



FTA / FTC PROCESSING UPDATE

May 31, 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.

From: Osborne, Matt E.

Sent: Sunday, May 31, 2020 11:31 PM

To: Judicial.NC Judicial Branch

Cc: Denning, Shea R.; Markham, James M; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryn

Subject: FTA and FTC processing guidance / May 30 order

[**Note:** This message involves the processing of failures to appear and failures to pay in criminal and infraction cases. The NCAOC Office of General Counsel is sending it to all Judicial Branch officials and employees to avoid inadvertently omitting someone. If your work does not involve criminal and infraction matters, please feel free to disregard this message.]

Dear Court Officials:

On Saturday, 30 May 2020, Chief Justice Beasley entered an order that, among other actions, modified Emergency Directive 7 regarding the payment of monies owed in criminal and infraction cases. The full order is available here:

https://www.nccourts.gov/assets/news-uploads/30%20May%202020%20-%207A-39%28b%29%282%29%20Extension%20Order.pdf?JrCQ.9a8WOPuh82NQFvq_Pp7ZNBLnQKF

The modification of Emergency Directive 7 requires the NCAOC Office of General Counsel (OGC) to update the failure to comply processing table that it previously provided to you. The failure to appear and failure to comply tables appear immediately below, with the latest changes highlighted.



1. failures to appear

Case Category	FTA Processing
FTA accrual date (i.e., the 20 th day after the failure to appear) falls before 16 March 2020	Process the FTA as normal.
<p>FTA accrual date (i.e., the 20th day after the failure to appear) falls on or after 16 March 2020, and before or on 31 July 2020</p> <p>(This category is governed by the Chief Justice’s orders of 19 March 2020, 13 April 2020, and 21 May 2020.)</p>	<p>Process the FTA as normal, <u>but</u> the defendant later may “undo” the FTA by obtaining a new court date or disposing of the offense before the close of business on 31 July 2020.</p> <p>If the defendant “undoes” the FTA by obtaining a new court date or disposing of the offense before the close of business on 31 July 2020, then the clerk will remove or refund the FTA fee, and report to DMV that the FTA was “entered in error” so that DMV will remove the FTA from its records.</p>



2. failures to comply

Case Category	FTC Processing
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls before 16 March 2020</p>	<p>Process the FTC as normal.</p>
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls on or after 16 March 2020, and before 6 April 2020</p> <p>(This category is governed by the Chief Justice’s orders of 19 March 2020, 2 April 2020, 13 April 2020, 1 May 2020, 21 May 2020, and 30 May 2020.)</p>	<p>Process the FTC as normal, <u>but</u> the defendant later may “undo” the FTC by making payment in full before the close of business on 31 July 2020.</p> <p>If the defendant “undoes” the FTC by paying in full before the close of business on 31 July 2020, then the clerk will remove or refund the FTC fee, and report to DMV that the FTC was “entered in error” so that DMV will remove the FTC from its records.</p>
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls on or after 6 April 2020, and before or on 29 June 2020</p> <p>(This category is governed by the Chief Justice’s orders of 2 April 2020, 1 May 2020, and 30 May 2020.)</p>	<p>Delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV.</p> <p>If the defendant does not pay in full before or on 29 June 2020, then after 29 June 2020 the clerk enters the FTC, assesses the FTC fee, and (if it is a Chapter 20 case) reports the FTC to DMV.</p> <p><u>Note:</u> Under the Chief Justice’s 2 April 2020 order, this delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 3 April 2020 and before or on 2 May 2020. Under the Chief Justice’s 1 May 2020 order, this delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 2 May 2020 and before or on 31 May 2020. Under the Chief Justice’s 30 May 2020 order, this delay does not apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 31 May 2020 and before or on 29 June 2020.</p>

If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.



Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice's recent orders should consult their own legal counsel.

Thanks.

