13 FEBRUARY 2021
ORDER OF THE CHIEF JUSTICE
OF THE SUPREME COURT OF NORTH CAROLINA

Last month I issued an order extending a number of emergency directives in response to the public health threat posed by the COVID-19 pandemic. I determine and declare under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this State. I hereby extend those emergency directives for an additional thirty-day period in order to ensure the continuing operation of essential judicial functions.

I will use the emergency powers vested in my office by State law, including N.C.G.S. § 7A-39(b), to continue to evaluate the evolving nature of the pandemic in the days and weeks ahead. This evaluation may result in the expiration or modification of emergency directives already in force, the issuance of new emergency directives, or both. Presently, I plan to extend the emergency directives of this order until the public health threat posed by the COVID-19 pandemic has subsided.

Article I, Section 18 of the North Carolina Constitution provides that "[a]ll courts shall be open" and that "justice shall be administered without favor, denial, or delay." I am committed to this constitutional mandate. At the same time, the Judicial Branch must fulfill this mandate in ways that prioritize and protect the health and safety of judicial officials and employees and the public. I continue to ask that local judicial officials and employees conduct trials and other proceedings and perform other courthouse functions with caution and with due regard for the COVID-19 situation in their respective judicial districts. Local judicial officials should exercise their substantial decision-making authority over when and how to conduct jury trials and other in-person proceedings while recognizing that the risks posed by COVID-19 continue to be serious.

As stated in my previous order, disagreements among local judicial officials over proposed safety precautions should be referred to the senior resident superior court judge for resolution. Appropriate safety precautions may include a temporary courthouse closure when emergency conditions in a particular county warrant such action. As local judicial officials consider what measures to take in addition to the ones set out in this order, I request that they consult their local health directors, as well as COVID-19 protocols adopted by the State and the counties and municipalities in which they operate.

Emergency Directive 2

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior

court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;

b. is under a direction to quarantine, isolate, or self-monitor;

c. has been exposed to a person who tested positive for COVID-19 within the last fourteen days;

d. has been diagnosed with COVID-19 within the last fourteen days; or

e. resides with or has been in close contact with any person in the abovementioned categories.

Emergency Directive 3

Judicial officials throughout the state are hereby authorized to conduct proceedings that include remote audio and video transmissions.

Judicial officials who conduct a proceeding that includes remote audio and video transmissions pursuant to this emergency directive must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process. To this end:

a. A party may, for good cause, object to the use of remote audio and video transmissions. If good cause is not shown, the court may conduct a proceeding that includes audio and video transmissions.

b. If a criminal defendant's right to confront witnesses or to be present is implicated by the proceeding that is to be conducted, then the defendant must waive any right to in-person confrontation or presence before remote audio and video transmissions may be used.

c. If the proceeding is required by law to be conducted in a way that maintains confidentiality, then confidentiality must be maintained notwithstanding the use of remote audio and video transmissions.

d. If the proceeding is required by law to be recorded, then any remote audio and video transmissions that are used must be recorded.

e. Each party to a proceeding that includes remote audio and video transmissions must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

The authorization in this emergency directive does not extend to proceedings that involve a jury.

This emergency directive does not apply to proceedings in which the use of remote audio and video transmissions is already permitted by law. Those proceedings should continue as provided by law.

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Emergency Directive 5

When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

> "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.
>
> (Signed) _____"

This emergency directive does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

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Emergency Directive 8

Marriages establish and implicate numerous rights and legal obligations (e.g., military deployments, social security benefits, pensions, workers' compensation benefits, and disability benefits). The date of marriage may impact these rights and legal obligations. It is therefore essential that individuals continue to have access to the performance of marriage ceremonies during this time.

Accordingly, magistrates shall continue to perform marriage ceremonies. Marriage ceremonies before magistrates shall be held in a location that is approved by the chief district court judge and that is capable of allowing all persons in attendance to practice social distancing. Additionally, the chief district court judge may restrict the hours and times during which marriage ceremonies are conducted, may require appointments for marriage ceremonies, and may restrict attendance at the marriage ceremonies.

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Emergency Directive 11

Each senior resident superior court judge shall, for each facility in his or her district, serve as or designate a COVID-19 Coordinator. In districts with more than one court facility, the same coordinator may be designated for multiple facilities. The COVID-19 Coordinator shall ensure that relevant safety protocols and mandates are being followed within court facilities.

Emergency Directive 12

Each senior resident superior court judge shall, for each facility in his or her district, ensure that:

a. intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;

b. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;

c. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;

d. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and

e. all areas accessed by the public are cleaned daily and that high touch areas are cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters).

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Emergency Directive 14

Clerks of superior court are directed to ensure that filings may be submitted during normal business hours and that access to public records is provided.

A clerk may, at his or her discretion, require that filings be submitted using a secure drop box to limit face-to-face interactions between staff and the public. A clerk may, at his or her discretion, require that access to public records be by appointment only and may limit the hours during which such access is available.

Emergency Directive 15

To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five business days of the date the filing is due. The extension of filing deadlines in this emergency directive does not apply to pleadings and other documents filed in proceedings for forfeiture of bail bonds under Part 2 of Article 26 of Chapter 15A of the General Statutes.

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Emergency Directive 21

All persons who are in a court facility are required to wear a face covering while they are in common areas of the facility and when they are or may be within six feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

For purposes of this emergency directive, a "face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A "face shield" means an item of personal protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer's face from splashes, coughs, or sneezes.

The clerks of superior court shall post a notice of this requirement at the entrance to every court facility in their counties.

This face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement or courthouse personnel, or who are under five years of age.

During a trial or proceeding, the presiding judicial official may order a juror answering questions during voir dire, an affiant, or a testifying witness to remove his or her face covering so that facial expressions may be observed. Face coverings removed for this purpose may only be removed while the juror, affiant, or witness is actively speaking and only if he or she is six feet or more away from any other person. The presiding judicial official may, upon a showing of good cause and after consideration of all appropriate health concerns, exempt a criminal defendant from the requirement to wear a face covering during his or her jury trial.

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Expiration of this Emergency Order and
Guidance to Judicial System Stakeholders

Pursuant to N.C.G.S. § 7A-39(b)(2), the emergency directives contained in this order expire on 14 March 2021.

I urge local judicial officials to exercise their own authority to grant additional relief and accommodations as necessary to protect courthouse personnel and the public while honoring the Judicial Branch's commitment to open courts and the prompt administration of impartial justice. Additional information about the Judicial Branch's response to the COVID-19 outbreak is available at https://www.nccourts.gov/covid-19.

This order becomes effective on 13 February 2021. Issued this the 12th day of February, 2021.

Paul Newby
Chief Justice
Supreme Court of North Carolina