

The Office of Administrative Hearings (OAH) Updated Response To COVID-19

On March 10, 2020, Governor Roy Cooper issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina.

On March 13, 2020, Chief Justice Cheri Beasley issued an Order declaring under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the public health threat posed by COVID-19 exist in all counties of this state. This Order contains Emergency Directives 1 and 2 directing the rescheduling of all superior court and district court proceedings and the posting of a notice at the entry of all court facilities directing that any person who has likely been exposed to COVID-19 should not enter the courthouse.

On March 18, 2020, the Director of the Office of Administrative Hearings (OAH) issued the OAH Response to COVID-19 outlining procedures for continuing operations of essential agency functions. In addition to the directives issued on March 18, 2020, the Director of OAH invoked the Emergency Waiver Rule found in 26 NCAC 01 .0105, effective March 27, 2020, for the purpose of waiving all specific time limitations contained in all Sections of 26 NCAC Chapter 03 – Hearings Division (except 26 NCAC 03 .0127 which applies only to administrative law judges). This waiver, which remains in effect, applies to all contested cases pending as of March 18, 2020, and thereafter filed at OAH until at such time it shall be revoked. The March 18, 2020 Response to COVID-19 contemplated that there would be further OAH responses due to the fluid and evolving situation.

On March 27, 2020, Governor Cooper issued Executive Order No. 121, a statewide Stay at Home Order, which ordered individuals currently in the state to stay at home, their place of residence, or current place of abode, except for essential activities, essential governmental operations, or to participate in or access COVID-19 essential businesses and operations as defined in the Executive Order. Pursuant to this Executive Order, non-essential businesses were allowed to continue operations consisting exclusively of employees performing activities at their own residences (i.e., working from home) and all COVID-19 essential businesses and operations were directed, to the maximum extent possible, to direct employees to work from home or telework. Additionally, this Executive Order generally banned mass gatherings defined as more than 10 persons in a single room or single space at the same time and directed individuals when outside their residence to maintain social distancing of at least six (6) feet apart from any other person, other than family or household members.

On April 2, 2020, Chief Justice Beasley issued an Order with additional emergency directives (Emergency Directives 1 – 7) deemed necessary to reduce the spread of COVID-19 infection and to ensure the continuing operation of essential court functions. Pursuant to these additional emergency directives, superior court and district court proceedings were generally ordered rescheduled for a date no sooner than June 1, 2020; judicial officials throughout the state were authorized to conduct non-jury proceedings that include remote audio and video transmissions;

and attorneys and other persons who did not have business in a courthouse were directed not to enter a courthouse.

On April 7, 2020, the Director of OAH issued the OAH First Amended and Modified Response to COVID-19 which notes that orders were being issued at OAH continuing contested cases to dates beyond June 1, 2020; and declares that unless required for an emergency hearing or other critical circumstances, OAH would not allow any person to enter the OAH Headquarters building unless admitted by OAH security personnel at the direction of the OAH Chief Hearings Clerk. Except as modified or superseded by the April 7, 2020 Response, the March 18, 2020 OAH Response to COVID-19 remains in effect. The April 7, 2020 Response further provides that, since the situation is fluid and evolving, it is likely that OAH's Response will be updated and modified as OAH receives further directives from North Carolina's Governor and Chief Justice.

On May 5, 2020, Governor Cooper issued Executive Order No. 138, easing restrictions on travel, business operations, and mass gatherings: Phase 1, which permitted individuals to undertake Allowable Activities as defined by the Order, but otherwise ordered individuals to stay at home. This Executive Order strongly advises individuals leaving their residences for Allowable Activities to maintain at least six (6) feet social distancing from other individuals, other than family or household members; to wear a cloth Face Covering when leaving home inside all public settings and outdoors when the individual cannot maintain at least six (6) feet social distancing; to use hand sanitizer frequently; and to wash hands with soap and water as frequently as possible. This Executive Order further requires businesses not closed under the Order to limit customer occupancy to not more than 50% of fire capacity, or to twelve (12) customers for every one thousand (1000) square feet of space, or so that customers can stay six (6) feet apart; and directs customers to stay at least six (6) feet apart from other customers and workers. The Order further requires allowable businesses to mark six (6) feet of spacing in high-traffic areas; to perform frequent cleaning and disinfection of high-touch areas; to provide hand sanitizer stations; to conduct daily screening of workers; and to post signage at main entrances reminding people to stay six (6) feet apart for social distancing, requesting recently symptomatic people not to enter, and notifying customers of the business's reduced capacity. Additionally, during the period of this Executive Order, businesses were strongly encouraged to continue to promote telework whenever possible.

