



## BOND FORFEITURES AND COVID-19 EXTENSION ORDERS (PART 3)

April 14, 2020

NCAOC's Office of General Counsel (OGC) provides legal advice and guidance to court officials around the State. OGC guidance to court officials concerning the court system's response to the COVID-19 pandemic is posted below for informational purposes only. It is not intended and should not be interpreted as legal advice or guidance to parties to individual proceedings before the courts. **OGC cannot give legal advice or guidance to attorneys or members of the public and cannot respond to inquiries about this guidance from anyone who is not a court official.** Parties with questions about how their individual rights or obligations may be affected by the current changes to court operations pursuant to the emergency orders of the Chief Justice and any guidance posted here should consult an attorney for assistance.

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**From:** Page, Troy D.  
**Sent:** Tuesday, April 14, 2020 11:13 AM  
**To:** Judicial.Chief District Court Judges; Judicial.District Court Judges;  
Judicial.Senior Resident Superior Court Judges; Judicial.Superior Court Judges;  
Judicial.Special Superior Court Judges; Judicial.Chief Magistrates;  
Judicial.Magistrates; Judicial.District Attorneys; Judicial.Public Defenders  
**Cc:** Judicial.Judicial Assistants of District Court; Judicial.Judicial Assistants of  
Superior Court; Judicial.Trial Court Administrators; Judicial.Trial Court  
Coordinators; Judicial.Assistant District Attorneys; Judicial.Assistant Public  
Defenders  
**Subject:** FW: bond forfeitures and COVID-19 extension Orders - part 3  
**Attachments:** COVID-19 - 13 April 2020 - 7A-39(b)(1) Order (FINAL).pdf

Dear Court Officials,

At the request of the office of the Chief Justice, I am forwarding for your information the thread below, distributed to clerks this morning (with its two prior iterations from late March) to address the processing of bail bond forfeitures pursuant to her orders entered March 19 and April 13, 2020, which extended the deadlines for certain filings in the trial courts and (in the order of April 13) stayed the automatic dispositions of forfeiture proceedings until September 30.

Troy D. Page  
North Carolina Judicial Branch





**From:** Page, Troy D.

**Sent:** Tuesday, April 14, 2020 8:41 AM

**To:** Judicial.Clerks of Superior Court

**Cc:** Judicial.Assistant Clerks of Superior Court; Judicial.Deputy Clerks of Superior Court; Lassiter, Jamie L.; Vernon, Shellie L.; Baker, David J.; Sheppard, Brent; Wynter-Mitchell El, Dorinda G.; Havenook, Scott; Blue, Deidra T.; Tarleton, Kristy S.; Tart, Krystal G.; Whitfield, Kimberly Y.; Melton, Nichole L.; Tyson, Takeeta R.; Rackley, Sherry; McLamb, Tamela L.; Hicks, Meredith S.; Brendle, Rebecca T.; Hilliard, Amber E.; Wooten, McKinley; Carman, Danielle M.; Mckinney, Tony A.; Plemmons, Joe; Hughes, Deanna; Bartnett, Amy K.; Nelson, Michael D.; Jackson, Michael A.; Barber, Bert L.; Poole, Amanda C.; Robertson, Laurin; Graves, Barbara; Smith, Lisa; Lachance, Paul K.; Taylor, Faith; Hair, Kathryn W.; Jackson, Melissa S.; Hudson, Bill; Brinkley, Nicole N.; Croom, Elizabeth B.; Holloway, Antares S.; Krasner, Tina A.; Kraus, Matthew R.; Lusic, Corrine L.; Powell, LaToya B.; Osborne, Matt E.; Sanka, Jyothi K.; Peck, Randy P.; Savino, Steve C.; Cash, Paul; Kommareddi, Viparna

**Subject:** bond forfeitures and COVID-19 extension Orders - part 3

Dear Clerks -

This message is a follow-up to my e-mails of March 24 and March 28, forwarded below, concerning emergency directives in the orders of the Chief Justice and their effect on the clerks' handling of bond forfeiture proceedings.

The two prior e-mails concerned the Chief Justice's Order of March 19, 2020, which extended deadlines for filings and other acts due from March 16 through the end of business on April 17. The Order of March 19 applied to all cases, not just forfeiture proceedings.

On April 13, the Chief Justice entered a new order under G.S. 7A-39 (attached), setting out two extensions for trial court proceedings.

- The Order of April 13 contains a general extension of the deadlines for filings and other acts in civil actions, criminal actions, estates, and special proceedings, such that a filing or act due to be done on or after March 16, 2020, and before the close of business on June 1, 2020, shall be deemed timely if filed or done before the close of business on June 1. (For the remainder of this e-mail, this order is "Extension No. 1." The effects of Extension No. 1 on proceedings other than bond forfeitures will be addressed in separate communications.)
- In bond forfeiture proceedings, specifically, for which disposition by operation of law is due to occur on and after April 14 through (and including) September 29, the Order of April 13 extends deadlines for filing set-aside motions and objections until close of business on September 30. Further, in order to implement this extended filing deadline, the order stays the automatic disposition of forfeiture proceedings that otherwise would occur by operation of law during that period of April 14 through (and including) September 29. (For the remainder of this e-mail, this order is "Extension No. 2.")





### **Stay of Forfeiture Dispositions and Filing Deadline Extension - Dispositions April 14 through September 29**

To implement Extension No. 2, the NCAOC will suspend the VCAP programs that automatically enter final judgments and grant set-aside motions after the close of each business day, starting with dispositions due to occur after the close of business on Tuesday, April 14. Unless the Order's end date is extended further, the programs will resume operation on the evening of September 30, after the expiration of the extended filing deadline in Extension No. 2. All of the dispositions that would have occurred from April 14 through September 29 will be entered on September 30 (except, of course, those with a pending set-aside motion or objection that would prevent disposition that evening).

Note that the Chief Justice's Order of April 13 does not prohibit the trial courts from entering orders in individual forfeiture proceedings during the period covered by the Order. The stay in Extension No. 2 prevents only the automatic entry of judgment under G.S. 15A-544.6 and the automatic grant of motions to set aside under G.S. 15A-544.5(d)(4). Therefore if a judge enters a dispositive order in any forfeiture proceeding, *e.g.*, striking a pending forfeiture pursuant to G.S. 15A-544.5(c), that disposition should be recorded as normal.

Because manual dispositions might be entered during the period covered by the stay, VCAP will continue to produce the Bond Forfeiture Dispositions Report (and Cash Bond Forfeitures Report) on a daily basis for the clerk's regular audit of any dispositions entered.

### **Additional Filing Deadline Extension - Dispositions March 16 through April 13 - Filings Now Due June 1**

In addition to Extension No. 2's stay of new forfeiture dispositions starting on April 14, Extension No. 1 supersedes the Order of March 19 and grants an additional extension for filings on forfeitures disposed automatically since March 16. Extension No. 2 is entered "notwithstanding" Extension No. 1, but only for the specific set of forfeiture proceedings described in Extension No. 2: those due for disposition from April 14 through September 29. Therefore forfeiture proceedings that were due for disposition March 16 through April 13 are covered by Extension No. 1.

As a result, filings in forfeiture proceedings that would have been due March 16 through April 13 will be deemed timely if filed before close of business on June 1 (rather than the original extension date of April 17 provided in the Order of March 19). This extends the period in which the clerk might have to give retroactive effect to those filings, so enforcement measures should remain delayed for judgments entered March 16 through April 13, until after the extended filing deadline expires at the close of business on June 1.

### **Remission Petitions Unaffected**

As explained in the e-mail of March 24, below, petitions to remit a final judgment of forfeiture under G.S. 15A-544.8 have no automatic effect on the forfeiture judgment, and their filing date does not control any automated features in VCAP. Therefore a petition to remit filed for a judgment docketed during the dates covered by Extension No. 1 should be entered as normal.





It is possible that a petitioner’s three-year statute of limitations under G.S. 15A-544.8(c)(1) did or will expire during the dates covered by the extension orders, but if so, the filing of the remission petition requires no special action on the clerk’s part. The remission petition should be entered as of the date actually filed, not back-dated to an earlier date. The clerk does not enforce the statute of limitations for filings, so it will be up to the movant to plead the Chief Justice’s orders as grounds for any late filing.

