

STATE OF NORTH CAROLINA  
\_\_\_\_ JUDICIAL DISTRICT  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
[**SUPERIOR/DISTRICT**] COURT DIVISION

File Number: \_\_\_\_\_ R \_\_\_\_\_

ADMINISTRATIVE ORDER

Pursuant to Rule 2 and Rule 22 of the North Carolina General Rules of Practice for District and Superior Courts, the local rules regarding remote hearings for the \_\_\_\_\_ Judicial District, County of \_\_\_\_\_, are hereby ratified and remain in effect until further notice.

ENTERED in chambers on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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The Honorable \_\_\_\_\_  
[**Senior Resident Superior Court Judge /**  
**Chief District Court Judge**]

**NOTE WELL:**<sup>1</sup> *CIVIL CASE MANAGEMENT PLANS AND ANY CRIMINAL CASE MANAGEMENT ORDERS / PLANS MAY NEED TO BE UPDATED TO INCORPORATE THIS ADMINISTRATIVE ORDER BY REFERENCE. PLEASE NOTE THAT THE EFFECTIVE DATE OF CASE MANAGEMENT PLANS AND ANY AMENDMENTS SHALL BE EITHER JANUARY 1 OR JULY 1, PURSUANT TO RULE 2 OF THE GENERAL RULES OF PRACTICE.*

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<sup>1</sup> The NOTE WELL comments in red are provided to assist the judge entering an administrative order based on this template. These comments should be removed before the final administrative order is entered.

\_\_\_\_ Judicial District Remote Hearing Procedures

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Pursuant to G.S. § 7A-49.6, Judicial Officials may conduct almost all types of proceedings (except jury trials) utilizing remote audio and video transmissions. The proceeding must allow the parties, the presiding Judicial Official, and all other participants to see and hear one another. Judicial Officials “must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process.” G.S. § 7A-49.6(a). Each party to any proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney. G.S. § 7A-49.6(b).

***NOTE WELL: G.S. § 7A-49.6 CONTEMPLATES THAT JURY TRIALS WILL BE CONDUCTED IN PERSON AND USE OF AUDIO-VIDEO TECHNOLOGY IN JURY TRIALS WILL BE LIMITED TO REMOTE WITNESS TESTIMONY AS PERMITTED BY G.S. § 7A-49.6(C), (E), AND (I). ALTERNATIVELY, THE STATUTE MAY BE INTERPRETED TO PERMIT THE ENTIRE JURY TRIAL TO BE CONDUCTED REMOTELY. FOR A DETAILED LEGAL ANALYSIS OF G.S. § 7A-49.6, PLEASE REFER TO THE MEMORANDUM ISSUED BY THE NCAOC'S OFFICE OF GENERAL COUNSEL ON JUNE 24, 2021 ENTITLED [Legislation Permitting Court Proceedings by Audio/Video Transmission – S.L. 2021-47 \(SB 255\)](#).***

This order is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it, including G.S. §§ 15A-1225.1, 15A-1225.2, 15A-1225.3, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f). See G.S. 7A-49.6(i).

As used in this order, the following words have the listed meanings:

“Civil Proceeding” means any civil action or special proceeding, including any juvenile proceeding or estate proceeding.

“Confidential Hearing” means any proceeding closed to the public by law or by court order.

“Contact Information” means a participant’s name, physical address from which the participant is participating, e-mail address to be used in the Remote Hearing invitation, and phone number where the participant may be reached at the time of the hearing.

“Contempt Hearing” means any hearing upon the issue of either civil or criminal contempt.

“Criminal Proceeding” includes prosecution of both criminal offenses and infractions.

“Host,” when used as a noun, means the clerk of superior court in the county where the Remote Hearing or Hybrid Hearing occurs, or his or her designee.

“Hybrid Hearing” means a hearing where at least one participant participates remotely using Webex or other audio-visual application approved by the NCAOC, and two or more participants are co-located. For the purpose of this definition, only a party and their counsel who are co-located are deemed a single participant.

“Judicial Official” means a presiding magistrate, clerk, or judge of the General Court of Justice.

“Juvenile Delinquency Proceeding” means a proceeding involving a juvenile alleged to be undisciplined or delinquent pursuant to Chapter 7B of the General Statutes.

“In-Person Hearing” means a hearing where the Judicial Official and all participants are co-located in the same physical space.

“Minor Child” means any child under the age of eighteen unless legally emancipated.

“Remote Hearing” means any hearing in which no participant is co-located with any other participant, and the Judicial Official and all participants are participating via Webex or other audio-visual technology approved by the NCAOC. For the purpose of this definition, only a party and their counsel who are co-located are deemed a single participant.

“Webex” means the primary application approved by the NCAOC for Remote Hearings and Hybrid Hearings.

***NOTE WELL: DIFFERENT VERSIONS OF SECTION 1 FOLLOW TO PROVIDE OPTIONS TO THE JUDGE ENTERING THIS ADMINISTRATIVE ORDER. USE THE FOLLOWING VERSION OF SECTION 1 IF REMOTE HEARINGS WILL BE THE DEFAULT.***

## **1. Remote Hearings are Presumed**

The default hearing method for all case types, except in jury trials (covered in Section 9 of this order) or as otherwise specified in this order or determined by the presiding Judicial Official, will be a Remote Hearing in accordance with G.S. § 7A-49.6 so long as: (i) in Civil Proceedings, including Juvenile Delinquency Proceedings, any party has a right to object, for good cause shown, to conducting a Remote Hearing; and (ii) in Criminal Proceedings and Juvenile Delinquency Proceedings in which the right to confront witnesses or be present is implicated, the defendant or juvenile provides a knowing, intelligent, and voluntary waiver of the applicable right(s), unless otherwise provided by law. Criminal and civil jury trials are not permitted to be conducted entirely remotely, except for witness testimony and jury management functions, as described in Section 9 of this order.

