

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE


IN THE GENERAL COURT OF JUSTICE
JUDICIAL DISTRICT 28

FILED

2021 JAN 13 P 4: 20

IN THE MATTER OF THE OPERATION

OF THE SUPERIOR and DISTRICT COURTS ORDER CONCERNING COURT
OPERATIONS

BY  January 13, 2021 through February 12, 2021

This matter comes on before the Senior Resident Superior Court Judge and Chief District Court Judge of the 28th Judicial District, in exercise of their in-chambers jurisdiction, through the “inherent power the court [having] the authority to do all things that are reasonably necessary for the proper administration of justice” (Beard v. North Carolina State Bar, 320 N.C. 126, 129 (1987)) and pursuant to authority delegated by the Chief Justice of the North Carolina Supreme Court.

Pursuant to the January 14, 2021, Order of the Chief Justice of the Supreme Court of North Carolina (“the Order”) (herewith attached), the Chief Justice directed adherence to Article I, Section 18 of the North Carolina Constitution providing that “[a]ll courts shall be open” and that “justice shall be administered without favor, denial, or delay.” The Order also required the Judicial Branch to fulfill this mandate in ways that prioritize and protect the health and safety of judicial officials and employees and the public.

The Order rested with “local judicial officials substantial decision-making authority over when and how to conduct jury trials and other in-person proceedings.”

The Chief Justice determined and declared 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.

Buncombe County is currently categorized as tier red/critical by the North Carolina Department of Health and Human Services based upon COVID case rates, positive test percentage and hospitalizations.

The Chief Justice extended Emergency Directives 2, 3, 5, 8, 11, 12, 14, 15, and 21 (*see* the Order attached) for an additional thirty days in order to ensure the continuing operation of essential judicial functions, and the same shall continue to be carried out by the undersigned.

Pursuant to the provisions of the Order of the Chief Justice, it is **HEREBY FURTHER ORDERED** that:

I.

No superior or district court proceeding, including proceedings before the clerk of superior court, may be scheduled if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance.

Judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.

The judicial official with jurisdiction over an individual proceeding will determine compliance with this directive.

II.

No jury trials shall be conducted in the superior or district court of the 28th Judicial District for the next thirty (30) days, that is no earlier than Monday, February 15, 2021.

III.

All trials will be continued to a future date no sooner than February 15, 2021, to be determined by the district attorney in criminal matters and counsel for the parties and the Trial Court Coordinator Marc Shimberg in civil superior court matters.

IV.

No calendar call will be held for these sessions of civil or criminal court.

V.

All superior and district court proceedings other than jury trials will continue as the undersigned specifically find and conclude that these proceedings can be conducted under conditions that protect the health and safety of all participants. Counsel are encouraged to contemplate the mandates of the North Carolina Constitution Article I, Sections 18, 19 and 21 and act according to their obligations as officers of the court while remaining vigilant to the maintenance of their health, that of their clients and the public.

VI.

All civil superior court motions on the calendars will be heard either by conference call or remotely where consented to by all parties. Mr. Shimberg will contact the parties to make the necessary arrangements for scheduling these hearings. In accordance with Section 18 of Article I of the Constitution of North Carolina these proceedings are open to the public. Any individual interested in accessing the proceedings may do so by contacting the Trial Court Administrator for a link to the proceedings.

VII.

If the parties cannot agree to having the civil matter heard by conference call or remotely, the matter will be rescheduled by the Trial Court Administrator or, if the presiding judge believes that the matter can be heard safely utilizing social distancing and the calendaring of only one motion at a particular time period, the matter may be heard at the originally-scheduled time. Any individuals in the courtroom shall maintain appropriate social distancing (at least six feet apart).

VIII.

Hand sanitizer, sanitizing wipes and gloves will be provided in the courtroom and shall be utilized by all individuals handling documents.

IX.

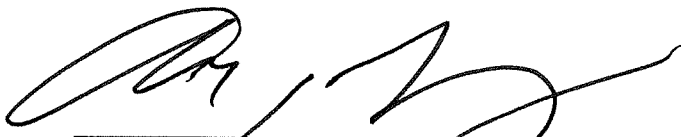
Any represented party expressing symptoms of the coronavirus or believing that he/she has been exposed to COVID-19, shall contact his/her attorney for further instructions. Any similarly affected attorney in a criminal matter shall contact the district attorney's office or civil attorney shall contact Mr. Shimberg.

X.

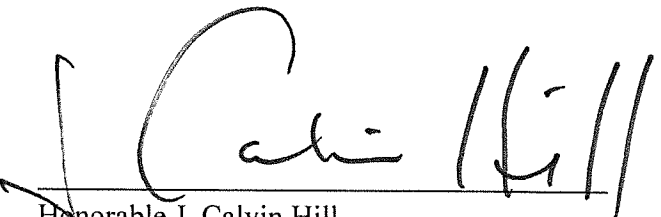
No individual who has been exposed to COVID-19, or is expressing symptoms consistent with the Coronavirus shall be required to be present in court and shall not enter the courthouse.

Nothing in this Order conflicts with or is inconsistent with the Executive Orders of the Governor of North Carolina, the safety guidelines of the North Carolina Department of Health and Human Services or the Buncombe County Public Health Department, as this order is consistent with the operations of the state courts as an essential government function pursuant to Article I, Section 18 of the North Carolina Constitution.

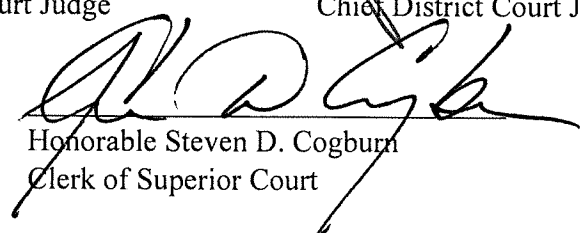
So, Ordered this 13th day of January, 2021.



Honorable Alan Z. Thornburg
Senior Resident Superior Court Judge



Honorable J. Calvin Hill
Chief District Court Judge



Honorable Steven D. Cogburn
Clerk of Superior Court