



CIVIL, SPECIAL PROCEEDINGS, AND ESTATES GUIDANCE DURING COVID-19

April 16, 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.

Dear Clerks,

As you are aware, multiple orders have been issued by Chief Justice Beasley and the Supreme Court impacting (1) the scheduling of hearings and (2) deadlines in the trial and appellate courts. In the following guidance for clerks, we are separating these categories to help address frequent questions received by the Office of General Counsel related to civil actions, special proceedings, and estates.

(1) Orders Impacting the Scheduling of Hearings and Trials:

On March 13, 2020, Chief Justice Beasley issued Emergency Directive 1 ordering that all superior and district court proceedings be scheduled or rescheduled, subject to certain exceptions in the order (e.g. the proceeding is necessary to preserve the right to due process). Directive 1 was extended by an order issued on April 2, 2020. *Neither the March 13th nor the April 2nd order impacts deadlines in the trial or appellate courts.* Directive 1 in the April 2nd order requires hearings in the district and superior courts, including hearings before clerks of superior courts, to be scheduled or rescheduled to a date no sooner than June 1, 2020, unless:

- a. the proceeding will be conducted remotely;
- b. the proceeding is necessary to preserve the right to due process of law (e.g., a first appearance or bond hearing, the appointment of counsel for an indigent defendant, a probation hearing, a probable cause hearing, etc.);



c. the proceeding is for the purpose of obtaining emergency relief (e.g., a domestic violence protection order, temporary restraining order, juvenile custody order, judicial consent to juvenile medical treatment order, civil commitment order, etc.); or

d. the senior resident superior court judge, chief business court judge, or chief district court judge determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

Directive 3 in the April 2nd order expands the ability of judicial officials, including clerks of superior court, to conduct non-jury hearings and trials by remote audio and visual technology, subject to certain criteria in this directive, including required consent of all parties.

(2) Orders Impacting Deadlines:

On March 19, 2020, Chief Justice Beasley issued an order that, in part, extended periods of limitation and provided that filings and acts in civil actions, criminal actions, special proceedings, and estates that were due to be done on or after 3/16/20 and by 4/17/20 in the trial courts would be deemed timely if the documents were filed or the acts were done by close of business on 4/17/2020.

On March 27, 2020, the Supreme Court issued an order providing that deadlines imposed by the Rules of Appellate Procedure that fall on or after 3/27/20 and by 4/30/20 are **extended for 60 days**.

On April 13, 2020, the Chief Justice extended the 3/19/20 order pursuant to G.S. 7A-39(b)(1) impacting deadlines in the trial courts as follows:

- (1) all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 3/16/20 and before the close of business on 6/1/20 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the **close of business on 6/1/20**.
- (2) all other acts that were or are due to be done in any county of this state on or after 3/16/20 and before the close of business on 6/1/20 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the **close of business on 6/1/20**.

The order issued 4/13/20 may be found here: https://www.nccourts.gov/assets/news-uploads/COVID-19%20-%202013%20April%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?.u_u1INIMPsEI6sKza5B6f7ZiZrcBH.D

Issuance of Summonses, Alias and Pluries, and Endorsements:

Clerks should continue to issue summonses and extensions to summonses.





Entry of Default and Default Judgments – G.S. 1A-1, Rule 55:

If the time to file an answer or otherwise plead expired on or before Friday, 3/13/20, the clerk may rule on motions for entry of default and default judgment.

If the time to file an answer or otherwise plead is due on or after Monday, 3/16/20 and by Monday, 6/1/20, then an answer or other responsive pleading filed by close of business on Monday, 6/1/20 would be deemed timely. Therefore, OGC recommends that the clerk not rule on motions for entry of default and/or default judgment until after Monday, 6/1/20 in the event an answer or other pleading is filed by close of business on Monday, 6/1/20.

