



## UPDATES FOR CLERKS OF SUPERIOR COURT - CIVIL, ESTATES, AND SPECIAL PROCEEDINGS COVID-19

June 30, 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:** Brinkley, Nicole N.  
**Sent:** Tuesday, June 30, 2020 3:26 PM  
**To:** Judicial.NC Judicial Branch  
**Cc:** Smith, Meredith Stone; Dona Lewandowski; Lassiter, Jamie L.  
**Subject:** Updates for Judicial Officials - Civil, Estates, and Special Proceedings COVID-19  
**Attachments:** RE: Updates for Clerks of Superior Court - Civil, Estates, and Special Proceedings COVID-19

Dear Court Officials,

Chief Justice Beasley entered two orders yesterday evening (i) extending Emergency Directives 2 through 8 and modifying Emergency Directive 7 and (ii) extending and modifying Emergency Directive 18. Emergency Directives 17 and 19 were not extended. All orders issued by the Chief Justice and the Supreme Court are available at <https://www.nccourts.gov/covid-19>. In response to the issuance of these new orders, OGC offers the following updated information to assist Clerks of Superior Court in understanding the impact on civil actions, special proceedings, and estates. **For consistency and ease of reference, the June 23<sup>rd</sup> email guidance (attached) is incorporated herein with new updates.** (NOTE: This communication is being sent through the Branch-wide email address so that individuals who need this information are not inadvertently omitted. I apologize in advance to the unintended recipients who receive this.)

### **EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

On [May 30th](#), Chief Justice Beasley issued an order providing that "[i]n any matter in which

the deadline to file a notice of appeal fell between 13 March 2020 and 1 June 2020, the deadline for filing an appeal and making any required payment or bond is hereby **extended to 30 June 2020.**"

Before taking any post-judgment action, such as the issuance of a writ of execution or writ of possession, a clerk should first confirm that the case is not impacted by this order and that the applicable time for filing notice of appeal and making any required bond has not been further extended.

#### **CERTAIN EMERGENCY DIRECTIVES EXTENDED**

**UPDATE:** An [order entered on June 29th](#) extended Emergency Directives 2 through 8 and modified Emergency Directive 7. Emergency Directives 2 through 8 currently **expire on 7/29/20**. Emergency Directive 5, which was extended by this order, continues to permit 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, but does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

**UPDATE:** A [second order entered on June 29th](#) extended and modified Emergency Directive 18. Emergency Directive 18 now **expires on 7/24/20**, which coincides with the expiration of the moratorium in Section 4024(b) of the CARES Act.

An [order issued on June 20th](#) extended Emergency Directives 9 through 16 and slightly modified Directives 11 and 13. Emergency Directives 9 through 16 **currently expire on 7/20/20**. This includes Emergency Directive 15, which provides that documents submitted to the clerk by U.S. Mail shall be deemed timely if received by the clerk within five (5) business days of the filing due date.

#### **SUMMARY EJECTMENT AND OTHER EVICTION ACTIONS**

##### **Emergency Directive 17:**

- Emergency Directive 17 was not extended.
- The stay of summary ejectment and eviction actions pending in the trial divisions in Emergency Directive 17 issued in the [May 30th order](#) has expired and trials in small claim actions seeking possession of real property were allowed to resume on Monday, June 22<sup>nd</sup>, subject to other Emergency Directives issued to ensure safety protocols such as social distancing.
- The provision in Emergency Directive 17 directed to the Sheriffs' execution and return of pending writs of possession of real property by June 30<sup>th</sup> expired on June 29<sup>th</sup>.
- The prohibition of initiating summary ejectment actions in Governor Cooper's Executive Order 142 has also expired, so clerks may begin to see an increase in the number of summary ejectment actions filed.