At any time prior to or during a Remote Hearing, the presiding Judicial Official retains the discretionary authority to convert the Remote Hearing to an In-Person Hearing by notifying the parties. **[For example, the Judicial Official may wish to exercise such discretion if the parties request an In-Person Hearing.]**

#### **a. Civil Proceedings**

In a Civil Proceeding, as provided in G.S. § 7A-49.6(d), a party or parties may object to a Remote Hearing and request an In-Person Hearing. Each objecting party shall file with the court and serve on all other parties pursuant to N.C. R. Civ. P. 5 at least \_\_\_\_ days **[prior to the hearing] [after service of the notice of hearing or, if none, after publication of the court's calendar noticing the hearing]** an objection or motion setting forth the specific basis of the objection. The Judicial Official shall consider the objection and, in his or her discretion, make a written or recorded finding as to whether the party has shown good cause for the objection. There is no statutory authority to make this good cause determination *ex parte*, so procedures under N.C. R. Civ. P. 7(b) shall be followed. The presiding Judicial Official has discretion to hear the objection remotely, if technologically permissible, given the basis of the objection. If the presiding Judicial Official finds that the party has demonstrated good cause for the objection, the proceeding shall not be held remotely. If there is no objection, or if there is an objection and good cause is not shown, the presiding Judicial Official may conduct the proceeding remotely.

If an emergency arises and the party objecting to a Remote Hearing is unable to provide a written motion as outlined above, the party may make the objection orally during a hearing or trial or at a session at which a cause is on the calendar for that session in accordance with N.C. R. Civ. P. 7(b)(1). Both the oral motion and ruling on the motion should be recorded. If granted, the Judicial Official shall direct the hearing be converted to an In-Person Hearing, as provided above.

#### **b. Criminal Proceedings**

A criminal defendant has a right to be present and a constitutional right to confront witnesses<sup>2</sup> during any material portion of the Criminal Proceeding. When a criminal defendant's right to confront witnesses or be present is implicated, G.S. § 7A-49.6(e) provides that the court must obtain a knowing, intelligent, and voluntary waiver of the defendant's rights in order to conduct a Remote Hearing, unless otherwise permitted by law.

When the court obtains such a knowing, intelligent, and voluntary waiver of the defendant's rights, as applicable, the following Criminal Proceedings are presumed to proceed via a

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<sup>2</sup> See, generally, State v. Pope, 257 N.C. 326 (1962).

Remote Hearing, although the presiding Judicial Official retains the discretion to conduct these proceedings by In Person Hearing:

***NOTE WELL: LIST STANDARD REMOTE HEARINGS IN THE DISTRICT (E.G., FIRST APPEARANCES FOR IN CUSTODY DEFENDANTS, PLEAS ON TUESDAYS IN DISTRICT COURT.)***

Judicial Officials will protect against coercion of, or prejudice to, defendants who decline to waive their rights to confront witness or be present (e.g., by continued detention until some later In-Person Hearing).

### **c. Juvenile Delinquency Proceedings**

A juvenile alleged to be delinquent has a right to be present and a constitutional right to confront witnesses during any material portion of the Juvenile Delinquency Proceeding. When a juvenile's right to confront witnesses or be present is implicated in a Juvenile Delinquency Proceeding, G.S. § 7A-49.6(c) provides that the court must obtain a knowing, intelligent, and voluntary waiver of the juvenile's rights in order to conduct a Remote Hearing, unless otherwise permitted by law.

When the court obtains such a knowing, intelligent, and voluntary waiver of the juvenile's rights, the following Juvenile Delinquency Proceedings are presumed to proceed via a Remote Hearing, although the presiding Judicial Official retains the discretion to conduct these proceedings by In Person Hearing:

***NOTE WELL: LIST STANDARD REMOTE HEARINGS IN THE DISTRICT (E.G., SECURE CUSTODY HEARINGS).***

Judicial Officials will protect against coercion of, or prejudice to, juveniles who decline to waive their rights to confront witness or be present (e.g., by continued detention until some later In-Person Hearing).

Additionally, because Juvenile Delinquency Proceedings are also Civil Proceedings, even when a juvenile consents to a Remote Hearing, all parties have a right to object to Remote Hearings pursuant to G.S. § 7A-49.6(c) using the procedure outlined in Section 1.a. above.

***NOTE WELL: USE THE FOLLOWING VERSION OF SECTION 1 IF IN-PERSON HEARINGS WILL BE THE DEFAULT.***

#### **1. In-Person Hearings are Presumed**

The default hearing method for all case types, unless otherwise specified in this order or determined by the presiding Judicial Official, shall be In-Person Hearings. At any time prior to or during an In-Person Hearing, the Judicial Official retains the discretionary authority to conduct these hearings by Remote Hearing in accordance with G.S. § 7A-49.6.

