



COURT ORDERED ARBITRATIONS AMID COVID-19 CONCERNS

June 12, 2020

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MEMORANDUM

TO: Arbitration Coordinators

FROM: Office of General
Counsel Court
Programs Division

CC: Clerks of Superior
Court Trial Court
Administrators

DATE: June 12, 2020

SUBJECT: Court Ordered Arbitrations amid COVID-19 concerns

The following guidance to court managers related to district court ordered arbitration is based on [orders](#) issued by Chief Justice Beasley as of May 30, 2020.

1. Can arbitration cases be calendared for an arbitration hearing if the case is ready to be scheduled?

Yes, district court cases that are eligible for arbitration may be calendared for an arbitration hearing. Arbitration hearings may be conducted in person adhering to social distancing



guidelines or held remotely using audio and visual technology, if approved by the chief district court judge. Per Emergency Directive 9 of the May 21, 2020 order, “[j]udicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in- person appearances. All judicial officials should minimize large gatherings and face-to-face interactions between court personnel and the public to the greatest extent possible.”

2. The time to file an answer in a case that is arbitration eligible expired June 1, 2020. Is there an extension of time within which to file an answer or can the notice of hearing be sent to the parties?

Additional extensions for filing civil pleadings were not granted past June 1, 2020. All deadlines for filing documents and papers and all deadlines for other acts that were due to be filed or done between March 16, 2020 and June 1, 2020, inclusive of those dates, were extended to June 1, 2020 but not beyond that date. However, beginning June 1st, Emergency Directive 15, which currently expires on June 20th, provides an additional “grace period” to file documents that are “delivered by the United States Postal Service to the clerk of superior court.” In order for a document to be deemed timely, the clerk must receive the document delivered by U.S. Mail within five (5) business days of the filing due date. Documents delivered by other means, such as FedEx or DHL, do not receive the benefit of this Directive. The purpose of this Emergency Directive is to encourage mailing documents to the clerk of superior court in order to minimize foot traffic in the courthouse.

3. For arbitration awards where the time to file a demand for trial de novo (TDN) has passed, does the May 30, 2020 order extending deadlines to file a notice of appeal that fell between March 13, 2020 and June 1, 2020 also apply to extend the deadline to file a TDN or should the award be entered as a judgment?

The order issued on May 30, 2020 does not extend the deadline to file a written demand for a TDN beyond June 1, 2020.

The order issued May 30, 2020, pursuant to G.S. 7A-39(b)(1) provided that “[i]n any matter in which the deadline to file a notice of appeal fell between March 13, 2020 and June 1, 2020, the deadline for filing such appeal and making any required payment or bond is hereby extended to June 30, 2020.”

Rule 9 of the Court Ordered Arbitration Rules permits a party not in default for a reason subjecting that party to judgment by default who is dissatisfied with an arbitrator’s award to demand as a matter of right a TDN in writing within 30 days after service of the award (or 10 days if rehearing). Failure to make this demand results in judgment being entered on the award. The right to demand a TDN is a distinct remedy from the right to file a notice of appeal. An appeal is taken from a final judgment. However, the award is not yet a judgment.

Comment to Rule 9 of the Court Ordered Arbitration Rules (emphasis added) provides: “No appeal lies from an arbitration award to the appellate courts of this State. *The remedy available to a party aggrieved by the award is to demand a trial de novo in the district*”



court. In the absence of such a demand within the 30-day period set forth in Arb. Rule 8(b), the clerk or the court will enter judgment on the award.”

The final judgment after the arbitration award is issued does not occur until the judgment is entered by the clerk (after the 30 days). The Court of Appeals has held that, under the Rules for Court-Ordered Arbitration, the trial court’s adoption of an arbitration award becomes, in effect, a consent judgment from which there is no right of appeal. Brock & Scott Holdings, Inc. v. West, 198 N.C. App. 357, 360 (2009).

Since (i) the right to demand a trial de novo is a distinct and different remedy from a right to file a notice of appeal and (ii) the arbitrator’s award is not a final judgment from which appeal may be taken, it is the opinion of the Office of General Counsel that the May 30, 2020 order does not extend deadlines to file a written demand for TDN.

However, Emergency Directive 15 in the May 21, 2020 order, which currently expires on June 20, 2020, would apply to written demands for TDN and provide an additional “grace period” if the demand for TDN is delivered to the clerk by U.S. Postal Service and received within five business days of the due date. For that reason, it is recommended waiting five additional business days before entering the arbitrator’s award as a judgment.

