advisor indicated whether her advice about wearing masks would continue until there is a vaccine or treatment or if there is any sense that those precautions could become less necessary over the coming months. Trial Court Administrator Myers said she did not.

District Attorney Evans said the Conference of District Attorneys is in favor of resuming jury trials as soon as reasonably possible subject to the best available safety advice that this Task Force can recommend to the Chief Justice. He said he would hold his additional comments until the Task Force reaches the jury trial section of the agenda. District Attorney West agreed.

Clerk Johnson said the clerks are the official record keepers, and it is going to be problematic for clerks to hear people who are speaking through masks. She said her courtroom clerks often have to ask people to repeat themselves when they speak while wearing masks and, in some instances, they cannot understand what is being said at all. She said masks muffle voices, and the court reporters are going to have the same problems.

Attorney Keister said the civil attorneys he has heard from share similar concerns about the active participants in a trial wearing masks, including attorneys, witnesses, and potential jurors during voir dire. He added that the civil bar does not seem concerned about jurors wearing masks during the actual trial when they are not speaking. Attorney McCabe agreed.

Attorney Harrison asked whether the public health advisor addressed the questions about spending longer durations of time in a courtroom where everyone is not wearing a mask. He said, in the counties where he practices, some people wear masks and others do not. He asked whether there is any scientific information that could inform the Chief Justice about whether masks should be required in the courthouses, and whether there is a significant increase in risk the longer a person spends in an area where someone else is infected but asymptomatic. Trial Court Administrator Myers said the NCDHHS advisor shared helpful information on those topics at the working group's meeting that day.

Public Defender Harjo said her understanding from the public health advisor is that there is a spectrum of risk, and that everyone wearing masks is the safest but safety diminishes as more people are without masks. She added that the same principle appears to be true with respect to time, and the risk increases as the length of time people spend in proximity increases. Public Defender Harjo said air circulation also impacts the spectrum of risk, and she does not believe there is any specific date when masks will no longer be recommended. Attorney Weede said the Task Force has talked a lot about there not being a one size fits all solution for many of the issues facing it, but he said this issue seems closer to requiring a uniform approach, at least in the criminal context, so that the courts do not create appellate issues.

Judge Bridges asked if Public Defender Harjo's position is that safety dictates that all participants wear masks but, because of the potential interference with the right to a fair trial, no criminal trials should take place except where the defendant chooses to waive constitutional protections and proceed. Public Defender Harjo said yes. Judge Bridges asked what should be done in those cases where a criminal





defendant chooses to waive those protection or files a motion for speedy trial demanding to go to trial. Public Defender Harjo said, in those circumstances, court actors will need to rely on the best safety practice recommendations and conduct a trial as safely as possible for all participants. She added that, in such cases, the courts may need to rely on protections like masks and plexiglass barriers and potentially even conduct portions of the trial remotely.

Judge Bridges said he is concerned that this position would leave it to the defendant and the defendant alone to make that decision. He said no defendant would be forced to submit to a trial but, if a defendant chooses to file a speedy trial motion, the witnesses and jurors would have to come to court and be subjected to conditions that other criminal defendants choose not to subject themselves to. Public Defender Harjo said the defendant is the one person in the courtroom with constitutional protections and rights. She said the courts can have trials that rely on protections like plexiglass under those circumstances but a criminal defendant who is facing significant prison time may choose to wait until the participants do not have to wear masks. Public Defender Harjo said there may need to be a reassessment several months down the road but, in 2020, she does not think it is unrealistic to say the courts should wait so that criminal defendants can have the same type of trials that other defendants have received over the years. Judge Bridges said the defendant is not the only person who has constitutional rights, noting that the state constitution now includes protections for victims.

Judge Bridges urged the Task Force members to bear in mind what the current discussion is about. He said the recommendations before the Task Force right now are from the Best Safety Practices Working Group, not the plan for resuming jury trials. Judge Bridges said the purpose of this report is to present the best safety recommendations for trials based on consultation with public health experts. He stressed that the Task Force is not yet talking about the policy considerations with respect to resuming jury trials, which is a matter that will be discussed later in the meeting. Judge Bridges said, where it is clear what the best safety practices are, the Task Force needs to express them and, where there are areas of disagreement about what the best safety practices are, the Task Force's work product needs to express that so everyone has the best information from public health advisors.

