



JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

May 28, 2020

Task Force Co Chair, the Honorable F. Donald Bridges, convened the meeting at 2:00 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 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 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) was not present for roll call but joined the meeting at 3:00 p.m.

The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge, was unable to attend. Anna Stearns, Chief of Staff and General Counsel to Chief Justice Beasley, was present via WebEx, as was 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 21, 2020 Task Force Meeting Minutes:

Judge Vincent moved to approve the minutes of the May 21, 2020 Task Force meeting, and District Attorney West seconded the motion. All Task Force members who were present approved the minutes by a roll call vote.





Finalize Recommended Priorities for Case Types as Court Sessions Expand:

Judge Corpening said a number of stakeholders submitted recommendations with respect to prioritization of proceedings and matters, and all of the submissions will be attached to the Task Force's final report as appendices. He said the Co-Chairs and staff attempted to weave highlights of those submissions into the body of the report as well. Judge Corpening said Judge Bridges and he are happy to receive substantive input about the draft report from Task Force members, but the Chief Justice needs the Task Force's report on a timeline that will not allow for extensive wordsmithing. He asked any Task Force member who has substantive comments about the report or who wants to discuss any covered matters further to submit written comments by 5:00 p.m. on Tuesday, June 2, 2020. He added that, in the meantime, the draft report will be updated to incorporate the recommendations submitted yesterday and today from the Technology and Innovations and the Best Safety Practices Working Groups.

Reports on Immediate Recommendations from Working Groups:

Judge Bridges invited the chairs of the various Working Groups to give reports about their recommendations.

Best Safety Practices Working Group:

Trial Court Administrator Myers said she circulated the Best Safety Practices Working Group's recommendations right before the meeting. She thanked the members of the group for their work, noting that it was not an easy feat to pull together these recommendations. Trial Court Administrator Myers said the group's goal was to provide clear and consistent information about the need for safety precautions, and she invited any Task Force member who thinks any of the recommendations are not clear or consistent to provide that feedback by the following Tuesday. Myers said the Working Group's recommendations are guided by a hierarchy of controls and, for the sake of clarity, they provided examples and suggestions. She added that local court officials should be able to refer to the hierarchy of controls in determining the specific combination of controls that will work best in their local courthouses.

Judge Bridges asked whether any Task Force members had comments about the Best Safety Practices recommendations, and none were expressed. Judge Bridges referred to the June 2, 2020 deadline for Task Force members to submit comments and said Judge Corpening and he agreed that would be the most workable approach to receiving comments and giving them fair consideration. He said that approach will give all Task Force members an opportunity to review and consider all of the information that is now before it, and to identify any matters in the draft Task Force report or the Working Group reports that warrant additional discussion at next week's meeting. He added that any Task Force member can request that next week's meeting agenda allow for further discussion of any topic covered by the reports. He stressed that the purpose of this approach is to provide some structure as to how the Task Force will go about considering proposed changes.





Technology and Innovations Working Group:

Judge Bridges stated that the Chair of the Technology and Innovations Working Group, District 4 Senior Resident Superior Court Judge Chuck Henry, was unable to attend the meeting and he asked Judge Baddour to give the Working Group report. Judge Baddour said the Task Force members received the Working Group's immediate recommendations yesterday, and he would not attempt to cover them all. He said the group attempted to include the main issues that could be addressed through technology and innovation, such as scheduling, notice, high-volume court operations, and communication between participants in court proceedings and between defense attorneys and their in-custody clients.

Judge Baddour noted that the Working Group tried to stay out of the details; for example, while the group recommended some mechanism for improving communication between defense counsel and their in-custody clients, it did not recommend a specific platform in order to give NCAOC and local court officials flexibility to explore different ideas. Judge Baddour said the Working Group views these recommendations as a menu of options that the Task Force might choose to endorse and pass on to the Chief Justice. He said the work to date has focused on immediate steps that could be implemented with little or cost and that would not require legislative change. The Working Group has not yet developed its intermediate and long-term recommendations. Judge Baddour said, if any Task Force member thinks anything on the list of immediate recommendations should be pushed back to intermediate or long-term, the Working Group is open to considering that.

