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ALLEGHENY CASUALTY  
INTERNATIONAL FIDELITY  
ASSOCIATED BOND

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Date: March 26, 2020  
From: AIA Team  
RE: **NCBAA NOTICE: FILE YOUR SET ASIDE OR GET CUT OFF**

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Please see the below important email from the North Carolina Bail Agents Association regarding motions to set aside. If you have any questions regarding this notification, please do not hesitate to contact the North Carolina Bail Agents Association or the North Carolina AOC directly. Additionally, feel free to contact our team at 800.935.2245.



### **ATTENTION BONDSMEN**

**Failure to file a motion to set aside by the final judgement date WILL result in the forfeiture to go into judgement and will PROHIBIT the bondsmen from signing bonds.**

*The North Carolina Administrative Office of the Courts has issued “guidance” regarding Chief Justice Beasley March 19<sup>th</sup> Order that “extended” all judicial filing deadlines that are due on or after March 16, 2020 to April 17, 2020.*

“The Chief Justice has clarified to OGC that the Order does not stay pending proceedings, and does not prohibit actions that occur by operation of law during the period covered by the Order (the period on or after March 16, 2020 through the end of business on April 17, 2020)”, said Troy Page NCAOC Office of General Counsel. Additional correspondence from Mr. Page can be found below.

**Unless your county has specifically issued additional rules, Bondsmen will be cut off from signing bonds if motions are not filed by the deadline. The order does allow you to file a set aside through April 17, 2020, but until that set aside is filed, the bondsmen will be cut off.**

NCBAA is working with Chief Justice Beasley and NCAOC to reconcile this issue and have requested changes to the current order. This includes working with Brian Elston and others to advocate for the court order to be expanded to include a provision which would allow bail agents 150 days from April 17, 2020 to set aside any pending order of forfeiture.

Once new information is received, it will be distributed ASAP.

[Click here for a copy of the letter from Elston Law](#)

[Click here for a copy of the letter from NCBAA](#)

[The full AOC Memo can be viewed here.](#)

## AOC Memo Regarding Recent Court Order

Today, March 24<sup>th</sup>, the Administrative Office of the Courts, Office of General Counsel released a memo regarding the impact on bond forfeiture proceedings in light of the extension Order entered by Chief Justice Beasley on March 19, 2020.

### AOC interpretation of Court Order regarding Bail

At the outset, it is important to note that the March 19 Order is not a stay order. The Chief Justice has clarified to OGC that the Order does not stay pending proceedings, and does not prohibit actions that occur by operation of law during the period covered by the Order (the period on or after March 16, 2020 through the end of business on April 17, 2020).

With this clarification in mind, our guidance on bond forfeitures is as follows:

#### **Forfeiture Judgments Docketed March 16 through April 16\***

**\*Note:** The Chief Justice's Order extends filing deadlines through EOB on April 17, but judgments entered on April 17 will be entered that evening, after the expiration of the extension deadline. Any set-aside motions or other filings that might prevent the entry of a judgment on April 17 therefore would have to be filed by EOB on that date, anyway. *State v. Williams*, 218 N.C. App. 450 (2012). *I.e.*, the Order does not extend the filing deadline until Monday, April 20, for judgments entered on the 17th. Therefore the effective range of judgments covered by the extension Order is those entered March 16 through (and including) April 16.

Because the Order does not stay pending proceedings, final judgments of forfeiture docketed pursuant to G.S. 15A-544.7 during the period covered by the Order were and will continue to be docketed validly. So for any forfeiture for which final judgment was or is due to occur March 16 through (and including) April 16:

