

# North and South Carolina Coronavirus Litigation, UPDATED April 15, 2020

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## Practices

Litigation

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*UPDATED APRIL 15, 2020, in light of Governor McMaster's "Home or Work" Order and the Supreme Court of South Carolina's Order "Re: Operation of the Trial Courts During the Coronavirus Emergency."*

In response to the novel coronavirus ("COVID-19"), courts across the country have taken many and various precautionary measures to prevent the spread of the virus. Here is a simple list and affiliated links to closures, delays, extensions, and other relevant information in both North Carolina and South Carolina.

## South Carolina State Courts

- On April 3, 2020, the Supreme Court of South Carolina issued a broad order altering the operation of all trial courts. The order, among other things, supplements and "significantly" alters current practices and procedures of trial courts. In the event the rules in the Order conflicts with current practices or rules, the Order shall control. As Amended on April 14, 2020 Appellate Case No. 2020-000447.
  - All criminal and civil jury trials are continued until further notice.
  - Retroactively to March 13, 2020, all deadlines under existing scheduling orders are extended for 45 days following the date on which the Governor lifts the emergency orders. Judges may issue a new or amended scheduling order that will not be subject to this stay
  - The statute of limitations is not tolled. Plaintiffs must continue to timely file lawsuits.
  - Beginning April 3, 2020, ALL trial court filings are extended 30 days.
  - In the event a party was required to take certain action on or after March 13, 2020, but failed to do so, the defect is forgiven and the required action must be taken within 30 days of April 3, 2020.

- Court reports no longer have to be in the same room to swear in a witness, therefore, depositions may be taken with video or audio technology.
  - Courts can hold hearings utilizing remote technology.
  - Courts can hold non-jury trials if all parties consent.
  - Judges are encouraged to decide motions without a hearing.
  - Service by email is allowed.
  - A Judge can grant an uncontested divorce without a hearing in certain circumstances.
  - The Order also describes a number of changes to criminal proceedings, the process for filing papers, requests for extensions, summary court proceedings, and probate proceedings.
  - The Order will remain in effect until modified or rescinded by the Supreme Court.
  - The Order replaces the March 16, 2020 “Trial Courts Coronavirus Memo,” “Summary Courts Coronavirus Memo,” and the March 18, 2020 “Statewide Family Court Order.”
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- A compilation of all orders, memos, and information related to specific county court closures is available on SC Courts.
  - Individual judicial circuits have issued additional orders with instructions specific to the circuit. The SC Bar maintains a compilation. SC Bar.
  - All evictions currently ordered or scheduled statewide are stayed until at least May 1, 2020. The court is not accepting applications for ejectment, scheduling hearings, issuing writs or warrants of ejectment, or proceeding in any other manner regarding evictions until directed by subsequent order of the court. However, the Court left open a case-by-case exception for evictions involving essential services and/or harm to person or property. 2020-03-18-01 Statewide Evictions and Foreclosures.
  - The Supreme Court of South Carolina issued a moratorium (or postponement) statewide of all foreclosure hearings, foreclosure sales, writs of assistance and writs of ejectment until directed by subsequent order of the Court. 2020-03-18-01 Statewide Evictions and Foreclosures.
  - All oral arguments currently scheduled before the **Supreme Court of South Carolina** and the **South Carolina Court of Appeals** are cancelled. The Supreme Court or Court of Appeals will consider alternative methods of conducting the arguments or hearing. The Order, among other things, extended deadlines for all Appellate Court filings by 20 days from March 20, 2020. However, this does not extend the time to serve a notice of appeal under SCACR Rules 203, 242, 247. 2020-03-20-01 Appellate Court Order.
  - A party that is required to participate in mediation may request that it be conducted via video conference. 2020-03-19-01 Mediation Settlement Conferences.
  - In addition to the above, lawyers who failed to comply with the 2019-2020 Continuing Legal Education requirements will be suspended if they do not file reports of compliance and pay the filing fee and any penalty by April 15, 2020. Effective immediately, lawyers may earn all or any portion of the required fourteen hours of CLE credit for the 2019-2020 annual reporting year through online or telephonic programs. 2020-03-17-01 Waiver of Distance Learning Limitations.

## United States District Court – District of South Carolina

- In the District of South Carolina, all civil and criminal jury selections and trials scheduled to start through May 8, 2020 are postponed until further notice. All grand jury proceedings scheduled through May 8 are postponed unless otherwise noted by the chief judge. In all civil cases, deadlines (those established by agreement or Fed. R. Civ. P.) are extended 21 days but statutes of limitation are not. All other civil and criminal matters scheduled for an in-court appearance before May 8 and their associated deadlines are postponed, unless the matter can be resolved remotely. DSC Standing Order.
- On April 1, 2020, the District of South Carolina Court issued a standing order with additional information regarding court operations including: closing the clerk's office to the public, however, it remains available by phone, noting its continued acceptance of ECF filings, and noting procedures for pro se filers and payments by check. DSC Standing Order.
- On April 3, 2020, the District of South Carolina authorized the use of video teleconferencing, and telephone conferencing if video is reasonably unavailable for various criminal case events outlined in the Order. The Order remains in effect for at least 90 days. In re: Court Operations in Response to Covid-19.