Judge Corpening said the chief district court judges held their weekly meeting earlier in the day, and there was discussion about some lawyers not wanting to handle hearings with remote technology. Judge Corpening asked Judge Baddour if there was any discussion among the Working Group members about how to increase the bar's interest in remote hearings. Judge Baddour said the attorney members of the Working Group may be better positioned to answer that question. He added that the Working Group heard fairly consistent feedback that parties should not be able to veto remote proceedings, although there should be some mechanism for objecting for good cause, and that it should be a matter for the presiding judge to determine. He said that feedback was unanimous among the civil practitioners, but there were more concerns on the criminal side about remote hearings for substantive matters.

Judge Baddour said his reading of the discussion was that people were okay with proceeding remotely in criminal matters with the defendant's consent. He added that the civil bar seems to prefer remote hearings over not getting matters heard. He said, if judges have the authority and discretion to decide which proceedings can be held remotely, the willingness of attorneys to participate becomes less significant. Judge Baddour said the group also discussed the ability of judges to decide certain motions on the paper submissions without a hearing, and there appeared to be fairly strong support for that idea among the attorneys in the Working Group. Judge Baddour said that would not work with all motions, but it would help the courts to minimize in-court proceedings for some portion of their dockets.

Attorney Harrison said Judge Vincent recently issued an order about remote proceedings in Guilford County, and there is a fairly broad local rule in Randolph County that has expanded the types of hearings that can be held remotely. He has discussed that rule with a number of lawyers in Randolph County and





it is overwhelmingly popular with the bar. Attorney Harrison said he recently wrote a blog post for the family law section of NCBA, in which he stated that attorneys should expect to see an expanded use of remote hearings and he did not receive any push back from it. He added that Texas has been conducting remote hearings and trials, and the family law attorneys there have reported positive experiences.

Attorney McCabe said he agreed with Judge Baddour's summary of the discussion. He said the consensus of the civil bar is that they want hearings, depositions, and mediations to proceed remotely so that cases are not delayed further. He said handling those matters remotely is the best and safest way right now and will prevent an even more substantial backlog. Attorney McCabe said civil practitioners are concerned that, if judges do not require those matters to proceed remotely, there may be some gamesmanship among the parties. He added that, when matters could only be held remotely with consent of both parties, a lot of people were unwilling to consent.

Virus Fatigue Working Group:

Judge Bridges said SOG Professor Jim Drennan was listening to the meeting, but he was travelling and unable to provide a Virus Fatigue Working Group report. Judge Corpening said he participated this week in the filming of the video the Working Group is preparing, noting that a variety of Judicial Branch actors filmed short video clips on their phones and emailed them to NCAOC for compilation into a video focused on taking care of ourselves and each other. Judge Corpening said the plan is to circulate that video across the Branch as a way of recognizing that we are all in this together. He said, as people return to their offices, they will be walking back into situations that are very different from the ones they left and we all need to recognize that everyone has experienced some degree of trauma. Judge Corpening added that the group has gotten permission to share a poster with some basic tips about checking in on ourselves and managing stress.

Judge Vincent said the current state of these efforts is consistent with Professor Drennan's last report to the Task Force, and the Working Group has compiled information and tips for the field from reputable sources. Judge Vincent added that NCAOC Communications Division is now working to make the self-care document that was shared at the last meeting more visually attractive.

Judge Bridges said all of the Working Groups have been focused on matters that are not part of the members' every day areas of expertise, and he is grateful to the members for their efforts to gather information and become informed in these new areas.

Review of Draft Recommendations for Resumption of Jury Trials:

Judge Bridges said the Chief Justice asked the Task Force to formulate a plan for the resumption of jury trials, and the draft Task Force report contains a starting proposal on that topic. He said one consistent theme in the comments from various stakeholders has been that one size does not fit all. Judge Bridges said that same theme applies to the resumption of jury trials, not only because various parts of the state have different populations and caseloads, but also because there are varying opinions and concerns among the different stakeholders.





Judge Bridges said the Task Force members and their constituents have expressed widely varying concerns about jury trials, and the current draft of the report represents an effort to present fair and accurate summaries of those concerns. Judge Bridges said he does not expect the Task Force members to reach unanimous agreement on every point in the draft plan, but he hopes that they can reach consensus on the fundamentals and that everyone's concerns have been accurately summarized so the Chief Justice and local officials can take them into account when they decide how to proceed with trials on a statewide basis and in individual districts.

Judge Bridges said another consistent theme has been the need for clarity, and many Task Force members have asked the group to recommend a specific date to the Chief Justice for when jury trials may resume. He said the request has not been for her to dictate when trials will resume, but to provide a date on which they may begin if local officials are ready to do so.

Judge Bridges asked if any Task Force member wanted to present a motion for consideration on that point. District Attorney West made a motion for August 3, 2020 to be the date when district attorneys can start calendaring jury trials, noting that there should be local discretion in consultation with all local stakeholders as to which trials actually proceed on that date. District Attorney Evans seconded the motion. He said, as a practical matter, the proposed date of August 3, 2020 is nothing more than a planning tool so that districts can begin to get prepared. He added that the date for resuming actual jury trials will vary.

Public Defender Harjo said the criminal defense bar shares the desire to get back to resolving cases and the clients, particularly those in custody, are anxious to have their cases heard. However, she believes that August 3, 2020 is too soon without the consent of all parties. Public Defender Harjo said she does not think it would be possible to resume trials before August 3 because there are so many protective measures that need to be put in place for all participants. Until those measures are in place, she does not believe it would be feasible to require criminal defendants and their counsel to commence trials that soon. Public Defender Harjo said attorneys have not been able to conduct in-person interviews and investigations, and it has not been possible to send investigators into the field. She added that those efforts may not be possible for the foreseeable future. She said the summary of the criminal defense bar's concerns in the draft report is accurate, and she urged the Task Force members to review those concerns. Public Defender Harjo added that she does not think it will be possible to conduct criminal jury trials remotely by video.

Attorney Weede agreed, noting that the draft report accurately summarizes the concerns of the criminal defense bar and he believes it does an excellent job of describing the positions of all stakeholders. Attorney Weede said, if all parties consent to a trial on August 3, he thinks it is acceptable to proceed. However, if all parties do not consent, he thinks it makes more sense not to resume criminal jury trials until late September 2020 and not to resume potentially capital trials until late November 2020. Attorney Weede said it might make sense to submit the Task Force's recommendations without a specific date and to let the Chief Justice make that decision after reviewing all of the feedback.





Trial Court Administrator Myers agreed that August 3, 2020 is too soon. She stressed that counties have not even resumed in-person hearings yet, and no one knows what that will look like or entail. She added that there are a lot of concerns about how to get a representative jury pool under these conditions, noting that many parents will still be dealing with child-care issues on August 3.

Attorney Harrison said whatever gets done in August is going to be a fairly preliminary trial run for the whole process, noting that courts are going to have to send summons to more people than normal because there will likely be more deferrals and that getting all jurors and participants together in one place may not be possible everywhere. He said there is going to have to be a “trial and error” approach for a while and using such an approach in a serious felony or murder case does not appear just. Attorney Harrison said everyone should want procedures that will withstand appellate scrutiny and that appear fair to the public.

Clerk Johnson said the Best Safety Practices Working Group is recommending staggered shifts in clerks’ offices, and many clerks will not be able to follow those recommendations because of the staffing needs in courtrooms. She said August 3 is going to be too soon for some clerks to resolve those staffing challenges. Clerk Johnson added that, if there is exposure in a clerk’s office or courthouse, they are going to have to close for sanitization and potentially isolate staff. She said the clerks of superior court would prefer a later date for jury trials.

Trial Court Coordinator Kinsley Craig said her concerns are logistical. She said the Chief Justice’s order directs the COVID-19 facility coordinators to identify any needed alternate facilities for jury trials by July 1, 2020. She said that will be a new process for everyone, including county managers, and she is hesitant to say that it will be possible to work out all of the logistics of holding jury trials in alternate locations by August 3. She noted that jury summons would have to include the location of the alternate facility.

Judge Bridges asked if there are other concerns about the August 3, 2020 start date in District Attorney West’s motion, and District Attorney Evans suggested calling the motion to get a better sense of where everyone stood. District Attorney West restated his earlier motion to allow the district attorneys to begin calendaring trials on August 3, subject to rulings by the presiding judges in specific cases. District Attorney West added that the COVID teams in individual districts should develop plans for the safe resumption of jury trials in their districts. District Attorney Evans said that process should lead to local consensus as to when actual trials should resume in each district.