- Bond forfeitures should be allowed to proceed to judgment as normal.
- Any surety or licensee prohibited from executing further bonds by a forfeiture judgment remains prohibited until the judgment is satisfied.
- Clerks should continue to receipt and apply payments made against bond forfeiture judgments.
- But the clerk should delay enforcement measures under G.S. 15A-544.7(c) for judgments entered in the period covered by the extension Order.
  - If the clerk carries out the normal enforcement procedures for a judgment docketed during the dates covered by the Order, but a party to the forfeiture then files a set-aside motion before the extension deadline of April 17 expires, in order to give retroactive effect to the set-aside, the clerk would have to recall the executions, recall any DOI notice, possibly refund monies collected by levy, etc. Therefore OGC advises that the clerks delay those enforcement measures, until the extension granted in the Order has expired.
  - Therefore for any judgment entered March 16 through (and including) April 16, the clerk should:
    - Delete any execution (EXEC) fees and service fees (OFCF) from the judgment, and delete any execution (EXEC) service records for that writ on Service Details (VCSD).
    - Do not delete any transcript (TRAN) fees from the judgment. The transcript of the judgment to other counties remains valid.
- For judgments already entered on March 16 and after, if any writs of execution already have been issued or copies delivered to DOI, the writs should be recalled and DOI should be notified not to liquidate any surety's assets for those judgments.
- Keep a list of forfeiture judgments for which enforcement measures are delayed. (The Bond Forfeiture Dispositions Report for the affected dates should suffice for this purpose.) After the period covered by the extension Order has expired, the clerk will need to re-initiate the enforcement measures for those judgments manually.

- If a set-aside motion (SFBJ) is filed before EOB on April 17 for a bond forfeiture judgment entered March 16 through (and including) April 16, delete the forfeiture judgment entirely. Restore the BDFR issue to pending status on Issue/Order Details (VCIU), and enter the SFBJ motion as normal.
  - There is no need to back-date set-aside motions when filed. They should be file-stamped according to the actual date and time filed.
  - Note: A set-aside motion filed for a judgment that was docketed before March 16 is not to be given retroactive effect. The extension Order does not extend the time for filings that should have been filed before that date.

#### **Set-Aside Motions Granted March 16 through April 16\***

**\*Note:** For the same reason discussed above for forfeiture judgments, any set-aside motions granted automatically on April 17 will be granted after the expiration of the extension deadline. Any objection from the District Attorney or school board to prevent the automated grant of a set-aside motion that evening would have to be filed by EOB on April 17, anyway. Therefore the effective range of set-aside motions for which the extension Order extends the deadline for objections is those granted March 16 through (and including) April 16.

Because the extension Order does not stay pending proceedings, set-aside motions granted pursuant to G.S. 15A-544.5(d)(4) during the period covered by the Order were and will continue to be granted validly. Therefore for any set-aside granted March 16 through April 16:

- VCAP's automated grant of pending set-aside motions should be allowed to proceed as normal.
- If an objection is filed before EOB on April 17 for a set-aside that was granted automatically March 16 through (and including) April 16, restore both the BDFR issue and the SFBJ issue to pending status on Issue/Order Details (VCIU), and enter the objection (SAOB) service record as normal.
  - Calendar the hearing on the set-aside motion and objection as normal under the county's policies for bond forfeiture hearings, subject to the Chief Justice's Order of March 13, 2020, which continued most court proceedings to dates after April 17.
    - There is no need to back-date objections when filed. They should be file-stamped according to the actual date and time filed.
    - Note: An objection filed for a set-aside that was granted before March 16 is not to be given retroactive effect. The extension Order does not extend the time for filings that should have been filed before that date.

#### **Remission Petitions Unaffected**

Unlike set-aside motions, petitions to remit a final judgment of forfeiture under G.S. 15A-544.8 have no automatic effect on the forfeiture judgment, and their filing date does not control any automated features in VCAP. Therefore petitions to remit filed for a judgment docketed during the dates covered by the extension Order should be entered as normal.

It is possible that a petitioner's three-year statute of limitations under G.S. 15A-544.8(c)(1) did or will expire during the dates covered by the extension Order, but if so, the filing of the remission petition requires no special action on the clerk's part. The remission petition should be entered as of the date actually filed, not back-dated to an earlier date. The clerk does not enforce the statute of limitations for filings, so it will be up to the movant to plead the Chief Justice's order as grounds for the late filing.

#### **Requests for Advice from Parties to Forfeiture Proceedings**

Parties with legal questions about their other rights or obligations in bail matters or bond forfeiture proceedings during the period covered by the extension Order, including ancillary questions about procedures like surrender, should be advised to consult with counsel. The clerks and NCAOC cannot give legal advice about individual litigants' rights or obligations.

#### **Troy D. Page**

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[www.NCcourts.org](http://www.NCcourts.org)