On May 20, 2020, Governor Cooper issued Executive Order No. 141, further easing restrictions on travel, business operations, and mass gatherings: Phase 2, lifting the Stay at Home Order in Executive Order No. 138. The provisions of this Executive Order restate the strongly encouraged social distancing, Face Covering, hand sanitizer and hand washing language and the customer limitations and business social distancing requirements language contained in Executive Order No. 138. This Executive Order further establishes restrictions for certain kinds of businesses and operations; establishes a prohibition on mass gatherings defined as more than ten (10) people indoors or more than twenty-five (25) outdoors at the same time in a single confined indoor or outdoor space; and continues the closing of certain types of businesses or operations which present greater risks of the spread of COVID-19.

On May 21, 2020, Chief Justice Beasley issued an Order with additional emergency directives (Emergency Directives 9 – 16) deemed necessary to reduce the risk of infection and to ensure the continuing operation of essential court functions. This Order directs judicial officials to continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances and to minimize face-to-face interactions between court personnel and the public. This Order further directs each senior resident superior court judge to ensure that intervals of at least six feet in every direction are marked in all areas where the public is expected to congregate or wait in court facilities; that the maximum allowable occupancy of each courtroom is established such that all persons may observe social distancing of at least six feet in every direction; that the maximum allowable occupancy is prominently posted at courtroom entrances; that hand sanitizer is available at the entry and exit of court facilities; and that all areas in court facilities accessed by the public are cleaned daily.

On June 24, 2020, Governor Cooper issued Executive Order No. 147 extending Executive Order No. 141 and requiring new measures to save lives in the COVID-19 pandemic. Pursuant to this Executive Order, individuals are required to wear Face Coverings when inside retail business establishments, in state government agencies headed by members of the Governor's Cabinet, and on public or private transportation regulated by the State (except personal vehicles).

On July 16, 2020, Chief Justice Beasley issued an Order containing an additional emergency directive (Emergency Directive 21) consistent with Governor Cooper's Executive Order No. 147 and mounting evidence that face coverings decrease the spread of COVID-19. Pursuant to Emergency Directive 21, all persons in a court facility are required to wear a face covering while in common areas of the facility and when interacting with other persons.

On July 29, 2020, the Senior Resident Superior Court Judge of the 10th Judicial District issued directives for the Operation of Civil Superior Court, effective August 1, 2020. Pursuant to these directives, Webex Civil Superior Hearings are being scheduled by the Trial Court Administrator's (TCA) Office in weekly sessions; consent of the parties to participate in the hearing via Webex, while not required, is presumed; in-person Civil Superior Hearings are being scheduled by the TCA's Office in weekly sessions in Courtroom 10C of the Wake County Courthouse; all requests for hearings are presumed to be remote hearing requests unless otherwise noted by parties/attorneys; and parties, for good cause, may object to a hearing being held either remotely or in-person (if objection to a remote hearing is granted, the matter is scheduled for an in-person hearing; if objection to an in-person hearing is granted, the matter is scheduled for a Webex hearing).

Consistent with the directives of Governor Cooper and Chief Justice Beasley, the Director of OAH now issues OAH's Updated Response to COVID-19:

Pursuant to the Governor's and Chief Justice's orders, all OAH personnel have been encouraged to remain at home by telecommuting that allows these employees to connect to all centralized information as would be available from their work stations at OAH and remaining simultaneously connected to their co-workers. A very small number of managerial employees, as safety permits,

have elected to be physically present at OAH, mostly on a staggered basis, to ensure coordination of operations and availability for emergency orders.

As emphasized and directed by Chief Justice Beasley, OAH has posted the following notice to the exterior entrances of its headquarters' building in Raleigh.

