



# THE CHIEF JUSTICE'S TASK FORCE ON REMOTE PROCEEDINGS MEETING MINUTES

April 1, 2022, 10:00 AM

The Chief Justice's Task Force on Remote Proceedings met at the North Carolina Judicial Center on Friday, April 1, 2022. The meeting came to order at 10:00 AM. The following RPTF members, North Carolina Administrative Office of the Courts (NCAOC) staff, and guests were present, either in-person or via Webex:

#### *RPTF Members*

- Judge Martin McGee, Co-Chair
- Eddie Caldwell, Co-Chair
- CSC Michelle Ball
- Ryan Boyce
- Judge Charles Brown
- Judge Andrew Heath
- Burcu Hensley (For Eric Zogry)
- Todd Ishee
- William Lassiter
- Vanessa Martinucci
- Kimmel McDiarmid
- Mary Pollard
- Mike Silver
- CSC Todd Tilley
- Patrick Weede
- Anthony Whitmore
- John Woodlock

#### *NCAOC Staff*

- Lori Cole
- DeShield Greene
- Emily Mehta
- Wesleigh Vick

#### *Guests*

- Shawn Alba
- Bryan Allison
- Jason Caccamo
- Sheriff Alan Cloninger, Gaston
- John Dilday
- Derek Dittmar
- Melissa Earp
- Brande Harris
- Erin Hickey
- Mark Larsen
- Jeff Levensailor
- Wayne Lewallen
- Nathan Zintek

#### **Welcome**

Judge Martin McGee reviewed the progress that has been made since the last meeting, including the continued installation of CRAVE units, ongoing development of scheduling software by both NCDPS and NCAOC, the development of a pilot program between Cabarrus County & Piedmont Correctional Institution, and the creation of two additional Subcommittees: a State Crime Lab Subcommittee and a Juvenile Subcommittee. The latter will focus on remote hearings in juvenile delinquency matters.



### **Introduction of New Member/State Crime Lab Mission**

Legislation to allow remote testimony by State Crime Lab analysts became effective January 1, 2022. As a result, Judge McGee contacted the NC State Crime Lab to develop a pilot program with Cabarrus County to use remote analyst testimony. To assist in the development of this pilot program, State Crime Lab Director Vanessa Martinucci was appointed to the RPTF, and the State Crime Lab Subcommittee was formed.

Analysts only testify about 10% of the time when they are subpoenaed to court. This results in a good bit of lost time for the analysts when they could be in the lab working cases. Remote testimony will allow analysts to stay in the lab and return to working cases right away when they complete their testimony.

Earlier this month, Cabarrus County held an initial meeting and practice session using remote testimony from the State Crime Lab. Members of the Cabarrus County Bar, prosecutor's office, clerks, and IDS Director Mary Pollard were present to observe. There were no issues with the process. They are now developing official business processes for remote testimony. Cabarrus County will have their first hearing using remote analyst testimony later this month. Judge McGee plans for the State Crime Lab Subcommittee to meet after their first hearing.

### **Disability Access in Remote Proceedings**

Derek Dittmar is a legally blind civil defense attorney with a Master of Laws focusing on disability access and constitutional rights. He is also certified in disability access testing. Mr. Dittmar stressed to the members that disability access is foundational. It must be implemented from the beginning and throughout the entire process, not afterwards. Mr. Dittmar focused on three points: applicable law, access in practice, and accommodation in practice.

Article I, Section 18 of the NC Constitution requires that "[a]ll courts shall be open" and that "justice shall be administered without favor, denial, or delay." Furthermore, the Americans with Disabilities Act and the North Carolina Persons with Disabilities Act, both require that courts provide accommodations and accessible services for people with disabilities.

When looking at access in practice, it is important to know that:

- The more work that is done on the front end to ensure accessibility, the less work that will have to be done on the back end to 'make it work.'
- Access is not just for those with disabilities. The Universal Design Theory provides when disability access is created, it improves the quality of life for all. For example, elevators are required by the ADA, but they are helpful to those with or without disabilities.
- Disability is very common—26% of Americans live with some form of a disability; and a disability can occur at any time.

