STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

R E V I S E D – EFFECTIVE DECEMBER 1, 2020

TWELFTH RENEWED AND AMENDED ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS RELATED TO NEW HAMPSHIRE CIRCUIT COURT AND RESTRICTING PUBLIC ACCESS TO COURTHOUSES

Pursuant to its constitutional and statutory authority and powers of general superintendence over the New Hampshire court system, and conditioned upon Governor Sununu renewing his State of Emergency Declaration under RSA 4:45, the New Hampshire Supreme Court, with the concurrence of Governor Sununu regarding statutory deadlines, makes the following orders relative to **New Hampshire Circuit Courts** to respond to the ongoing COVID-19 pandemic.

1. As of December 1, 2020, and through December 21, 2020 and/or the last day of a Declared State of Emergency, the New Hampshire circuit courts will remain open on a restricted basis, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19.

- The courthouses will be open **only** to individuals filing for emergency relief, or who are scheduled for in-person proceedings, or who are a party in a landlord/tenant case pursuant to RSA 540 or RSA 540-A and must file required documents or make rental payments.
- Otherwise, the courthouses will not be open to the general public.
- Through December 21, 2020, and/or the last day of a Declared State of Emergency, members of the public will not have access to view files or make copies at the courthouses. To learn more about requesting copies of documents, please see the NHJB website COVID page.
- If you have questions about whether you should go to a courthouse, please call 855-212-1234.

2. The November 6, 2020 Eleventh Renewed and Amended Order Suspending In-Person Court Proceedings Related to New Hampshire Circuit Court and Restricting Public Access to Courthouses remains in effect until 8:00 a.m. on December 1, 2020.

3. Subject to the exceptions in paragraphs 4, 5, and 6 below, all in-person proceedings in the circuit courts will remain suspended from December 1, 2020, through December 21, 2020 and/or the last day of a Declared State of Emergency.

4. Exceptions to suspension of in-person court proceedings include, but are not limited to:

a. Proceedings necessary to protect constitutional rights of criminal defendants, including bail-related matters, trials, and plea agreements for incarcerated individuals.
b. Requests for orders of protection for domestic violence under RSA 173-B, stalking under RSA 633:3-a and juvenile abuse under RSA 169-C:7-a, and hearings on such orders.
c. Requests for child-related emergency orders in divorce/parenting cases under RSA 461-A and hearings on any emergency relief ordered.
d. Temporary hearings in divorce/parenting cases.
e. Hearings on the enforcement, establishment or modification of child support whether financial, medical, or both.
f. Division for Children, Youth and Families' requests for emergency orders and hearings on such orders, as well as other hearings in RSA 169-C cases if children are in out-of-home placement.
g. Requests for detention or placement of a juvenile under RSA 169-B and all hearings in RSA 169-B cases for juveniles who are detained or in an out-of-home placement.
h. Requests for placement of a juvenile under RSA 169-D and all hearings in RSA 169-D cases in which the juvenile is in an out-of-home placement.
i. Proceedings related to petitions for temporary emergency injunctive relief.
j. Proceedings related to emergency mental health orders, including Involuntary Emergency Admission and Involuntary Admission (probate commitment) proceedings under RSA 135-C.
k. Petitions for guardianship of minors under RSA 463 or guardianship over incapacitated persons under RSA 464-A, and hearings on such orders.
l. Landlord/Tenant proceedings under RSA 540 and 540-A.
m. Termination of parental rights hearings under RSA 170-C.
n. Proceedings directly related to the COVID-19 public health emergency.
o. Other exceptions as approved by the Senior Associate Justice of the Supreme Court.

5. To comply with the ongoing recommendations to mitigate the risks of COVID-19, the court will conduct many of the above-referenced cases telephonically or by video, to the extent possible, and the court will notify the parties how to access their telephonic or video hearing. Note: certain matters will be scheduled for in-person hearings in the first instance, as follows:

- Trials in criminal cases, as referenced in paragraph 4(a), unless the defendant waives in-person participation;
- Adjudicatory hearings in Delinquency/CHINS cases, as referenced in paragraph 4(g) and (h), unless the juvenile waives in-person participation;
- Child support enforcement hearings, as referenced in 4(e);
- Final hearings in termination of parental rights cases, as referenced in 4(m), unless the respondent waives in-person participation.

6. In addition to the exceptions in paragraph 4 above, the circuit court may conduct in-person, telephonic or video hearings in other cases, as determined by the Administrative Judges of the circuit court, in consultation with the trial judges or their designees.

7. Notwithstanding paragraphs 4, 5, and 6 above, to reduce the increased risk of COVID-19 spread from holiday gatherings, in-person hearings shall not be scheduled for any matters on the following dates:

In 2020 -
November 30, December 1, December 2, December 3,
December 28, December 29, December 30, December 31;
In 2021 -
January 4, January 5, January 6, January 7.