YOU SHOULD NOT ENTER THE OFFICE OF ADMINISTRATIVE HEARINGS IF YOU HAVE LIKELY BEEN EXPOSED TO COVID-19. A PERSON WHO HAS LIKELY BEEN EXPOSED TO COVID-19 IS DEFINED AS ANY PERSON WHO:

- a. has travelled internationally within the preceding 14 days;**
- b. has had symptoms of COVID-19 within the prior 72 hours;**
- c. has been directed to quarantine, isolate, or self-monitor;**
- d. has had a known exposure to COVID-19;**
- e. has been diagnosed with COVID-19;**
- f. has had a risk of exposure to COVID-19 within the last 14 days; or**
- g. resides with or has been in close contact with any person in the above-mentioned categories.**

THE SYMPTOMS OF COVID-19 INCLUDE:

- Fever**
- Cough**
- Chills**
- Repeated shaking with chills**
- Muscle pain**
- Headache**
- Sore throat**
- New loss of taste or smell**

RISK OF EXPOSURE TO COVID-19 INCLUDES:

- Persons who are well but who have a sick family member at home with COVID-19**
- Having contact with someone diagnosed with COVID-19**
- Living in or visiting a place where COVID-19 is spreading**

If you fit into any of the above categories, you should not enter the Office of Administrative Hearings. Instead, please call the number listed below, and report your situation for instructions on how to proceed. If you have a scheduled appearance or were otherwise directed to attend a hearing today, you will not be penalized for your absence provided you

call this number. We thank you for your cooperation in the effort to prevent the spread of COVID-19 (coronavirus) to others in the community. (984) 236-1850.

Unless required for an emergency hearing or other critical circumstances, OAH will not allow any visitors, attorneys, or other persons presenting themselves at the OAH Headquarters Building at 1711 New Hope Church Road, Raleigh, North Carolina, to enter the building unless first admitted by OAH security personnel at the direction of the OAH Chief Hearings Clerk.

This restricted entry at the OAH Headquarters Building does not specifically apply to other facilities where OAH conducts contested case hearings. For information on restrictions that apply to county courtrooms, please consult the policy posted on the OAH website, entitled [Procedural Rules That Apply to Contested Cases in County Courthouses](#).

In addition to the foregoing mandatory restrictions, OAH strongly urges all interested parties to utilize the technology available to them, such as e-filing, emailing, telephone, and voicemail to communicate and transact business throughout the OAH three divisions. Most parties routinely transact business in this manner, but during the current public health crisis, these methods should be the primary means of communication.

OAH Operations Protocols for Safe Return to Worksite

In OAH's ongoing efforts to help reduce the risk of COVID-19 exposure and transmission to employees and those entering and conducting business in the OAH Headquarters Building and to promote a safe and health work environment, the following operations protocols were placed into effect beginning May 22, 2020, as amended June 23, 2020. These protocols are subject to further modifications and/or restrictions as further guidance and directives are received.

Sick individuals or individuals that have been exposed to someone infected with COVID-19 should stay home and not enter the NC OAH building.

1. Social Distancing

When inside the NC OAH building in high traffic and/or public facing areas, individuals must maintain at least six (6) feet social distancing from other individuals to help prevent the transmission and spread of COVID-19. In high traffic areas, intervals of at least six (6) feet in all directions will be denoted with floor markers where individuals are expected to stand.

Individuals must adhere to posted maximum allowable occupancy of courtrooms or meeting spaces where individuals must sit or stand such that six (6) feet social distancing may be observed in every direction.

The established maximum occupancy has been prominently posted at the entrances to each courtroom and meeting space.

No members of the public or NCOAH employees should sit or stand in close proximity of each other for extended periods of time in contravention of current public health guidance.

Employees must wait to use common work or break areas until they can maintain at least six (6) feet social distancing from other employees.

2. Prevention of COVID-19 Transmission

At the front entrance of the NC OAH building, members of the public will be required to submit to a temperature check to be performed by a designated OAH employee before being allowed to enter the building. Employees entering the building through the rear entrance must have their temperature checked by the Security Officer on-duty prior to reporting to his/her duty station.