There are four pillars of accessibility: perceivable, operable, understandable, & robust (POUR). The processes for remote proceedings must follow these guiding principles to provide accessibility in





practice. It is also important to note that there is a difference between accessibility and *usability*. Using a hotel as an example, accessibility would mean that every room in the hotel *can* be entered although the layout of the space may be difficult to *use*. Usability would mean that the space can be entered, it can be used, it is convenient, and enjoyable for those with disabilities. The best practice to ensure something is accessible, is to make sure it is accessible *and* usable. Therefore, the best practices to ensure access in practice are:

1. Include people with disabilities in all stages of development, from the initial brainstorming to the post-rollout updates.
2. Contract for accessibility with third parties. When third party designed software or hardware is contracted, make sure that the accessibility requirement is set forth and the designer is obligated to comply with it.
3. It is vital to have in-house testing with someone who has a disability.
4. There must be multiple means to receive disability access complaints or recommendations.

Accommodation in practice is modification of a procedure or policy to ensure that a person with disabilities can have full access to the offering. Not every person with disabilities will use the same form of technology; therefore, accommodation in practice is necessary. To accommodate remote proceedings, there must be multiple avenues provided (e.g., being able to use not only WebEx, but also Zoom.) Another way to accommodate remote proceedings is to prepare all associated documents and materials in multiple formats (i.e., large print, brail, electronic, etc.). Finally, to accommodate remote proceedings there should be consideration of video remote interpretation (VRI).

Kimmel McDiarmid advised the Task Force members present that a real-time court reporter is able to provide captioning for the hearing impaired who appear in court, whether as a participant or observer, with a second computer (often called a throwdown by the court reporter). This second computer is an extra computer that either has software loaded on it to allow a user to view the realtime transcription or has the ability to access the website where many court reporters stream their real time with the use of a broadcasters license for which they pay. This website is also accessible from any smart phone. Ms. McDiarmid also advised that the court reporter can be made the captioner for a hearing held via Webex so that the captions are accurate and usable, rather than relying on the captions that result from the embedded captioning abilities of Webex.

### **Court Webex Scheduling App Demo & Technology Updates**

NCDPS is currently piloting their scheduler software with Piedmont Correctional Institution (CI) and Maury CI. They are incorporating the Post-Release Supervision and Parole Commission's schedule in the scheduler software. They plan on meeting with the Industrial Commission next to include their schedule in the scheduler. As a part of the piloting process, NCDPS provided a feedback form for Piedmont CI to note where the scheduler can be improved.

NCAOC is now able to provide two CRAVE courtroom configurations per county. Thus far, 75 courthouse site surveys have been completed. After a site survey is complete, the county will install the required CRAVE cabling. Currently, there are five courtrooms operating with CRAVE: Cabarrus, Perquimans, New





Hanover, Burke, and Caldwell. All site surveys should be complete by July with CRAVE systems operating in all counties by the end of 2022.

NCAOC has partnered with Presidio Systems to develop a scheduling application. Presidio's objective is: "Provide NCAOC community with an intuitive, simple scheduling application that will reduce the inherent complexities of cross-department coordination and to provide WebEx scheduling for DAC facilities/offenders at all DAC facilities by July 2022. The centralized platform would help schedule, organize, and optimize the interactions between offenders, court staff, attorneys, judges, and external parties."

Presidio demonstrated the scheduling application that can be used to coordinate the scheduling of Webex remote proceedings (i.e., State Crime Lab proceedings, jails, probation, etc.). Presidio estimates a partially functional application will be ready by May 1<sup>st</sup>; a fully functional application (not in production) should be ready by June 1<sup>st</sup>. The projected benefits of the scheduling application are: increased efficiency by using automation and technology to replace manual processes, minimization of travel which in turn reduces costs, and real time scheduling. Presidio plans for the scheduling application to be able to connect to WebEx, connect to Office 365 for calendaring, and integrate with other agencies (such as, NCDPS). It is being built with jails, the State Crime Lab, probation services, NC Bar, and other entities in mind.