Trial Court Administrator Myers said, with the exception of a few questions that the working group asked its public health advisor at the meeting earlier today, she believes the best safety practice recommendations are close to final. She said she wants to add some more information that the group received today about plexiglass barriers and the impact of the duration of time spent together in an enclosed room, but she believes that can be done relatively quickly.

Judge Corpening agreed with Judge Bridges about the role of this working group, adding that the competing concerns of Task Force members about the resumption of trials can be delivered to the Chief Justice. Judge Corpening asked if it was the will of the Task Force to adopt the recommendations of the Best Safety Practices Working Group. Trial Court Administrator Myers suggested that her working group revise the second section on jury trials to focus solely on safety recommendations and to note any inconsistencies in the guidance from public health experts, and that the Task Force vote on the final





recommendations by email. Judge Corpening said he would be open to that approach or to redistributing the recommendations for a final vote at the next meeting.

Attorney Harrison asked whether it would be possible to have the working group's public health advisor create a separate appendix with the information that is the scientific basis for the working group's recommendations. Judge Corpening said Trial Court Administrator Myers could make that request on behalf of the working group. Judge Corpening suggested that the working group make the revisions that Trial Court Administrator Myers suggested earlier in the discussion and ask for the additional scientific information Attorney Harrison suggested, and then recirculate the recommendations for an email vote the following week. Trial Court Administrator Myers agreed.

Technology and Innovations Working Group:

Judge Henry stated that the Technology and Innovations Working Group previously submitted immediate and intermediate recommendations to the Task Force. They also developed some recommendations about the resumption of jury trials, many of which have now been incorporated into the proposed plan that will be discussed later in the meeting. In addition, the working group has compiled a list of long-term recommendations that should be finalized early the following week. Judge Henry said the group does not have additional meetings scheduled, but it can reconvene at any time to respond to questions or address certain recommendations. He said the working group had a series of very open discussions, and he thanked all of the members and the AOC staff who supported their work.

Judge Corpening said any discussion of the jury trial recommendations from this working group would be held for that agenda item, and he asked if there was a motion to approve the other intermediate recommendations. Attorney Harrison so moved and Attorney Weede seconded the motion. All Task Force members who were present (Judge Bridges, Judge Corpening, Judge Vincent, District Attorney West, District Attorney Evans, Clerk Johnson, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, Attorney Weede, and Attorney Keister) approved the motion by a roll call vote.

Resumption of Jury Trials:

Judge Bridges said the Chief Justice directed the Task Force to develop recommendations for the resumption of jury trials and the Task Force has been working on those recommendations for some time now. He noted that this is one of the most daunting challenges involved in the courts ramping back up to full operations. He said, at the last Task Force meeting, the group agreed not to recommend a specific date for the resumption of jury trials and to leave that to the Chief Justice based on her assessment of the health conditions at any given time.

Judge Bridges said, at the last meeting, the Task Force received a report from the Technology and Innovations Working Group that was described as a three-legged stool for the resumption of jury trials after taking into account safety considerations. One concern that was expressed at that meeting was the role of the clerk in the decision-making process. He said the Chief Justice has issued an emergency directive that orders the senior resident superior court judges to undertake certain actions, including





efforts to safely resume trials, so it is clear that the Chief Justice intends to have the senior residents and / or their designated COVID-19 facility coordinators play a significant role in crafting local plans. Judge Bridges said, because of the clerks' role in summoning and managing jurors, one suggestion last week was that the clerks should play a critical role in formulating that plan. Thus, Judge Bridges said the proposed plan has been revised to recommend that, in formulating a local plan, the senior residents should work in consultation with the clerk, district attorney, and public defender or senior member of the local criminal defense bar.

Judge Bridges said, since the last Task Force meeting, he has attempted to merge the jury trial recommendations from the Technology and Innovations Working Group into the draft recommendations that already existed. He said there are some areas in which the language diverged somewhat, but he believes the working group's recommendations are now reflected in the proposed plan. Judge Bridges said the proposal now recommends that the Chief Justice identify a specific date as the earliest date on which jury trials will be allowed to resume. Although the specific cases selected for trial would be determined by the identified local judicial officials, the proposal includes a recommendation that local officials begin with short and simple trials, including simple civil trials, misdemeanor appeals, Class H and I felonies, or other trials that are expected to last no more than one week. Judge Bridges said the criminal defense bar requested that no murder trials be convened before late November, and the proposal now states that criminal trials involving offense classes of B2 or higher should not be held during the first 90 days. In addition, there is language providing that local senior resident superior court judges would have discretion depending on local health conditions to delay the resumption of trials for an additional period of time or to suspend them after they have resumed. Judge Bridges said Public Defender Harjo suggested that jury trials should not proceed without the defendant's consent, and the proposal now includes a recommendation that local court officials consider a number of factors in determining whether specific trials or types of trials should proceed, with the defendant's consent or lack thereof being one factor for consideration.