-- Matt

Matt Osborne
North Carolina Judicial Branch

From: Osborne, Matt E.
Sent: Friday, May 22, 2020 11:37 AM
To: Judicial.NC Judicial Branch
Cc: Denning, Shea R; Markham, James M; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryne
Subject: FTA and FTC processing guidance / 21 May 2020 order

Dear Court Officials:

Set out in the emails below from 4 May 2020 and 14 April 2020 is the previous guidance we have provided on failure to appear (FTA) and failure to comply (FTC) processing in light of prior orders of the Chief Justice.

Yesterday's order of the Chief Justice further extended the deadlines for filings and acts in criminal and infraction cases, and it requires that we update our FTA and FTC processing guidance.

Specifically, in her order of 21 May 2020, the Chief Justice directed that, in criminal actions, "[a]ll deadlines for filing documents and papers and all deadlines for other acts that were due to be filed or done between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020."

(Note: The order provides that this updated criminal case extension language does *not* alter the 1 May 2020 directive regarding criminal monies owed or the 13 April 2020 directive regarding bond forfeitures. I addressed criminal monies owed in a separate email earlier this morning. Troy Page will address bond forfeitures in a future email as the relevant deadlines draw nearer.)

Yesterday's extension order affects the processing of FTAs and FTCs as **highlighted** in the following two tables:



1. failures to appear

Case Category	FTA Processing
FTA accrual date (i.e., the 20 th day after the failure to appear) falls before 16 March 2020	Process the FTA as normal
<p>FTA accrual date (i.e., the 20th day after the failure to appear) falls on or after 16 March 2020, and before or on 31 July 2020</p> <p>(This category is governed by the Chief Justice’s orders of 19 March 2020, 13 April 2020, and 21 May 2020.)</p>	<p>Process the FTA as normal, <u>but</u> the defendant later may “undo” the FTA by obtaining a new court date or disposing of the offense before the close of business on 31 July 2020.</p> <p>If the defendant “undoes” the FTA by obtaining a new court date or disposing of the offense before the close of business on 31 July 2020, then the clerk will remove or refund the FTA fee, and report to DMV that the FTA was “entered in error” so that DMV will remove the FTA from its records.</p>



2. failures to comply

Case Category	FTC Processing
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls before 16 March 2020</p>	<p>Process the FTC as normal</p>
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls on or after 16 March 2020, and before 6 April 2020</p> <p>(This category is governed by the Chief Justice’s orders of 19 March 2020, 2 April 2020, 13 April 2020, 1 May 2020, and 21 May 2020.)</p>	<p>Process the FTC as normal, <u>but</u> the defendant later may “undo” the FTC by making payment in full before the close of business on 31 July 2020.</p> <p>If the defendant “undoes” the FTC by paying in full before the close of business on 31 July 2020, then the clerk will remove or refund the FTC fee, and report to DMV that the FTC was “entered in error” so that DMV will remove the FTC from its records.</p>
<p>FTC accrual date (i.e., the 40th day after the failure to pay) falls on or after 6 April 2020, and before or on 30 May 2020</p> <p>(This category is governed by the Chief Justice’s orders of 2 April 2020 and 1 May 2020.)</p>	<p>Delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV.</p> <p>If the defendant does not pay in full before or on 30 May 2020, then after 30 May 2020 the clerk enters the FTC, assesses the FTC fee, and (if it is a Chapter 20 case) reports the FTC to DMV.</p> <p><u>Note:</u> Under the Chief Justice’s 2 April 2020 order, this delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 3 April 2020 and before or on 2 May 2020. Under the Chief Justice’s 1 May 2020 order, this delay also does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 2 May 2020 and before or on 31 May 2020.</p>

If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice’s recent orders should consult their own legal counsel.



Have a good holiday weekend.

-- Matt

Matt Osborne
North Carolina Judicial Branch

From: Osborne, Matt E.