### **Scheduling Juvenile Justice Proceedings**

There are two county operated juvenile detention centers, nine state operated juvenile detention centers, and three separate counties that have juvenile-only population sections in their jails. Throughout the pandemic, they have had success with remote hearings. They are working on remote hearing procedures for juveniles and have had initial discussions to identify key issues.

### **Identification of Needed Data**

Judge McGee led the members in a discussion on the identification of data that is needed. He prompted the members to consider how the RPTF will measure outcomes, what data would be helpful in decision making, and how the RPTF would capture data moving forward.

The State Crime Lab tracks all subpoenas they receive in depth, including but not limited to the county of origin, who is subpoenaed, and the case number. They have created an option for virtual subpoenas and with that, they can track the number of requests for virtual hearings. They also track who is traveling to court, the length of travel time, how often they are subpoenaed, how much of their time is spent waiting, and how much of their time is spent testifying. The State Crime Lab can share their data to show how virtual hearings have affected their analysts. Furthermore, they can monetize their data to show the savings that result from virtual hearings. Judge Heath asked Emily Mehta to connect with the State Crime Lab team to learn more about their work with demonstrating cost savings and how that can be applied elsewhere.





Judge McGee suggested that after the general discussion with all RPTF Members, the discussion should continue into the Subcommittee meetings to refine what type of information is needed. He asked for representatives from each group (Prisons, Jails, Courts, Central Regional Hospital) to talk about the type of data that would be helpful. NCDPS shared that they can capture the data they need themselves. They can calculate the number of miles and hours that they are currently spending on in-person hearings. By taking the proportion that they know will turn into virtual hearings, they will be able to quantify the cost savings of virtual hearings.

### **Prioritization of Hearings**

Judge McGee continued to lead the members in general discussion, now focusing on prioritization of hearings. He asked for a representative from the Prisons System to share prioritization issues or concerns that they have.

Brandeshawn Harris relayed concerns from NCDPS Deputy General Counsel Jodi Harrison. Their concerns are related to offenders who have multiple hearings at the same time and how the requests should be prioritized (e.g., the offender needs to go to Federal Court, Superior Court, and District Court). NCDPS is also concerned about how a situation is handled when a proceeding exceeds its allotted time and there is another agency that needs the device at that time. One of the biggest issues right now is the limited number of devices.

There is currently a process in place to resolve conflicts in court hearings. This could be followed to resolve conflicts. Judge McGee asked that the members continue to work collaboratively to find solutions to these issues.

### **Business Practices & Writs**

Judge McGee prompted the members to consider the areas where business practices are needed by considering the current business process, if the current process should be modified, identify paperwork that is completed and transmitted, and the forms that are needed.

As a pilot county for Odyssey, CSC Michelle Ball shared that in the future there will no longer be papers to pass around. Odyssey will route the documents electronically. This will change the current process with writs because the system will use electronic signatures, and documents will be filed electronically. Judge Heath asked Anthony Whitmore to engage the Business Analysis and Project Management Team in developing business analysis and practices for the RPTF.

### **Waiver of Remote Proceeding Form & Colloquy**

According to the procedural requirement in G.S. 7A-49.6, when the right to confront or the right to be present is implied in criminal or juvenile delinquency proceedings, a waiver is required to conduct the proceeding remotely. Currently, there is no waiver form developed to satisfy this requirement. The Office of General Counsel prompted the RPTF Members to consider if it would be beneficial to develop a waiver and/or colloquy for obtaining waivers that court officials would use in remote proceedings.





**Adjourn**

The meeting adjourned at 1:06 PM.

The next RPTF meeting will be held on Friday, August 5<sup>th</sup>, 2022, at the North Carolina Judicial Center.

*Submitted by Erin Elliott*

