



JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

May 21, 2020

Task Force Co Chair, the Honorable Jay Corpening, convened the meeting at 2:30 p.m. by WebEx.

Reminder of Open Meeting and Roll Call:

Judge Corpening 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 Teresa Vincent, District 18 Chief District 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.
- 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. 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 13, 2020 Task Force Meeting Minutes:

Attorney Weede moved to approve the proposed minutes of the May 13, 2020 Task Force meeting, and Judge Vincent seconded. All Task Force members who were present approved the minutes by a roll call vote.





Impact of Chief Justice’s May 21, 2020 Order on Task Force Goals and Timeline:

Judge Bridges said the Chief Justice’s most recent order includes two emergency directives to the Task Force. Emergency Directive 11 directs the Task Force to develop guidelines and best practices for in-person court proceedings that are in compliance with current public health guidance. Judge Bridges said that appears to be a charge that the Task Force had already assigned to the Best Safety Practices Working Group, and Trial Court Administrator Myers confirmed that her group is addressing that matter as one aspect of its work.

Judge Bridges said Emergency Directive 16 also directs the Task Force to recommend best practices and minimum requirements for resuming jury trials and to submit those recommendations to the Chief Justice by June 30, 2020. Judge Bridges noted that the Chief Justice gave Judge Corpening and him advance notice of her intent to include this directive in her most recent order. Judge Bridges said the superior court judges’ work group has been discussing this issue and is developing a draft proposal for the Task Force to review.

Judge Bridges noted that Judge Sermons is the current President of the Conference of Superior Court Judges and asked if he had any comments. Judge Sermons said the superior court judges are looking at information from other states and developing best practice guidelines about resuming jury trials. He added that there will need to be a lot of deference to the individual judgment of senior resident judges but that it might be best to focus on small steps first like lower-level felony trials. Judge Sermons added that facilities will remain the biggest concern, noting that a lot of courthouses only have one or two courtrooms and scheduling trials that allow for social distancing will present significant challenges. Judge Sermons said there is no one-size-fits-all approach and local court system actors will have to work together in their own districts to develop appropriate local plans.

Judge Bridges agreed that the resumption of jury trials is going to require local cooperation among all stakeholders, and he invited comments from Task Force members who have an interest in jury trials. District Attorney West said the district attorneys want authority to start calendaring jury trials no sooner than the week of August 3, but they believe there needs to be local control over the resumption of jury trials beyond that date. District Attorney West said the district attorneys will implement a common-sense approach to what cases will be tried and how, and that approach should not involve jumping right into the trial of a capital case. District Attorney West added that the district attorneys share the same concerns and questions as others about safety and the availability of personal protective equipment.

District Attorney Evans said the defense bar seems to be concerned that, at some arbitrary date in the future, district attorneys will start calendaring complex cases without any rationale, consultation, or consideration of other interests. He reminded the Task Force members that the district attorneys have also been impeded in their ability to prepare and process cases and that it will take them some time to ramp back up once they have a firm starting date. He added that the judges will be the ultimate arbiters of whether individual cases are ready for trial. District Attorney Evans said, once the Chief Justice





determines a start date and the Task Force publishes best practices, there needs to be some trust that everyone will work together to make sure justice is done.

Judge Bridges said there is a strong theme in the Chief Justice's emergency directives that courts need to be guided by a principle of not proceeding unless it can be done safely and appropriately. He noted that Emergency Directive 11 directs the senior residents to serve as or designate a COVID-19 Coordinator for each court facility in their districts. Each Coordinator is then responsible under Emergency Directive 13 for ensuring that each session of court, individually or collectively, will allow for social distancing and that all Judicial Branch personnel who will be assigned to a courtroom for more than 30 minutes have face coverings. Judge Bridges said that directive appears to impose additional calendaring requirements that need to be coordinated among different divisions of the trial court to control total courthouse population.

Public Defender Harjo said she has heard suggestions that attorneys, witnesses, clients, and jurors can wear masks during trials, and that suggestion scares her. Public Defender Harjo said cross examination is the cornerstone of the jury trial system, and it is not possible to elicit evidence that might undercut accusations with everyone wearing masks. Public Defender Harjo said there may be some cases where that could be done effectively, such as class H and I felonies, but she could not try a murder or rape case effectively with people wearing masks. She added that the same would be true for the state's cross examination of the defendant. Public Defender Harjo said she understands the need for face coverings, but she is concerned about protecting the constitutional rights of her clients with everyone wearing masks. She added that it would be very troubling for her to be asked to try a case when she cannot sit next to her client and interact with him or her during trial.

