

Courts, Custody, & Choices: How to Address New or Existing Issues

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As most people are well aware, the COVID-19 crisis has completely changed how we operate in our daily lives. One place that has felt a tremendous effect as a result of this crisis is our court system. Originally, an Order was entered by the Chief Justice of the North Carolina Supreme Court on March 13, 2020, that postponed most district and superior court cases for 30 days.

On Monday, April 3, 2020, the Chief Justice announced that the Order entered on March 13, 2020, is now effective until June 1.

This means that only a limited number of court hearings will be conducted prior to June 1. At this point, there are still many unknowns about how court closures will affect both new and existing issues arising from separation, divorce, or shared custody of children. The following Q&A addresses some of these questions and concerns.

What effect do these changes have on my case?

If you have filed claims for child custody, child support, post-separation support, alimony, equitable distribution, or any other claim related to your separation and divorce (or had these claims filed against you), you will not have any hearings related to these claims until June 1, 2020, or later, unless:

- The proceeding will be conducted remotely;
- The proceeding is for the purpose of obtaining emergency relief;
- The senior district court judge of the county where the action is pending determines that the proceeding can be conducted under conditions that protect the health and safety of all participants.

Unless your case falls under one of the exceptions named above, it will be continued even if you already had a court date scheduled prior to June 1, 2020. Once court resumes its normal schedule, you should call the office of the Clerk of Court in the county where your action is pending in order to find out when your court case was rescheduled.

What effect does this have on deadlines in my case?

On March 19, 2020, the Chief Justice entered an Order extending deadlines for the filing of pleadings, motions,

notices, and other documents and papers that were due to be filed on or after March 16, 2020. This original extension provided that if a document was required to be filed after March 16, 2020 and prior to April 17, 2020, it would be deemed timely filed if it was filed before the close of business on April 17, 2020. On April 13, 2020, the Chief Justice entered another Order addressing further extension of filing and other court-related deadlines. Pursuant to this recent Order, all deadlines related to the filing of documents related to your case have been extended as follows:

- If you have a document that is required to be filed or served (such as a request for an extension of time or a response to a pleading) between the dates of March 16, 2020 and June 1, 2020, the document will be considered timely if it is filed by 5:00 p.m. on June 1, 2020.
- If you have a pending appellate case, any deadlines set by the rules of appellate procedure have been extended for sixty (60) days.

Although deadlines related to the filing of documents have been extended, filings are still being accepted by most counties. The Chief Justice strongly suggested in her April 3 Order that filing be submitted by mail rather than in person. All filings that are required to be signed under oath will be accepted for filing if the signing party affirms the truth of the filing by a representation in substantially the following language: "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true."

The order continuing court cases until June 1 also applies to mediations and other types of in-person settlement conferences. However, there are other options available for those who are willing to mediate their case in a virtual setting and are discussed in further detail below.

What options do I have in the event of an emergency?

While all court dates have been continued until June 1, 2020 or later, the county courthouses remain open and are addressing situations where emergency relief is needed. Therefore, if you are in need of an order of protection as a result of domestic violence or if you feel you are in need of an emergency custody order, you are still able to seek these orders prior to June 1, 2020. Each county is operating differently from the other in regard to how in-person access is handled, so it is recommended that you contact the office of the Clerk of Court in the county where your action is pending (or the county where the action needs to be filed if one is not pending) so they can inform you as to how they are addressing emergency related filings.

In the event that this type of order has been entered against you, contact the Clerk of Court where the action was filed and ask for confirmation of your scheduled court date, as it is likely that these issues will be addressed prior to June 1, 2020.

In the event that you have an issue that does not qualify as "emergency relief," you should contact your local Clerk's office or District Court Trial Court Coordinator and inquire into whether your particular issue can be accommodated by a remote hearing. If all parties involved and the presiding Judge agree that the proceeding can be conducted remotely, you may be able to proceed.

What do I do about my custody exchanges?

As you are aware, North Carolina has issued an Order requiring residents to "shelter in place" unless travel from the home is "essential." At this time, child custody exchanges have been deemed essential. Therefore, custody-related exchanges are not currently a violation of the shelter-in-place order, and despite the current COVID-19 concerns, you should continue to follow your custody order that is currently in place. It is best in this situation to use practical solutions to ensure that your children and both families are kept safe while at

the same time respecting the custodial relationship between each parent and child. In the event that you are unable to come to an agreement on alternative visitation arrangements, you should follow your existing custody order.

What options do I have to move my case along?

This "downtime" from the court can be a perfect opportunity to catch up on pending items such as document production and settlement negotiations. This is also a good time to strategize with your attorney about how to move your case forward so that it is "trial ready" when the restrictions related to court hearings and deadlines are lifted.

Further, although in-person mediations have been continued until June 1, 2020, or later, there are alternative mediation and settlement conference options. These types of settlement conferences can be done via video conferencing or teleconferencing. Video conferencing software programs like Zoom allow participants to access the video conference from wherever their computer or other device is located. Such programs also allow the lawyers and mediator to create virtual rooms for each party and his or her counsel and control the other party's access to that "room." As COVID-19 continues to increasingly impact our country each day, more and more mediators are offering their services through video conferencing. Thus, parties who want to resolve a custody or equitable distribution dispute while operating under a shelter-in-place order may elect to participate in virtual mediation. These options are particularly useful for high-conflict cases that need to be resolved sooner rather than later.

How can I stay informed regarding any additional updates?

In order to help keep you informed, we will post any additional updates that we receive on our website. You can also visit nccourts.org for information regarding the press releases and orders issued concerning the COVID-19 crisis and its effect on our court system. Lastly, you can always call your county's Clerk of Court office in order to inquire as to how the COVID-19 crisis is affecting your specific courthouse location. Be sure and keep yourself informed regarding when courts will be once again functioning normally.

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