Statutory Exemptions – G.S. 1C-1603:

If the deadline to file a motion or petition to claim property as exempt from execution or to request a hearing before the clerk for this purpose occurs on or after Monday, 3/16/20 and by Monday, 6/1/20, and the motion or request for hearing is filed by close of business on Monday, 6/1/20, the filing would be deemed timely.

Executions on Civil Judgments:

Summary Ejectment:

Deadlines that fall within an applicable period of these orders to file notices of appeal, to pay appeal costs, to file petitions to appeal as an indigent, and to pay contract periodic rent payments to the clerk pursuant to an undertaking in summary ejectment actions are impacted by the orders governing deadlines.

- (1) If the time for filing notice of appeal and to execute an undertaking to stay execution expired on or before Friday, 3/13/20 and notice of appeal and an undertaking were not filed, the orders impacting deadlines do not prohibit the issuance of writs of possession and, therefore, should be issued by clerks upon request.
- (2) If the deadline for a defendant to file notice of appeal from and to stay execution of a magistrate's judgment for possession falls on or after Monday, 3/16/20 and by Monday, 6/1/20 and a notice of appeal and an undertaking are filed by the close of business on 6/1/20, then the filings would be deemed timely. For this reason, OGC recommends that clerks **not issue writs of possession during this window of time** in the event a notice of appeal and an undertaking are filed by close of business on Monday, 6/1/20.
- (3) Trial de novo - If the deadline for a defendant to file notice of appeal from a district court judge's judgment for possession falls on or after 3/16/20 and before 3/27/20, the deadline to file notice of appeal with the trial clerk for an appeal to the Court of Appeals is governed by the Chief Justice's 3/19/20 and 4/13/20 orders and deemed timely if filed before the **close of business on 6/1/20**. Note: G.S. 42-34.1(a) governs bonds to stay execution and provides, in part, that "it shall be sufficient to stay execution of the judgment during the 30-





day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in G.S. 42-34(b), and no additional security under G.S. 1-292 is required.”

During the applicable period to file notice of appeal pursuant to Rule 3 of the Rules of Appellate Procedure, a tenant is required to sign an undertaking and pay the applicable rent by the next due date (assuming rent has already been paid into the clerk’s office under a previous undertaking). The Chief Justice’s 4/13/20 order deems filings (undertaking) and acts (payment of rent) that are due on or after 3/16/20 and by 6/1/20 to be timely if filed or done by 6/1/20. Thus, OGC recommends that the clerk not issue writs of possession for these cases impacted until after the applicable appeal period has expired.

- (4) Trial de novo - If the deadline for a defendant to file notice of appeal from a district court judge’s judgment for possession falls on or after 3/27/20 and by 4/30/20, the deadline to file notice of appeal with the trial clerk for an appeal to the Court of Appeals is governed by the Supreme Court’s 3/27/20 order and **extended for 60 days**. Note: G.S. 42-34.1(a) governs bonds to stay execution and provides, in part, that “it shall be sufficient to stay execution of the judgment during the 30-day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in G.S. 42-34(b), and no additional security under G.S. 1-292 is required.”

During the applicable period to file notice of appeal pursuant to Rule 3 of the Rules of Appellate Procedure, a tenant is required to sign an undertaking and pay the applicable rent by the next due date (assuming rent has already been paid into the clerk’s office under a previous undertaking). The Chief Justice’s 4/13/20 order deems filings (undertaking) and acts (payment of rent) that are due on or after 3/16/20 and by 6/1/20 to be timely if filed or done by 6/1/20. Thus, OGC recommends that the clerk not issue writs of possession for these cases impacted until after the applicable appeal period has expired.