### **a. Civil Proceedings**

Although In-Person Hearings are presumed in Civil Proceedings, a party or parties may request a Remote Hearing by providing a motion to the **[court manager] [clerk]** at least \_\_\_\_\_ days **[before the hearing] [after service of the notice of hearing or, if none, after publication of the court's calendar noticing the hearing]** and serving the other parties with the motion. The motion shall describe the reason for the request, and the physical location(s) of the individual(s) while participating. Criminal and civil jury trials are not permitted to be conducted entirely remotely, except for witness testimony and jury management functions, as described in Section 9 of this order.

The Judicial Official has the discretionary authority to conduct the hearing by Remote Hearing without the need to find good cause. If a party objects to such a Remote Hearing, the following procedures shall apply pursuant to G.S. § 7A-49.6(c).

Each party objecting to a Remote Hearing shall file with the court and serve on the other parties pursuant to N.C. R. Civ. P. 5 at least \_\_\_\_\_ days **[prior to the hearing] [after service of the request]** an objection or motion setting forth the specific basis of the objection. The presiding Judicial Official shall consider the objection, and in his or her discretion, make a written or recorded finding as to whether the party has shown good cause for the objection. There is no statutory authority to make this good cause determination *ex parte*, so procedures under N.C. R. Civ. P. 7(b) should be followed. The presiding Judicial Official has discretion to hear the objection remotely, if technologically permissible, given the basis of the objection. If the presiding Judicial Official finds that the party has demonstrated good cause for the objection, the proceeding shall not be held remotely. If there is no objection, or if there is an objection and good cause is not shown, the presiding Judicial Official may conduct the proceeding remotely unless otherwise directed by the court.

If an emergency arises and a party objecting to a Remote Hearing is unable to provide a written objection or motion as outlined above, the party may make the objection orally during a hearing or trial or at a session at which a cause is on the calendar for that session in accordance with N.C. R. Civ. P. 5 7(b)(1). Both the oral motion and ruling on the motion should be recorded. If granted, the Judicial Official shall direct the hearing be converted to an In-Person Hearing, as provided above.

### **b. Criminal or Juvenile Delinquency Proceedings**

Although In-Person Hearings are presumed in a Criminal Proceeding or Juvenile Delinquency Proceeding, a party or attorney may request a Remote Hearing by providing notice to the court and notifying the **[court manager] [clerk]** at least \_\_\_\_\_ days before the hearing and serving the other parties with the motion. A Criminal Proceeding or Juvenile Delinquency

Proceeding shall not proceed via a Remote Hearing except as authorized by G.S. § 7A-49.6(e) or as otherwise permitted by law.

Specifically, a criminal defendant or a juvenile alleged to be delinquent has a right to be present and a constitutional right to confront witnesses<sup>3</sup> during any material portion of the proceeding. When a criminal defendant's or juvenile's right to confront witnesses or be present is implicated, G.S. § 7A-49.6(e) provides that the court must obtain a knowing, intelligent, and voluntary waiver of the applicable right(s) in order to conduct a Remote Hearing unless otherwise permitted by law.

Additionally, because Juvenile Delinquency Hearings are also Civil Proceedings, even when a juvenile consents to a Remote Hearing, all parties have a right to object to Remote Hearings pursuant to G.S. § 7A-49.6(c) using the procedure outlined in Section 1(a) above.

## **2. Contempt Hearings**

Criminal contempts are crimes, and therefore the procedural and constitutional protections incident to criminal prosecution, including the right to be present and the constitutional right to confront witnesses, attach.<sup>4</sup> In civil contempt, when the alleged contemnor faces potential incarceration (which is always the case), many of the procedural and constitutional protections incident to criminal prosecution also attach, including the right of confrontation.<sup>5</sup> Therefore, in order to proceed by Remote Hearing or Hybrid Hearing, the court must obtain a knowing, intelligent, and voluntary waiver of the alleged contemnor's rights pursuant to G.S. § 7A-49.6(e) unless otherwise permitted by law.

If a contempt hearing proceeds by Remote Hearing or Hybrid Hearing and the Judicial Official finds contempt and orders the contemnor to a term of imprisonment, the contemnor must report to the \_\_\_\_\_ County Detention Center as indicated in the order. If a term of imprisonment is ordered, a copy of the contempt order shall be provided to the \_\_\_\_\_ County Sheriff's Office. A contempt order requiring a contemnor to report to the \_\_\_\_\_ County Detention Center at a specific date and time should include a Sheriff's return section for the Sheriff's Office to indicate whether the person reported as ordered or failed to appear. This provision does not prohibit the Judicial Official from having the contemnor taken into custody immediately pursuant to a commitment order directed to the Sheriff. The Sheriff's Office will notify the [court] [clerk] of a contemnor's failure to appear at the detention facility on the date and time ordered, and the [court] [clerk] shall notify a judicial official. A judicial official may issue an Order for Arrest, if authorized by law, or take such other action as the judicial official deems appropriate in his or her discretion.

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<sup>3</sup> See, generally, *State v. Pope*, 257 N.C. 326 (1962).

<sup>4</sup> *O'Briant v. O'Briant*, 313 N.C. 432, 329 S.E.2d 370 (1985).

<sup>5</sup> *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247 (1981).