**Requests for Advice from Parties to Forfeiture Proceedings**

As noted in the e-mail of March 24, parties with legal questions about their rights or obligations in bail matters or bond forfeiture proceedings during the period covered by the extension orders, including ancillary questions about procedures like surrender, should be advised to consult with counsel. The clerks and NCAOC cannot give legal advice about individual litigants’ rights or obligations.

In order to assist clerks with implementation of the Chief Justice’s orders of March 19 and April 13, the table below summarizes the periods of time covered by the two orders and the clerk’s tasks for bond forfeiture dispositions due to occur within those periods. This table replaces the table in my e-mail of March 28; the previous table now should be disregarded.

Disposition Date	Clerk’s Duties During Extension Period	Clerk’s Duties After Extension Period Ends
Dispositions entered <b>prior to March 16</b>	No changes. These cases are not affected by the extension orders.	No changes. These cases are not affected by the extension orders.





Disposition Date	Clerk's Duties During Extension Period	Clerk's Duties After Extension Period Ends
<p>Judgments entered and set-asides granted automatically <b>March 16 through April 13</b> (and including <b>April 13</b>)</p> <p>(Pursuant to Order of March 19)</p>	<ul style="list-style-type: none"> <li>- Allow automated dispositions to occur as normal.</li> <li>- Do not issue executions or DOI copy until June 2.</li> <li>- Recall executions issued prior to extension order of March 19.</li> <li>- Notify DOI not to proceed on the DOI copy.</li> <li>- Delete EXEC service records and EXEC/OFCF fees added by VCAP for judgments Mar. 16 - Mar. 26 (per e-mail of Mar. 24).</li> <li>- Keep transcript fees as assessed.</li> <li>- (There are no VCAP-generated records to be deleted for judgments entered March 27 through April 13, as explained in the email of Mar. 28.)</li> <li>- Continue to receipt and apply payments to judgments.</li> <li>- Continue to receive and record motions and objections.</li> <li>- If SFBJ filed by EOB June 1, undo prior automated judgment, and enter SFBJ.</li> <li>- If SAOB filed by EOB June 1, undo disposition of BDFR and SFBJ, and enter SAOB.</li> <li>- If RFAJ/RPBJ filed, enter as normal. Do not undo judgment.</li> </ul>	<p><b>On June 2 (after extension has ended at EOB June 1):</b></p> <p><u>For Judgments entered March 16 - March 26:</u> Re-request executions/DOI copies and issue manually for judgments still unsatisfied. Ensure EXEC/OFCF fees are assessed and EXEC service records are complete.</p> <p><u>For Judgments Entered March 27 - April 13:</u> NCAOC will generate the executions and service records and assess the fees automatically for still-unsatisfied judgments. Clerks only need to issue the executions and DOI copies.</p>
<p>Judgments and set-asides due to be disposed automatically <b>April 14 through September 29</b> (and including <b>September 29</b>)</p> <p>(Pursuant to Order of April 13)</p>	<ul style="list-style-type: none"> <li>- Entry of judgments and grants of set-aside motions by operation of law are stayed. No automated dispositions will be entered by VCAP. Pending forfeitures (BDFR issues) and set-asides (SFBJ issues) will remain pending until the end of the stay.</li> <li>- Continue to enter manually any dispositions resulting from orders of the trial courts.</li> <li>- Continue to receipt and apply payments to judgments entered previously.</li> <li>- Continue to receive and record motions and objections as normal.</li> <li>- Clerks do not need to take any action to give retroactive effect to filings related to dispositions that would have occurred on or after April 14. Record filings as of the actual date filed. (See previous row for filings by June 1 for dispositions entered March 16 through April 13.)</li> </ul>	<p>VCAP's automated dispositions will resume after expiration of the extension, currently after EOB on September 30.</p> <p>Judgments will be entered and un-objected set-aside motions will be granted as normal. For judgments entered, clerks will carry out the normal enforcement measures.</p>