- (5) Missed Payments Pursuant to Undertaking - Contract Periodic Rent Payments Pursuant to an Undertaking to Stay Execution – The payment of periodic contract rent pursuant to an undertaking is an act to which the Chief Justice’s 3/19/20 and 4/13/20 orders impacting deadlines apply. If a contract periodic rent payment pursuant to an undertaking is due on or after Monday, 3/16/20 and by Monday, 6/1/20 and is paid by close of business on Monday, 6/1/20, then the rent payment would be deemed timely. Therefore, OGC recommends that clerks not issue writs of possession until after Monday, 6/1/20 if a periodic rent payment pursuant to an undertaking is due within this window of time in the event the payment(s) is timely received on 6/1/20.





Writs of Execution:

- (1) Writs of execution should be issued by clerks upon request (i) if the time for filing notice of appeal and to obtain a stay of execution and (ii) the time to claim statutory exemptions or to request a hearing before the clerk to claim statutory exemptions pursuant to G.S. 1C-1603, if applicable, expired on or before Friday, 3/13/20.
- (2) Magistrates' Judgments - If the deadline for a party to file notice of appeal or to claim statutory exemptions or request a hearing to claim statutory exemptions under G.S. 1C-1603, if applicable, falls on or after Monday, 3/16/20 and by Monday, 6/1/20, then any of these filings received by the clerk by close of business on 6/1/20 would be deemed timely. Therefore, OGC recommends that clerks **not issue executions for these actions impacted** in the event these filings are timely filed with the clerk by close of business on Monday, 6/1/20.
- (3) Judgments Rendered by Judges in the District and Superior Courts - If the deadline for a party to file notice of appeal, to obtain a stay of execution, or to claim statutory exemptions under G.S. 1C-1603, if applicable, falls on or after Monday, 3/16/20, see the "**Appeals Periods**" section below regarding the orders impacting deadlines to file notice of appeal with the trial clerk for appeals to the appellate division. If the deadline to file a motion to claim statutory exemptions, or a request for hearing before the clerk to claim statutory exemptions is filed by the close of business on 6/1/20, then the filing would be deemed timely. OGC recommends that clerks **not issue executions** until the applicable appeal deadline and/or deadline to file a motion to claim statutory exemptions has expired.

Upset Bids in Power of Sale Foreclosures and Judicial or Execution Sales:

If an upset bid period is pending during the period contemplated by the orders (on or after Monday, 3/16/20 and by Monday, 6/1/20), upset bids can continue to be timely filed until the close of business on Monday, 6/1/20.

Example: Report of sale filed on Thursday, 3/12/20. No upset bids filed until Monday, 6/1/20. The upset bid filed on Monday, 6/1/20 is timely and the period would extend 10 days from Monday, 6/1/20.

Foreclosure Sales, Judicial Sales, Execution Sales:

Foreclosure sales are not impacted by the orders or memorandum issued by the Chief Justice. However, President Trump announced a moratorium on certain foreclosures through Sunday, 5/17/20, which will impact whether foreclosures sales may proceed on impacted properties. Additionally, the federal Coronavirus Aid, Relief, and Economic Security Act "CARES Act" further restricts the ability of servicers to proceed with judicial and non-judicial foreclosures related to certain federally backed mortgage loans. See Meredith Smith's [blog](#) post entitled 'On the Civil Side: Federal and State Limits on Foreclosures in North Carolina in Response to COVID-19.'





Judicial and execution sales under G.S. Chapter 1, Articles 29A and 29B scheduled to be held on or after Monday, 3/16/20 and on or before Monday, 6/1/20 may still be held and reports of sale may still be filed. However, as addressed in the upset bid topic above, for any bid period that expired on or after Monday, 3/16/20 and on or before Monday, 6/1/20, upset bids may be filed up until the close of business on Monday, 6/1/20 and the upset bid would be deemed timely filed.

Indexing Claims of Lien and Judgments:

The orders issued by Chief Justice Beasley on 3/19/20 and 4/13/20 (i) do not impact the ability to file and index claims of lien with a clerk of superior court and (ii) do not prohibit clerks of superior court from indexing judgments when entered and filed.

