

STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

R E V I S E D – E F F E C T I V E A P R I L 2 7 , 2 0 2 1

NINETEENTH RENEWED AND AMENDED EMERGENCY ORDER
GOVERNING OPERATIONS OF NEW HAMPSHIRE COURTS
AND SUPREME COURT COMMITTEES

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, in consultation with public-health officials, makes the following orders governing the operations of **all New Hampshire courts and Supreme Court committees** in light of the ongoing COVID-19 pandemic and the recent progress that has been made toward containing it.

1. The April 1, 2021 emergency orders governing the Supreme Court, the Superior Court, the Circuit Court, and Supreme Court committees, as defined in paragraph 1 of the emergency order applicable to committees, remain in effect until 8:00 a.m. on April 27, 2021.
2. The following paragraphs of this Nineteenth Renewed and Amended Emergency Order governing all courts and Supreme Court committees will go into effect at 8:00 a.m. on April 27, 2021, and will remain in effect through May 17, 2021 and/or the last day of a Declared State of Emergency, unless this order is further renewed or explicitly revoked beforehand.
3. Since the onset of the pandemic, the New Hampshire courts and Supreme Court committees have remained open to perform their judicial and administrative responsibilities, but have curtailed in-person proceedings and restricted public access to the courthouses and committee offices (collectively, “judicial branch facilities”) in order to mitigate the risks associated with COVID-19. As of April 27, 2021, the Supreme Court will serve as a pilot location for expansion of in-person operations and for increased public access to judicial branch facilities. Each court and each committee shall continue to work toward a greater reopening of its facilities to the public and toward an expansion of in-person proceedings, in keeping with public-health guidance and the New Hampshire Constitution’s requirement that “the public’s right of access to governmental proceedings and records shall not be unreasonably

restricted.” The next emergency order, to be issued on or about May 13, 2021, will outline the additional steps that have been taken and will be taken, in consultation with public-health officials, toward the goal of achieving the full resumption of in-person operations by summer.

Public Access to Judicial Branch Facilities (All Courts and Committees)

4. The **Supreme Court** building will be physically open to the public between 8:30 a.m. and 4:30 p.m., Monday through Friday. Access to the building is permitted to persons who are present for one or more of the following purposes: attending in-person court proceedings (see paragraph 9); conducting in-person business with the clerk’s office (see paragraph 10); or appearing for a scheduled appointment with the New Hampshire Law Library (see paragraph 11).

5. Access to **Superior Court and Circuit Court** facilities is permitted, during their normal operating hours, to persons who are present for one or more of the following purposes: attending in-person court proceedings; filing for emergency relief when the nature of the emergency requires in-person filing; or, in a landlord/tenant case pursuant to RSA 540 or RSA 540-A, filing required documents or making rental or other court-ordered payments. In-person proceedings in the **Superior Court** include those identified in paragraphs 16, 17, and 18. In-person proceedings in the **Circuit Court** include those identified in paragraphs 27, 28, and 29. Except as set forth above in this paragraph, the courthouses will not be open to the general public through May 17, 2021 and/or the last day of a Declared State of Emergency. Accordingly, persons seeking to view case files or obtain copies should review the judicial branch’s COVID-19 website page for information and instructions: <https://www.courts.state.nh.us/aoc/corona-covid-19.html>. Persons can receive assistance regarding court cases by contacting the Information Center at 855-212-1234. Questions about the need or ability to enter a court facility should also be directed to the Information Center at 855-212-1234.

6. Each **Supreme Court committee** with a physical office will be open for any in-person hearings held at the office and for scheduled appointments with persons whose business with the committee cannot be conducted remotely, such as public inspection of Attorney Discipline Office (“ADO”) files pursuant to Supreme Court Rule 37(20)(n). To mitigate risks associated with COVID-19, each committee may otherwise close its physical office to the general public through May 17, 2021 and/or the last day of a Declared State of Emergency, but shall remain accessible by telephone and email during regular business hours. The ADO will allow and accept the electronic submission and service of pleadings, as well as electronic signatures, in addition to conventional (paper) filings and conventional signatures. The ADO and each other committee

should provide drop boxes, if available, for persons to file documents conventionally.