Troy D. Page  
North Carolina Judicial Branch





**From:** Page, Troy D.

**Sent:** Saturday, March 28, 2020 3:16 PM

**To:** Judicial.Clerks of Superior Court

**Cc:** Judicial.Assistant Clerks of Superior Court; Judicial.Deputy Clerks of Superior Court; ***[REMAINDER OF PRIOR CC LIST OMITTED FROM E-MAIL OF APR. 14 FOR SPACE]***

**Subject:** FW: bond forfeitures and Chief Justice's extension Order

Dear Clerks,

This message is a follow-up to my e-mail of March 24, forwarded below. In order to reduce the manual data entry needed to delay enforcement of bond forfeiture judgments during the period covered by the Chief Justice's extension Order of March 19, 2020, the NCAOC has adjusted VCAP's programs to suspend some of the nightly, automated processes that enter those judgments.

Starting with the entry of forfeiture judgments after the close of business on Friday, March 27, and for the remainder of the period covered by the extension Order, the following automated entries for newly-entered judgments have been turned off temporarily:

- generation of the writs of execution (and the DOI copies for licensed sureties);
- creation of execution (EXEC) service records on Service Details; and
- assessment of execution (EXEC) and service (OFCF) fees on those judgments.

With these processes suspended, clerks will not need to delete those records from new forfeiture judgments entered on and after March 27. (Note: The 'Process Issued' column of the Bond Forfeiture Dispositions Report will continue to display 'EXEC,' even though no executions are generated while the execution programs are suspended temporarily. Clerks can ignore the 'EXEC' entries in that column during this period.)

In addition, for new judgments entered on and after March 27, clerks will not need to initiate those enforcement measures manually after the extension period ends. NCAOC will be keeping log files of the new judgments entered and will generate the writs of execution, service records, and associated fees automatically for any judgments that remain unsatisfied at the end of the extension period.

After the extension ends, the clerk still will need to re-initiate enforcement measures manually for judgments entered March 16 through (and including) March 26. Those enforcement measures should be deleted for now as advised in the previous e-mail, but NCAOC will not be able to re-initiate enforcement for those judgments automatically. We apologize for that inconvenience.

VCAP's automation will continue to enter forfeiture judgments, prohibit sureties, transcribe new judgments to other counties (including assessment of transcript fees), and grant set-aside motions, as discussed in the earlier message. NCAOC is suspending only the programs that generate the





enforcement entries for forfeiture judgments so that clerks will not have to delete those records manually.

Other guidance in the e-mail of March 24 remains unchanged. The extension Order’s filing deadline of the end of business on April 17 remains in effect. So if a forfeiture proceeding is disposed automatically (either by entry of judgment or grant of a motion to set aside) during the period covered by the extension Order, and a party files a pleading (a set-aside motion or an objection) by end of business on April 17 that would have prevented that automated disposition, then the clerk still will need to give effect to that pleading retroactively. *E.g.*, if a set-aside motion is filed by end of business on April 17 for a forfeiture that was reduced to final judgment March 16 through (and including) April 16, the clerk still will need to delete the judgment, restore the forfeiture to pending status, and enter the set-aside as normal.

The table below summarizes the combined guidance from the e-mail of March 24 and this follow-up.