##### **Emergency Directive 18:**

- **UPDATE:** On June 29<sup>th</sup>, Emergency Directive 18 was **extended through 7/24/20 and modified** as follows:
  - 1) The filing of the CARES Act Affidavit (form AOC-CVM-207) is required in summary ejectment actions “commenced pursuant to Article 3 of Chapter 42 of the General Statutes for nonpayment of rent or other fees or charges.” Previously, Directive 18 required the CARES Act affidavit to be filed in all summary ejectment actions, regardless of the basis for filing indicated on the complaint.
  - 2) A writ of possession for real property shall not be issued unless the *magistrate or judge concludes* that the property is not a “covered dwelling” as defined by Section 4024(a)(1) of the CARES Act. The clerk, in issuing a writ of possession, is not exercising judicial authority and, thus, cannot make this conclusion.
  - 3) In all summary ejectment actions initiated *on or after 3/27/20 and through 6/3/20 for nonpayment of rent or other fees or charges*, the plaintiff must file the CARES Act affidavit with the court before judgment is entered.
  - 4) In all summary ejectment actions that are commenced *on or after 6/4/20*, the CARES Act affidavit must be filed with the complaint for service on the defendant together with the complaint and summons. Previously the affidavit was required to be filed with the complaint on or after 6/1/20. This accounts for the fact that the CARES Act AOC form affidavit was not released until June 3<sup>rd</sup>.
- The moratorium in Section 4024(b) of the CARES Act prohibits the initiation of actions to recover possession of a covered dwelling from a tenant based on nonpayment of rent or other fees or charges during the effective period (3/27/20 through 7/24/20). However, there may be a basis *other than nonpayment of rent* for initiating a summary ejectment action.
- If a clerk suspects a plaintiff is filing a new summary ejectment complaint based on nonpayment, in violation of Section 4024 of the federal CARES Act, OGC advises that the clerk accept the filing and not advise the filer as to whether the complaint should or should not be filed. **It is not the duty or responsibility of the clerk, upon the filing of a civil action, to read into the body of a complaint to determine if a plaintiff is violating federal law by initiating the action and either (i) advise accordingly or (ii) refuse the filing. It is the responsibility of the plaintiff to determine whether the CARES Act affidavit is required.**
- If the plaintiff has legal questions about the CARES Act and any potential consequences that may result from initiating the action, the plaintiff should consult with an attorney and review the CARES Act.
- The clerk should provide the CARES Act affidavit (form AOC-CVM-207) to the plaintiff/agent filing a complaint for summary ejectment. The clerk may refer the filer to the requirement in Emergency Directive 18 to file the affidavit with the complaint for actions *initiated on or after 6/4/20 for nonpayment of rent or other fees or charges*. The CARES Act affidavit is available at this link: <https://www.nccourts.gov/documents/forms/cares-act-affidavit-summary-ejectment>.
- For cases initiated on or after 6/4/20, a copy of the CARES Act affidavit that is filed with the complaint must accompany the summons and complaint when served on a defendant. Clerks must include a copy of this affidavit with the complaint and summons

for service on the defendant(s).

- If the plaintiff fails or refuses to file the affidavit at the time of initiating the action, OGC advises that the clerk accept the filing of the complaint. Emergency Directive 18 does not expressly direct or authorize the clerk to refuse filing a summary ejectment complaint if not accompanied by the affidavit.
- The CARES Act affidavit is not required if the complaint is filed pursuant to Article 7 of G.S. Chapter 42 (criminal or other activity in violation of G.S. 42-63).

#### **Emergency Directive 20:**

- An [order issued on June 20th](#) added Emergency Directive 20 which provides courts with greater flexibility in scheduling trials in summary ejectment and small claim eviction actions filed pursuant to Articles 3 and 7 of G.S. Chapter 42. When a plaintiff demands possession in a complaint filed pursuant to Article 3 (summary ejectment) or Article 7 (criminal activity) of G.S. Chapter 42, G.S. 42-28 requires the clerk of superior court to issue a summons requiring the defendant to appear and answer the complaint at a certain time and place not to exceed *seven days from the issuance of the summons, excluding weekends and legal holidays*. Emergency Directive 20 extends the seven (7) business days to **up to 30 days** from the issuance of the summons. The issuance of the summons would not be delayed, but rather the trial date on the summons form, [AOC-CVM-100](#), would be moved out beyond the current seven business day time limit. Emergency Directive 20 currently **expires on 7/20/20**.
- This Directive does not apply to vacation rental evictions under G.S. Chapter 42A.

#### **TIPS IN DETERMINING WHETHER A WRIT OF POSSESSION FOR REAL PROPERTY MUST BE ISSUED**

- I. Cases initiated *prior to March 27<sup>th</sup>* (pre-CARES Act):
  - A writ of possession may be entered for a judgment entered *prior to March 13<sup>th</sup>*, subject to the affidavit requirement in [G.S. 42-36.1A](#).
  - OGC advises that a writ of possession should not be issued if the deadline to file notice of appeal *fell between 3/13/20 and 6/1/20, inclusive of those dates*, in the event a notice of appeal is filed by June 30<sup>th</sup>. It is not clear whether the window of time in the [May 30th order](#) includes March 13<sup>th</sup> and June 1<sup>st</sup>. For example, if the deadline to file a notice of appeal fell on March 13<sup>th</sup>, a defendant could file a notice of appeal and sign an undertaking to pay periodic rent on June 30<sup>th</sup>.
  - If the defendant previously filed a notice of appeal and an undertaking but has missed a periodic rental payment due to be paid into the clerk's office, the clerk may issue writ upon application of the plaintiff pursuant to [G.S. 42-34\(f\)](#) or [G.S. 42-34.1\(a\)](#).
- II. Cases initiated *on or after March 27<sup>th</sup>* (CARES Act):
  - For cases initiated on or after 3/27/20, Emergency Directive 18 provides that a writ of possession should not be issued unless a *magistrate or judge concludes* that the subject property is not a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act.
  - In cases initiated on or after March 27<sup>th</sup>, if a magistrate or judge has entered a judgment for possession but does not specifically reference the CARES Act in the judgment, it is appropriate for the clerk to (i) rely on the judgment for possession as being valid and enforceable and (ii) imply that the magistrate or judge determined that the property was not a "covered dwelling" since the action was not dismissed and proceed with issuing a

writ in the usual manner.

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 and other court officials may contact myself or Matt Kraus with any legal questions in these subject matter areas.

Take care,  
Nickie

**Nicole Brinkley**  
Assistant Counsel  
NCAOC Office of General Counsel  
**North Carolina Judicial Branch**

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**From:** Brinkley, Nicole N.  
**Sent:** Tuesday, June 23, 2020 5:55 PM  
**To:** Judicial.NC Judicial Branch  
**Cc:** Smith, Meredith Stone; Dona Lewandowski; Lassiter, Jamie L.; Furr, Justin M.  
**Subject:** RE: Updates for Clerks of Superior Court - Civil, Estates, and Special Proceedings

COVID-19 Dear Clerks, Assistant Clerks, and Deputy Clerks of Superior Court,

Chief Justice Beasley issued two orders on Saturday, June 20<sup>th</sup>. All orders issued by the Chief Justice and the Supreme Court are available at <https://www.nccourts.gov/covid-19>. In response to the issuance of these new orders and a number of questions we have received related to summary ejectment actions, OGC offers the following updated information to assist Clerks of Superior Court in understanding the impact on civil actions, special proceedings, and estates. The previous information provided by email on June 3<sup>rd</sup> may be found below this email. (NOTE: This communication is being sent through the Branch-wide email address so that individuals who need this information are not inadvertently omitted. I apologize in advance to the unintended recipients who receive this.)

#### **EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

On [May 30th](#), Chief Justice Beasley issued an order providing that “[i]n any matter in which the deadline to file a notice of appeal fell between 13 March 2020 and 1 June 2020, the deadline for filing an appeal and making any required payment or bond is hereby **extended to 30 June 2020.**”

Before taking any post-judgment action, such as the issuance of a writ of execution or writ of possession, a clerk should first confirm that the case is not impacted by this order and that the applicable time for filing notice of appeal and making any required bond has not been further extended.

#### **CERTAIN EMERGENCY DIRECTIVES EXTENDED**

An [order issued on June 20th](#) extended Emergency Directives 9 through 16 and slightly modified Directives 11 and 13. Emergency Directives 9 through 16 **currently expire on 7/20/20**. This includes Emergency Directive 15, which provides that documents submitted to the clerk by U.S. Mail shall be deemed timely if received by the clerk within five (5) business days of the filing due date.

Pursuant to an [order issued on May 30th](#) Emergency Directives 2 through 8 were extended and **currently expire on 6/29/20**. Emergency Directive 1 was not further extended. Emergency Directive 5, which was extended by this order, continues to permit 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, but does not apply to wills to be probated, conveyances of real estate, or any document that is not to be filed in the General Court of Justice.

### **SUMMARY EJECTMENT AND OTHER EVICTION ACTIONS**

#### **NEW: Emergency Directive 20:**

- A [second order issued on June 20th](#) added Emergency Directive 20 which provides courts with greater flexibility in scheduling trials in summary ejectment and small claim eviction actions filed pursuant to Articles 3 and 7 of G.S. Chapter 42. When a plaintiff demands possession in a complaint filed pursuant to Article 3 (summary ejectment) or Article 7 (criminal activity) of G.S. Chapter 42, G.S. 42-28 requires the clerk of superior court to issue a summons requiring the defendant to appear and answer the complaint at a certain time and place not to exceed *seven days from the issuance of the summons, excluding weekends and legal holidays*. Emergency Directive 20 extends the seven (7) business days to **up to 30 days** from the issuance of the summons. The issuance of the summons would not be delayed, but rather the trial date on the summons form, [AOC-CVM-100](#), would be moved out beyond the current seven business day time limit. Emergency Directive 20 currently **expires on 7/20/20**.
- This Directive does not apply to vacation rental evictions under G.S. Chapter 42A.

#### **Emergency Directive 17:**

- The stay of summary ejectment and eviction actions pending in the trial divisions in Emergency Directive 17 issued in the [May 30th order](#) has expired and trials in small claim actions seeking possession of real property were allowed to resume on Monday, June 22<sup>nd</sup>, subject to other Emergency Directives issued to ensure safety protocols such as social distancing.
- The provision in Emergency Directive 17 directed to the Sheriffs' execution and return of pending writs of possession of real property expires June 29<sup>th</sup>.
- The prohibition of initiating summary ejectment actions in Governor Cooper's Executive Order 142 has also expired, so clerks may begin to see an increase in the number of summary ejectment actions filed.

#### **Emergency Directive 18:**

- The CARES Act affidavit requirement in Emergency Directive 18 is still in effect and currently **expires on 6/29/20**. The affidavit is required in all summary ejectment actions, regardless of the basis for filing indicated on the complaint.
- The moratorium in Section 4024(b) of the CARES Act prohibits the initiation of actions to recover possession of a covered dwelling from a tenant based on nonpayment of rent or other fees or charges during the effective period (3/27/20 through 7/25/20). However, there may be a basis *other than nonpayment of rent* for initiating a summary ejectment action.
- If a clerk suspects a plaintiff is filing a new summary ejectment complaint based on nonpayment, in violation of Section 4024 of the federal CARES Act, OGC advises that the clerk accept the filing and not advise the filer as to whether the complaint should or should not be filed. **It is not the duty or responsibility of the clerk, upon the filing of a civil action, to read into the body of a complaint to determine if a plaintiff is violating federal law by initiating the action and either (i) advise accordingly or (ii) refuse the filing.**
- If the plaintiff has legal questions about the CARES Act and any potential consequences that may result from initiating the action, the plaintiff should consult with an attorney and review the CARES Act.
- The clerk should provide the CARES Act affidavit (form AOC-CVM-207) to the plaintiff/agent filing the complaint. The clerk may refer the filer to the requirement in Emergency Directive 18 to file the affidavit with the complaint for actions initiated on or after 6/1/20. The CARES Act affidavit is available at this link: <https://www.nccourts.gov/documents/forms/cares-act-affidavit-summary-ejectment>.
- For cases initiated on or after 6/1/20, a copy of the CARES Act affidavit that is filed with the complaint must accompany the summons and complaint when served on a defendant. Clerks must include a copy of this affidavit with the complaint and summons for service on the defendant(s).
- If the plaintiff fails or refuses to file the affidavit at the time of initiating the action, OGC advises that the clerk accept the filing of the complaint. Emergency Directive 18 does not expressly direct or authorize the clerk to refuse filing a summary ejectment complaint if not accompanied by the affidavit.
- The CARES Act affidavit is not required if the complaint is filed pursuant to Article 7 of G.S. Chapter 42 (criminal or other activity in violation of G.S. 42-63).

#### **TIPS IN DETERMINING WHETHER A WRIT OF POSSESSION FOR REAL PROPERTY MUST BE ISSUED**

- I. Cases initiated *prior to March 27<sup>th</sup>* (pre-CARES Act):
  - A writ of possession may be entered for a judgment entered *prior to March 13<sup>th</sup>*, subject to the affidavit requirement in [G.S. 42-36.1A](#).
  - OGC advises that a writ of possession should not be issued if the deadline to file notice of appeal *fell between 3/13/20 and 6/1/20, inclusive of those dates*, in the event a notice of appeal is filed by June 30<sup>th</sup>. It is not clear whether the window of time in the [May 30th order](#) includes March 13<sup>th</sup> and June 1<sup>st</sup>. For example, if the deadline to file a notice of appeal fell on March 13<sup>th</sup>, a defendant could file a notice of appeal and sign an undertaking to pay periodic rent on June 30<sup>th</sup>.
  - If the defendant previously filed a notice of appeal and an undertaking but has missed a

periodic rental payment due to be paid into the clerk's office, the clerk may issue writ upon application of the plaintiff pursuant to [G.S. 42-34\(f\)](#) or [G.S. 42-34.1\(a\)](#).

- II. Cases initiated *on or after March 27<sup>th</sup>* (CARES Act):
- For cases initiated on or after 3/27/20, Emergency Directive 18 provides that a writ of possession should not be issued unless a finding is made that the subject property is not a covered property as defined by Section 4024(a)(1) of the CARES Act.
  - In cases initiated on or after March 27<sup>th</sup>, if a magistrate has entered a judgment for possession but does not add a specific written CARES Act finding in the judgment, it is appropriate for the clerk to (i) rely on the judgment for possession as being valid and enforceable and (ii) imply that the magistrate made this finding since the action was not dismissed and proceed with issuing a writ in the usual manner.

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.

Take care,  
Nickie

Nicole Brinkley  
North Carolina Judicial Branch

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**From:** Brinkley, Nicole N.  
**Sent:** Wednesday, June 3, 2020 7:48 PM  
**To:** Judicial.NC Judicial Branch  
**Cc:** Smith, Meredith Stone; Dona Lewandowski; Lassiter, Jamie L.  
**Subject:** Updates for Clerks of Superior Court - Civil, Estates, and Special Proceedings COVID-19

Dear Clerks, Assistant Clerks, and Deputy Clerks of Superior Court,

Chief Justice Beasley issued three orders on Saturday, May 30<sup>th</sup>. These orders are available at <https://www.nccourts.gov/covid-19>. The May 30<sup>th</sup> orders were issued after OGC's May 29<sup>th</sup> email guidance for clerks of superior court in civil actions, special proceedings, and estates. In response to the issuance of these new orders and questions we have received, OGC offers the following information and FAQs to assist Clerks of Superior Court. (NOTE: This communication is being sent through the Branch-wide email address so that individuals who need this information are not inadvertently omitted. I apologize in advance to the unintended recipients who receive this.)

#### **EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

On [May 30<sup>th</sup>](#), Chief Justice Beasley issued an order providing that "[i]n any matter in which the deadline to file a notice of appeal fell between 13 March 2020 and 1 June 2020, the deadline for filing an appeal and making any required payment or bond is hereby **extended to 30 June 2020**."

#### **CERTAIN EMERGENCY DIRECTIVES EXTENDED**

A [separate order](#) issued on May 30<sup>th</sup> extended Emergency Directives 2 through 8, and these currently expire on 6/29/20. Emergency Directive 1 was not further extended. Emergency Directive



5, which was extended by this order, continues to permit 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.

#### **G.S. CHAPTER 45 POWER OF SALE FORECLOSURES**

##### **Q. May clerks of superior court conduct power of sale foreclosure hearings?**

- A. Yes. Emergency Directive 17 stays “[a]ll evictions pending in the trial divisions.” A power of sale foreclosure hearing is not an eviction proceeding, but rather a proceeding to authorize or not authorize a trustee or substitute trustee to proceed with the foreclosure pursuant to the terms of a deed of trust and North Carolina law. However, clerks of superior court should consult the Emergency Directives issued by Chief Justice Beasley in the order issued [May 21st](#) intended to reduce court facility occupancy and allow sufficient space for social distancing when scheduling in-person hearings.

#### **SUMMARY EJECTMENT AND OTHER EVICTION ACTIONS**

##### **1. Q. Does the stay in Emergency Directive 17 apply to new actions initiated on or after 6/1/20?**

- A. Yes.
- Emergency Directive 17 in a third order [issued May 30th](#) provides that “[a]ll evictions pending in the trial divisions, whether summary ejectment or otherwise, are hereby stayed **until 21 June 2020**.
  - This includes (i) summary ejectment actions pursuant to Art. 3 of G.S. Chapter 42, (ii) evictions based on criminal activity in Art. 7 of G.S. Chapter 42, and (iii) vacation rental evictions under G.S. Chapter 42A.
  - Emergency Directive 17 does not prohibit the filing of new summary ejectment or other eviction actions.
  - OGC has received clarification from the Chambers of the Chief Justice that cases initiated on or after 6/1/20 are also subject to the stay and should not proceed in court until the expiration of this stay.

##### **2. Q. The plaintiff is trying to file a new summary ejectment complaint based on nonpayment that, I believe, is in direct violation of Governor Cooper’s Executive Order 142. Should I refuse the filing?**

- A. No. OGC advises that the clerk accept the filing.
- Executive Order 142 (EO 142) issued by Governor Cooper on May 30<sup>th</sup> ordered an eviction moratorium.
  - Section 1(B)(1) of the EO 142 orders, in part, that “Residential Landlords shall not, for reason of late payment or nonpayment, initiate or take any action to further summary ejectment or other eviction proceedings against a Residential Tenant.”.
  - Section 1(C)(1) prohibits a landlord from taking any action, judicial or otherwise, to terminate a commercial tenant’s possession if (i) the landlord is aware the late or nonpayment is caused by the COVID-19 pandemic or (ii) the commercial tenant provides documentation or other evidence that the late or nonpayment is caused by the COVID-19 pandemic.

- It is not the duty or responsibility of the clerk, upon the filing of a civil action, to determine whether a plaintiff has violated a provision of Executive Order 142. The filing should not be refused.
3. **Q. The plaintiff is trying to file a new summary ejectment complaint based on nonpayment that, I believe, is in direct violation of Section 4024 of the federal CARES Act because the property participates in the Section 8 Voucher program. Should I refuse the filing?**
- A. No.
- OGC advises that the clerk accept the filing. It is not the duty or responsibility of the clerk, upon the filing of a civil action, to determine whether a plaintiff has initiated an action in violation of Section 4024 of the CARES Act. The filing should not be refused.
  - The CARES Act affidavit (form AOC-CVM-207) should be provided to the plaintiff. The clerk may refer the filer to the requirement in Emergency Directive 18 to file the affidavit with the complaint for actions initiated on or after 6/1/20.
  - A copy of the CARES Act affidavit that is filed with the complaint must accompany the summons and complaint when served on a defendant. Clerks must include a copy of this affidavit with the complaint and summons for service on the defendant(s).
  - The new CARES Act affidavit, form AOC-CVM-207, was released today and is available at this link:  
<https://www.nccourts.gov/documents/forms/cares-act-affidavit-summary-ejectment>
4. **Q. If a plaintiff fails or refuses to file the CARES Act affidavit with the complaint at the time of filing, should the clerk refuse to file the complaint.**
- A. No.
- For cases initiated on or after 6/1/20, Emergency Directive 18 requires the plaintiff to file the CARES Act affidavit at the same time the complaint for summary ejectment is filed so that it can be served with the complaint and summons on the defendant(s).
  - OGC advises that the clerk provide new form AOC-CVM-207 'CARES Act Affidavit (Summary Ejectment)' to the plaintiff and direct the plaintiff to the provision in Emergency Directive 18 requiring the affidavit.
  - If the plaintiff fails or refuses to file the affidavit at the time of initiating the action, OGC advises that the clerk accept the filing. Emergency Directive 18 does not expressly direct or authorize the clerk to refuse filing a summary ejectment complaint if not accompanied by the affidavit.
  - The CARES Act affidavit is not required if the complaint is filed pursuant to Article 7 of G.S. Chapter 42 (criminal or other activity in violation of G.S. 42-63).
  - The CARES Act affidavit, form AOC-CVM-207 is available at this link:  
<https://www.nccourts.gov/documents/forms/cares-act-affidavit-summary-ejectment>
5. **Q. Can the plaintiff file the CARES Act affidavit at a later date for any SUME cases that were initiated on or after 6/1/20 (Emergency Directive 18)?**
- A. If a CARES Act affidavit is presented for filing after the filing of the complaint, OGC recommends the clerk accept the filing. The clerk should not advise a party or attorney whether or how the timing of the filing of the affidavit impacts the case.
6. **Q. Should SUME cases involving the CARES Act be continued until June 21<sup>st</sup> (Emergency Directive**