7. All persons entering a judicial branch facility may be subject to screening procedures to assess their possible exposure to COVID-19. Pursuant to the July 24, 2020 order of the Supreme Court, and until further order, all persons in a judicial branch facility must wear face covers that cover the mouth and nose; this requirement does not apply to anyone for whom the wearing of a face cover would be contrary to their health or safety. For purposes of preventing the spread of COVID-19, each court and committee may monitor the number of people entering and leaving its facility to ensure that the number does not exceed safe occupancy levels or interfere with the ability to maintain physical distancing of at least six feet.

8. The remaining sections of this order set forth additional provisions applicable to the Supreme Court, the Superior Court, the Circuit Court, and Supreme Court committees, respectively.

Additional Provisions Applicable to Supreme Court

9. The Supreme Court has issued oral argument lists for April 28, May 5, May 12, and May 27, 2021. The oral argument lists are available here: <https://www.courts.state.nh.us/supreme/orals/index.htm>. The oral arguments on April 28, 2021, are scheduled to take place via Webex video conferencing. The oral arguments on May 5, May 12, and May 27, 2021, are scheduled to take place in person, in the courtroom. Until further notice, attendance in the courtroom will be limited to attorneys, parties, security officers, and other necessary persons, as determined by the Supreme Court or a single justice. All others may watch and listen to a live stream of the oral arguments via the Supreme Court webcast, except in any case identified as confidential. Similarly, for the oral arguments on April 28, 2021, persons who do not receive an electronic invitation to participate in the Webex video conferencing session may watch and listen to a live stream of the oral argument via the Supreme Court webcast, except in any case identified as confidential. The starting times of in-person oral arguments will be staggered to reduce occupancy levels in the courtroom and to allow time for cleaning of the courtroom between cases. Persons attending oral argument will be permitted to use the Law Library as a preparation space.

10. The clerk's office will be open and accessible to the public for purposes of obtaining court forms, requesting information, submitting filings, reviewing case files, or using the computer kiosk for electronic filing or electronic access to court records. To avoid unnecessary visits to the building, persons are encouraged to obtain forms and information remotely from the Supreme Court's website, <https://www.courts.state.nh.us/supreme/index.htm>, and to

submit filings through the court's electronic filing (e-filing) system, through the mail, or via the drop box in front of the Supreme Court building. Persons may also request assistance regarding a Supreme Court case by calling (603) 271-2646.

11. The Law Library is open to the public by appointment only. Appointments are available in three-hour blocks from 9:00 a.m. to 12:00 noon, and from 1:00 p.m. to 4:00 p.m., except on days that are scheduled for oral arguments. Until further notice, only two visitors at a time will be allowed in the Law Library. The Law Library will continue to offer curbside service to accommodate borrowers who would prefer not to come into the Law Library. Information concerning Law Library appointments and curbside pickup of books is available here:

<https://www.courts.state.nh.us/lawlibrary/index.htm>. For research assistance and other questions, Law Library staff are available between 8:30 a.m. and 4:30 p.m., Monday through Friday, by calling (603) 271-3777 or by emailing lawlibrary@courts.state.nh.us.

12. Notwithstanding the increased public access permitted by this order, any Supreme Court Rule that impedes the ability of the court or the clerk to utilize available technologies, in appropriate circumstances, to limit in-person contact or obviate travel to the Supreme Court building is suspended for the duration of this order. In particular, the provisions of Rule 4(a) of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing are suspended to the extent that they:

- Restrict the ability of attorneys, self-represented parties, and nonlawyer representatives in cases commenced in the Supreme Court prior to August 6, 2018, to submit documents through the e-filing system.
- Restrict the ability of self-represented parties and nonlawyer representatives in cases commenced in the Supreme Court on or after August 6, 2018, but prior to January 1, 2020, to submit documents through the e-filing system.
- Require self-represented parties and nonlawyer representatives in cases commenced in the Supreme Court on or after January 1, 2020, to submit documents through the e-filing system.

13. Accordingly, in any Supreme Court case, a filing may be submitted by an attorney, a self-represented party, or a nonlawyer representative in any of the following ways during the effective period of this order: (a) electronically through the court's e-filing system; (b) in paper, by mailing or delivering the filing to the clerk's office; or (c) in paper, by placing the filing in the drop box that is located in front of the Supreme Court building. The timing, including

timeliness, of a filing shall be determined in accordance with applicable Rules. See Rule 9(d) of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing; Supreme Court Rule 26(1).