Sent: Monday, May 04, 2020 8:51 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.; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryn; 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; Barnett, Amy K.; Nelson, Michael D.; Jackson, Michael A.; Barber, Bert L.; 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.; Page, Troy D.; Powell, LaToya B.; Denning, Shea R.; Markham, James M; Judicial.Senior Resident Superior Court Judges; Judicial.Superior Court Judges; Judicial.Special Superior Court Judges; Judicial.Chief District Court Judges; Judicial.District Court Judges; Dorer, Peg; Spahos, Kimberly N.; Fairbanks, Whitney B.; Brooks, Susan E.
Subject: additional update on FTA and FTC processing / 1 May 2020 order

Dear Clerks:

I am writing on behalf of the Office of General Counsel to provide a further update on failure to appear (FTA) and failure to comply (FTC) processing in light of the order entered by Chief Justice Beasley this past Friday, 1 May 2020.

Friday's order extends the FTC delay period (i.e., the period during which clerks will delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV) through **30 May 2020**.

Specifically, the order contains the following provision: "The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40th day following nonpayment falls on or after 6 April 2020 and before or on 30 May 2020."

This language, which originally appeared in Chief Justice Beasley's 2 April 2020 order, previously set an end date of 1 May 2020. The updated order from this past Friday extends the end date to 30 May 2020.

Just as with the 2 April 2020 order, this FTC exception does *not* apply to "[m]onetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued."



The updated FTA and FTC processing tables are as follows (there are no changes to the FTA table):

1. failures to appear

Case Category	FTA Processing
FTA accrual date (i.e., the 20 th day after the failure to appear) falls before 16 March 2020	Process the FTA as normal
FTA accrual date (i.e., the 20 th day after the failure to appear) falls on or after 16 March 2020, and before or on 1 June 2020 (This category is governed by the Chief Justice’s orders of 19 March 2020 and 13 April 2020.)	Process the FTA as normal, <u>but</u> the defendant later may “undo” the FTA by obtaining a new court date or disposing of the offense before the close of business on 1 June 2020. If the defendant “undoes” the FTA by obtaining a new court date or disposing of the offense before the close of business on 1 June 2020, then the clerk will remove or refund the FTA fee, and report to DMV that the FTA was “entered in error” so that DMV will remove the FTA from its records.



2. failures to comply

Case Category	FTC Processing
FTC accrual date (i.e., the 40 th day after the failure to pay) falls before 16 March 2020	Process the FTC as normal
FTC accrual date (i.e., the 40 th day after the failure to pay) falls on or after 16 March 2020, and before 6 April 2020 (This category is governed by the Chief Justice’s orders of 19 March 2020, 2 April 2020, 13 April 2020, and 1 May 2020.)	Process the FTC as normal, <u>but</u> the defendant later may “undo” the FTC by making payment in full before the close of business on 1 June 2020. If the defendant “undoes” the FTC by paying in full before the close of business on 1 June 2020, then the clerk will remove or refund the FTC fee, and report to DMV that the FTC was “entered in error” so that DMV will remove the FTC from its records.
FTC accrual date (i.e., the 40 th day after the failure to pay) falls on or after 6 April 2020, and before or on 30 May 2020 (This category is governed by the Chief Justice’s orders of 2 April 2020 and 1 May 2020.)	Delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV. If the defendant does not pay in full before or on 30 May 2020, then after 30 May 2020 the clerk enters the FTC, assesses the FTC fee, and (if it is a Chapter 20 case) reports the FTC to DMV. <u>Note:</u> Under the Chief Justice’s 2 April 2020 order, this delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 3 April 2020 and before or on 2 May 2020. Under the Chief Justice’s 1 May 2020 order, this delay also does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 2 May 2020 and before or on 31 May 2020.

Note: You may recall that in her 2 April 2020 order, the Chief Justice delayed certain payment due dates by 90 days. The Chief Justice continued and extended this directive in her 1 May 2020 order. The Office of General Counsel will address this in a separate email notice.

If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and



other interested parties with questions about the impact of the Chief Justice's recent orders should consult their own legal counsel.

Our best to all of you during this time.

-- Matt

Matt Osborne
North Carolina Judicial Branch

From: Osborne, Matt E.