### **3. Hybrid Hearings**

A presiding Judicial Official also has discretionary authority to conduct Hybrid Hearings in accordance with G.S. § 7A-49.6 so long as: (i) in Civil Proceedings, including Juvenile Delinquency Proceedings, any party has a right to object for good cause shown to the Hybrid Proceeding in accordance with the same procedures for objecting to Remote Hearings set forth in Section 1.a. above; and (ii) in Criminal Proceedings and Juvenile Delinquency Proceedings in which the right to confront witnesses or be present is implicated, the defendant or juvenile provides a knowing, intelligent, and voluntary waiver of the applicable right(s), unless otherwise provided by law, as provided in Section 1 above. Hybrid Hearings are specifically permitted by law in Criminal Proceedings when certain conditions are satisfied. *See, e.g.*, G.S. §§ 15A-1225.1 (child witness remote testimony), 15A-1225.2 (remote testimony by a witness with an intellectual or developmental disability), and 15A-1225.3 (forensic analyst remote testimony); *State v. Seelig*, 226 N.C. App. 147 (2013) (allowing a witness's remote testimony during a criminal jury trial because the witness could not travel due to health reasons).

A party may request a Hybrid Hearing by providing a motion to the **[court manager] [clerk]** at least \_\_\_\_\_ days **[before the hearing] [after service of the notice of hearing or, if none, after publication of the court's calendar noticing the hearing]** and serving the other parties with the motion. The motion shall describe the reason for the request, the individuals who will appear in person, and for any individual appearing remotely, the physical location of that individual while participating and the individual's contact information. In addition, the party seeking the Hybrid Hearing shall certify that the remote individual is able to access the hearing remotely and that the courtroom in question is capable of accommodating a Hybrid Hearing. Otherwise, the party shall propose a suitable alternate location. The Judicial Official has the discretionary authority to conduct the hearing by Hybrid Hearing without the need to find good cause.

### **4. Scheduling / Hosting Webex Hearings**

**[Concurrent with] [Within \_\_\_\_\_ days after]** the filing of a complaint, motion, or responsive pleading, attorneys and self-represented litigants must provide a valid email address to the **[court manager] [clerk]** or certify that they do not have email access.

Consistent with G.S. §§ 7A-95(c) and 7A-198(c), the clerk or the clerk's designee shall schedule and host Webex proceedings in district and superior court. When scheduling the hearing, the Host shall follow the naming convention for the Webex hearing as stated in Rule 17.2 of the Rules of Recordkeeping promulgated by the Director of the North Carolina Administrative Office of the Courts (NCAOC).

The clerk may also designate one or more **[court manager(s)] [judge(s)]** co-Host(s) for each proceeding scheduled, as provided by G.S. §§ 7A-95(c) and 7A-198(c). The co-Host is authorized to begin, conduct, and record the hearing if the Host is not available. Any recording made will automatically be saved in the Webex account of the Host.

***NOTE WELL: USE THE FOLLOWING SECTION IF WEBEX HEARINGS HAVE A “STANDING” URL PER COURTROOM.***

A standing Webex link has been established for each courtroom in the county. The links are as follows:

**[Provide courtroom names and URLs here. For example: Chatham Criminal District Courtroom 2A, <https://nccourts.webex.com/meet/Chatham.CR2A>.]**

Each attorney or self-represented litigant is responsible for providing the Webex link to his or her client(s), witness(es), and other interested individuals, as applicable. Each Webex link **[shall] [should]** also be published on the court calendar. If a public access link (e.g., a YouTube link for live streaming) is provided that is separate from the Webex link used by parties and witnesses, spectators / media should access the hearing via the public access link.

***NOTE WELL: USE THE FOLLOWING SECTION IF THE CLERK, COURT MANAGER, OR JUDGE WILL SEND THE WEBEX LINK.***

The **[clerk] [court manager] [judge]** will send the Webex link to attorneys of record and self-represented litigants who have calendared cases. Each attorney or self-represented litigant is responsible for providing the Webex link to his or her client(s), witness(es), and other interested individuals, as applicable. Each Webex link **[shall] [should]** also be published on the court calendar. If a public access link (e.g., a YouTube link for live streaming) is provided that is separate from the Webex link used by parties and witnesses, spectators / media should access the hearing via the public access link.

## **5. Audio Visual Quality / Functionality**

***NOTE WELL: THE CLERK HAS AUTHORITY TO DESIGNATE A “KEY OPERATOR” BECAUSE THE CLERK IS STATUTORILY CHARGED WITH OPERATING ELECTRONIC RECORDING DEVICES OR DESIGNATING SOMEONE ELSE TO DO SO UNDER G.S. §§ 7A-95(C) AND 7A-198(C).***

The clerk has designated \_\_\_\_\_ as the Webex “key operator” pursuant to NCAOC Rule of Recordkeeping 19.3.

To ensure a quality recording and that all parties and the presiding Judicial Official can see and hear one another during the Webex hearing, the audio equipment should be tested **[daily] [at least \_\_\_ minutes prior to the scheduled hearing]** by the clerk or clerk’s

designee. The presiding Judicial Official reserves the right to conduct a pre-trial conference as needed for the purpose of ensuring the quality of the Remote Hearing.

## **6. Decorum and Etiquette in Remote Hearings and Hybrid Hearings**

The decorum of a Remote Hearing or Hybrid Hearing shall be the same decorum as an In-Person Hearing conducted in a courtroom (e.g., eating, drinking, smoking, profanity are prohibited). An attorney, party, or witness participating remotely in a Remote Hearing or Hybrid Hearing should have an appropriate background and a suitably quiet location. Attorneys are bound by the same rules of dress and decorum in Remote Hearings and Hybrid Hearings as they are for In-Person Hearings. **[Business attire] [Business casual attire] [insert preferred dress]** shall be appropriate dress for parties and witnesses during a Remote Hearing or Hybrid Hearing.