Judge Bridges said Judge Vincent suggested that the chief district court judges should be included in the decision-making process about the resumption of trials because there are jury trials in district court. He said he intended to add a recommendation that chief district court judges be consulted in formulating local plans, but he inadvertently neglected to do so. In addition, he has been told that there is some interest among the chief district court judges in developing their own plans for jury trials in district court. Judge Bridges said there are two basic options. The Task Force could recommend that the senior resident superior court judges' plans address jury trials in district court after consultation with the chief district court judges, or it could recommend that the chief district court judges develop parallel plans for district court trials.

Judge Bridges said he thinks those are all of the significant changes in today's draft compared to the draft the Task Force discussed the prior week. He said the message he received from the Task Force at its last meeting was to go back to the drawing board and try to integrate the Technology and Innovations Working Group's jury trial recommendations into the existing draft plan. Judge Bridges said he did that in consultation with Judge Henry and then took the revised proposal back to the superior





court judges' work group for their feedback. He said the current draft is a product of those efforts and he would be happy to entertain any comments about the revised draft.

District Attorney Evans said the Conference of District Attorneys supports every effort that can be made to ensure that jury trials resume as safely as possible. He said, when the Technology and Innovations Working Group submitted its recommendations the prior week, the district attorneys raised several issues. District Attorney Evans said the district attorneys understand that, in the midst of this crisis, they will have to move slowly and be reflective in choosing what cases to bring to juries. He said he believes the proposed matters that should be considered and the actors that should be consulted during that process are appropriate. However, the conference's primary concern is the erosion of the district attorneys' statutory authority to set calendars, especially given the restrictions that everyone will be under until there is a vaccine or effective treatment.

District Attorney Evans said the virus is getting worse by the day in North Carolina and none of us can predict what will happen in the coming months. He said it is a no brainer to start with shorter and less complicated trials, but he believes the proposed restriction on trials for certain classes of offense is unnecessary. District Attorney Evans said telling the district attorneys that they can only try lower-level felonies for the first 90 days and that they cannot expand to more serious cases does not get to the heart of the issue. He said he believes the real issue is not what class of cases they should try but, given limited resources and the risks that everyone will be facing, what type of cases are worth bringing to trial in the short term. District Attorney Evans said there may be lower-level felony cases that are not worth risking the health of jurors and witnesses to bring to trial, while there may be homicide cases that are not complex and will not take a long time to try. He said, assuming local actors follow all of the best safety recommendations and consult with others as needed, those cases can be tried relatively safely and they are not more difficult to try than the average class H felony. He said the artificial classification by class of offense does not make sense, and he wants to be in a situation where the courts are asking jurors to hear the cases that matter the most.

District Attorney West agreed. He said the district attorneys' primary objections to the draft proposal are the restrictions on trial by class of offense and that some of the recommendations seem to infringe on their statutory calendaring authority. District Attorney Evans said he cannot imagine that any of the district attorneys would want to start out with capital trials and, at least in his district, he would listen if the clerks came to him and said they could not handle a specific trial. Similarly, he said he would be receptive if a criminal defense attorney asks to delay any high-level felony trials because he or she is in a high-risk category. He said the collegiality of the bar is important to him and language that unduly restricts the district attorneys' calendaring authority is unnecessary.