Sent: Tuesday, April 14, 2020 8:35 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.; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryne; 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.; 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.; Page, Troy D.; Powell, LaToya B.; Denning, Shea R.; Markham, James M

Subject: update on FTA and FTC processing / 13 April 2020 order

Dear Clerks:

I am writing to provide updated guidance on the processing of failures to appear (FTA) and failures to comply (FTC) in light of the updated extension order entered by the Chief Justice on 13 April 2020.

This order changes the extension period end date from 17 April 2020 to 1 June 2020.

A copy of the new order is available here:

https://www.nccourts.gov/assets/news-uploads/COVID-19%20-%2013%20April%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?.u_u1INIMPsEI6sKza5B6f7ZiZRcBH.D

You previously received the following two emails from me:

- an email dated 24 March 2020 addressing FTA and FTC processing in light of the extension order entered by Chief Justice Beasley on 19 March 2020 ("RE: FTA and FTC processing," 03/24/2020 at 10:06 AM), and
- an email dated 3 April 2020 addressing payment due dates and FTCs in light of the criminal monies owed emergency directive entered by Chief Justice Beasley on 2 April 2020 ("RE: criminal monies owed / 2 April 2020 emergency directive," 04/03/2020 at 5:59 PM).



Based on the updated extension order entered yesterday by the Chief Justice moving the extension period end date from April 17 to June 1, the NCAOC Office of General Counsel (OGC) is updating its prior guidance on FTA and FTC processing in order to reflect the new extension period end date:

1. failures to appear

Case Category	FTA Processing
FTA accrual date (i.e., the 20 th day after the failure to appear) falls before 16 March 2020	Process the FTA as normal
FTA accrual date (i.e., the 20 th day after the failure to appear) falls on or after 16 March 2020, and before or on 1 June 2020 (This category is governed by the Chief Justice’s orders of 19 March 2020 and 13 April 2020.)	Process the FTA as normal, <u>but</u> the defendant later may “undo” the FTA by obtaining a new court date or disposing of the offense before the close of business on 1 June 2020 . If the defendant “undoes” the FTA by obtaining a new court date or disposing of the offense before the close of business on 1 June 2020 , then the clerk will remove or refund the FTA fee, and report to DMV that the FTA was “entered in error” so that DMV will remove the FTA from its records.



2. failures to comply

Case Category	FTC Processing
FTC accrual date (i.e., the 40 th day after the failure to pay) falls before 16 March 2020	Process the FTC as normal
FTC accrual date (i.e., the 40 th day after the failure to pay) falls on or after 16 March 2020, and before 6 April 2020 (This category is governed by the Chief Justice’s orders of 19 March 2020, 2 April 2020, and 13 April 2020.)	Process the FTC as normal, <u>but</u> the defendant later may “undo” the FTC by making payment in full before the close of business on 1 June 2020 . If the defendant “undoes” the FTC by paying in full before the close of business on 1 June 2020 , then the clerk will remove or refund the FTC fee, and report to DMV that the FTC was “entered in error” so that DMV will remove the FTC from its records.
FTC accrual date (i.e., the 40 th day after the failure to pay) falls on or after 6 April 2020, and before or on 1 May 2020 (This category is governed by the Chief Justice’s order of 2 April 2020. In that order, the Chief Justice indicated that she fully expects to enter a follow-up order to extend this directive through the end of May.)	Delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV. If the defendant still has not paid in full by the close of business on 1 May 2020, then the clerk enters the FTC, assesses the FTC fee, and (if it is a Chapter 20 case) reports the FTC to DMV. <u>Note:</u> This delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 3 April 2020 and before or on 2 May 2020.

Note: You may recall that in her 2 April 2020 order, the Chief Justice also delayed certain payment due dates by 90 days. That directive remains in effect, and was not altered by the order the Chief Justice entered yesterday.

If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice’s recent orders should consult their own legal counsel.

We continue to wish the best to all of you.

-- Matt





Matt Osborne
Deputy Legal Counsel
NCAOC Office of General Counsel
North Carolina Judicial Branch

Justice for all

www.NCcourts.gov