8. The following additional provisions are applicable to landlord and tenant proceedings under RSA 540:

a. To ensure compliance with federal Coronavirus Aid, Relief and Economic Security (CARES) Act, Public Law 116-136 and the Centers for Disease Control and Prevention's public health order regarding evictions, Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (September 4, 2020) (referred to in this order as "CDC Order"), all landlords in residential eviction actions must file an affidavit, on a form approved by the circuit court, documenting their compliance with, or exemption from, CARES Act Sections 4023 and 4024 and the CDC Order. The affidavit must be filed with the court prior to entry of a landlord and tenant writ and served upon the tenant with

the writ. No writ will be entered or docketed (see District Division Rule 5.3) unless the landlord files the affidavit.

b. For residential eviction proceedings initiated prior to September 4, 2020 in which a writ of possession has not been issued, landlords must file an updated affidavit to document their compliance with the CDC Order, even if they have previously filed an affidavit of compliance. No writ of possession shall be issued until the landlord files a new affidavit.

c. Landlords have an affirmative obligation to notify the court hearing an eviction action if the tenant provides to the landlord a declaration pursuant to the CDC Order at any time prior to the service of a writ of possession by the sheriff. This obligation applies even if the landlord has previously filed the affidavit required by paragraph 8(a). Landlords may not pursue an eviction action if the tenant becomes a "covered person" within the meaning of the CDC Order at any stage in the proceeding, even after a writ of possession has been issued by the court.

d. In all cases in which issuance of a writ of possession or other process or proceedings have been stayed as a result of the CDC Order or prior Supreme Court Order, any deadlines set forth in court rules, court orders, statutes, ordinances, administrative rules, administrative orders or otherwise are extended through December 31, 2020. Deadlines for filing a notice of intent to appeal with the local court, an appeal to the New Hampshire Supreme Court, or payment of rent during the pendency of an appeal are not extended. The period for calculating all deadlines extended under this Order will <u>begin</u> on January 1, 2021, regardless of whether any portion of the time for complying with a deadline had elapsed prior to the case being stayed.

9. For Small Claims pretrial and mediation sessions, all attendance and participation requirements set forth in Circuit Court District Division Rules 4.4 and 4.12 shall apply as if the proceedings were taking place in-person. Further, the circuit court may require that all documentation and information necessary for the court to make a Periodic Payment determination pursuant to Circuit Court District Division Rule 4.10 be submitted in writing or electronically in the first instance. Any such determination made by the court after review of all submissions shall have full force and effect. The failure of any party to submit such documentation may result in the issuance of a Payment Order, a Payment Hearing or a denial of the Motion for Periodic Payments.

10. For any of the above hearings, filings should be mailed or delivered to the physical drop box at each courthouse. In exceptional circumstances, documents may be submitted by email to the COVID-19 email address provided on the hearing notice, or obtained through the Information Center. If

documents must be submitted by email, include case name and case number in the subject line.

11. Any filing/exhibit submitted by email must also be sent to the court via U.S. mail, to be docketed as part of the official court record.

12. Emailed filings should only occur in cases that are scheduled for hearings pursuant to this order, for which documents could not have been submitted earlier. Any submission unrelated to such hearings or that should have been mailed or delivered will not be accepted by email.

13. Notwithstanding Rule 11(a)(4) of the Rules of Criminal Procedure, the circuit court may take a plea from a defendant without a signed Acknowledgement and Waiver of Rights Form by reviewing the defendant's rights on the record and obtaining the defendant's oral waiver.

14. All courts will accept electronic signatures on pleadings and will allow litigants' signatures to be electronically signed by attorneys and/or bail commissioners with a statement that they have communicated with the litigant who has authorized them to do so.

15. The Administrative Judges of the circuit court may determine, based upon staffing levels or other factors, that hearings in individual cases subject to the exceptions indicated above be conducted at court locations other than those at which they would normally occur or be conducted by video or by telephone. Any statutory restrictions on venue are hereby suspended for the duration of this order.

16. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge. The proceedings shall be conducted in accordance with the requirements established by the Administrative Judges and the Superior Court Chief Justice. Those requirements for in-person court proceedings are available here: https://www.courts.state.nh.us/aoc/COVID-19-Bench-trial-guidelines.pdf.

17. Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, clerks of court are charged with ensuring that core constitutional and safety-related court functions continue. Nevertheless, all judges and court clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing. Any court rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended for the duration of this order.

18. This order encourages court proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings.

- All deadlines set forth in court rules, court orders, statutes, ordinances, administrative rules, administrative orders or otherwise are no longer extended and are in effect, except that the deadlines for scheduling of hearings may be extended as the needs of the trial court require.
- Specifically as to requests for the return of firearms, ammunition, and specified deadly weapons held by law enforcement during the term of a protective order under RSA 173-B:5, X, the court will temporarily suspend scheduling hearings within 15 days of the expiration of the order of protection and will instead schedule hearings within 15 days after the receipt of information from the department of safety that the requesting defendant is not subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm. Scheduling return-of-firearms hearings only after the court has received sufficient information upon which to base a decision on the requester's motion will help preserve the availability of remote hearings and other judicial resources limited by the continuing State of Emergency and aid the trial court in providing timely access to justice to all litigants.

19. All deadlines set forth in court rules, court orders, statutes, ordinances, administrative rules, administrative orders or otherwise are no longer extended and are in effect, except that the deadlines for scheduling of hearings may be extended as the needs of the trial court require.

20. This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19. Accordingly, the court will liberally consider any reasonable requests for use of telephonic or video conferencing in lieu of an in-person court proceeding.

21. Unless renewed or explicitly revoked beforehand, this order shall remain in effect through December 21, 2020 and/or the last day of a Declared State of Emergency.

Issued: November 24, 2020

ATTEST: Timothy A. Gudas

Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire