May 28, 2020

Dear Members of the New Hampshire Bar:

As we navigate these uncertain times, we wanted to reach out to you, as members of the New Hampshire Bar, to share some of the lessons we have learned and the measures we have adopted during this crisis. We hope this message finds you safe and well.

Last week we admitted 20 new members to the bar. As has been our practice, we discussed with these new members the unique quality of practicing law in New Hampshire, and how vital it is that we maintain the special collegiality and professionalism that distinguishes our legal community.

This crisis has given us ample opportunity to witness those special attributes in practice: members of the New Hampshire Bar have risen to meet and overcome myriad challenges resulting from the COVID-19 pandemic. Each and every one of you have had to radically alter the way you conduct business in order to serve your clients during this difficult time. At a record pace, you have met the technical challenges imposed by working remotely while maintaining sufficient access to your clients and ensuring they receive all necessary advice and guidance. We recognize that you have accomplished these professional goals while also balancing personal concerns related to health, family, and income. We are amazed at what you have accomplished, proud to be members of the New Hampshire Bar, and grateful to work alongside such dedicated and talented individuals.

During the past three months, the New Hampshire Judicial Branch has also made radical changes to our operations due to COVID-19. All of our courts remain open during the pandemic, and we are committed to keeping them open because the justice system is essential to the citizens of New Hampshire. When COVID-19 first became a state and national public health concern, the Judicial Branch issued emergency orders to allow essential court functions to continue in a safe and efficient manner while staying the majority of court deadlines to allow judges, court staff, attorneys and pro se litigants the opportunity to work through logistical issues imposed by the limited physical access to the 44 court buildings throughout the state. As the pandemic has continued, the Judicial Branch has expanded our operations in both the trial courts and the Supreme Court to include:

- Video remote oral arguments at the New Hampshire Supreme Court on a weekly basis
- Video or telephonic remote trial court hearings in Superior and Circuit Court on non-emergency matters
- Video or telephonic remote bench trials in Superior and Circuit Court upon request
- Telework opportunities that allow our Information Center to continue to answer 1,300 calls per day
- Drug Court proceedings and programming conducted throughout the state
- Email communications with clerks’ offices to access file information that is not available electronically
- Video remote Swearing-In Ceremony of newly admitted members of the bar

We are immensely proud of our judges and court staff who have transformed the way we conduct business, but this process certainly has not been without its challenges. From an administrative standpoint, the Judicial Branch has strived to ensure that the approximately 800 Judicial Branch employees throughout the state are able to perform their essential work in a safe environment. From a court operations perspective, the Judicial Branch continues to encounter challenges as we balance public operations with resuming in-court hearings.

The most complex challenges before us for the next few months are the resumption of jury trials, grand juries, and complex evidentiary hearings including marital cases, and the need to address the backlog of cases due to the recent limits on in-court operations and the extended deadlines. We have court committees reviewing all of these issues. The committees, while mindful of prioritizing stakeholder engagement, have also collaborated with judicial branches throughout the country on shared challenges and best-practice responses.

Additional operational changes will be evident in the coming weeks. The Superior Court will launch a jury trial pilot in Coos County and will be sending specially designed summons and questionnaires in June for one jury trial in August. The Superior Court Return to Operations Committee is currently working with the local criminal bar to identify an appropriate case. In addition, the committee is working with the state’s Chief Medical Director and following CDC recommendations to ensure a safe and effective process. Much of the initial jury selection process will occur remotely and in-court operations will be conducted in accordance with medically established guidelines.

Also in progress, the supervisory judge in each county will be working with County Attorneys to identify locations that are large enough to conduct grand jury sessions that comply with social distancing guidelines. We hope to resume grand jury proceedings in the coming months.

Additionally, the Superior Court is available to conduct remote bench trials at any time. If you are willing to resolve your criminal or civil case by bench trial, please contact the clerk in your county and she or he will schedule a bench trial promptly.

In the Circuit Court, several dedicated focus groups that include judges, staff and outside stakeholders are developing strategies to triage and resolve the large backlog of hearings that have been cancelled, as well as to address the cases that continue to be filed. These focus groups are seeking innovative ways to reach cases at each crucial stage of the proceedings, while following CDC guidelines for physical distancing and limiting group sizes in each of our 34 locations. The highest priority are cases involving incarcerated defendants, individuals seeking protective orders, those involving children and parties with mental health issues. The Circuit Court is actively scheduling all cases with statutory deadlines and expanding our ability to conduct larger volumes of both telephonic and video hearings.
Also, starting this week, based on work with the NH Coalition Against Domestic and Sexual Violence, NH Legal Assistance and members of the private bar, the Circuit Court is piloting a process that allows plaintiffs to file Domestic Violence or Stalking Petitions by email if they are working with a community crisis center or family justice center. This temporary process is designed to address the challenges faced by those filing petitions, and to reduce the number of individuals who feel compelled to enter court buildings during the crisis.

The Circuit Court will also begin addressing divorce and parenting matters that were stayed during the first months of the pandemic. To limit in-person appearances, First Appearance sessions will be conducted using a pre-recorded video followed by an individual conference with a case manager. Follow up events, including a temporary hearing if required, or mediation, will be scheduled from there. Final hearings for cases involving children will be scheduled by video or telephonic hearing where possible. Most other final hearings will be limited to cases that can be heard in three hours or less, as we focus on higher priority cases.

These changes will allow us to continue moving the courts’ business forward but they are not our sole priority. Despite our shared interest to “return to normal,” public safety must remain our paramount concern. As we continue to expand courthouse operations on a measured basis, we will do so within the confines of what public health authorities recommend. We know that even when public safety allows for greater numbers of individuals to visit our physical court locations, additional safety precautions will likely remain in place and become part of our standard operations moving forward.

Finally, we are mindful that many members of the New Hampshire Bar, particularly newer members of the profession, may face financial hardships as job opportunities decrease and student debt remains. We encourage you to contact the New Hampshire Bar for assistance with concerns pertaining to the payment of annual bar dues and/or taking CLE courses. You may be aware that the Supreme Court has issued an order extending the date by which bar members must earn and report CLE credits to September 1. We will continue to work with New Hampshire Bar leadership to ensure that sufficient resources are available to help lawyers work through issues related to the practice of law during these unsettled times.

Although the challenges are many, we are confident that collectively we can and will meet each of them, particularly given our accomplishments to date and the strength we find in our shared commitment to the law. We wish all of you and your families a healthy and safe summer and we look forward to better days ahead.

Gary Ellis Hicks, Senior Associate Justice  
New Hampshire Supreme Court

Tina L. Nadeau, Chief Justice  
New Hampshire Superior Court

David D. King, Administrative Judge  
New Hampshire Circuit Court