



JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

May 13, 2020

The Task Force Co Chairs, the Honorable F. Donald Bridges and the Honorable Jay Corpening, convened the meeting at 2:00 p.m. by WebEx. Judge Bridges recognized Chief Justice Cheri Beasley, thanked her for her leadership, and invited her to share some opening comments.

Welcome Comments from Chief Justice Beasley:

Chief Justice Beasley thanked the Task Force members, and the Co-Chairs in particular, for their willingness to serve and generate recommendations about how to expand access to our state courts moving forward. Chief Justice Beasley said she has reviewed the Task Force's initial recommendations about deadline extensions, and she is looking forward to receiving more recommendations. Chief Justice Beasley said she knows everyone has a lot of questions about how the courts will move forward, and this group's recommendations will be foundational. She added that she expects to issue at least one additional order within the next week or two, and she wants everyone to know where the system is headed.

Chief Justice Beasley said the Task Force's work has been fundamental in helping to relay information about what is happening in the court system, and she appreciates the group's efforts. She said one thing she is trying to think through is logistically how to make sure the courts are not overrun with people on June 1, and she noted that it will be important to coordinate with local sheriffs to ensure that personnel and the public remain safe.

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.
- 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.
- Kinsley Craig, District 27B Trial Court Coordinator.
- Kellie Myers, District 10 Trial Court Administrator.
- Jason Cheek, Davidson County Magistrate.



- 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 Teresa Vincent, District 18 Chief District Court Judge, was not present for roll call but joined the meeting at 2:18.

Anna Stearns, Chief of Staff and General Counsel to Chief Justice Beasley, was present via WebEx, as was the Honorable Chuck Henry, District 4 Senior Resident Superior Court Judge, and the Honorable R. Allen Baddour, District 15B Resident Superior Court Judge. A number of additional people joined the WebEx as representatives of NCAOC, the Office of Indigent Defense Services (IDS), 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 May 5, 2020 Task Force Meeting Minutes:

Attorney Harrison stated that the proposed minutes did not reflect the final email vote of the Task Force on the initial set of recommendations to the Chief Justice. NCAOC Deputy Director of Court Programs, Danielle Carman, said she would add that vote to the minutes, noting that the final vote was 15 to one in favor, with Trial Court Administrator Myers dissenting due to concerns about using the postmark date for time-stamping mailed documents. Attorney Harrison moved to approve the minutes with the addition of that vote, and Public Defender Harjo seconded the motion. As revised, the minutes were approved by a roll call vote.

Preparing to Expand Court Functions Starting June 1, 2020:

Judge Corpening said the Task Force needs to send a clear message about what ramping courts back up on June 1 will look like. Judge Corpening said he has heard a lot of concerns that courtrooms across the state will be full of people on that date, and it is important to be clear that courthouses are preparing to start expanding court functions on June 1 but that does not mean courts should be back in full swing on that date. Judge Corpening said court officials need to follow public health protocols and social distancing practices in courthouses, which will include measuring courtrooms for six-foot separations and readjusting space so personnel and members of the public can feel safe.

Judge Bridges said the Task Force needs to be mindful of appropriate messaging in composing its recommendations and in individual members' work in their districts. Judge Bridges said a big part of the Task Force's work will be to send clear messages to court officials and the public. Judge Sermons said he has heard comments from attorneys that defendants think they do not need to go to court because jury trials will not be taking place any time soon, witnesses will disappear, and cases will be dismissed as a result. Judge Sermons said the Task Force needs to move toward creating a product that clarifies the courts are not closed and that encourages prosecutors and defense attorneys to work on scheduling court in time slots. Judge Sermons said the message needs to be that the courts are open and ramping





back up and that plea bargains are not going to get better even if the carry-through is slow. He added that people will feel more secure coming to courthouses if everyone has masks and gloves.

Public Defender Harjo said court activities are going to increase but, for the safety of everyone involved, the courts need to make reasonable decisions about what matters need to be heard quickly and what matters do not, as well as how to safely accomplish the priority matters. She said we all need to slow down and take precautions for everyone's safety.

Attorney Weede said there is a need for personal protective equipment (PPE) such as masks and gloves, and asked whether courthouses will have those supplies available by June 1. Attorney Weede said Wake County plans to resume an administrative calendar starting June 1 but defendants will have designated times in superior court. He has not yet heard a plan for district court in June. Attorney Weede asked whether there needs to be some communication about whether people should appear on their court dates.