All attorneys and parties are encouraged to access the Remote Hearings or Hybrid Hearings at least \_\_\_\_ minutes prior to the scheduled start time of the hearing. The court shall have discretion to deny entry to the hearing if a party is not present at the appointed time.

Attorneys and self-represented litigants shall identify themselves before speaking. During a Remote Hearing or Hybrid Hearing, attorneys and parties who are not testifying or speaking should mute their microphones. The Host or co-Host reserves the right to “mute” a party or attorney who fails to mute themselves if it causes feedback, echoing, or is otherwise noisy, disruptive, or distracting. If more than one person in the same location will be participating remotely in the Remote Hearing or Hybrid Hearing, they must (i) share a device, (ii) ensure proper muting to avoid audio malfunction, or (iii) participate from separate rooms to ensure audio quality.

## **7. Confidential Attorney-Client Communications During Remote Hearings and Hybrid Hearings**

If an attorney and client are participating in a Remote Hearing or Hybrid Hearing from separate locations, they may communicate privately, for example via text message or email, during the hearing, provided however, parties may not communicate with counsel while they are testifying via any mechanism or medium other than the audio and video technology seen and heard by all other participants, unless specifically permitted by the court to communicate privately during testimony. If a party wishes to communicate confidentially with his or her attorney and cannot do so by text message or email, the presiding Judicial Official should be informed, and he or she shall permit such confidential communication, by **[enabling a breakout session through the Webex] [taking a break to allow for telephonic communication] [such other appropriate means]**.

The Webex “chat” feature should not be used for attorney-client communications because, if the hearing is recorded, all chats are also recorded, including “private” chats between two individuals. Attorneys and parties are hereby notified that chats may be recorded and will not be reminded at a hearing.<sup>6</sup> For this reason, all are encouraged not to use the “private” chat feature of Webex, but rather to request a breakout session or use their own mobile phones, email, or some other method to ensure private communication.

## **8. Exhibits and Evidence**

Failure to comply with the provisions set out regarding exhibits and evidence may result in a proposed exhibit not being considered, a continuance of the hearing, or other action in the discretion of the presiding Judicial Official.

### **a. Testimony**

Pursuant to G.S. § 7A-49.6(a), a remote proceeding must allow the parties, the presiding Judicial Official, and all other participants to see and hear one another.

The **[clerk] [presiding Judicial Official]** shall administer oaths to witnesses during a remote proceeding. Affirmation may be used in lieu of swearing a witness. The person administering the oath must be able to see and hear the witness **[, and the person taking the oath must be able to see and hear the official administering that oath.]**

Witnesses should be in a room alone when testifying in a Remote Hearing or Hybrid Hearing, when feasible. Parties may be accompanied by their attorney if the attorney and party so choose. If a person will be in the room with a testifying witness, the attorney or witness shall advise the presiding Judicial Official prior to the witness’ testimony. No person, including an attorney, may communicate with a witness about the witness’ testimony while the witness is testifying via any mechanism or medium other than the audio and video technology seen and heard by all other participants, unless specifically permitted by the court to communicate privately during testimony.

If, while testifying, a witness wishes to communicate confidentially with his or her attorney, the presiding Judicial Official should be informed, and he or she may permit such confidential communication, by **[enabling a breakout session through the Webex] [taking a break to allow for telephonic communication] [such other appropriate means]**.

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<sup>6</sup> Attorneys are cautioned to review Rule 1.6 of the Revised Rules of Professional Conduct as it may apply to communications with clients via various technological media during proceedings conducted via audio and video transmission.

The presiding Judicial Official shall prescribe the manner in which and the terms upon which a Minor Child's testimony may be taken remotely and shall prescribe the appropriate location for the testimony and whether any third party may be present with the Minor Child.

#### **b. Exhibits**

Attorneys and self-represented litigants shall list all exhibits to be offered at a hearing on an exhibit log and **[serve in accordance with N.C. R. Civ. P. 5] [provide]** copies of documentary exhibits and photographs of tangible exhibits **[on] [to]** the other parties \_\_\_\_ business days prior to the hearing. All exhibits must be pre-marked for identification purposes. Attorneys and self-represented litigants are not required to **[serve] [provide]** exhibits to the other parties if doing so would disclose trial strategy or trial preparation.

Each party must deliver a(n) **[electronic] [hard copy] [state other method here]** copy of all pre-marked, proposed exhibits to the **[presiding Judicial Official] [clerk] [court manager]** \_\_\_\_ business days prior to the hearing. This includes both documents **[served on]** **[provided to]** the other parties and those submitted only to the Clerk, as described below. Documents that have not been marked for identification purposes will not be accepted. Exhibits not delivered prior to the hearing may be accepted in the discretion of the presiding Judicial Official.

Special care should be taken to preserve confidentiality when confidential records are stored or transmitted electronically. Ideally, confidential records in electronic format should be encrypted in transit and at rest. *See, e.g.,*

<https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/remember-your-ethical-duties-when-it-comes-to-encryption/>.

***NOTE WELL: USE THE FOLLOWING SECTION IF EXHIBITS MUST BE PROVIDED TO CLERK BEFORE THE HEARING.***

Exhibits must be submitted to the clerk \_\_\_\_ hours / business days before the court session. The pre-marked exhibits must be provided in an envelope (case number on the outside of the envelope) and contain an exhibit log. The entirety of this submission shall not be made a part of the file and shall not be disclosed to anyone except appropriate judicial officials, absent consent of the submitting party. This rule is intended to ensure the clerk has exhibits that may be admitted into evidence during a remote hearing, yet at the same time preserve a party's ability to prevent disclosure of trial strategy and tactics.