Judge Bridges said the superior court judges' work group has discussed the difficulty of maintaining social distancing at counsel table, noting that a six-foot separation between counsel and the client could convey a troubling message to jurors. Judge Bridges said one option could be to erect plexiglass shields between people at counsel tables on both the defense and prosecution side. Public Defender Harjo said that would be better than masks, but she remains concerned that it would dehumanize her clients. Judge Bridges asked if she would have that concern even if the shields are erected at both counsel tables. Public Defender Harjo said yes, noting that the investigating officers and other witnesses who may sit at the prosecution table are professionals who do not struggle with the issues and stigma related to poverty and mental illness that criminal defendants often do.

Attorney Weede said criminal defense attorneys are concerned about how plexiglass shields would impact their ability to communicate with clients during trial, noting that it is imperative that they are able to do so. He said plexiglass will help with safety issues, but it would create challenges in maintaining confidential communications during trial. Attorney Weede added that defense attorneys are also concerned about the potential health implications of resuming trials, particularly those who are in high-risk categories or have family members in those categories. He stressed that a resumption of trials would require defense attorneys to have meetings in local jails with in-custody clients. Attorney Weede said the criminal defense attorneys he has heard from believe the time frame for resuming trials needs





to be further out than the district attorneys have suggested. Attorney Weede said, if there are speedy trial issues and both sides consent to proceed, trials in August may be acceptable if officials can determine how to hold them safely. Otherwise, he suggested resuming jury non-capital trials in late September, with potentially capital cases set out further due to the serious penalties those defendants face.

Attorney McCabe said the civil bar shares many of the same safety concerns, but the civil practitioners he has heard from want to resume jury trials by early August. He added that the Chief Justice's most recent order provides some needed clarity about the timing of resuming trials. Attorney Keister agreed, and said clarity and safety are the primary concerns of the civil bar. He said civil jury trials may not be the top priority but, for attorneys with civil trials scheduled for this fall, the bar wants as much advance notice as possible as to whether those civil dockets are going to move forward.

Judge Bridges asked about the possibility of holding civil trials with a smaller panel of jurors. He said that is generally only by stipulation of the parties, and he asked what willingness there may be to have smaller jury panels in civil cases, especially in small courthouses with insufficient space for jury trials. Attorney McCabe said the civil attorneys with whom he has consulted are very open to six-person juries if that would help minimize backlogs. He added that they are also open to a change in the number of peremptory challenges. Attorney Keister agreed, noting that civil lawyers will be open to that if the court notifies them that those are the parameters for having a case heard in 2020.

Judge Bridges said one key issue with resuming trials is going to be the summoning and handling of jurors. He said that is an area in which the clerks will play a key role, and the superior court judges' work group has discussed approaches like bringing in smaller groups of jurors and staggering reporting times. Clerk Johnson said it is going to be a logistical challenge for clerks to do juror orientations, although that could be done with smaller numbers. Clerk Johnson said she hopes that when trials resume, especially criminal trials, the ones that will be scheduled will be ones that actually go forward. She said it takes a lot of time and money to do juror orientations and jury selection in cases that then plead or settle on the eve of trial. Judge Bridges said that is a good point and it will be important to try to identify cases that are actually going to proceed to trial.

Clerk Chinn-Gary agreed that smaller panels and staggered reporting times would be helpful. She added that public messaging will be very important whenever trials resume. Clerk Chinn-Gary said if the court system tells the public that courthouses are safe, that hand sanitizer is available, and that social distancing is being practiced, that messaging must be true and will be an important part of making the public feel safe enough to come to the courthouse. Clerk Chinn-Gary said Mecklenburg County saw a lot of no shows in the early days of COVID-19, and there will be a need for generous deferral policies and second noticing for those who do not appear the first time. Clerk Chinn-Gary said there may be community venues other than courthouses in which jury trials could take place more safely. She added that the possibility of virtual jury trials is being contemplated across the country and should be the subject of some conversation, even if the idea is ultimately rejected.