Judge Corpening said his county provided a very limited supply of masks, and he does not see NCAOC being in a position to supply enough masks to all 100 counties. Trial Court Administrator Myers said the Best Safety Practices Working Group will be addressing these types of issues, and asked people to refer questions and suggestions to her.

Clerk Chinn-Gary said Mecklenburg County has the most positive tests in the state, and she is very concerned that people will hear the June 1 date and rush to the courthouse. Clerk Chinn-Gary said she wants the message to be that the June 1 date will be a "soft" expansion so that foot traffic remains limited. She added that attorneys and litigants need to continue to be encouraged to mail filings and not flood the courthouses on June 1. Clerk Chinn-Gary said clerks' office will continue to have limited staffing due to vacancies, as well as sick and high-risk employees. She added that her office is facing a deficit of 30% of her workforce and will not be able to return to full operations with that limited staffing level.

District Attorney West said some district attorneys have asked whether we can legally require members of the public to wear face masks, particularly if we are unable to provide them. He said it is not clear if the courts can turn people away if they do not have a mask and the court system does not make them available. Judge Corpening said the chief district court judges have discussed that issue as well. Judge Sermons said his county is currently able to provide masks if members of the public do not have them, but he presides in smaller counties that do not have large numbers of people in court right now.

Clerk Chinn-Gary said local actors are paying attention to safe occupancy levels in courtrooms, but there needs to be thought given to safe occupancy in the courthouses at large. Clerk Chinn-Gary said Mecklenburg tracked the number of people coming into the courthouse during April, and there were quite a few people coming into the courthouse on a daily basis despite limited operating hours. Clerk Chinn-Gary said it is one thing to manage occupancy levels in any given courtroom but that does not take into account spaces like corridors and open clerk windows.





Attorney Weede said local sheriffs' departments and courthouse security will also need to ensure there is appropriate social distancing and sanitizing as attorneys and members of the public go through security lines, and he suggested that the Best Safety Practices Working Group consider that issue.

Clerk Johnson said she attended a regional meeting with area clerks, and they discussed the need for cooperation among all partners at the county level. She said there are some counties where the local sheriffs are not offering to assist with getting people into the courthouse, and it is not clear who will regulate that process if the sheriffs are unwilling to do it outside of the courtrooms themselves. Sheriff Clemmons said the sheriffs are willing to be involved in courthouse security, but they do not think it is appropriate for them to be doing any type of health screening of court personnel or members of the public as they enter courthouses. Sheriff Clemmons said the latter should be handled by local health officials.

Judge Corpening said the Technology and Innovations Working Group will be discussing creative scheduling options, such as rolling calendars, to avoid having hundreds of people show up for court at the same time. Judge Corpening added that what courts will look like on June 1 is important and that messaging to the field and public needs to be clear. He asked the working groups to address any comments that touch on their areas.

Setting Priorities for Case Types as Court Sessions Expand:

Judge Corpening said the courts need to establish priorities for case types as they expand operations. He said the chief district court judges have created work groups looking at criminal, domestic, civil, and juvenile cases, and they have struggled with prioritizing many specific case types because they are all important. Judge Corpening said one question for the Task Force is the best process for compiling and organizing all of the recommendations that are collected. He said the court managers provided lists of priority recommendations that were attached to the Task Force's first meeting agenda, and the chief district court judges, superior court judges, and others are also working on recommendations. Judge Corpening suggested that each external work group could submit its work product to NCAOC, and NCAOC staff could compile and filter them to identify areas of agreement and disagreement. He suggested that might help streamline the Task Force's work.

Judge Bridges agreed with that approach. He said there is no Task Force working group devoted to this task, so it is important to formulate the best approach to getting these recommendations before the full group. Trial Court Administrator Myers said the court managers' recommendations were intended to be evaluated in conjunction with the recommendations of other court system actors in their areas of expertise, and she agreed that compiling all of the recommendations into one document would make it easier for the Task Force to navigate.

District Attorney West said most of the district attorneys' recommendations were previously provided to the Task Force, and the comments he is hearing in the field are that the Task Force or the Chief Justice needs to provide guidance sooner rather than later about what can and cannot be done as the courts





ramp back up. District Attorney Evans agreed, noting that people need certainty as soon as reasonably possible. He added that district attorneys need to know when they can start calendaring cases.

Judge Bridges said quantifying time frames for various proceedings is one of the most challenging aspects of the Task Force's charge. He said he liked the district attorneys' approach because it set forth three proposed phases for different events and proceedings, and he thought that was a helpful concept. Judge Bridges asked if the district attorneys have suggestions about appropriate indicators or trigger points for moving to each new phase. District Attorney West said the district attorneys tried to marry their proposed phases to the phases in the Governor's plan. Judge Corpening noted that the district attorneys sent more recent recommendations about jury trials.