Judge Bridges said the current proposal specifically references G.S. 7A-49.4, which is the statute that gives district attorneys calendaring authority. He said the superior court judges' work group wanted to recognize that statutory authority and to be clear that the intent is not to shift that authority in any way. However, as District Attorney Evans suggested, Judge Bridges said there probably are no judges who would approve proceeding with a capital trial right now. He said, despite the district attorneys having





statutory calendaring authority, judges have the ultimate control over whether particular cases proceed so the district attorneys' authority is not absolute. Judge Bridges said he hopes everyone will be mindful that the proposal contains recommendations and does not use terms like shall, must, or will. He said the Task Force has been clear since its inception that its mission is not to issue mandates or directives to local court officials, but to provide a resource for local court officials and recommendations to the Chief Justice. Judge Bridges said the recommendations about starting with lower-level felonies and the senior resident superior court judges prioritizing cases for trial in consultation with the district attorney and others are not mandates, and local officials will remain free to do what they chose to do within the confines of any emergency directives from the Chief Justice.

Judge Henry said the superior court judges' main focus was on the expected length of the initial trials. He said there are a number of unknowns right now, including how potential jurors will respond to the idea of jury service and what will happen if a defendant claims illness on the second or third day of trial. He said no one has worked through every possibility but, based on the collective wisdom and experience of the groups that have worked on this proposal, high-level felony trials are less likely to be shorter trials. He said he has not presided over a second-degree murder trial or higher that has taken less than a week in a long time. Judge Henry said the ultimate decisions will be controlled locally and cooperatively and arguing over the exact language of the recommendation may not be productive.

Judge Sermons said he understands the district attorneys' concerns, but the language about starting with low-level felony trials was primarily driven by not knowing how it will work to bring that many people into a courtroom. He said local judicial officials will not know how it is going to work until they do it and, once they do, they can react and improve. He said he is not opposed to wordsmithing the proposal but the intent is to try it, find out what works, and make improvements. Trial Court Administrator Myers added that the public health experts said the exposure risk increases with the amount of time spent in a courtroom, which is why shorter trials should be prioritized first.

Public Defender Harjo said she likes the proposal. She said she understands District Attorney Evans' point that there may be more serious trials that will take less than a week to try but, given that these are recommendations, such cases could be accommodated by a request of both the defendant and district attorney. She said the proposal gives due consideration to a lot of the concerns of the defense bar, including their inability to prepare cases due to the danger of being in close proximity with their clients. Attorney Weede said he is pleased with the draft. He said the initial section lays out the concerns of various stakeholders and the plan takes into account public health guidelines and the limitations on the ability of defense attorneys to prepare for trial. He said defendants charged with high-level felonies are facing the potential of decades in prison and the court system needs to ensure that their attorneys have adequate time to prepare a defense. He said it is going to be some time before attorneys will feel comfortable and safe visiting clients in jail, and he thinks the proposal is appropriate as drafted.

Judge Vincent said her preference would be to have the chief district court judges craft a separate plan for district court jury trials. She said that would avoid any miscommunications about conflicting schedules. Judge Corpening said the bulk of the recommendations apply to all trials, regardless of the





court in which they are held. However, the chief district court judges have the statutory obligation to schedule civil matters, so he agrees there should be a dual track with a separate district court plan. He said, in formulating that plan, the chief district court judge should consult with the COVID-19 coordinator, whether that is the senior resident superior court judge or a designee, because that person has to approve calendars right now. In addition, the chief district court judge should consult with the trial court coordinator or trial court administrator, family court administrator, and a domestic or civil lawyer.

Attorney Keister said he believes the proposal is excellent and addresses the concerns of the civil bar. He said a number of civil attorneys will be trying cases in multiple counties and clarified that the intent is to have every senior resident superior court judge and chief district court judge develop local orders with county-specific plans. Judge Bridges said yes, and Attorney Keister said that makes sense to him. Attorney McCabe said he feels very good about the proposal.

Clerk Johnson and Clerk Chinn-Gary said their concerns have been addressed and they are satisfied with the proposal. Trial Court Coordinator Craig agreed. Judge Bridges said the proposal will be edited to include dual tracks for plans for jury trials in both superior and district courts. Attorney Harrison said the chief district court judges should be added as a consultant in recommendation number 4.

District Attorney Evans said he thinks the plan is excellent overall. However, he believes that it would be sufficient for recommendation number 11 to state that the first trials should be short and less demanding and should be expected to take less than a week to try without any reference to the class of offense. District Attorney Evans said he believes it is important to develop as much consensus as possible before submitting these recommendations to the Chief Justice, and he would have to vote against the entire proposal because of that one section. He asked whether he could cast his vote in opposition to that specific item rather than the plan in its entirety.