14. The Supreme Court will continue to accept electronic signatures on any pleading and will allow a litigant's signature to be electronically or conventionally made by the litigant's attorney, provided that the attorney includes a statement that the attorney has communicated with the litigant, the attorney has received the litigant's authorization to sign the pleading on the litigant's behalf, and the litigant has affirmed the information in the pleading.

15. Given the expanded methods of filing allowed by this order, and the interests of both the Supreme Court and the parties in advancing cases during the pandemic, Supreme Court filing deadlines are not extended, tolled or suspended by this order, but may be extended upon motion in accordance with Supreme Court Rules.

Additional Provisions Applicable to Superior Court

16. A separate order was issued by the Superior Court on July 14, 2020, authorizing the resumption of in-person jury trial and grand jury proceedings in August 2020, consistent with the Superior Court's roll-out plan outlined in The State Court Jury Trial Plan and in accordance with protocols for the resumption of grand jury proceedings. The State Court Jury Trial Plan is available here: <https://www.courts.state.nh.us/aoc/State-Court-Jury-Trial-Plan.pdf>. Since August 2020, the Superior Court convened a statewide grand jury process to ensure all counties could conduct grand jury proceedings and has held twenty-four jury trials. Each county is currently prepared to hold jury trials. In consultation with public-health officials, the Superior Court will continue to evaluate the safety of conducting jury trials and other proceedings on a week-to-week basis.

17. In addition to jury trials and grand jury proceedings, in-person court proceedings may also be held in the following circumstances, among others:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bail-related matters, trials, and plea agreements for incarcerated individuals.
- Proceedings related to petitions for temporary emergency injunctive relief.
- Proceedings directly related to the COVID-19 public health emergency.
- Proceedings listed in paragraph 18 below.
- Other circumstances as approved by the Chief Justice of the Superior Court or by the Chief Justice or Senior Associate Justice of the Supreme Court.

18. The following hearings will be scheduled for in-person hearings, with the ability for either party to request conversion to a remote hearing. However, any hearing that has already been scheduled will not be changed, rescheduled, or converted absent party request.

- Suppression hearings.
- Contested plea and sentencing hearings.
- Contested violation of probation hearings.
- Drug Court termination hearings.
- Contested civil hearings and bench trials.

19. The Chief Justice of the Superior Court may determine, based upon staffing levels or other factors, that hearings in individual cases subject to the preceding paragraphs 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.

20. Attendance at in-person court proceedings will 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 Superior Court Chief Justice and the Circuit Court Administrative Judges. Those requirements for in-person court proceedings are available here:
<https://www.courts.state.nh.us/aoc/COVID-19-Bench-trial-guidelines.pdf>.

21. Other in-person hearings may be suspended. All judges and court clerks are permitted to use 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, in appropriate circumstances, to limit in-person contact is suspended for the duration of this order.

22. The Superior Court 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.

23. E-filing remains in operation in the Superior Court. In non e-filed cases, pleadings can be submitted via email to SuperiorEFC@courts.state.nh.us. Each Superior Court location will also accept hand-delivered pleadings through drop boxes located immediately inside the entrance of the court.

24. To assist parties in resolving their disputes, the Superior Court will have judicial officers available to engage in settlement conferences for parties at no cost. Parties can file a joint statement with the court requesting a settlement conference be scheduled.

25. Superior Court Administrative Order 2020-03, suspending the 90-day deadline to indict, remains in effect until further notice. All other deadlines set forth in court rules, court orders, statutes, ordinances, administrative rules, administrative orders or otherwise are in effect.

26. Orders of protection and temporary injunctions that would otherwise expire between April 27, 2021, and May 17, 2021 and/or the last day of a Declared State of Emergency are hereby extended to May 18, 2021, and/or the last day of a Declared State of Emergency.

Additional Provisions Applicable to Circuit Court

27. In-person court proceedings may be held in the following circumstances, among others:

- 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 from 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 Administrative Judges of the Circuit Court or by the Chief Justice or Senior Associate Justice of the Supreme Court.