Estate Deadlines:

The orders issued on 3/19/20 and 4/13/20 apply to responses to petitions, creditor claims, applications for assignment of spousal and child's allowance, petitions for elective share, and inventories and accountings that fall on or after Monday, 3/16/20 and by Monday, 6/1/20 and would all be deemed timely if filed by the close of business on Monday, 6/1/20.

Name Change Postings:

There is no impact on name change postings by any of the orders entered or the memorandum issued by the Chief Justice as a result of the COVID-19 virus. G.S. 101-2(a) provides that "any person who wishes, for good cause shown, to change his or her name must file an application before the clerk of the superior court of the county in which the person lives, after giving 10 days' notice of the application by publication at the courthouse door." The Chief Justice's orders issued on 3/19/20 and 4/13/20 extending deadlines do not impact the requirement to give at least 10 days' notice before filing the application with the clerk. However, the Chief Justice's 3/13/20 and 4/2/20 orders (Directive 1) are applicable to hearings for name changes and the hearings should be postponed or held in accordance with the terms set out in the Chief Justice's orders. Petitions for appeal to the resident superior court judge in name change proceedings, pursuant to G.S. 101-5(f) are subject to the Chief Justice's 3/19/20 and 4/13/20 orders impacting deadlines.

Motor Vehicle Liens Authorized by the Clerk:

G.S. 44A-4(b)(1) provides that "if prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2." Based on the Chief Justice's 3/19/20 and 4/13/20 orders, the owner or legal possessor could contest the sale or the lien in writing with the clerk by the close of business on Monday, 6/1/20 and it would be deemed timely filed. Due to this issue, if a lienor holds a sale on or after Monday, 3/16/20 and by Monday, 6/1/20, clerks should not order the transfer of the title after Monday, 6/1/20 so long as the owner or legal possessor did not contest the sale or lien in writing with the clerk by the close of business on Monday, 6/1/20.





Appeal Periods (applicable to criminal, civil, estates and special proceedings):

The Chief Justice and the Supreme Court have issued collectively three orders to date impacting deadlines in both the trial and appellate courts. In reading the orders issued on 3/19/20, 3/27/20, and 4/13/20 together, we provide the following guidance to assist clerks in determining what post-judgment action to take:

- (1) If a deadline to file notice of appeal from an order or judgment **entered by a clerk or magistrate** to district or superior court falls on or after 3/16/20 and by 6/1/20, a notice of appeal would be deemed timely if filed by close of business on 6/1/20 (based on 4/13/20 order).
- (2) If a deadline to file notice of appeal with the trial clerk for an appeal to the appellate court fell on or after 3/16/20 and before 3/27/20, a notice of appeal would be deemed timely if filed by 6/1/20 (based on 4/13/20 order).
- (3) If the deadline provided in the Rules of Appellate Procedure to file notice of appeal with the trial clerk for an appeal to the appellate court falls on or after 3/27/20 and by 4/30/20, the deadline is extended for 60 days (based on the 3/27/20 order).

(3) Emergency Directive 5 – Special Proceeding and Estate Filings Signed Under Penalty of Perjury

Directive 5 in the Chief Justice’s order issued on 4/2/20 permits any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice that is required to be verified or executed under oath or affirmation to be executed by written declaration in substantial conformity to the language in the directive. This directive applies to all documents filed with the court, including documents filed in special proceeding and estate matters. This directive does not apply to the execution of wills. However, it does apply to the execution of affidavit forms filed in support of the probate of a will such as forms AOC-E-300, AOC-E-301, and AOC-E-302. This would also apply to all other special proceeding and estate forms filed with the court requiring an affiant to sign under oath or affirmation. This directive currently expires on May 1, 2020.

The clerks and NCAOC cannot give legal advice about individual litigants’ rights or obligations. This is meant to be general guidance and may not address every scenario within a case. Clerks may contact myself or Matt Kraus with any legal questions in these subject matter areas. Thank you for all you do every day.

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