Disposition Date	Clerk’s Duties During Extension Period	Clerk’s Duties After Extension Period Ends
Dispositions entered <b>prior to March 16</b>	No changes. These cases are not affected by the extension order.	No changes. These cases are not affected by the extension order.
Judgments entered and set-asides granted automatically <b>March 16 through (and including) March 26</b>	<ul style="list-style-type: none"> <li>- Allow automated dispositions to occur as normal.</li> <li>- Do not issue executions or DOI copy.</li> <li>- Recall executions already issued.</li> <li>- Notify DOI not to proceed on DOI copy.</li> <li>- Delete EXEC service records and EXEC/OFCF fees. Keep transcript fees as assessed.</li> <li>- Continue to receipt and apply payments to judgments.</li> <li>- Continue to receive and record motions and objections.</li> <li>- If SFBJ filed by EOB Apr. 17, undo prior automated judgment, and enter SFBJ.</li> <li>- If SAOB filed by EOB Apr. 17, undo disposition of BDFR and SFBJ, and enter SAOB.</li> <li>- If RFAJ/RPBJ filed, enter as normal. Do not undo judgment.</li> </ul>	Re-request executions/DOI copies and issue manually for judgments still unsatisfied. Ensure EXEC/OFCF fees are assessed and EXEC service records are complete.
Judgments entered and set-asides granted automatically <b>on and after March 27</b>	<ul style="list-style-type: none"> <li>- Allow automated dispositions to occur as normal.</li> <li>- No need to delete enforcement records.</li> <li>- Continue to receipt and apply payments to judgments.</li> <li>- Continue to receive and record motions and objections.</li> <li>- If SFBJ filed by EOB Apr. 17, undo prior automated judgment, and enter SFBJ.</li> <li>- If SAOB filed by EOB Apr. 17, undo disposition of BDFR and SFBJ, and enter SAOB.</li> <li>- If RFAJ/RPBJ filed, enter as normal. Do not undo judgment.</li> </ul>	Issue executions and DOI copies for still-unsatisfied judgments. NCAOC will generate the executions and their service records and assess fees automatically when the extension ends.





Troy D. Page  
North Carolina Judicial Branch

**From:** Page, Troy D.  
**Sent:** Tuesday, March 24, 2020 10:33 AM  
**To:** Judicial.Clerks of Superior Court  
**Cc:** Judicial.Assistant Clerks of Superior Court; Judicial.Deputy Clerks of Superior Court; **[REMAINDER OF PRIOR CC LIST OMITTED FROM E-MAIL OF APR. 14 FOR SPACE]**  
**Subject:** bond forfeitures and Chief Justice's extension Order

Dear Clerks,

The Conference of Clerks of Superior Court asked that the Office of General Counsel (OGC) address the impact on bond forfeiture proceedings in light of the extension Order entered by Chief Justice Beasley on March 19, 2020. A copy of the order is available here:

<https://www.nccourts.gov/assets/news-uploads/COVID-19%20-%2019%20March%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?bba2.JnZLu2WZ0VL0ekFushCeYUdih3X>

At the outset, it is important to note that the March 19 Order is not a stay order. The Chief Justice has clarified to OGC that the Order does not stay pending proceedings, and does not prohibit actions that occur by operation of law during the period covered by the Order (the period on or after March 16, 2020 through the end of business on April 17, 2020).

With this clarification in mind, our guidance on bond forfeitures is as follows:

**Forfeiture Judgments Docketed March 16 through April 16\***

**\*Note:** The Chief Justice's Order extends filing deadlines through EOB on April 17, but judgments entered on April 17 will be entered that evening, after the expiration of the extension deadline. Any set-aside motions or other filings that might prevent the entry of a judgment on April 17 therefore would have to be filed by EOB on that date, anyway. *State v. Williams*, 218 N.C. App. 450 (2012). *I.e.*, the Order does not extend the filing deadline until Monday, April 20, for judgments entered on the 17th. Therefore the effective range of judgments covered by the extension Order is those entered March 16 through (and including) April 16.

Because the Order does not stay pending proceedings, final judgments of forfeiture docketed pursuant to G.S. 15A-544.7 during the period covered by the Order were and will continue to be docketed validly. So for any forfeiture for which final judgment was or is due to occur March 16 through (and including) April 16:

- Bond forfeitures should be allowed to proceed to judgment as normal.





