



TECHNOLOGY AND INNOVATION WORKING GROUP INTERMEDIATE RECOMMENDATIONS

June 4, 2020

The Technology and Innovations Working Group was tasked with examining the types of proceedings that can be conducted remotely, whether legislative changes are needed to support that effort, whether there are additional equipment needs, and to identify innovations in court scheduling and operations based on technology.

The Working Group previously provided immediate recommendations to the Judicial Branch COVID-19 Task Force which contained recommendations that could be implemented with existing technology, had little to no costs associated, or could be authorized through an emergency directive. The Technology and Innovations Working Group makes the following intermediate recommendations with a proposed implementation date of **no sooner than October 2020**. Proposed *long term recommendations that could be implemented in 2021 will be forthcoming*.

1. Recommend local policies for motions (or types of motions) to be addressed on written motion, without oral argument.
 - a. Civil matters: motions to compel, motions to dismiss, motions to continue or for peremptory setting, other administrative matters.
2. Amend paragraph 4 of Rule 6 of the General Rules of Practice to reflect that arguments of any motion may be accomplished by means of a telephone, **remote, online, or electronic** conference without requiring counsel to appear in court in person.
3. Establish a portal (computer terminal or iPad) at each courthouse for public use that would allow individuals without home computer access to participate remotely in a hearing outside of the courtroom.
 - a. Enable self-represented defendants to negotiate with a prosecutor prior to court (e.g. for certain traffic and low-level misdemeanor cases) by iPlea, WebEx, or other technologies.
4. Authorize/Permit limited driving privilege (LDP) petitions and other filings required in association with the LDP petitions to be submitted electronically and for associated costs to be paid online.
5. Amend Dispute Resolution Commission (DRC) rules to permanently authorize remote district and superior court mediations.
 - a. Require, absent a showing of good cause, remote mediations for superior court matters as well as district court family financial matters. In-person mediations can be held if social distancing can be observed and upon consent of all parties or order of Court.



6. Amend Rules of Court Ordered Arbitration to allow for remote arbitration hearings and for in-person arbitrations to occur at locations other than the courthouse (requires amendment to the Rules of Court Ordered Arbitration)
7. Request that appropriate representatives of the superior court judges, district court judges, clerks of superior court and court managers and other stakeholders identify high volume/narrow discretion issues that may be fairly resolved using public facing technology including Online Dispute Resolution (ODR).
8. Eliminate calendar call and replace with digital/phone/kiosk-based check in system.
9. Establish statewide rules for remote handling of all forms of evidence (marking/identifying, introduction, live witness testimony, etc.) including remote swearing of witnesses.
10. Evaluate programs for support of self-represented litigants and assess the use of such programs more widely in courts (e.g., ODR).
11. Following the statewide survey of jails and correctional facilities to determine the capability of attorney/client video conferences included in the immediate recommendations, create database describing each facility's capacity and contact information, in order to allow remote contact with inmates by counsel for attorney-client purposes as well as court proceedings.
 - a. Encourage each district's COVID-19 coordinator to make reasonable efforts to bring video capacity to facilities without this technology.
12. Modify citation to include a field for a cell phone number and email address for the defendant or develop mechanism to collect this information in a way that protects the defendant's confidentiality.
13. Consider requesting that the legislature expand the scope of G.S. 1A-1, Rule 53 to specify that alimony, child custody, child support, and equitable distribution issues may be referred by district court judges.
14. Request that the NCAOC Communications Office prepare training platforms to teach attorneys and the public how to use WebEx to interface with the courts and judicial system.
15. To reduce courthouse traffic, consider an emergency directive to waive the fine/penalty that is established pursuant to G.S. 7A-148 for those defendants that elect to waive a trial or hearing and plead guilty or responsible to charges during the period on or after _____ until _____.





Recommendations Related to Jury Trials

(Updated June 10, 2020)

The following recommendations have been incorporated into the jury trial resumption plan that Task Force members will be discussing at the June 11, 2020 Task Force meeting:

1. The senior resident superior court judge and the elected clerk of superior court for the county, in consultation with the COVID-19 Coordinator, must agree that jury trials may be calendared in a county before the matter is calendared for a trial by jury.
2. Before criminal jury trials are calendared in each county, the senior resident superior court judge should consult with the elected district attorney and the chief public defender regarding prioritizing the types of criminal cases for trial by jury and the timetable for those trials. In districts where there is no public defender office, the senior resident superior court judge should consult with a senior member of the criminal defense bar in the county/district in addition to the elected district attorney. The senior resident superior court judge will make the final decision.
3. The first jury trials set for hearing should be trials which are either Class H or I felonies that should take less than a week to try or civil jury trials that should take less than a week to try.
4. No Class A, B1, or B2 felony will be calendared for jury trial before November 30, 2020.
5. On or after August 3, 2020, civil jury trials may be calendared by agreement of the elected clerk of superior court and senior resident superior court judge in consultation with the COVID-19 Coordinator.
6. On or after August 3, 2020, criminal jury trials, as prioritized by the senior resident superior court judge upon the advice of the elected district attorney and the chief public defender (or a senior member of the criminal defense bar where no public defender office exists), may be calendared in counties in which the senior resident superior court judge and elected clerk of superior court, in consultation with the COVID-19 Coordinator, have agreed for jury trials to be calendared.

The following additional recommendations have not yet been incorporated into that document:

7. Explore temporary changes that will improve the jury process for civil cases, such as:
 - a. Encourage chief district court judges to review their district's jury excuse policy under G.S. 9-6(b) and expand it to allow for deferrals and excuses to be heard remotely (if a county is not already doing so) and allow more leeway for excusing/deferring those jurors who are in a high-risk group.
 - b. Require jurors to watch the juror orientation video online prior to appearing for service.
 - c. Encourage use of online juror questionnaires, and perhaps case specific questionnaires, prior to appearing for service to reduce time in court





- d. Stagger jury service appearance times (have smaller groups appear throughout the day instead of all at the same time).
 - e. Provide information with the jury summons regarding steps taken to address COVID-19 concerns within the courthouse so jurors feel their safety is addressed and therefore more comfortable with the jury process.
 - f. Find other venues for jury trials or other high-volume court sessions.
 - g. Mandate/encourage smaller civil juries and consider reducing the number of civil peremptory challenges and/or setting a reasonable time limit for voir dire.
 - h. Conduct voir dire remotely, with computers/kiosks in courthouse for those who cannot connect from home.
 - i. Note: There are more issues/concerns associated with remote voir dire in criminal cases (especially serious felonies).
8. Consider remote jury trials for civil cases.
- a. Note: There are more issues/concerns associated with remote jury trials in criminal cases (especially serious felonies).