28. To comply with the ongoing recommendations to mitigate the risks of COVID-19, the Circuit 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 27(a), unless the defendant waives in-person participation.
- Final hearings in domestic violence or stalking cases, or juvenile abuse cases, as referenced in paragraph 27(b).
- Child support enforcement hearings, as referenced in paragraph 27(e);
- Adjudicatory hearings in Abuse/Neglect cases, as referenced in paragraph 27(f), unless the parent(s) waive(s) in-person participation;
- Adjudicatory hearings in Delinquency/CHINS cases, as referenced in paragraph 27(g) and (h), unless the juvenile waives in-person participation;
- Final hearings in termination of parental rights cases, as referenced in paragraph 27(m), unless the respondent waives in-person participation.

Nothing about the addition of in-person hearings in this paragraph 28 will change any hearings currently scheduled as remote hearings. Hearings currently scheduled as remote hearings (telephonic or video) will be held as scheduled.

29. In matters other than those listed in paragraphs 27 and 28, the Circuit Court may conduct in-person, telephonic or video hearings, as determined by the Administrative Judges of the Circuit Court, in consultation with the trial judges or their designees.

30. 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, 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, 86 Fed. Reg. 16731 (Mar. 31, 2021) (referred to in this Order as “CDC Order”), and any statute, regulation, or executive action extending the effective date of the 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 Section 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 Circuit Court 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 30(a). Landlords may not pursue an eviction action for any reason other than one of the five listed in the “Applicability” section of the CDC Order 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 the final day the CDC Order is in effect. Deadlines for filing a notice of intent to appeal with the local court, an appeal to the 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 begin on the

day after the expiration of the CDC Order regardless of whether any portion of the time for complying with a deadline had elapsed prior to the case being stayed.

31. 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.

32. 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, the filer should include the case name and case number in the subject line.

33. 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.

34. 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.

35. 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.

36. The Circuit Court 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.

37. The Administrative Judges of the Circuit Court may determine, based upon staffing levels or other factors, that hearings in individual cases subject

to the preceding paragraphs 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.

38. Attendance at in-person court proceedings will 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>.

39. 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 permitted to use 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, in appropriate circumstances, to limit in-person contact is suspended for the duration of this order.

40. This order permits 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.

41. All deadlines set forth in court rules, court orders, statutes, ordinances, administrative rules, administrative orders or otherwise are in effect, except that the deadlines for scheduling of hearings may be extended as the needs of the trial court require.

Additional Provisions Applicable to Supreme Court Committees

42. Each committee is permitted, but not required, to conduct in-person committee proceedings, in-person committee hearings, and other in-person committee meetings governed by Supreme Court Rules (collectively, "in-person committee proceedings"), provided that in-person committee proceedings are conducted in a manner consistent with current public-health guidelines for limiting the spread of COVID-19.

43. Each committee is authorized to determine the extent and manner in which in-person committee proceedings are to be conducted and may determine that such proceedings are to be conducted instead by telephone or video conference. In Supreme Court committee-related proceedings, a single justice is authorized to determine the extent and manner in which in-person proceedings are to be conducted and may determine that such proceedings are to be conducted instead by telephone or video conference.

44. Each committee may determine, based upon staffing levels or other factors, that in-person proceedings be conducted at locations other than those at which they would normally occur. Any provisions in Supreme Court Rules concerning the location of holding in-person committee proceedings are hereby suspended during the effective period of this order.

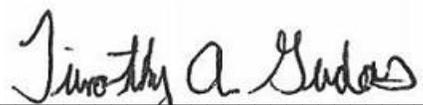
45. To achieve social distancing and to limit in-person contact, attendance at any permitted in-person committee proceedings or in-person Supreme Court committee-related proceedings will be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the committee or, in Supreme Court proceedings, a single justice.

46. Any Supreme Court Rule that impedes a committee's ability to utilize available technologies, in appropriate circumstances, to limit in-person contact is suspended during the effective period of this order. Without limiting the generality of the foregoing, any provisions in Supreme Court Rules requiring physical presence of committee members for quorum or voting purposes are suspended during the effective period of this order.

47. This order expressly does not prohibit committee proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect any committee's consideration of matters that can be resolved without in-person proceedings.

48. Filing and other deadlines are not extended, tolled or suspended by this order, but may be extended upon request in accordance with the committee's standard rules and procedures.

Issued: April 23, 2021

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