



THE CHIEF JUSTICE'S REMOTE PROCEEDINGS TASK FORCE

www.NCcourts.gov/Remote-Proceedings

MEETING MINUTES

August 5, 2022, 10:00 AM

The Chief Justice's Remote Proceedings Task Force (RPTF) met at the North Carolina Judicial Center on Friday, August 5, 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
- Judge Allen Baddour
- CSC Michelle Ball
- Christopher Bazzle
- DA Ted Bell
- Judge Charles Brown
- Whitney Fairbanks (for Mary Pollard)
- Judge Andrew Heath
- William Lassiter
- Vanessa Martinucci
- Kimmel McDiarmid
- Tim Moose
- Todd Shanley
- Mike Silver
- CSC Todd Tilley
- Charles Vance
- Patrick Weede
- Anthony Whitmore
- John Woodlock
- Eric Zogry

NCAOC Staff

- Sean Callan
- Lori Cole
- Elizabeth Croom
- DeShield Greene
- Mike Hutchinson
- Julianna Kirschner
- Joseph Kyzer
- Emily Mehta
- Matt Osborne
- Troy Page
- Asia Prince

Guests

- Shawn Alba (Presidio)
- Bryan Allison (Presidio)
- Sheriff Asa Buck (Carteret)
- Jason Caccamo (NCSCCL)
- Sheriff Alan Cloninger (Gaston)
- John Dilday (NCSCCL)
- Melissa Earp (NCDPS)
- Jodi Harrison (NCDPS)
- Wayne Lewallen (NCSCCL)
- Jeff Levensailor
- Lt. Ted Lister (Cabarrus County Sheriff's Office)

Approval of Meeting Minutes

John Woodlock made a motion to approve the April 1st Task Force meeting minutes with the amendment proposed by Kimmel McDiarmid. Tim Moose seconded the motion. The minutes were approved.



Meeting Overview

Judge McGee described the challenges before the RPTF for hearings between the courts and the prisons, jails, juvenile detention facilities, and the State Crime Lab (SCL). Webex software will be used to conduct all remote proceedings. The CRAVE system or some comparable audio video system is the best equipment to allow everyone to see and hear the proceedings. The three areas that must still be addressed are: Remote Hearing Scheduling protocol, Private Attorney/Client Communication, and Document Exchange. (See attached spreadsheet.)

Maury Correction has piloted a plan for private communication between attorneys and their clients who are incarcerated. Cabarrus County Detention Center will soon have an audio option to allow a private, non-recorded phone line. Juvenile facilities are dealing with this on case-by-case basis. For the SCL, the communication issue relates more to ensuring the defense attorney can contact the lab analyst prior to the remote proceedings. The various court paperwork and documents that are required (e.g., plea transcripts) are being handled in an ad hoc fashion for each institution, either through hand delivery, fax, or electronic. Discussions are ongoing to determine a way to transfer documents between the institutions and the courts. The Subcommittees and pilot programs are working on these and a variety of other issues (e.g., who records the hearing, who sends the Webex invitation).

Technology-CRAVE Update

Anthony Whitmore provided an update on the implementation of the CRAVE system. All 100 counties, two courtrooms per county, will receive technology to be able to communicate with jails, prisons, and other facilities. As of today, CRAVE has been deployed in seven counties: Burke, Brunswick, Cabarrus, Caldwell, Dare, New Hanover, and Perquimans. CRAVE will be deployed in Polk on August 8th.

An obstacle to implementing CRAVE has been installation of equipment/cables in the courtrooms. Site surveys of what is needed for the courtrooms have been completed for 50 counties. NCAOC Director Judge Heath has sent letters to county managers and the elected sheriffs to encourage them to engage with the NCAOC counterparts to get cabling installed to deploy CRAVE. In addition, a video has been created to show the advantages of CRAVE which was shared with the RPTF. Mr. Shanley noted that the project has not been well received in the counties due to the timing.

Since the SCL proceedings occur largely in district court, it would be helpful if at least one CRAVE installation were in district court. CSC Tilley stated that CRAVE has been helpful in conducting clerk proceedings and the Perquimans Sheriff was enthusiastic about the installation due to the distance of the jail to the courthouse. Counties interested in implementing CRAVE should contact the AOC Help Desk at 919 890-2407.

Technology-Court Webex Scheduling App (Presidio) Update

Representatives from Presidio provided an update on the Webex scheduling application that will allow courts to schedule Webex hearings between the courts and the detention facilities. The app will allow



for a clerk or other court staff to schedule a hearing with a county jail. The jail can then confirm the defendant is in the detention facility and that the defendant will appear for the remote proceeding at the time specified. Juvenile facilities are not currently part of the application for the pilot sites. Deputy Secretary Lassiter advised it would be helpful to include juvenile facilities in the scheduling app process and to have access to the CRAVE units because each juvenile facility has a virtual courtroom which is CRAVE compatible.

Presidio gave an overview of the project timeline, with the project beginning in June and ending in September. Screenshots of the platform were displayed. (See attached presentation.) The app will display future dockets to allow a user to view the cases scheduled. Presidio hopes to be able to demonstrate the application at the next Task Force meeting. Lori Cole expressed concerns regarding accessibility requirements, including language and disability access. She also recommended that someone with a disability be included in testing. The next steps are to identify pilot sites to test the platform to be able to gather and incorporate the feedback. Training documentation will be prepared for users.