Exhibits must be provided in a physical medium that the clerk can accept and retain (e.g., documents shall be printed out and in paper form, photos may be printed or on a disc or

flash drive, and videos shall be on a flash drive, DVD, or other medium capable of retention). Exhibits that are admitted during the hearing that are not submitted to the clerk prior to the hearing must be provided to the clerk within \_\_\_\_ hours / business days after the court session concludes in the same format as offered into evidence in the remote proceeding (e.g., documents shall be printed out and in paper form, photos may be printed or on a disc or flash drive, and videos shall be on a flash drive, DVD, or other medium capable of retention). Any non-documentary exhibit offered into evidence in a remote proceeding (e.g., by displaying it on camera for all participants) shall be delivered to the clerk as presented and in a container provided by the party and appropriate for long-term preservation of the exhibit. The clerk has no responsibility to take custody of or retain exhibits that are neither offered nor admitted.

***NOTE WELL: USE THE FOLLOWING SECTION IF ADMITTED EXHIBITS WILL BE PROVIDED TO CLERK AFTER THE HEARING.***

Unless the court has ordered that some other entity retain custody of an exhibit, any exhibit offered or admitted into evidence must be submitted to the clerk \_\_\_\_ business days after the court session concludes. The clerk has no responsibility to take custody of or retain exhibits that are neither offered nor admitted. The pre-marked exhibits must be provided in an envelope (case number on the outside of the envelope) and contain an exhibit log. Exhibits must be provided in a physical medium that the clerk can accept and retain and in the same format as offered into evidence in the remote proceeding (e.g., documents shall be printed out and in paper form, photos may be printed or on a disc or flash drive, and videos shall be on a flash drive, DVD, or other medium capable of retention). Any non-documentary exhibit offered into evidence in a remote proceeding (e.g., by displaying it on camera for all participants) shall be delivered to the clerk as presented and in a container provided by the party and appropriate for long-term preservation of the exhibit.

**[The presiding judicial official may choose, but is not required, to inquire if all exhibits a party intended to introduce as evidence have been considered by the court at the conclusion of the hearing.]**

***NOTE WELL: USE THE FOLLOWING VERSION OF SUBSECTION (C) IF ATTORNEYS AND PARTIES ARE PERMITTED TO SHARE DOCUMENTS DURING REMOTE HEARINGS AND HYBRID HEARINGS.***

#### **c. Displaying documents during Remote Hearings and Hybrid Hearings**

Attorneys and self-represented litigants may display digital exhibits during a Remote Hearing or Hybrid Hearing using the “Share” feature with permission of the presiding

Judicial Official. Prior to displaying confidential exhibits (e.g., juvenile case records or other information protected by law), the attorney or self-represented litigant shall inform the presiding Judicial Official, who will then ensure that only those individuals authorized to access the documents are allowed to observe the confidential exhibits. Presentation of confidential exhibits may require either exclusion of non-participants from the Remote or Hybrid Hearing or some other mechanism for exchanging those exhibits among the parties.

If the proceeding is one that is open to the public, then the presiding Judicial Official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person in accordance with G.S. § 7A-49.6(g), while also protecting confidential information, such as juvenile case records, displayed during the Remote or Hybrid Hearing.

***NOTE WELL: USE THE FOLLOWING VERSION OF SUBSECTION (C) IF ATTORNEYS AND PARTIES ARE NOT PERMITTED TO SHARE DOCUMENTS DURING REMOTE HEARING AND HYBRID HEARINGS.***

#### **c. Displaying documents during Remote Hearings and Hybrid Hearings**

Attorneys and self-represented litigants are not permitted to display exhibits during a Remote Hearing or Hybrid Hearing using the “Share” feature. Any exhibits that an attorney or self-represented litigant intends to display must be provided prior to the Remote or Hybrid Hearing in accordance with Section 8.b. above, to the **[court manager] [clerk] [Judicial Official]**, who, when appropriate, will display that exhibit as requested by the attorney or self-represented litigant.

Prior to displaying confidential exhibits (e.g., juvenile case records), the attorney or self-represented litigant shall inform the presiding Judicial Official, who will then ensure that only those parties authorized to access the documents are allowed to observe the confidential records. Presentation of confidential exhibits may require either exclusion of non-participants from the Remote or Hybrid Hearing or some other mechanism for exchanging those exhibits among the parties.

If the proceeding is one that is open to the public, then the Presiding Official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person in accordance with G.S. § 7A-49.6(g), while also protecting confidential information, such as juvenile case records, displayed during the Remote or Hybrid Hearing.

## **9. Jury Proceedings**

Criminal and civil jury trials are not permitted to be conducted remotely, except for witness testimony and jury management functions, as described below.

### **a. Civil Jury Proceedings**

A witness in a civil jury proceeding may testify remotely if the presiding Judicial Official finds that good cause exists for doing so under the circumstances in accordance with G.S. § 7A-49.6(c) or as otherwise provided by law. Any party seeking to solicit witness testimony remotely shall file with the court and serve on the other parties pursuant to N.C. R. Civ. P. 5 at least \_\_\_\_ days prior to the hearing, a motion setting forth the specific basis of the request for remote testimony. The Judicial Official shall consider the request and make a written or recorded determination as to whether the party has shown good cause to permit the witness to testify remotely. There is no statutory authority to make this good cause determination *ex parte*, so procedures under N.C. R. Civ. P. 7(b) shall be followed. Only if the presiding Judicial Official finds that the party has demonstrated good cause for the request, may the witness testify remotely. If an emergency arises and the requesting party is unable to provide proper notice as outlined above, the requesting party may make the request orally in accordance with N.C. R. Civ. P. 7(b). Both the oral motion and the ruling on the motion should be recorded.