Trial Court Coordinator Craig said the court managers are concerned about the potential impact that holding jury trials under current conditions may have on future appeals and motions for appropriate relief. She added that everyone is struggling with new responsibilities as a result of the pandemic, and it will not be possible to meet the NCAOC's current time standards for disposition of cases. Trial Court Administrator Myers agreed. She added that whenever trials resume, it will be important to protect the court reporters, who are generally seated below witnesses where viral particles could land on them as witnesses speak or cough.

Judge Bridges asked all Task Force members to submit short written summaries about these matters within the next week to him or to NCAOC Deputy Director of Court Programs, Danielle Carman.

Setting Priorities for Case Types as Court Sessions Expand:

Judge Corpening turned to a discussion of setting priorities for case types as courts expand, and he said it would be difficult to impossible to set priorities for the entire state because there are so many different practices in different counties. Judge Corpening reminded everyone that the purpose of the Task Force is to provide guidance to the Chief Justice as she works to provide guidance to the field. He directed the Task Force members to two documents in their meeting materials. The first document contained all of the external work group submissions about priorities, including the Chief Justice's chambers, the superior court judges, the chief district court judges, the district attorneys, the court managers, and the family law bar. He noted that the chief district court judges' juvenile work group did not complete its submission in time to include in that document, so it will be updated to include their recommendations. Judge Corpening said the second document is a chart compiling all of the responses and identifying areas of consensus and areas of disagreement.

Judge Corpening said one challenge is that prioritization is about more than case types. For instance, he noted that some priorities for the chief district court judges' juvenile group included emergent matters where a child's safety is at issue or there is a dire need for services. Those are very important matters to be heard but they are not case types. Judge Corpening added that part of the Task Force's message to the Chief Justice needs to be that it is more important than ever for local stakeholders to collaborate and see what works in their individual counties. Judge Corpening asked for feedback on what the Task Force's ultimate product for the Chief Justice should look like. He said it might make sense to provide the Chief Justice with the collective body of work, along with all of the different groups' recommendations. He said it will not be possible to get all Task Force members to agree on every matter.

Trial Court Coordinator Craig said the Task Force's materials included a new document drafted by the court managers that is intended to be a combination of their previously submitted comments about case type prioritization and an attempt at grouping matters into low, medium, and high risk of exposure to the coronavirus. She said low risk proceedings are those that involve no risk of exposure to infection, do not involve physical contact between participants, and can be addressed immediately by remote means. Medium risk proceedings are those that involve moderate levels of exposure risk and that can be conducted in person with social distancing or through a hybrid of in-person and remote means. High risk





proceedings are those that involve maximum levels of exposure risk because they must be conducted in person and appropriate social distancing is impossible due to varying factors such as courtroom size and the number of participants. Trial Court Coordinator Craig said this document is not intended to be the only recommendation to the Chief Justice in this area, but it is a resource from the court managers' perspective on how they would rank various types of proceedings. She suggested using the court managers' initial recommendations about case priorities and also recommending that courts handle anything that is low risk because those matters can be resolved safely and quickly. Judge Corpening agreed that remote hearings can be done safely and should be handled, even if the case type is not a high priority. Trial Court Coordinator Craig agreed, noting that local court actors should look at priority and risk together.

Judge Bridges said his view of the work product that this Task Force should generate with respect to prioritization has changed over time. Judge Bridges said one recurring theme he has heard is that this Task Force should not issue directives to local authorities, and he believes it will be very important for the written report to communicate that the recommendations are not mandates. Judge Bridges said the Task Force will make recommendations to the Chief Justice and offer best practice suggestions as a resource to the local court officials who will ultimately have to make the actual decisions. He said the written report should convey that the recommendations are examples of the analysis that local court officials should conduct, not directives. That said, Judge Bridges said the superior court work group endorses the court managers' product as a good example of the recommended analysis. He stressed that the Chief Justice's position is that the court system needs to shift away from thinking about what *must* be heard and toward thinking about what *can* be heard safely.

Judge Sermons said the superior court judges have discussed the priorities recommended by the court managers, and he agreed they are very helpful. However, the judges are also realizing that there are trial weeks and administrative weeks and, in some ways, the priorities are already set by those designations. Judge Sermons added that everyone needs to be sensitive to the ability of attorneys to get cases ready for trial.