- a) The temperature taker is to maintain as much distance from individuals being tested as they can, wear a face covering, wash their hands with soap and water or use alcohol-based sanitizer (at least 60% alcohol) regularly, and wear gloves.
- b) Per Centers for Disease Control Guidelines, any temperature 100.4 F or greater is considered a fever. Individuals with temperatures of 100.4 or greater will not be allowed to enter the building.
- c) Per Centers for Disease Control Guidelines, individuals with temperatures at or below 100.3 F do not have a fever. Those individuals may continue into the building following these protocols.

Members of the public entering NC OAH must wear an appropriate face cover that covers the mouth and nose in a manner consistent with the Centers for Disease Control guidelines. Face coverings must always be worn when:

- a) In common areas (hallways, restrooms, elevators, etc.)
- b) In courtrooms unless actively participating in a hearing or other official business and the wearing of a face cover impedes communication (or as directed by the presiding Administrative Law Judge); and
- c) Within six-foot proximity of other people.

Upon request (and if available), face coverings will be provided to members of the public required to be in the OAH building for more than thirty (30) minutes.

Consistent with the NC Department of Health and Human Services' recommendation to wear a face covering whenever you are in public, employees who are able to do so are expected to wear face coverings at all times while inside the agency worksite, unless they are alone in their office or personal space.

- a) NC OAH will provide face coverings for employees to wear as required inside the agency worksite.
- b) Employees may be exempted from wearing a face covering if they have a health condition certified in writing by a healthcare professional that the wearing of a face

covering would be detrimental to his/her health and that certification has been provided to the OAH Human Resources Director.

“Appropriate face cover” is defined as one recognized by the Center for Disease Control as helpful in reducing the transmission of COVID-19 in public settings. Medical or single use medical-type face masks are appropriate. If fabric, the face cover should:

- a) fit snugly but comfortably against the side of the face
- b) be secured with ties or ear loops
- c) include multiple layers of fabric
- d) allow for breathing without restriction; and
- e) be able to be laundered and machine dried without damage or change in shape.

Individuals should carry hand sanitizer, and use it frequently, in addition to washing hands, using soap and water for at least twenty (20) seconds as frequently as possible.

All areas in the OAH building will be cleaned and sanitized daily by the OAH Housekeeping Service.

3. Restroom Use

No more than two (2) individuals will be allowed in a restroom at a time. Once inside, social distancing must be maintained by standing at least six (6) feet apart.

After using the restroom, individuals are to wash their hands with soap and water for at least 20 seconds. Once done washing and drying their hands, individuals should use a paper towel to turn off the faucet and open the door to exit the restroom.

The restrooms will be cleaned and sanitized daily by the OAH Housekeeping Service.

4. Elevator Use

To help maintain social distancing of at least six (6) feet apart, no more than two (2) individuals will be allowed to ride together in the elevator.

Employees are encouraged to use the stairs in lieu of the elevator whenever possible, especially when descending.

5. Employee Kitchen/Breakroom Area

To maintain social distancing when using the kitchen/breakroom area, no more than two (2) employees may use an area at a time.

Employees shall not use tables or chairs in the kitchen/breakroom to wait or eat meals.

Employees are to remove any items they have placed in the kitchen/breakroom cabinets or drawers and store them in their personal office or take them home.

Employees must wash hands with soap and water or use hand sanitizer before and after touching shared appliances/items, e.g., microwave, coffee pot, toaster, oven, refrigerator, etc.

Appliance handles and other high touch areas, e.g., shared appliances/items, countertops, etc., are to be sprayed and wiped down before and after each use with an EPA-approved disinfectant.

6. Water Fountains

The water fountains located in the OAH Headquarters Building have been disabled.

7. Shared Equipment

High touch areas on printers, copiers, faxes, and other shared equipment will be decontaminated frequently with an EPA-approved disinfectant.

Shared equipment will be placed in an area large enough to promote six (6) feet social distancing between employees.

To the extent possible, shared office supplies will be limited.

Employees shall not be permitted to use other employees' headsets or other personal items.

If phones must be shared, e.g., phones located at the front desk or in meeting rooms, they will be decontaminated frequently with an EPA-approved disinfectant.

8. Employee Teleworking

NC OAH employees have been strongly encouraged to continue teleworking to the greatest extent possible until further guidance and directives are received.