**17) or after July 25<sup>th</sup> (CARES Act expiration). Does the Clerk decide this or can the plaintiff ask the clerk to schedule after July 25<sup>th</sup>?**

- A. It is not the responsibility of the clerk to review the CARES Act affidavits when filed. The plaintiff does not typically choose the court date. The court hearing should be scheduled in accordance with the Chief Justice's Emergency Directives, including Emergency Directive 17, and county scheduling protocol. The moratorium in Section 4024(b) of the CARES Act does not stay summary ejection actions pending before 3/27/20 (effective date) or filed after 3/27/20, but rather prohibits the initiation of summary ejection actions for nonpayment related to a covered dwelling, effective 3/27/20 through 7/25/20.

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.

Take care,

Nickie



**Nicole Brinkley**  
Assistant Counsel  
NCAOC Office of General Counsel  
North Carolina Judicial Branch

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



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**From:** Brinkley, Nicole N.  
**Sent:** Friday, May 29, 2020 5:16 PM  
**To:** Judicial.NC Judicial Branch  
**Cc:** Smith, Meredith Stone; Dona Lewandowski  
**Subject:** Guidance for Clerks of Superior Court - Civil, Estates, and Special Proceeding COVID-19

Dear Clerks, Assistant Clerks, and Deputy Clerks of Superior Court,

Based on additional orders issued by Chief Justice Beasley impacting (1) the scheduling of hearings and trials and (2) deadlines in the trial courts, we provide the following updated general guidance for clerks of superior court, separated into categories to help address frequent questions received by the Office of General Counsel related to **civil actions, special proceedings, and estates**. This guidance for clerks does not summarize all Emergency Directives issued by the Chief Justice. All orders issued by the Chief Justice and the Supreme Court are available at <https://www.nccourts.gov/covid-19>. This serves as an update to the guidance emailed on March 24<sup>th</sup> and April 16<sup>th</sup>, 2020 with subject line 'Civil, Estates, and Special Proceeding COVID-19 FAQs.' (NOTE: This communication is being sent through the Branch-wide email address so that individuals who need this information are not inadvertently omitted. I apologize in advance to the unintended recipients who receive this.)

## I. Orders Impacting the Scheduling of Hearings and Trials:

(1) 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 orders issued on April 2, 2020 and May 1, 2020 and expires May 30<sup>th</sup>. *The March 13<sup>th</sup>, April 2<sup>nd</sup>, and May 1<sup>st</sup> orders do not impact deadlines in the trial or appellate courts.* Directive 1 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.

(2) Emergency Directive 3 in the April 2<sup>nd</sup> and May 1<sup>st</sup> orders expands the ability of judicial officials, including clerks of superior court, to conduct non-jury proceedings by remote audio and visual technology, subject to certain criteria set out in the directive. Emergency Directive 3, as modified by the May 1<sup>st</sup> order, **no longer requires the consent of parties** as a criterion for conducting a remote proceeding. However, a party may, for good cause, object to the use of remote audio and visual transmissions.

(3) **NEW:** On May 21<sup>st</sup>, [additional Emergency Directives](#) were issued by the Chief Justice to reduce the number people in courtrooms and allow for social distancing.

## II. Orders Impacting Deadlines:

(1) 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 filed or 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.

(2) On March 27, 2020, the North Carolina 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**.

(3) On April 13, 2020, the Chief Justice extended the 3/19/20 order impacting deadlines in the trial courts by further extending periods of limitation and providing, in part, that filings and acts in civil actions, criminal actions, special proceedings, and estates that were due to be filed or done

on or after 3/16/20 and by 6/1/20 in the trial courts would be deemed timely if the documents were filed or the acts were done **by close of business on 6/1/20**. This order also separately addressed extensions of time in bond forfeiture proceedings, and OGC has issued separate guidance about this.