Judge Corpening said the Best Safety Practices Working Group will be looking at the trigger points the courts should rely on, noting that it might not make sense for the court system to track the exact same phases as the Governor. Trial Court Administrator Myers said the plans from other states that are on the Task Force's website might help in formulating best practices.

Judge Bridges said many counties will have limited courtroom space, which will make social distancing challenging and may lead to potential conflicts between divisions of the trial court competing for that limited space. He said the Task Force may need to recommend methods for resolving those conflicts. He added that communication between court officials will be key, but the group may want to consider something like Rule 3.1's mechanisms for resolving scheduling conflicts when one attorney is needed in multiple courtrooms. Judge Corpening agreed, noting that space conflicts will exist in a lot of counties and recommendations about case priorities will help local officials resolve conflicts over courtroom space. Judge Corpening asked Deputy Director Carman to designate AOC staff to compile the recommendations of the various system actors and to point out areas of consensus and areas of disagreement. Judge Bridges agreed, and stressed the need for all external groups to submit their recommendations to Carman by May 20 at the latest so they can be included in that compilation.

Judge Corpening said Judge Bridges had previously stated that the Task Force members are not North Carolina's COVID czars, and the group is merely offering recommendations to the Chief Justice. Judge Corpening stressed that local stakeholders will still need to work together to make those recommendations fit the needs in 100 different counties.

Attorney Harrison said external groups are going to continue to discuss these issues and the Task Force may need to share information in a more real-time fashion as it does its work. Deputy Director Carman said NCAOC has posted a number of documents on the Task Force's webpage, and NCAOC's Technology Services Division is working on a solution that will enable sharing of documents in progress with Task Force members who are not Judicial Branch employees. Carman said it might be premature to share working recommendations with outside groups before they have been submitted to the Chief Justice for her consideration. Attorney Harrison suggested that minutes of the working groups be made available to the full Task Force so everyone knows what each group is discussing. Judge Corpening said all external recommendations will also be shared with the full Task Force.





Reports from Working Groups:

Judge Bridges invited the Chairs of the three Working Groups to share updates with the full Task Force.

Virus Fatigue Working Group:

SOG Professor Drennan said the Virus Fatigue Working Group has met twice and is meeting again on Monday. Their mission is to address the emotional side of the virus and the stress that everyone is experiencing with their unique situations. Professor Drennan said they are trying to identify steps that can be taken fairly quickly, as well as longer-term initiatives. He said a lot of court system actors are experiencing anticipatory angst about the next few weeks, so the group wants one relatively short document to circulate with information from the Mayo Clinic, Centers for Disease Control and Prevention, and local health officials. Professor Drennan said the working group also wants to develop a short video about self care, and likened their efforts to trying to provide keys to doors that can offer help if people need it. In the longer term, Drennan said the working group wants to explore the information and resources that are already out there and make sure Judicial Branch employees are aware of them.

Clerk Chinn-Gary said the working group is considering the impact of the virus itself, as well as the stress and uncertainty that rapid change in the courts will create. Clerk Chinn-Gary noted that this crisis has forced technological innovation on people with varying levels of comfort, and court personnel will need help and support as court cultures change. Professor Drennan agreed, noting that some good innovations will come from this pandemic, but they will not come pain free.

Best Safety Practices Working Group:

Trial Court Administrator Myers said the Best Safety Practices Working Group had not yet met, and she is trying to schedule its first meeting for Monday. She added that she spent some time gathering and organizing materials and sent them to the members earlier that day. Trial Court Administrator Myers said the group has compiled a number of public health questions that it received from various sources, and will be working with a public health advisor to answer those questions. It will then work on developing recommendations that make sense for the courts in light of those answers.

Judge Vincent asked if there may be a recommendation to ask local public health department officials to visit courtrooms and make specific recommendations about safe occupancy levels. Trial Court Administrator Myers said several counties are doing that and she believes the superior court judges are putting that forth as a best practice. Judge Bridges said there are a lot of topics for this working group to cover, and he asked Task Force members to send questions and feedback to Trial Court Administrator Myers or Deputy Director Carman.

Technology and Innovations Working Group:

Judge Henry said the Technology and Innovations Working Group is identifying issues for consideration and dividing them into three categories—an immediate set of recommendations by June 1, an intermediate set of recommendations for the next 60 to 120 days, and a long-term set of





recommendations. He said the group's second meeting on Monday will focus on the immediate recommendations.