Amendment to Janitorial/Custodial Services Contract

To help prevent community spread of COVID-19, OAH has adopted guidelines provided by the North Carolina Department of Administration, Facilities Management, for cleaning, sanitizing, and disinfecting the OAH Headquarters Building. To implement these additional cleaning guidelines, OAH amended its contract with its Janitorial/Custodial Services Vendor effective June 25, 2020.

Pursuant to the amended contract, the Vendor is required:

- to use Centers for Disease Prevention and Control (CDC) approved cleaning products effective against COVID-19 to clean, sanitize and disinfect the OAH Headquarters Building daily (Monday – Friday)
- to have all OAH employees leave the headquarters building when performing cleaning and sanitizing

- to wear disposable gloves when cleaning, sanitizing, and disinfecting surfaces
- to follow the North Carolina Department of Administration, Facilities Management's '7-Step Cleaning Process' when performing all cleaning and sanitizing tasks
- to focus on cleaning high touch areas, such as doorknobs, light switches, countertops, water fountains, handrails, and elevator wall/buttons, and restroom/breakroom soap dispensers and faucets; and
- to perform all services enumerated in the 'COVID-19 Routine Cleaning and Sanitizing Checklist'.

Additional COVID-19 Safety Protocols

Hand sanitizer has been made available in all high traffic areas of the OAH Headquarters Building.

Plexiglass barriers have been installed to isolate and socially distance employees and other persons inside the OAH Headquarters Building from the OAH Receptionist located at the reception area near the front entrance and from the OAH Security Officer located at the security officer's desk area on the first floor of the building.

Plexiglass barriers have likewise been installed in the courtrooms of the OAH Headquarters Building to isolate the presiding ALJ, the hearing assistant, and the testifying witness from each other during in-person and hybrid in-person hearings.

HEARINGS DIVISION

Consistent with Chief Justice Beasley's Orders pertaining to superior court and district court proceedings, and to minimize the spread of COVID-19 among members of the public having business before OAH, beginning on March 18, 2020 hearings in contested cases at OAH were rescheduled by administrative law judges (ALJs) to dates beyond June 1, 2020. During the March 18 – June 1 interval, proceedings in contested cases not involving a hearing on the merits continued to take place before ALJs, almost entirely on a virtual basis with ALJs utilizing OAH's remote audio and video technology. Since March 18, 2020, ALJs, like other OAH personnel, have been teleworking from home to the greatest extent permissible, utilizing available remote technology to manage their dockets and off-docket caseloads.

Medicaid Recipient Appeal hearings are scheduled as telephone hearings in the regular course of business, and, as such, have continued to go forward telephonically as scheduled from locations remote from the OAH building. Requests to conduct these hearings via videoconferencing technology (such as Microsoft Teams or Cisco Webex) can be made by emailing anne.hollowell@oah.nc.gov or by calling 984-236-1933.

While attorneys and other members of the public have been generally restricted from entry into the OAH Headquarters Building, the OAH Clerk's Office remains open for document and pleadings filings through its web-based e-filing capabilities. For several years now, parties and attorneys

have established access to e-filing by registration whereby paper filings have all but been eliminated. For information and instructions on registering to become an e-filer, please click on this link: <https://www.oah.nc.gov/e-filing-registration-guide>. OAH still accepts filing by email attachment and by fax in addition to limited paper filings. During the COVID-19 crisis, OAH strongly encourages all parties and attorneys to avoid paper filings (although paper filings will continue to be accepted for certain type filings) and to utilize the OAH electronic filing system to the greatest extent possible as a means of distancing to avoid person-to-person contact.

Information regarding filing a petition, electronic filing or to locate a form may be found on the OAH website at <https://www.oah.nc.gov/hearings-division>.

For immediate assistance or to find answers to questions about a pending contested case, contact the Chief Hearings Clerk, Maria G. Erwin at 984-236-1859 or at maria.erwin@oah.nc.gov.