Attorney McCabe said he understood District Attorney West’s original motion to allow for criminal and civil jury trials to resume no earlier than August 3, but his restated motion was limited to criminal trials. District Attorney West said he would accept a friendly amendment to include the resumption of civil jury trials in his motion. Attorney Weede suggested voting separately on civil and criminal jury trials. Trial Court Administrator Myers disagreed, noting that court officials will have to engage in the same preparatory steps of summing jurors and staffing courtrooms appropriately before resuming both civil and criminal trials. Trial Court Administrator Myers suggested that the COVID facility coordinators and/or senior resident superior court judges be required to certify that they have a safe plan in place by





a certain date. She said she would defer to the clerks on when they can have adequate staffing in place, but she suggested sometime in September. If the Task Force recommends a specific date, Trial Court Administrator Myers said it needs to be very clear that each district should not resume actual trials until they have a plan for doing so safely.

Judge Bridges asked District Attorney West whether his motion could include a requirement of local COVID safety plans being in place before the resumption of jury trials, and District Attorney West said yes. Attorney McCabe said his understanding is the date for actual resumption of trials would be a district-by-district decision, not a statewide mandate, noting that the August 3 date should be the earliest date when individual districts can start holding trials as long as it can be done safely. Judge Bridges agreed and said the Task Force is not issuing directives but is offering recommendations for the Chief Justice's consideration.

Judge Bridges restated the motion on the floor as allowing, but not requiring, the calendaring of civil and criminal jury trials on or after August 3 as long as the local COVID facility coordinators have a COVID safety plan with respect to jury trials in the district. The following nine Task Force members voted in favor of the motion in a roll call vote: Judge Bridges, Judge Corpening, Judge Vincent, District Attorney West, District Attorney Evans, Trial Court Coordinator Craig, Trial Court Administrator Myers, Magistrate Cheek, and Attorney McCabe. The following five Task Force members voted against the motion in a roll call vote: Clerk Johnson, Clerk Chinn-Gary, Public Defender Harjo, Attorney Harrison, and Attorney Weede.

Judge Bridges said the next step is for the Task Force to determine whether and how to include this recommendation in the report. He urged everyone to read the draft report carefully and to send the Co-Chairs written comments explaining any concerns they may have about how the materials are presented and requesting any desired additions to next week's meeting agenda. NCAOC Deputy Director of Court Programs, Danielle Carman, asked any Task Force members who submit written comments or requests to copy her so she can compile the information in advance of the meeting.

Judge Bridges said the Task Force has tried to garner as much consensus as possible on the issues before it and it is clear there is significant dissension on the issue of a date for resuming trials. He said that may be a sign that the Task Force should defer consideration of this issue and see if it is possible to arrive at greater consensus. He urged all Task Force members to think about that question. Judge Corpening said, unless there are significant changes in people's positions over the next week, if the Task Force decides to submit that recommendation to the Chief Justice, the report needs to convey that there are heartfelt differences of opinion on this issue. He said the Chief Justice has been wrestling with this issue and it will be helpful to her to know that the Task Force wrestled with it as well. Judge Corpening said the work done by the Task Force and Working Groups has been remarkable, and he and Judge Bridges are amazed at the quality and speed of the work. With respect to the jury trial issue, he said it is challenging in part because of the planning that needs to happen before trials can resume. Judge Corpening added that it is easier to push a date back than to move it forward.





Plan and Timeline for Submission of Report to Chief Justice:

Judge Corpening said time has been the Task Force’s enemy since it began its work, and the group needs to try to wrap up the initial report to the Chief Justice as soon as possible. He said court operations will begin expanding next week, although the degree of expansion will vary around the state, and people are looking to this group for guidance. Judge Corpening reiterated the request for Task Force members to submit written comments about the draft report by 5:00 p.m. next Tuesday.

Judge Corpening said next week’s meeting will be focused on finding consensus on as many issues as possible, and the goal is to submit the report to the Chief Justice by the following week. He reiterated that the Co-Chairs are seeking substantive comments, not wordsmithing. He added that the Task Force will have additional longer-term work to do after the initial report is submitted.

Goals for Next Meeting and Date:

Judge Bridges said the next meeting will be Thursday, June 4, 2020 at 2:00 by Web Ex. The goals for that meeting will be to finalize the immediate reports from the Working Groups and to arrive at a final recommendation on the resumption of jury trials. He added that the Task Force has not even discussed whether to include any budgetary recommendations in its report. Judge Corpening asked Deputy Director Carman to provide the Task Force members with a draft of NCAOC’s COVID-19 funding requests before the next meeting, and she agreed to do so.

The meeting adjourned at 3:13 p.m.

