

Judicial Updates on COVID-19

COVID-19 Response Resource Center: Timely Counsel for your Business

By Daniel Adams on 03.16.2020

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Criminal Justice Section members should pay close attention to rapidly developing guidance from state and federal courts concerning COVID-19. The most recent guidance is summarized below, and the relevant orders are linked. Please also check with your local courts to track developments affecting you and your clients; as of 11:00 a.m. Monday, March 16, 2020, 16 counties were reporting **court closings and/or advisories**.

NC State Courts

Chief Justice Beasley entered an **order on Friday, March 13** regarding the operation of the North Carolina court system.

EFFECTIVE MONDAY, MARCH 16, 2020, for 30 days, Chief Justice Beasley ordered the rescheduling of District and Superior Court proceedings calendared between March 16 and April 16. No District or Superior Court matters can be added to the calendar during the 30-day period either.

Exceptions to the scheduling include, at least:

1. Criminal preliminary hearing (first appearance, probable cause, etc.);
2. Domestic Violence cases (filing and hearing);
3. Magistrates issuing warrants and performing marriages.
4. Estate and Special Proceedings before the Clerk (guardianships, partition actions, etc.); and
5. Matters that may be handled remotely—within the discretion of Senior Resident Superior Court Judges and Chief Judges.

Courthouses and clerk's offices will remain open. Information regarding pending matters during the 30-day "continuance period" will be forthcoming from counties.

NC Federal Courts

North Carolina's three federal district courts each entered orders addressing procedures related to COVID-19. The key provisions are as follows:

WDNC

- WDNC courthouses will remain open
- Criminal case proceedings will continue
- Individual judges presiding over criminal proceedings may take actions with respect to their cases that are lawful and consistent with the WDNC order, taking into account criminal defendants' right to a speedy trial and the application of that right to defendants who are detained pending trial
- The time period of any continuances granted under the order will be excluded under the Speedy Trial Act
- To reduce the possibility of exposure:
 - The U.S. Marshal's Service is directed to immediately remove any ill detainees from the courthouse
 - Judges will stagger court hearings as much as possible
 - Magistrate Judge hearings will be moved to larger courtrooms
 - Magistrate Judges will use After Hours Warrants procedures and will continue to develop the capability to use Skype for initial appearances
 - Settlement conferences and non-evidentiary proceedings will be conducted by Skype
- Court employees experiencing symptoms are to remain at home on leave or telework

MDNC

- MDNC courthouses will remain open
- Although not specifically stated, criminal case proceedings will continue
- Only those with official business before the court are permitted to enter
- The following persons **shall not** enter any U.S. Courthouse, combined courthouse/federal facility, or U.S. Probation Office, without the prior permission of the Chief Judge or designee:
 - Anyone who, within the last 14 days, traveled:
 - Outside the United States
 - To the State of Washington
 - To New Rochelle, New York

- To any locale that has been declared in quarantine;
 - Anyone who resides or has had close contact with someone who falls within the descriptions above;
 - Anyone displaying symptoms of COVID-19, including fever, cough, or shortness of breath;
 - Anyone diagnosed with, or having had contact with anyone diagnosed with, COVID-19; and
 - Anyone who has been asked to self-quarantine
- Any attorney that is scheduled to appear before a judge in the MDNC but cannot due to the restrictions above should contact judge's chambers

EDNC

- EDNC courthouses will remain open
- Although not specifically stated, criminal case proceedings will continue
- The following persons **shall not** enter any U.S. Courthouse or U.S. Probation Office, without the prior permission of the Chief Judge:
 - Anyone who, within the last 14 days, traveled:
 - To China, South Korea, Japan, Italy, Iran, or Egypt
 - To the State of Washington
 - To New Rochelle, New York
 - To any other country or region that is the subject of a Level 3 Travel Health Notice issued by the CDC;
 - Anyone who resides or has had close contact with someone who falls within the descriptions above;
 - Anyone displaying symptoms of COVID-19, including fever, cough, or shortness of breath;
 - Anyone diagnosed with, or having had contact with anyone diagnosed with, COVID-19; and
 - Anyone who has been asked to self-quarantine
- Any attorney that is scheduled to appear before a judge in the EDNC but cannot due to the restrictions above should contact the judge's case manager

NC State and Federal Prisons

There has been a great deal of reporting about the fact that COVID-19 poses a particular threat to inmates, who are confined in close quarters with others and lack the same access to soap, hand sanitizer, and social distance as those at liberty. Indeed, China, Iran, and Italy have reportedly struggled to address the spread of COVID-19 in prison populations. I have not yet seen a specific plan for combating COVID-19 in North Carolina's state jails and prisons, but one hopes that such a plan is forthcoming. The U.S. Bureau of Prisons has published a COVID-19 Action Plan, available [here](#).

The key components are:

- Social visits are suspended for 30 days
- BOP will allow for additional inmate telephone calls (500 minutes per month instead of 300)
- Legal visits are suspended for 30 days, although case-by-case accommodation will be made and confidential legal calls will be allowed
- Attorneys seeking an in-person visit with their client or a confidential call should contact the institution Executive Assistant
- All inmate facility transfers will be suspended for 30 days, with certain exceptions
- BOP will implement nationwide modified operations to maximize social distancing

Finally, because of the increased risks associated with COVID-19 in prisons, I have heard that at least one federal judge has varied downward from a prison term to a term of house arrest plus probation. That may be something for defense counsel to consider requesting at sentencing during this pandemic.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.