Judge Corpening noted the district attorneys' earlier point about prioritization being handled at a local level, and he asked for their view of what the Task Force's written product should look like. District Attorney West agreed that local court officials should prioritize the matters that can be done safely, and he said administrative traffic courts are going to present a big challenge. He added that, in Cumberland County, those will not be held until later in the summer. District Attorney West noted that local officials around the state are trying to prioritize the matters that do not require as many large gatherings.

District Attorney Evans agreed, adding that the final product has to acknowledge that one size does not fit all and allow for local autonomy. District Attorney Evans said he has reviewed the written reports of similar task forces around the country, and they tend to revolve around best safety practices and provide checklists and guidelines for each local jurisdiction to consider as it sets its own priorities. District Attorney Evans said jury trials are going to be difficult under current circumstances, but every murder trial is not the same and there are some felony cases that could be resolved. He said his office is





working to prioritize victims' rights cases and is focusing less on traffic and compliance matters. He suggested that the final product offer a template of things to consider so that local officials can prioritize in ways that are safe and consistent with best practices.

Judge Corpening turned to the family law recommendations, and attorney Harrison said the family bar suggests prioritizing the cases that involve the most urgent matters that would make the most difference to the clients. With respect to the final report to the Chief Justice, attorney Harrison said his work group tried to be practical and offer a toolbox to local courts. He said every court will not need every tool in the box, but he believes the Task Force should provide all of the submissions from the various groups to the Chief Justice so she can benefit from everyone's input.

Judge Corpening said the chief district court judges' juvenile work group focused almost entirely on risk assessment and best safety practices and did not attempt to prioritize actual proceedings. He said the group classified all juvenile court proceedings as high priority and their submission focuses on how to conduct them safely. Judge Corpening said he would work on a draft of a preamble to the prioritization recommendations that focuses on safety and minimizing risk.

Judge Corpening turned to the topic of prioritizing proceedings between trial court divisions, and he asked whether Rule 3.1 of the General Rules of Practice could be used to resolve courtroom scheduling conflicts. Judge Bridges said Rule 3.1 was drafted to address situations in which a particular attorney is expected to appear in more than one court at once and to resolve conflicts over which types of appearances take priority. He said local court officials are going to face new conflicts over courtroom space as court operations resume with social distancing requirements. While it would be ideal to resolve those conflicts through local communication, the superior court judges' work group discussed whether Rule 3.1 would be an effective tool for resolving competition for courtroom space. He said the superior court judges believe Rule 3.1 would provide an appropriate framework for resolving those conflicts when local communication is not effective. Judge Sermons agreed. Judge Vincent said there may be times when there are not enough bailiffs to enforce social distancing outside of the courtrooms, and she suggested using Rule 3.1 to resolve conflicts over manpower as well.

Judge Bridges suggested that the Task Force could recommend to the Chief Justice that Rule 3.1 should be used to resolve conflicts over facilities and courthouse personnel, in addition to scheduling conflicts for particular attorneys. Judge Sermons so moved, and Judge Vincent seconded the motion. Public Defender Harjo suggested that the recommendation be prefaced by language clarifying that communication between the parties is the preferable way to resolve conflicts, but Rule 3.1 should be used when communication is unsuccessful. Judge Sermons agreed. Judge Corpening said Rule 3.1(f) provides that judges should communicate with each other and attempt to resolve conflicts voluntarily.

Clerk Chinn-Gary said clerks preside over hearings that often involve large numbers of people, such as foreclosures, and the need to accommodate those proceedings in courtrooms is not contemplated by Rule 3.1. Judge Corpening said he hopes judges would work with their local clerks to accommodate those proceedings. By roll call vote, all Task Force members who were present approved the motion to





recommend the use of Rule 3.1 to resolve conflicts over facilities and courthouse personnel, in addition to scheduling conflicts for attorneys.