### **b. Criminal Jury Proceedings**

A witness in a Criminal Proceeding may only testify remotely in accordance with G.S. § 7A-49.6(e), which provides: "Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal ... proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's ... rights."

Hybrid Hearings are permitted by law in Criminal Proceedings when certain conditions are satisfied. *See, e.g.*, G.S. §§15A-1225.1 (child witness remote testimony), 15A-1225.2 (remote testimony by a witness with an intellectual or developmental disability), and 15A-1225.3 (forensic analyst remote testimony); *State v. Seelig*, 226 N.C. App. 147 (2013) (allowing a witness's remote testimony during a criminal jury trial because the witness could not travel due to health reasons).

***NOTE WELL: THE FOLLOWING ARE PERMISSIBLE AND MAY BE INCLUDED AS DESIRED:***

### **c. Jury Management and Voir Dire**

Jury Excuses may be conducted remotely in the discretion of the Senior Resident Superior Court Judge and Chief District Court Judge. **NOTE WELL: HERE, DESCRIBE PROCEDURE FOR REMOTE JURY EXCUSES. FOR EXAMPLE, POTENTIAL JURORS SHALL BE PROVIDED WITH INFORMATION ABOUT THE REMOTE EXCUSE PROCESS BY LETTER INCLUDED WITH THE JURY SUMMONS. THE LETTER SHOULD INCLUDE THE URL, DATE, AND TIME FOR REMOTE JURY EXCUSES. THIS MAY BE INSERTED INTO LOCAL JURY MANAGEMENT ORDERS AND INCORPORATED HERE BY REFERENCE.**

Jury Orientation may be conducted remotely in the discretion of the presiding Judicial Official. **NOTE WELL: HERE, DESCRIBE PROCEDURE FOR JURY ORIENTATION. FOR EXAMPLE, POTENTIAL JURORS SHALL BE PROVIDED WITH INFORMATION ABOUT THE REMOTE ORIENTATION BY LETTER INCLUDED WITH THE JURY SUMMONS. THE LETTER SHOULD INCLUDE THE URL, DATE, AND TIME FOR ORIENTATION. A MECHANISM FOR TAKING ATTENDANCE OR OTHERWISE RECORDING THE PRESENCE OF POTENTIAL JURORS SHOULD BE DESCRIBED. THIS MAY BE INSERTED INTO LOCAL JURY MANAGEMENT ORDERS AND INCORPORATED HERE BY REFERENCE.**

Voir dire may be conducted remotely in the discretion of presiding Judicial Official. **NOTE WELL: HERE, DESCRIBE PROCEDURE FOR VOIR DIRE, INCLUDING MECHANISM FOR PARTIES TO BE HEARD IF THEY OBJECT TO REMOTE VOIR DIRE.**

## **10. Record of Hearing / Official Transcript**

As provided in G.S. §§ 7A-95(c) and 7A-198(c), the clerk, the clerk's designee, or the court reporter will create a record of the court proceeding via the Liberty Recording system (operated by the clerk or clerk's designee), Webex recording (operated by the clerk or clerk's designee), and / or one of several techniques employed by court reporters. The clerk, as the custodian of each of these types of recordings, shall maintain and preserve each recording made by the clerk, the clerk's designee, or the court reporter pursuant to G.S. §§ 7A-95(c) and 7A-198(c). During a Hybrid Hearing, it is especially important to ensure that all participants are being clearly recorded, which may require using a combination of the Liberty Recording system, the Webex recording, and / or court reporter technique (if applicable). The court reporter maintains the responsibility for preparing the official transcript from the recording(s) prepared by the court reporter, Liberty recording, and / or Webex recording. Only a person on the NCAOC Court Reporters and Approved Transcriptionist List may prepare the official transcript from the recording(s) prepared by the court reporter, Liberty recording, and / or the Webex recording.

Each individual Confidential Hearing must be a separate recording in Webex.

## **11. Access to Webex recordings**

Webex recordings of proceedings are public record unless the recordings are sealed by the court or confidential by law (e.g., involuntary commitment hearings, juvenile abuse, neglect, and dependency proceedings, and Juvenile Delinquency Proceedings). Webex recordings include the recorded audio, video, chats, and other information. Presiding Judicial Officials should keep in mind that most Webex recordings are public record when considering whether to allow Remote Hearings or Hybrid Hearings involving police informants, Minor Children, jurors, sensitive family matters, etc.

Confidential Webex recordings may only be provided to a requesting party as permitted by law. Sealed Webex recordings may only be provided to a requesting party as permitted by order of the court.

## **12. Public access**

The public has a right to attend court proceedings unless a proceeding is confidential by law or the presiding Judicial Official has closed the proceeding. If the proceeding is one that is open to the public, access to a Remote Hearing or Hybrid Hearing must be provided as nearly as practicable to the access that would be available were the proceeding conducted in person pursuant to G.S. § 7A-49.6(g).