In keeping with Chief Justice Beasley's Emergency Directives 3 and 9, since June 1, 2020 ALJs have been conducting administrative hearings utilizing remote audio and video technologies (Microsoft Teams and Cisco Webex) to the greatest extent possible. While a very limited number of contested cases have been scheduled for in-person or hybrid in-person hearings at the OAH Headquarters Building, these hearings are being conducted under strict protocols to prevent the spread of COVID-19, including prehearing exchange of exhibits and witness lists, staggered witness appearance schedules, six (6) foot social distancing requirements, adherence to limited allowable courtroom occupancy, face covering requirements, and adherence to all OAH COVID-19 Operations Protocols currently in effect while present inside the OAH building. However, consistent with operations protocols currently in effect for the Civil Superior Court of the 10th Judicial District, it is presumed that OAH contested case hearings will be conducted remotely unless otherwise ordered by the presiding ALJ for good cause shown.

RULES DIVISION

The Rules Review Commission (RRC) provides a live audio broadcast of its meeting every month, and instructions can be found here: <http://www.oah.nc.gov/rules-division/rules-review-commission>.

The online agenda for the RRC's monthly meeting is posted on the OAH website. Anyone having specific questions about the rules filed for that month's meeting may contact the assigned attorney, who will be listed on the agenda.

For rulemaking agencies, boards, and commissions.

The same as with the directives for all OAH divisions, please avoid paper filings. Effective March 16, 2020 the Office of Administrative Hearings waived rules codified in 26 NCAC 02C requiring rulemaking agencies to file a print original and print copies for submissions to OAH for emergency, proposed temporary, temporary, and permanent rules. The agency is to submit rules, including a scanned copy of the signed submission forms, to the Rules Division by email to oah.rules@oah.nc.gov. Please contact Molly Masich at 984-236-1934 or Dana McGhee at 984-

236-1937 to confirm receipt of the emailed transmissions. This includes adopted temporary and permanent rules submitted to OAH for review by the Rules Review Commission.

Rulemaking Coordinators are encouraged as a first resort to use the e-filing system for submitting proposed permanent rules for publication in the NC Register. A link to the instructions follows at <http://files.nc.gov/ncoah/documents/Rules/E-Filing-Training-071019.pdf> and the link to connect to the e-filing system is at <https://www.enchrats.oah.state.nc.us/Login.aspx>.

For questions about rescheduling public hearings, contact Molly Masich at molly.masich@oah.nc.gov or 984-236-1934.

For questions about filing emergency rules, contact Molly Masich at molly.masich@oah.nc.gov or 984-236-1934. Links to the statute for adopting an emergency rule (G.S. 150B-21.1A) and the OAH emergency rulemaking flowchart.

For any other questions, please email oah.rules@oah.nc.gov.

CIVIL RIGHTS DIVISION

In response to the COVID-19 crisis, all the Civil Rights Division Staff are teleworking. The Civil Rights Division will continue to receive and investigate complaints.

For questions about the Civil Rights Division, contact Lamont Goins at lamont.goins@oah.nc.gov or 984-236-1905.

For questions about employment discrimination, contact June Melvin at june.melvin@oah.nc.gov or 984-236-1907.

For questions about housing discrimination, contact Gene Troy at gene.troy@oah.nc.gov or 984-236-1916.

To file a complaint, please complete the Intake Form located as follows:

Employment Discrimination Section

<http://www.oah.nc.gov/documents/employment-charge-intake-form>

Housing Discrimination Section

<http://www.oah.nc.gov/documents/housing-discrimination-complaint-form>.

Once the form is completed and submitted, a member of the staff will contact you.

For Respondents having questions or needing to submit information, please contact the assigned investigator for assistance.

For all other issues, please refer to the Division's webpage for information.
<http://www.oah.nc.gov/civil-rights-division>.

HUMAN RELATIONS COMMISSION (HRC)

In response to the ongoing COVID-19 crisis, the HRC has been holding its meetings via remote technology since May and had its last meeting in July. The HRC is scheduled to next meet remotely on October 29, 2020. Access to HRC remote meetings is available from the following link: <https://www.oah.nc.gov/civil-rights-division/human-relations-commission>.

This posting is dated, September 14, 2020, and is reflective of the crisis circumstances as they currently exist. Since the situation is fluid and evolving, this posting is likely to be updated and modified as OAH receives further directives from North Carolina's Governor and Chief Justice.

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