Judge Sermons asked whether removing the examples in parentheses in recommendation number 11 would address District Attorney Evans' concerns. District Attorney Evans said yes, that would limit the recommendation to starting with shorter and less complex trials without specifying offense classes. He added that, if a district attorney tries to calendar a lengthy capital trial right away, he would expect the presiding judge not to allow it to proceed. Attorney Weede said he is comfortable with number 11 as it is currently drafted, noting that the language in parentheses just provides examples. Judge Bridges said one of the superior court judges in his work group has already identified cases that he wants to go to trial when jury trials are allowed to resume, including murder cases that are expected to take less than a week to try and where both the prosecutor and defense have agreed they are ready to proceed. He said that judge would be permitted to proceed with those trials under the current proposal.

Attorney Weede moved to adopt the resumption of jury trials plan as written with changes recommending a parallel plan for district court trials. Attorney Harrison seconded the motion. Trial Court Administrator Myers directed the Task Force to recommendation number 3, which provides that the Task Force does not believe remote jury trials are a feasible option at this time. She said the Best





Safety Practices Working Group's recommendations suggest the possibility of conducting various portions of a jury trial remotely. Judge Bridges read Trial Court Administrator Myer's written comment about number 3, which stated that the working group recommendations include remote practices leading up to the impaneling of a jury and actual trial, such as online orientation videos, remote pre-screening for deferrals / excusals, remote strikes for cause based on written answers to questionnaires, and voir dire, and suggested that number 3 be modified to distinguish between the processes involved in jury management, jury reporting, voir dire, and trial to ensure that some remote practices are encouraged. Attorney Weede amended his motion to include that language, and Attorney Harrison seconded the motion.

By a roll call vote, 13 of the Task Force members who were present voted to approve the motion (Judge Bridges, Judge Corpening, Judge Vincent, Judge Sermons, Clerk Johnson, Clerk Chinn-Gary, Trial Court Coordinator Craig, Trial Court Administrator Myers, Public Defender Harjo, Attorney McCabe, Attorney Harrison, Attorney Weede, and Attorney Keister). District Attorney West voted no, stating that he objected to recommendation 11 as drafted but did not object to the rest of the proposal; he asked if the report could include a footnote explaining his objection to number 11 and providing his suggested alternative language. District Attorney Evans also voted no.

Judge Bridges asked the Task Force members for their view on whether the report should include a footnote to recommendation number 11 explaining the basis of District Attorney West's and District Attorney Evans' objection. Attorney Harrison said he believes that would be appropriate, noting that the Chief Justice should know that the vast majority of the proposal has the Task Force's unanimous support. Attorney Weede agreed. Trial Court Administrator Myers agreed, noting that is how the Task Force handled her objection to one portion of its May 8, 2020 recommendations on deadline extensions.

Judge Bridges said, given the consent of the Task Force members who made and seconded the motion, he would be inclined to allow the report to include a footnote explaining the basis of their objection to recommendation number 11. He asked if the district attorneys would support the jury trial recommendations with the addition of such a footnote, and District Attorney West and District Attorney Evans said yes. Judge Bridges said the motion would be deemed amended and their votes are now in favor of the motion subject to the addition of a footnote explaining the basis of their objection to recommendation number 11. Judge Bridges added that the motion in favor of the proposal passed unanimously with the addition of that footnote.

Judge Bridges thanked the Task Force members for their hard work and their willingness to consider other points of view. Judge Corpening thanked Judge Bridges for his tireless pursuit of consensus on this issue.

Suggested Statutory or Rule Changes and Funding Concerns:

Given the length of the meeting, Judge Corpening suggested tabling a discussion of this issue until the next Task Force meeting, and Judge Bridges agreed. Judge Corpening asked the Task Force members to





be prepared to discuss any recommended statutory or rule changes at the next meeting, and to think about whether the Task Force should make any specific funding recommendations.

Goals for Next Meeting and Date:

The Task Force discussed the possibility of meeting the following week or taking a week off in light of the superior court judges' virtual conference the following week. After discussion, the group agreed to hold its next meeting on Wednesday, June 24th, at 2:00 p.m. Judge Bridges said the goals for that meeting will be to get the Task Force's final stamp of approval on the revised jury trial plan, to talk about recommended statutory or rule changes and any funding requests, and to get approval of the second report to the Chief Justice that is due by June 30, 2020.

The meeting adjourned at 4:50 p.m.