Waiver of Remote Proceeding Form & Colloquy

G.S. 7A-49.6(e) requires the court to obtain a waiver to conduct a remote proceeding when the right to confront or the right to be present is implicated in criminal or juvenile delinquency proceedings. At the April meeting, the NCAOC Office of General Counsel (OGC) inquired if there was a need to update two templates that were developed during the pandemic to accompany Emergency Directive 3: (i) form for the defendant to execute that would waive their right to an in person proceeding and (ii) a colloquy to be used by the court to obtain this waiver. Judge McGee, Judge Baddour, and others expressed an interest in moving forward with revisions to these templates to comply with G.S. 7A-49.6. As a result, OGC drafted (i) a template colloquy for remote criminal proceedings to comply with G.S. 7A-49.6 (ii) a template waiver form to comply with G.S. 7A-49.6 and (iii) a proposed revision to the transcript of plea form (AOC-CR-300) to include an abbreviated version of the waiver language that could be used if the defendant is represented by counsel. The three drafts were presented for discussion by Matt Osborne and Troy Page, noting changes that have been made from the original versions, including modifying the jurat on the CR-300 to a more general notarial jurat given that there may not be a clerk co-located with the defendant during a remote proceeding.

Concerns were expressed by NCDPS that allowing a defendant to speak confidentially with their attorney during a proceeding, as referenced in the waiver, may be problematic given their current structure but this will have to be addressed on a case-by-case basis. Judge McGee added that some cases may not be able to be heard if this request is made. There was discussion that the waiver would not be needed in proceedings under G.S. 15A-1225.3 if the requirements in that statute were followed.

Judge Brown made a motion to submit the modified AOC-CR-300 with the modified jurat to NCAOC Director Judge Heath and to approve the updated colloquy and waiver form as discussed. CSC Tilley



seconded the motion. The motion passed. The changes discussed will be made and presented to Judge Heath for approval. Upon approval, the colloquy and waiver will be added to the RPTF web page, and the revised AOC-CR-300 will be updated on nccourts.gov.

Juvenile Subcommittee Report

The Juvenile Subcommittee was formed from the larger Jails Subcommittee to address concerns specific to juveniles. The Subcommittee has met three times since convening. Juvenile specific waiver forms may be ready by the next Task Force meeting. Finalizing the scheduling application will be beneficial for scheduling juvenile remote proceedings as will having an AM and PM court session and assigned staff to be present at all the hearings.

The Subcommittee is working with New Hanover County and Subcommittee Member Judge J. Corpening to develop guidelines and recommendations. There are legislative changes the Subcommittee may present at the next Task Force meeting, one being to add a requirement that a parent waive their right to be present at a remote hearing. The Subcommittee has discussed the types of hearings and procedures that can best be held remotely, and a best practice list is being prepared for judges that outlines the types of hearings that work best. There have been discussions about allowing victims to participate and testify remotely in secure hearings, which occur every 10 days.

The Subcommittee may recommend a few changes to the colloquy and waiver that are specific to juveniles. The juvenile plea of transcript may need to be updated to comport with the changes discussed to the adult transcript of plea. Mr. Lassiter stated clerks will be added to the Subcommittee to help resolve scheduling issues. The Subcommittee continues to consider how a juvenile will communicate confidentially with their attorneys.

Prisons Subcommittee Report

Four remote hearings have been conducted in the pilot location, which is Piedmont Correctional Institution and the Cabarrus County Courthouse. Judge McGee and the Cabarrus District Attorney met with the Warden about the details of the pilot program. For the remote hearings in the pilot, video conferencing is set up in Piedmont with the scheduling done by the District Attorney's Office using the software created by John Woodlock. A draft writ has been created to indicate the hearing is remote and includes a field for the Webex link. (Note: In Cabarrus, the Webex link remains the same for each hearing in the CRAVE courtroom.)

Piedmont Correctional Institution is still working to create a conference space that can be used by defendants to have confidential communications with their attorneys. The document exchange is the biggest challenge; most attorneys use fax or email. These processes are coordinated between each facility. The goal is to document the procedures (i.e., confidential communication, scheduling, document exchange) to be replicated in other jurisdictions. Regarding the confidential phone line, Jodi Harrison noted that the phone line in Maury Correctional Institution should be functional now, the Foothills



facility will implement on August 19th, and the Anson Correctional Institution should be functioning by the end of month. Judge McGee noted the information that was provided to the RPTF members regarding the counties and facilities with the highest number of writs.

Jails Subcommittee Report

The Jails Subcommittee is awaiting clear guidance on the needs of the courts but would like to convene a group of jail administrators. Lt. Lister reported that 25 remote hearings have been held in the Cabarrus County Detention Center. They are also conducting advisements for other counties. A phone line has been added in the room in the jail where the hearings are held to allow for secure attorney/client communication. Starting August 22nd, video visitation for attorneys will be implemented. To ensure the conversation is not recorded, attorneys must confirm their status to suppress the recording.

State Crime Lab (SCL) Subcommittee Report

Since the April RPTF meeting, Cabarrus has held 4 driving while intoxicated trials using remote analyst testimony. While Cabarrus does not have a CRAVE system in the district court courtroom, there is a comparable county system that works well. The court notifies the SCL when the analyst should log in to the proceeding; scheduling the proceedings has not been an issue. The analyst contact information is provided to the defense attorney to address any questions they have prior to the hearing.

The Conference of District Attorneys and Judge McGee have prepared a draft protocol for district court remote hearings involving the SCL; Judge McGee plans to share that outline at a future meeting. Other counties have also been holding remote proceedings using the existing infrastructure with success. For example, a New Hanover County case was scheduled that resulted in a plea which saved five hours of travel time. The SCL is developing a subpoena coversheet to use in these proceedings. A Subcommittee meeting will be scheduled in the future. Judge Brown encouraged the group to consider how to prioritize cases when counties request analyst testimony on the same date and time, rather than just a first come, first served approach.

Adjourn

The meeting adjourned at 1:00 PM.

Future Meeting Dates

The next RPTF meeting will be held on Tuesday, December 13th at the NC Judicial Center.

Submitted by DeShield Greene