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EMAIL TO: All Sheriffs

FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

SENT: March 18, 2020

SUBJECT: Writs for Possession of Real Property - Impact of a Declared State of Emergency

We have been asked about the ability of a sheriff to decline to serve a writ for possession of real property during a declared state of emergency.

The attached Memo from Chief Justice Cheri Beasley says that "small claims **proceedings**, including summary ejections and money owed, must be postponed" (emphasis added.)

However, a **writ for possession of real property** is a court order that must be served on the tenant by the sheriff within 5 days of the sheriff's receipt of the writ, as specified in G.S. 42-36.2(a) [copy below]. I am not aware of any statewide court order, from Chief Justice Beasley or anyone else, that legally suspends or could suspend the legal requirement that a writ for possession of real property, which is a court order, be served by the sheriff within the specified 5 day time period.

A news article on this topic is at:

<https://www.charlotteobserver.com/news/coronavirus/article241226521.html>

According to the news article, in Mecklenburg County court sessions are being held to give tenants an opportunity to ask for some relief from a trial judge. When such hearings are held, it is likely that the plaintiff landlord will want to be heard also.



100% Membership

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If you have any questions, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks...Eddie C.



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§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.

(a) When Sheriff May Remove Property. - Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. **The time within which the sheriff shall have to execute the writ shall be no more than five days from the sheriff's receipt thereof.** The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

- (1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or
- (2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of a statement described in subdivision (2) of this subsection, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.



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MEMORANDUM

TO: Senior Resident Superior Court Judges
Chief District Court Judges
Clerks of Superior Court
District Attorneys
Public Defenders

FROM: Chief Justice Cheri Beasley
NCAOC Director McKinley Wooten, Jr.

DATE: March 15, 2020

SUBJECT: Coronavirus Update for our Courts

Note: Some links below go to Juno, which is not publicly accessible. You must be on the NCAOC network to access Juno.

For the last few weeks, I along with the Governor and all state elected officials have been closely monitoring the COVID-19 pandemic as it has reached North Carolina. The recent national response has been historic, as many of our most meaningful and noteworthy events have been cancelled including government meetings, sports tournaments, religious services, and entertainment and business events, and as our university campuses have closed. This pandemic is serious.

Yesterday, the Governor issued an [executive order prohibiting](#) gatherings of more than 100 people and directing the closure of all K-12 public schools for a minimum of two weeks. Violations of the order are punishable as a Class 2 misdemeanor. In response to the Governor's order and the rapidly evolving public health situation, I am writing to you as local Judicial Branch leaders to reiterate some measures in my [March 16, 2020 order](#) and to clarify others.

Director Wooten and I appreciate meeting by WebEx with many of you on Thursday. Your input has been and continues to be invaluable. Not only are you the ones with a wealth of experience in your areas of service and leadership but we are all in a place, the gravity of which neither North Carolina nor the world has experienced. The status of this pandemic and its impact on our courts will evolve week to week or day to day. It will take all of us to successfully respond to the coronavirus pandemic, making sure our court leaders, personnel, and the public are at the least amount of risk to exposure to the coronavirus. Safety for all is paramount.

While, at this time, our courthouses must remain open to accept filings and address emergency / safety situations, the spirit of my order is to drastically reduce the foot traffic in **all** of our courthouses across the state. The public's

minimal presence in our courts will help reduce community transmission of COVID-19 among citizens and will further protect our Judicial Branch employees who still must interact with members of the public about matters that fall within the exceptions to my order. Put simply, it cannot be business as usual for our court system. Non-essential court functions that cannot be accomplished through the use of remote technology must be postponed.

NCAOC is working to compile responses to a number of frequently asked questions it is receiving, but I wanted to cover some of them here. For at least the next 30 days:

1. In-person meetings must be postponed or cancelled to the fullest extent possible.
2. When cases or hearings cannot be postponed for the next 30 days, remote technologies should be utilized as authorized by law and to the fullest extent possible.
3. Matters before the Clerks of Superior Court:
 - Subject to health precautions, involuntary commitment hearings, guardianship hearings, and pressing estate administration matters should be conducted.
 - Other matters before the clerk, such as foreclosures and other special proceedings, must be postponed.
4. Matters before Magistrates:
 - Magistrates must conduct initial appearances and, subject to health precautions, should continue to perform weddings.
 - Small claims proceedings, including summary ejectments and money owed, must be postponed.
5. District and Superior Court:
 - All civil and criminal district and superior court matters that are not subject to the exceptions in my order, including traffic court, must be postponed.

To assist you in your local communication efforts, I am attaching to this email a Word version of the plan that Wake County officials have established to implement my directives. I recognize that there will be more than one way to meet those directives and that there will be some local variations in light of county needs and conditions on the ground. However, the Wake County plan is measured and thorough, and I encourage other districts to use it as a model, particularly with respect to the level of specificity that it contains.

I will work as quickly as possible to make any necessary conforming amendments to my March 16th order. At this time, I have not yet entered an order extending statutes of limitations or filing deadlines, but I am considering the most appropriate actions to take in that regard. As with past adverse weather events, any order I enter will likely have a retroactive effective date.

As you implement changes to close court sessions as described in my order and this email, please remember to **take care of the following two actions:**

1. **Report closings to the Help Desk** as you would any other court session closing, such as during an adverse weather event. The Help Desk is available around the clock for you at 919-890-2407. As a reminder, by [order of the Supreme Court](#), all Senior Resident Superior Court Judges and Chief District Court Judges, or their designees, are to report any cancellation or delay of, or early and unscheduled end to, their respective court sessions to the NCAOC. We highly recommend that one person be designated to report all superior court and district court closings. You may want to consider your [COOP leader](#) for this role.
2. Over the next 30 days, as you enter local administrative orders or other plans for court operations, or if you disseminate news releases to your local media or on social media, please **email them to the Communications Office** at webrequests@nccourts.org so that they may be shared on your county pages on the Judicial Branch's public website.

We are also aware that there are numerous questions about employee status, leave time, and a host of issues around employees performing these duties. Rest assured that we are working to address these matters and will have updates for you this week.

Our work to stop the spread of the coronavirus will be continuous. As in all matters, Director Wooten, the NCAOC staff and I are here for you and please always feel free to contact us. We well recognize that these measures will cause more demands on your time and limited resources. We are prepared to request additional funding as we assess our court-wide needs in response to the pandemic.

Thank you in advance for your attention to these matters, and for going above and beyond in your service to North Carolina. I am grateful to each of you. Please circulate this information to additional Judicial Branch staff and local stakeholders.



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