To facilitate public access to a Remote Hearing, each Webex link **[should] [shall]** be published on the court calendar for the session. Any person who wishes to obtain access to a hearing may also contact \_\_\_\_\_ at \_\_\_\_\_ at least \_\_\_\_ business day(s) prior to the hearing to obtain a link to the Webex proceeding. All spectators must access the hearing via the appropriate hearing link at the time set for the hearing. If a public access link (e.g., a YouTube link for live streaming) is provided that is separate from the Webex link used by parties and witnesses, spectators / media should access the hearing via the public access link. For the purpose of this order, a spectator is defined as any person or entity who is not a hearing participant (e.g., party, witness).

Absent approval by the presiding Judicial Official under Rule 15 of the General Rules of Practice, the parties, attorneys, witnesses, spectators, public, and media shall refrain from making any recordings, videos, or photographs of any hearing, including Remote Hearings and Hybrid Hearings. The presiding Judicial Official may permit or prohibit “electronic coverage” and “electronic media coverage” as provided in Rule 15 of the General Rules of Practice. Failure to comply with a Judicial Official’s prohibition of electronic coverage or electronic media coverage may result in ejection from the hearing and appropriate

sanctions to include contempt. Rule 15(i) of the General Rules of Practice provides that recordings by the media or the public permitted by the court, if any, including film, video tape, still photographs or audio reproductions, shall not be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

***NOTE WELL: USE IF SPECTATORS / PUBLIC MUST DISABLE CAMERA.***

Spectator cameras shall be disabled, and microphones shall be muted during any Remote Hearing. Spectators shall not speak or otherwise communicate with any party or witness during the hearing. Spectators shall not utilize the chat feature or interfere with the hearing in any way. The presiding Judicial Official will provide instructions to all parties and spectators to protect the integrity of the hearing. Once the presiding Judicial Official begins instructions for the participants, the Webex hearing may be locked, and additional spectators may be prohibited from joining the hearing.

Any spectator, witness, or participant who violates orders given by the presiding Judicial Official pertaining to the use of Webex, who contacts testifying witnesses or parties, who photographs, records or videos the proceeding (without permission of the presiding Judicial Official), or who disrupts the proceeding is subject to being ejected from the hearing and may not be allowed to rejoin the hearing in the presiding Judicial Official's discretion. They are also subject to appropriate sanctions to include contempt.

These limitations on spectator access are necessary to protect the integrity of the hearing and to ensure the hearing can proceed without unreasonable interruption or delay. Further, the limitations protect the ability of the Court and the parties to remotely conduct hearings without undue delay, interruption, or disruption while still granting the public's ability to attend the hearing.

***NOTE WELL: USE IF SPECTATORS MAY / MUST ENABLE CAMERA***

Spectator cameras **[may]** **[must]** be enabled, and microphones shall be muted during a Remote Hearing. Spectators shall not speak or otherwise communicate with any party or witness during the hearing. Spectators shall not utilize the chat feature or interfere with the hearing in any way. The presiding Judicial Official will provide instructions to all parties and spectators to protect the integrity of the hearing. Once the presiding Judicial Official begins instructions for the participants, the Webex hearing may be locked, and additional spectators may be prohibited from joining the hearing.

Any spectator, witness, or participant who violates orders given by the presiding Judicial Official pertaining to the use of Webex, who contacts testifying witnesses or parties, who photographs, records or videos the proceeding (without permission of the presiding Judicial Official), or who disrupts the proceeding is subject to being ejected from the hearing and may not be allowed to rejoin the hearing in the presiding Judicial Official's discretion. They are also subject to appropriate sanctions to include contempt.

These limitations on spectator access are necessary to protect the integrity of the hearing and to ensure the hearing can proceed without unreasonable interruption or delay. Further, the limitations protect the ability of the Court and the parties to remotely conduct hearings without undue delay, interruption, or disruption while still granting the public's ability to attend the hearing.

### **13. Spoken Foreign Language Interpreters**

The court shall ensure the rights of a person who needs a foreign language interpreter are protected prior to initiating a hearing. Requests for spoken foreign language court interpreters should be submitted to the Language Access Coordinator using the online request form at <https://www.nccourts.gov/request-for-spoken-foreign-language-court-interpreter>. Such requests should be submitted as soon as the attorney / party is aware of the need for an interpreter to allow sufficient time to schedule the interpreter.

If the interpretation cannot be adequately accommodated in a Remote Hearing or Hybrid Hearing, the proceeding shall be held in-person. If, at any time during a Remote Hearing, the interpretation cannot be conveyed to either the court or the party, the hearing shall be delayed to address interpretation or continued to another court session. Note: Sign language interpreters are not spoken foreign language interpreters and instead are addressed in Section 14.

### **14. Requests for Accommodations Under the Americans with Disabilities Act**

The court shall ensure the rights of any individuals that require a reasonable accommodation under the Americans with Disabilities Act. Reasonable accommodations are determined on a case by case basis and may include, but are not limited to, the use of licensed interpreters (e.g., sign language interpreters, deaf blind interpreters), periodic breaks, or captioning. Reasonable accommodation requests should be submitted to the county Disability Access Coordinator either in-person, at (include phone number), by email at (Countyname).DAC@nccourts.org, or via the online request form at <https://www.nccourts.gov/form/disability-access-request>. Such requests should be submitted as soon as the attorney / party is aware of the need for an accommodation to allow sufficient time to review the request and arrange for a reasonable accommodation.

If a reasonable accommodation cannot be provided in a Remote Hearing or Hybrid Hearing, the proceeding shall be held in-person. If, at any time during a Remote Hearing, the reasonable accommodation can no longer be provided, the hearing shall be delayed to address the reasonable accommodation or continued to another court session.