



SUPREME COURT OF NORTH CAROLINA  
CHAMBERS OF THE CHIEF JUSTICE

PAUL NEWBY, CHIEF JUSTICE

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January 6, 2021

The Honorable Roy Cooper  
Governor of the State of North Carolina  
20301 Mail Service Center  
Raleigh, NC 27699

**Via Electronic Delivery**

Dear Governor Cooper:

Thank you for your leadership during the challenges of the COVID-19 pandemic.

I respectfully request that you include courthouse personnel among the frontline essential workers designated to participate in Phase 1b of the COVID-19 vaccination program. The North Carolina Constitution mandates that “[a]ll courts shall be open... and [that] justice shall be administered without favor, denial, or delay.” N.C. Const. Art. I, § 18. Providing courthouse personnel with prompt access to vaccines will allow them to keep our courts open and operational as constitutionally required without unnecessary exposure to the dangers of COVID-19.

The framers of the North Carolina Constitution had sound reasons for incorporating the open courts mandate into our State’s most important legal document. The work of the Judicial Branch, especially of our local judicial officers and employees, is vital to the well-being of our State, a fact that you certainly appreciate as a former Attorney General and practicing attorney. Because justice delayed is often justice denied, circumstances that substantially impair the courts’ ability to function efficiently over a significant period can result in violations of due process and other legal rights.

Keeping our courts open and operational entails on-site work and in-person interaction with the public and coworkers. This reality puts courthouse personnel at serious risk of coming into contact with persons who have COVID-19. Every day, for example, clerks, deputy clerks, and assistant clerks accept and handle thousands of paper documents filed by private citizens or legal professionals. Courthouse personnel routinely encounter parties and witnesses at hearings and in trials. They also interact in person with jurors and prospective jurors. The physical attributes of



most courthouses compound the problem. Many courthouse personnel do not have their own offices but instead work in common spaces in close proximity to others. Local judicial officers and employees around the State continually and unavoidably find themselves near other people in courtrooms, hallways, and offices.

Despite the potential harm to their health and their families, our superior court judges, district court judges, clerks, magistrates, bailiffs, and other courthouse personnel have done a terrific job minimizing the pandemic's impact on the timely and impartial administration of justice and other judicial responsibilities. There remains, however, a very real chance that COVID-19 will gravely damage court operations if local judicial officers and employees are not granted early access to available vaccines. COVID-19 clusters have resulted in temporary closings at more than half of our State's courthouses during the past several months. Moreover, as you well know, our State saw a record number of COVID-19 cases and COVID-19-related deaths in December. Vaccinations for courthouse personnel will reduce the likelihood that North Carolinians will be denied justice in criminal and civil proceedings because of additional courthouse closings.

It is worth noting that some courthouse personnel fall into groups that are eligible for vaccination in Phase 1b. Bailiffs, for instance, may be eligible in their capacity as Sheriff's deputies. Given that other courthouse personnel are around the same people, it makes sense for them to be vaccinated on the same schedule as bailiffs.

I understand that the distribution of COVID-19 vaccines involves many difficult decisions and competing interests. I believe, though, that my request is consistent with guidance provided by United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA"). On December 16, 2020, CISA issued an Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During the COVID-19 Response ("CISA Memorandum"). The CISA Memorandum recommends that state and local governments consult the CISA's Essential Critical Infrastructure Workforce Guidance Version 4.0 ("CISA Guidance 4.0") when prioritizing the distribution of COVID-19 vaccines.

CISA Guidance 4.0 supports a "risk-based approach towards worker safety to ensure the continuity of critical functions" during the pandemic. To assist state and local governments in identifying critical infrastructure, CISA Guidance 4.0 lists "essential critical infrastructure workers" who perform vital functions. Those listed include "workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance."

In excluding courthouse personnel from Phase 1b, the North Carolina Department of Health and Human Services was influenced by the Updated Interim Recommendation for Allocation of COVID-19 Vaccine prepared by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices ("ACIP"). The ACIP relied on CISA Guidance 4.0 but divided "essential critical infrastructure workers" into two categories for purposes of prioritizing vaccine access: "frontline essential workers" and "other essential workers." It defined "frontline essential workers" as "the subset of essential workers likely at highest risk for work-related exposure to . . . COVID-19, because their work-related duties must be performed on-site and involve being in close proximity (<6 feet) to the public or to coworkers." The ACIP recommended vaccinating frontline essential workers during Phase 1b and delaying vaccinations for other essential workers. The NCDHHS adopted the ACIP's categories and followed the ACIP in designating court employees as "other essential workers."

I hope that you will urge the NCDHHS to reclassify courthouse personnel as frontline essential workers eligible for vaccination in Phase 1b. The CISA Memorandum expressly encourages state officials to "use their own judgment in making decisions regarding resource allocation and other public health measures." For the reasons set out above, I think that courthouse personnel should be deemed frontline essential workers for purposes of the COVID-19 vaccination program.

Thank you for considering this request to protect local judicial officers and employees for the good of our State and in accordance with the North Carolina Constitution's open courts mandate. Should you have any questions or concerns, please do not hesitate to contact me.

I look forward to working with you to serve our State in the years ahead.

Sincerely,

A handwritten signature in blue ink that reads "Paul Newby". The signature is written in a cursive, flowing style.

Paul Newby  
Chief Justice  
Supreme Court of North Carolina

cc: Kristi Jones, Chief of Staff for Governor Roy Cooper  
Dr. Mandy K. Cohen, Secretary of NCDHHS