Reports from Working Groups:

Virus Fatigue Working Group:

SOG Professor Drennan said the Virus Fatigue Working Group has been focused on things that may be immediately helpful to personnel in the field. First, the group has drafted a document with self-care suggestions and, assuming the Task Force approves the draft content, the plan is to work with the NCAOC Communications Division to make it more visually appealing and to distribute it to the field. He said the Working Group did not discuss whether this document should be a full Task Force recommendation to the Chief Justice or something that comes directly from the Working Group, adding that he would defer to the Co-Chairs on that matter. He said the document relies heavily on information published by the Mayo Clinic and Centers for Disease Control and Prevention, as well as materials from the American Bar Association’s lawyers’ assistance program.

Second, Professor Drennan said the Working Group identified a “Help Now” poster published by the Trauma Resource Institute and has obtained permission to circulate it. It is a colorful poster with some basic suggestions about how to respond to stress in the moment. Third, Professor Drennan said the group is creating a video to promote awareness among court personnel about the stress induced by the crisis and to urge them to pay attention to self-care. Finally, the group is considering reducing the first document to a shorter chart with bullet points.

Judge Corpening asked if the Task Force members thought it would be okay to release those resources once they are finalized. Judge Bridges said he thinks that would be the best approach. Judge Bridges said he has reviewed a large number of reports from other states with similar task forces, and he believes this group’s work is unique and will be an excellent way of personalizing the message to Judicial Branch personnel across the state. Judge Corpening agreed, and said he appreciates the Working Group’s quick efforts. No Task Force members expressed concern about distributing the Working Group’s products as soon as they are finalized.

Best Safety Practices Working Group:

Trial Court Administrator Myers said the Best Safety Practices Working Group met on Monday and discussed the public health questions it had received with Dr. Erica Wilson, the Task Force’s public health advisor from the North Carolina Department of Health and Human Services. She said a lot of the answers to those questions may change as the public health guidance evolves, so it will be a bit of a challenge to ensure that the Working Group is providing up-to-date information. Trial Court Administrator Myers said she is working with the Working Group’s staff on how best to format the information, but the questions and answers will be reflected in the meeting minutes for the Working Group, which will be circulated to the full Task Force once they are approved. Trial Court Administrator Myers said the group’s next task is to begin preparing best safety recommendations for the Task Force’s





consideration that are appropriate for the court system, including the best safety recommendations for in-person proceedings that are required by the Chief Justice's Emergency Directive 11.

Technology and Innovations Working Group:

Judge Henry thanked the NCAOC and IDS staff who are supporting the Technology and Innovations Working Group. He referred to the earlier discussion about the use of plexiglass shields at counsel table, and said he wondered whether headsets might help with communications between defense counsel and the client. Judge Henry said the Technology and Innovations Working Group has developed a draft set of immediate recommendations that could be implemented in the short-term with little or no cost but has not yet held a final vote on those recommendations. He said it has been a collaborative effort among all members, and the list is intended to offer suggestions that may or may not be helpful in specific situations. He added that the Working Group will focus next on a set of intermediate recommendations that will be offer suggestions for July through November 2020, and then on long-term recommendations that may be helpful after the pandemic. He noted that the long-term recommendations may require legislation or additional funding.

Judge Henry offered a few highlights from the immediate recommendations, such as creative ways to expand remote proceedings and potential ways to enhance the use of the court date notification system. He said there is also a recommendation to conduct a survey aimed at identifying the local jails that have the capacity and software for remote conferences between attorneys and clients in custody. Judge Henry said the list of recommendations may be modified in subsequent meetings, but the group wanted to get an initial draft to the Task Force for today's meeting. Judge Henry added that he believes the immediate recommendations are close to final.

Judge Corpening and Judge Bridges asked the Working Groups to strive to have final recommendations to present to the full Task Force at its next meeting.

Goals for Next Meeting and Date:

Judge Corpening said his goals for the next Task Force meeting are to finalize the collection of case priorities to recommend to the Chief Justice, to finalize the immediate recommendations from the Best Safety Practices and Technology and Innovations Working Groups, and to further develop the conversation on jury trials. Judge Bridges said he hopes to have a draft plan for the resumption of jury trials to present to the Task Force at its next meeting, and he reiterated his earlier request for written comments from Task Force members and their constituents.

Judge Corpening suggested holding the next full Task Force meeting on Thursday, May 28 at 2:00 p.m. Judge Vincent said she may have to miss that meeting to preside over a session of drug treatment court.

The meeting adjourned at 4:22 p.m.