- (4) **NEW:** On **May 21, 2020**, Chief Justice Beasley issued an order impacting (a) periods of limitation in civil actions, special proceedings, and estates and (b) criminal trial court deadlines.
- **Periods of Limitation:** All periods of limitation in civil actions, special proceedings, and estates that were set to expire between 3/16/20 and 7/31/20, inclusive of those dates, are extended until the **close of business on 7/31/20**.
  - All other trial court and appellate court deadlines in civil actions, special proceedings, and estates are governed by (i) the Chief Justice's order issued April 13, 2020 or (ii) the Supreme Court's order issued March 27, 2020.
  - The May 21, 2020 order does not apply to documents and papers due to be filed or acts due to be done in the appellate courts
  - The order issued 5/21/20 may be found here: <https://www.nccourts.gov/covid-19>.
- (5) **NEW:** On May 21, 2010, the Chief Justice issued an order with eight additional emergency directives. Emergency Directive 4 encourages filings to be submitted by mail rather than in person. In an effort to further minimize foot traffic in courthouses, **Emergency Directive 15** provides a grace period of five (5) additional business days for pleadings and other documents delivered to the clerk of superior court by the U.S. Postal Service. **Beginning 6/1/20**, pleadings and other documents delivered to the clerk by the United States Postal Service *and* received by the clerk within five (5) business days of the filing due date shall be deemed timely. OGC has received clarification from the Chief Justice that Emergency Directive 15 applies to documents delivered by U.S. Mail and received by the clerk of superior court on or after 6/1/20 that were due to be filed on or after 3/16/20 and by close of business on 6/1/20 pursuant to the order issued April 13<sup>th</sup>. Thus, certain actions clerks of superior court were previously permitted to take after June 1<sup>st</sup> will need to be delayed until after June 8<sup>th</sup>. **\*\*Emergency Directive 15 expires 6/20/20. OGC recommends that clerks make a notation in the area of the file-stamp indicating "U.S. Mail delivery" in order to record whether a document was received by U.S. Mail.**

#### **Orders Impacting Deadlines and Duties of the Clerk of Superior Court:**

##### **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. Pursuant to Emergency Directive 15, if a filing that is due on or after 3/16/20 and by close of business on 6/1/20 is delivered by U.S. Mail and received by the clerk by 6/8/20 (within 5 business days of 6/1/20), the filing 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, 6/8/20 in the event an answer or other pleading is delivered by U.S. Mail.

Pursuant to Emergency Directive 15 of the May 21, 2020 order, if the deadline to file an answer or otherwise plead is due on or after June 1, 2020 and the filing is delivered by U.S. Mail and received by the clerk within 5 business days of the due date, the filing would be deemed timely.

**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. Pursuant to Emergency Directive 15, if a filing that is due on or after 3/16/20 and by close of business on 6/1/20 is delivered by U.S. Mail and received by the clerk on 6/8/20 (within 5 business days of 6/1/20), the filing would be deemed timely.

Pursuant to Emergency Directive 15, 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 is due on or after June 1, 2020 and the filing is delivered by the U.S. Mail and received by the clerk within 5 business days of the due date, 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 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) Appeal from Magistrate’s Judgment - If the deadline for a defendant to file notice of appeal from 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 is filed by the close of business on 6/1/20, then the filing would be deemed timely. Pursuant to Emergency Directive 15, if a notice of appeal is delivered to the clerk by U.S. Mail and received by **6/8/20**, the filing would be deemed timely. For this reason, OGC recommends that clerks **not issue writs of possession until after 6/8/20** in the event a notice of appeal and an undertaking are delivered by the U.S. Mail and received by the clerk by close of business on Monday, 6/8/20.
- (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**. Pursuant to Emergency Directive 15, if a notice of appeal is delivered to the clerk of superior court by U.S. Mail and received by **6/8/20**, the filing would

be deemed timely. 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 N.C. Supreme Court’s 3/27/20 order and **extended for 60 days**. Pursuant to Emergency Directive 15, beginning June 1<sup>st</sup>, if the document is delivered by U.S. Mail and received by the clerk of superior court within 5 business days of the due date, the filing would be deemed timely. 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 Periodic Rent Payments Pursuant to 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. Pursuant to Emergency Directive 15, if the filing is delivered by U.S. Mail and received by the clerk by 6/8/20 (within 5 business days), the filing shall be deemed timely. Therefore, OGC recommends that **clerks not issue executions for these actions impacted by the 4/13/20 order until after 6/8/20** in the event these filings are delivered by U.S. Mail and received by the clerk by close of business on Monday, 6/8/20.
- (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. Pursuant to Emergency Directive 15, if the filing is delivered by U.S. Mail and received by the clerk within 5 business days of the filing due date, the filing shall 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. (Note: Pursuant to Emergency Directive 15, beginning June 1<sup>st</sup>, if an upset bid is delivered by U.S. Mail and received by the clerk within 5 business days of the expiration of the upset bid period, the filing would be deemed timely.)

Example 1: 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. If the upset bid is delivered by U.S. Mail and received by the clerk on 6/8/20, the upset bid would be deemed timely and the period would extend 10 days from Monday, 6/8/20.

Example 2: Report of sale filed on Thursday, 3/12/20. No upset bids are filed before close of business on 6/1/20. Since an upset bid could be delivered by U.S. Mail and received by the clerk on 6/8/20 pursuant to Emergency Directive 15, the sale should not be confirmed until after 6/8/20 (within 5 business days).

**Foreclosure Sales, Judicial Sales, Execution Sales:**

Foreclosure sales are not impacted by the orders or memorandum issued by the Chief Justice. Section 4022(c)(2) of the federal Coronavirus Aid, Relief, and Economic Security Act "CARES Act"



restricting the ability of servicers to proceed with judicial and non-judicial foreclosures related to certain federally backed mortgage loans has expired. Various federal agencies, including the U.S. Department of Housing and Urban Development (HUD) have issued foreclosure moratoriums through various letters that currently expire on June 30<sup>th</sup>. See Meredith Smith's blog posted today entitled '[Expiration and Extension of Federal and State Limits on Foreclosures in North Carolina.](#)'

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. (Note: Pursuant to Emergency Directive 15, if the upset bid is delivered by U.S. Mail and received by the clerk by 6/8/20, the upset bid would be deemed timely.)