- Any surety or licensee prohibited from executing further bonds by a forfeiture judgment remains prohibited until the judgment is satisfied.
- Clerks should continue to receipt and apply payments made against bond forfeiture judgments.
- But the clerk should delay enforcement measures under G.S. 15A-544.7(c) for judgments entered in the period covered by the extension Order.
  - o If the clerk carries out the normal enforcement procedures for a judgment docketed during the dates covered by the Order, but a party to the forfeiture then files a set-aside motion before the extension deadline of April 17 expires, in order to give retroactive effect to the set-aside, the clerk would have to recall the executions, recall any DOI notice, possibly refund monies collected by levy, etc. Therefore OGC advises that the clerks delay those enforcement measures, until the extension granted in the Order has expired.
  - o Therefore for any judgment entered March 16 through (and including) April 16, the clerk should:
    - Delete any execution (EXEC) fees and service fees (OFCF) from the judgment, and delete any execution (EXEC) service records for that writ on Service Details (VCSD).
    - Do not delete any transcript (TRAN) fees from the judgment. The transcript of the judgment to other counties remains valid.
- For judgments already entered on March 16 and after, if any writs of execution already have been issued or copies delivered to DOI, the writs should be recalled and DOI should be notified not to liquidate any surety's assets for those judgments.
- Keep a list of forfeiture judgments for which enforcement measures are delayed. (The Bond Forfeiture Dispositions Report for the affected dates should suffice for this purpose.) After the period covered by the extension Order has expired, the clerk will need to re-initiate the enforcement measures for those judgments manually.
- If a set-aside motion (SFBJ) is filed before EOB on April 17 for a bond forfeiture judgment entered March 16 through (and including) April 16, delete the forfeiture judgment entirely. Restore the BDFR issue to pending status on Issue/Order Details (VCIU), and enter the SFBJ motion as normal.
  - o There is no need to back-date set-aside motions when filed. They should be file-stamped according to the actual date and time filed.
  - o Note: A set-aside motion filed for a judgment that was docketed before March 16 is not to be given retroactive effect. The extension Order does not extend the time for filings that should have been filed before that date.

### **Set-Aside Motions Granted March 16 through April 16\***

**\*Note:** For the same reason discussed above for forfeiture judgments, any set-aside motions granted automatically on April 17 will be granted after the expiration of the extension deadline. Any objection from the District Attorney or school board to prevent the automated grant of a set-aside motion that evening would have to be filed by EOB on April 17, anyway. Therefore the effective range of set-aside





motions for which the extension Order extends the deadline for objections is those granted March 16 through (and including) April 16.

Because the extension Order does not stay pending proceedings, set-aside motions granted pursuant to G.S. 15A-544.5(d)(4) during the period covered by the Order were and will continue to be granted validly. Therefore for any set-aside granted March 16 through April 16:

- VCAP's automated grant of pending set-aside motions should be allowed to proceed as normal.
- If an objection is filed before EOB on April 17 for a set-aside that was granted automatically March 16 through (and including) April 16, restore both the BDFR issue and the SFBJ issue to pending status on Issue/Order Details (VCIU), and enter the objection (SAOB) service record as normal.
  - o Calendar the hearing on the set-aside motion and objection as normal under the county's policies for bond forfeiture hearings, subject to the Chief Justice's Order of March 13, 2020, which continued most court proceedings to dates after April 17.
    - There is no need to back-date objections when filed. They should be file-stamped according to the actual date and time filed.
    - Note: An objection filed for a set-aside that was granted before March 16 is not to be given retroactive effect. The extension Order does not extend the time for filings that should have been filed before that date.

### **Remission Petitions Unaffected**

Unlike set-aside motions, petitions to remit a final judgment of forfeiture under G.S. 15A-544.8 have no automatic effect on the forfeiture judgment, and their filing date does not control any automated features in VCAP. Therefore petitions to remit filed for a judgment docketed during the dates covered by the extension Order should be entered as normal.

It is possible that a petitioner's three-year statute of limitations under G.S. 15A-544.8(c)(1) did or will expire during the dates covered by the extension Order, but if so, the filing of the remission petition requires no special action on the clerk's part. The remission petition should be entered as of the date actually filed, not back-dated to an earlier date. The clerk does not enforce the statute of limitations for filings, so it will be up to the movant to plead the Chief Justice's order as grounds for the late filing.

### **Requests for Advice from Parties to Forfeiture Proceedings**

Parties with legal questions about their other rights or obligations in bail matters or bond forfeiture proceedings during the period covered by the extension Order, including ancillary questions about procedures like surrender, should be advised to consult with counsel. The clerks and NCAOC cannot give legal advice about individual litigants' rights or obligations.





**Troy D. Page**  
Assistant Legal Counsel  
NCAOC Office of General Counsel  
**North Carolina Judicial Branch**

*Justice for all*  
[www.NCcourts.org](http://www.NCcourts.org)