## North Carolina State Courts

- On April 2, 2020, the Supreme Court of North Carolina issued an order containing seven emergency directives. The Order:
  - Postpones superior court and district court proceedings for a second time to June 1, 2020, unless the hearing will be conducted remotely, the hearing is for emergency relief, and the hearing is necessary to preserve due process rights.
  - Continues to direct clerks of court to post notices at court facilities discouraging entry by those infected with Covid-19.
  - Authorizes court proceedings to be conducted by remote audio and video transmissions.
  - Directs attorneys and others without business before the court to avoid court facilities. Allows use of sworn statement under penalty of perjury rather than notarization for court filings and oaths.
  - Allows service of court documents by email.
  - Extends the deadline for payment of most fines and fees by 90 days.
- The Supreme Court of North Carolina's Order is available [here](#).
- All pleadings, motions, notices, and other documents or papers previously due on or after March 16, 2020 are now due before the close of business on April 17, 2020. This extension does not apply to appellate court proceedings, however, it does apply to cases in Business Court. North Carolina Order Extending Deadlines. North Carolina Business Court Order.
- All "other acts" that were or are due to be done in any North Carolina county on or before March 16, 2020 in any civil action, criminal action, estates, or special proceedings are now due on or before the close of business on

April 17, 2020. North Carolina Order Extending Deadlines.

- The Supreme Court of North Carolina issued an order extending all appellate court deadlines that fall between March 27 – April 30, 2020 for 60 days. The order encourages electronic filings. Supreme Court of North Carolina Order.
- All superior court and district court proceedings are postponed at least 30 days, unless: the proceeding is held remotely, the proceeding is necessary to preserve due process rights, the proceeding is for emergency relief, and/or 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 participants. This does not apply to juries or grand juries that have already been empaneled. Emergency Directive 1.
- The Supreme Court of North Carolina also imposed restriction to entry any court facility if the individual has likely been exposed to COVID19 including those individuals who have traveled to China, South Korea, Japan, Italy, or Iran within the past 14 days, who has been directed to quarantine, isolate, or self-monitor, who has been diagnosed, or who resides with or has been in close contact with any person in the above mentioned categories. Emergency Directive 2.
- North Carolina also provides a county-by-county breakdown of court closing and advisories. The notice provides, however, the parties should still check with the specific county to verify whether it remains open. County Court Closings or Advisories.

## United States District Court – Eastern District of North Carolina

- In the Eastern District of North Carolina all civil and criminal jury trials scheduled to begin before May 1, 2020 are continued. All other hearings, conferences, and other proceedings are subject to the discretion of the judge presiding. Grand jury matters will proceed. Where feasible, judges should consider hearings and other conferences over video conference or telephone. EDNC Standing Order.
- The Eastern District of North Carolina altered procedures for criminal proceedings including extending the use of video and telephone conferences for initial appearances, conferences with attorneys, hearings, and felony arraignments. The Order remains in effect for 90 days beginning April 6, 2020. EDNC April 6, 2020 Order.
- Those who have tested positive for the coronavirus, have symptoms of COVID-19, have travelled to highly impacted areas, or may have otherwise been exposed to the virus are prohibited from visiting any courthouse without permission from the chief judge. EDNC Standing Order.

## United States District Court – Middle District of North Carolina

- In the Middle District of North Carolina, all civil trials scheduled to begin before April 16, 2020 are postponed until further notice. All criminal cases are postponed to a date on or after April 16, 2020. Grand jury proceedings scheduled for March are canceled. All deadlines in all cases are not extended and remain in effect. MDNC Standing Order.

- In Standing Order 13, the M.D.N.C. extended its previous standing order and continued ALL CIVIL and CRIMINAL JURY TRIALS and IN-COURT HEARINGS scheduled to begin before May 4, 2020. MDNC Standing Order 13.
- Those who have tested positive for the coronavirus, have symptoms, or may have been exposed to the virus are prohibited from visiting any courthouse without permission from the chief judge. MDNC Standing Order.

## United States District Court – Western District of North Carolina

- In the Western District of North Carolina judges are staggering their hearings and hearings will be held in the largest courtroom available. Non-evidentiary hearings and mediations should be conducted remotely where possible. WDNC Standing Order.
- The Western District of North Carolina altered procedures for criminal proceedings including continuing all previously scheduled criminal trials to begin on or before June 1. Hearings, conferences and other proceedings are subject to the individual judge's discretion. The order remains in effect until June 1, 2020. WDNC April 1, 2020 Order.
- Those who have tested positive for the coronavirus, have symptoms, or may have been exposed to the virus are prohibited from visiting any courthouse. WDNC Standing Order.
- Oral arguments on summary judgment motions in civil cases before Judge Conrad are suspended. All summary judgment motions will be decided on the briefs until further notice. Judge Conrad Directive.

## Fourth Circuit Court of Appeals

- Cases previously scheduled for argument during the March 17-20, 2020 and April 7, 2020 argument sessions will be heard at a later session, heard remotely or submitted on the briefs, at the direction of the assigned panels. The Powell Courthouse in Richmond, Virginia, is closed to the public. Papers may be filed in the courthouse lobby, but those who have tested positive for the coronavirus, those with symptoms of COVID-19 and those who may have been exposed to the virus are prohibited from entering the building. Fourth Circuit Court of Appeals Directive.
- The Fourth Circuit subsequently issued an Order suspending the normal requirement that the court will not publish an opinion without oral argument, in light of the suspension/cancellation of at least the March and April terms of court. If the panel unanimously agrees, the opinion may be published even if there is no oral argument. Fourth Circuit Court of Appeals Order.

On a more national level, the Federal Bar Associate compiled a number of resources and valuable educational updates surrounding the COVID-19 situation. Federal Bar Association CLEs.

Nexsen Pruet has drafted a several templates for your business to send to clients regarding the virus and its potential impact. The templates are available for a small fee, however, Nexsen Pruet is providing the templates to nonprofit organizations free of charge. For more information, contact any Nexsen Pruet business litigation attorney.

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