Messaging and Communications to the Field:

Judge Bridges referred to Judge Corpening's earlier statement about communicating that the Task Force is trying to formulate recommendations for the Chief Justice and the field, and it is not acting as an oversight body or issuing directives to local court officials. He added that there are a large number of very talented people throughout the court system, and it will be important to seek their input as the Task Force goes about its work.

Judge Bridges asked the group if there are messages they think the Task Force needs to consider when drafting its report(s). Trial Court Coordinator Craig suggested that we communicate to the field and public that none of us have ever had to deal with a crisis like this before, and we all need to be patient and understanding as we work to develop recommendations and establish clear communications. Judge Vincent agreed, and added that the Task Force needs to submit clear and practical recommendations and emphasize that this is a fluid process because the pandemic is fluid. Judge Bridges said the Task Force and local court officials may need to make adjustments as we go, adding that we may need to roll back some expansions depending on how the virus progresses.

District Attorney Evans said district courts around the state have operated in the same ways for decades, and this crisis presents an opportunity to reassess the way we do things, innovate, and become more efficient. Judge Bridges agreed, and said the crisis presents an opportunity to get rid of archaic customs such as Monday morning calendar calls when the courts ask hundreds of people to show up at the same time and wait for their cases to be called. Judge Bridges said the courts should be able to move toward operating with more set appointments or blocks of time instead of mass calendar calls.

Professor Drennan said the end goals of the courts have not changed, but we are being forced to reconsider the means to get there. Professor Drennan said decisions are being made in a time of extreme uncertainty, and they will be the best decisions we can make to do what we have always done—provide a system of justice. He added that everyone has to be flexible about the best ways to accomplish that goal. Judge Bridges said this crisis may force people who work in the court system to be more patient and slow down some processes. He said everything will take longer as we develop new practices and that will offer an opportunity to slow down and spend more time on the cases.

Attorney McCabe said the Task Force's initial recommendations were warmly received by NCAJ's plaintiffs' attorney members, and they are looking forward to more clarity on topics like discovery deadlines, depositions, and mediations. Attorney McCabe said trials remain an area of concern, and some guidance about prioritization of proceedings would be helpful. Attorney Weede said the criminal defense bar also has a strong interest in receiving information about jury trials as soon as possible. District Attorney West agreed, and said the district attorneys favor a statewide approach on matters like when they can start calendaring jury trials, but they prefer deference to local control over more local issues.





Judge Vincent said she hopes that one of the recommendations that comes from the Technology and Innovations Working Group will be to utilize new technologies to help with challenging matters like scheduling criminal traffic calendars in time slots. Trial Court Administrator Myers said the vast majority of cases in the court system are resolved short of jury trials, and the Task Force needs to focus on those cases in terms of setting priorities. Judge Corpening said some jurisdictions are finding that mandatory remote hearings improve court attendance rates, and added that public health and safety has to be the foremost focus of the Task Force's recommendations.

Judge Baddour said many people in superior court do not seem to understand that our courts probably will not be having jury trials until August at the earliest, and that upcoming court sessions will be focused on things like pleas and motions practice. He suggested that the Task Force and Chief Justice be clear that it will take time before we can have jury trials, but stress all of the other things the courts can do safely in the interim. Judge Bridges agreed that the courts remain open to provide many services and that the focus has to be on ramping back up safely.

Goals for Next Meeting and Date:

Judge Bridges said one principal goal for the Task Force's next meeting is to have received a significant amount of input from the various external work groups about prioritization of cases and proceedings. Judge Corpening urged Task Force members to look at the various reports from other states before that meeting if possible.

Judge Bridges said part of the challenge with that task is that there are so many competing interests. For instance, there are some cases that may not be high priority in some ways, but there are statutory deadlines and federal funding implications. As another example, he said a criminal case where the defendant has been in custody for a long time and has indicated an intent to plead not guilty and demand a jury trial would normally be a high priority, but the court system cannot conduct jury trials right now. Judge Bridges reiterated that he likes the phased approach in the district attorneys' recommendations but there will be a lot of competing factors that have to be taken into consideration when prioritizing matters. Judge Corpening said he asked the chief district court judges' work groups to prioritize proceedings as we expand court operations under the assumption that social distancing is possible and there are limited hours in one day.

The meeting adjourned at 3:48 p.m. The next meeting will be held on Thursday, May 21, 2020 at 2:30 p.m.