#### **Indexing Claims of Lien and Judgments:**

The orders issued by Chief Justice Beasley (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. **Emergency Directive 14, addressed further below, directs clerks of superior court to ensure that filings may be submitted during normal business hours. The filing and indexing of claims of lien and judgments affecting title to real property or lien priority are time-sensitive and should not be delayed.** For example, G.S. 44A-12(b) and -13(a) impose strict deadlines on a lien claimant for filing a claim of lien (no later than 120 days after the last furnishing of labor or materials) and commencing a civil action to enforce the claim of lien (no later than 180 days from the last furnishing of labor or materials).

#### **Estate Deadlines and Periods of Limitation:**

The orders issued on 3/19/20 and 4/13/20 impacting deadlines in the trial courts apply to responses to petitions, creditor claims, 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. Filings due within this window that are delivered by U.S. Mail and received by the clerk by 6/8/20 would be deemed timely.

**NEW: Periods of Limitation** - The order issued by the Chief Justice on 5/21/20 provides that periods of limitation in civil actions, estates, and special proceedings that were set to expire between 3/16/20 and 7/31/20, inclusive of these dates, are **extended until the close of business on 7/31/20**.

The phrase "period of limitation" in G.S. 7A-39(b)(1) is not defined but *may* include the following:

- (1) petition to claim an elective share pursuant to G.S. 30-3.4(b);
- (2) application for assignment of a year's allowance of a surviving spouse or child pursuant to G.S. 1-54; and
- (3) the commencement of an action or estate proceeding related to a barred claim or a contingent or unliquidated claim pursuant to G.S. 28A-19-16.

**\*\*Creditor Claims:** A personal representative or collector determines whether a claim is untimely and, therefore, barred.

Pursuant to Emergency Directive 15, beginning June 1<sup>st</sup>, if a document is delivered by U.S. Mail and received by the clerk within 5 business days of the due date, the filing would be deemed timely.

### **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, Emergency Directives in the Chief Justice’s 5/1/20 order (Directive 3) and 5/21/20 order are applicable to hearings for name changes. These hearings should be 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 4/13/20 order, 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. Pursuant to Emergency Directive 15, filings delivered by U.S. Mail and received by the clerk by close of business on 6/8/20 would also be deemed timely. 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 until *after* Monday, **6/8/20** in the event the owner or legal possessor contests the sale or lien in writing and delivers it by U.S. Mail.

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

The Chief Justice and the Supreme Court have issued collectively four orders to date impacting deadlines in both the trial and appellate courts. In reading the orders issued on 3/19/20, 3/27/20, 4/13/20, and 5/21/20 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).
- (4) 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).
- (5) If the deadline to file notice of appeal with the trial clerk for an appeal to the appellate court falls on or after 5/1/20 and by 6/1/20, a notice of appeal would be deemed timely if filed by 6/1/20 (based on 5/21/20 order that reaffirms 4/13/20 order).

*Note:* Pursuant to Emergency Directive 15, beginning June 1<sup>st</sup>, documents delivered by U.S. Mail and received by the clerk of superior court within 5 business days of the due date shall be deemed timely.

**III. Emergency Directive 5 – Special Proceeding and Estate Filings Signed Under Penalty of Perjury**

Directive 5 in the Chief Justice’s order issued on 5/1/20 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 30, 2020.

**IV. NEW: Emergency Directive 14 – Clerks Must Accept Filings and Provide Access to Records**

Directive 14 in the Chief Justice’s order issued on 5/21/20 directs Clerks of Superior Court to ensure that:

- (1) filings may be submitted during normal business hours and
- (2) access to public records is provided.

The clerk has discretion to (i) require that filings be submitted using a secure drop box to limit face-to-face interactions with the public and (ii) require appointments or limited hours for access to public records. This directive expires on 6/20/20.

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 your continued dedication and commitment as we move into June.

-Nickie



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Assistant Counsel  
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**North Carolina Judicial Branch**

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



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**From:** Brinkley, Nicole N.  
**Sent:** Thursday, April 16

**To:** Judicial.NC Judicial Branch

**Cc:** Smith, Meredith Stone; Dona Lewandowski

**Subject:** Civil, Special Proceedings, and Estates Guidance During COVID-19

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 13<sup>th</sup> nor the April 2<sup>nd</sup> order impacts deadlines in the trial or appellate courts.* Directive 1 in the April 2<sup>nd</sup> 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 2<sup>nd</sup> 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-%2013%20April%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?.u\\_u1lNIMPsEI6sKza5B6f7ZiRcBH.D](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_u1lNIMPsEI6sKza5B6f7ZiRcBH.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 foreclosure 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.

Nicole Brinkley  
Assistant Counsel  
NCAOC Office of General Counsel