

Brian Elston Law



March 24, 2020

The Honorable Cheri Beasley
(via email to mhaxton@sc.nccourts.org)

RE: *Judicial Order satisfying goal of social distancing and the bail bond industry*

Chief Justice Beasley:

Thank you for the Court's recent orders promoting social distancing as we collectively fight the spread of COVID-19. In furtherance of the Court's goals, I am writing to request an order pertaining to individuals involved in the bail bond industry. Judicial intervention is necessary for the protection of bail agents, law enforcement, and society from COVID-19 and further contamination. As such, this is a humanitarian issue facing all of us.

A brief overview of the bail bonding industry is necessary to appreciate the basis for an order. When a defendant fails to appear in court, the court enters an order forfeiting the bond. After notice is given, the order becomes final within 150 days, absent a reason setting aside the order. N.C. Gen. Stat. § 15A-544.6. Accordingly, bail agents and surety companies initiate efforts to pursue, capture, and surrender defendants that have previously failed to appear in court. N.C. Gen. Stat. § 15A-544.5. If a bail agent or surety is unable to set aside the forfeiture within 150 days, the order becomes final. Even after the order of forfeiture, a bail agent may still pursue an absconding defendant in order to then file a motion to receive a refund of the money paid. N.C. Gen. Stat. § 15A-544.8.

The Court's March 19, 2020 order authorizes a bail agent or surety to file its motions by April 17, 2020. Unfortunately, the order does not eliminate the conditions precedent that must form the basis of the motions. Pursuing these conditions precedents jeopardize the health and well-being of numerous individuals.

The practical implication of the bail system is that bail agents will be in physical contact with not only defendants, but also the defendant's families and friends who may be serving as cosigners and indemnitors, confidential informants, jailers, and of course, court staff. By even attempting to locate and surrender an absconding defendant, bail agents place themselves at risk for exposure as well as their families. If a jail accepts a surrender of a defendant with symptoms, numerous other individuals are then also at risk for infection. These consequences are in contravention with the Court's and Governor Cooper's recent orders regarding social distancing.

As I write this letter, Charlotte just released their own stay-at-home letter and hospitals have recommended that Governor Cooper issue the same. Sixteen other states have issued ‘stay at home’ guidelines. Attached hereto are correspondence indicating that Warren, Vance, Franklin and Forsyth Counties are limiting surrenders to the jail. Despite these orders and practices, without an order to the contrary, bail agents may still legally be tasked with picking up absconding defendants if they hope to set aside the orders of forfeiture on April 17, 2020.

In order to reconcile the competing priorities, on behalf of the individuals whose support is enclosed herein, I am writing to request an order extending “other acts may be timely done in civil actions.” N.C. Gen. Stat. § 7A-39(b)(1). Specifically, we request an order that allows bail agents 150 days from April 17, 2020 to set aside any *pending* order of forfeiture. Furthermore, we request that bail agents have an additional one year to file any motion for relief from final judgment as referenced in N.C. Gen. Stat. § 15A-544.8.

The implementation of this order should not be difficult. An entry of forfeiture is automated and can be easily reversed in VCAP. Furthermore, Clerk of Court have the ability to reissue notices of forfeiture. Accordingly, the implementation of the order would be as simple as an order allowing bail agents to exchange their existing order of forfeitures for a re-issued notice on April 17, 2020.

Thank you for the Court’s consideration. If I can be of any service in discussing the matter or drafting a proposed order, please do not hesitate to contact me. My email address is brian@brianelstonlaw.com and my number is 828-575-9700.

Very Truly Yours,



Brian D. Elston

Enc.: Letters of Support From
Randy Cauthen, President of the North Carolina Bail Agents Association Phillip
Bradshaw, bail agent, board member of NCBAA
Donna Worley on behalf of Ace Bail Bonds and its agents
Amy Wilkins, bail agent and on behalf of Absolute Bail Bonds and its agents Andy
Inglesias, bail agent
Dustin Smith, on behalf of Crum & Forster and its agents
Lisa Thompson, on behalf FCS and its agents
Jeff Botellio, bail agent

Quinn Cokley, bail agent and on behalf of Bobcat Surety and its agents Michael
Woody, bail agent and on behalf of 828 Bail Bonds and its agents
Omar Williams, bail agent and on behalf of Bail Bond Partners and its agents
Todd Alston, bail agent
Robert Mays, Attorney



Brian Elston <brian@brianelstonlaw.com>

NCBAA

Randy Cauthen <cauthen.randy@gmail.com>
To: brian@brianelstonlaw.com

Mon, Mar 23, 2020 at 2:20 PM

Thanks Brian, I'm Randy Cauthen President of the NC Bail Agents Association. We would gladly support you in this effort.
Thanks,
Randy



Brian Elston <brian@brianelstonlaw.com>

Re: ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

pbrad29694@aol.com <pbrad29694@aol.com>
To: brian@brianelstonlaw.com
Cc: executivedirector@ncbaa.com, cauthen.randy@gmail.com

Mon, Mar 23, 2020 at 2:27 PM

I think it is fair to say that every licensed bondsman in state stands behind this, over 1800.

If the Supreme Court Justice doesn't assist us, there will be bankruptcies, foreclosures and businesses lost. This really needs to be explained.

Thanks for your efforts.

Phillip Bradshaw

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

On Monday, March 23, 2020, Brian Elston <brian@brianelstonlaw.com> wrote:

That would be a prudent idea. I think the more people I can say stay behind this, the better the chances at intervention.

Thanks and let me know if you need anything!

Brian

Brian Elston
Brian Elston Law
Patton Parker House
95 Charlotte Street
Asheville, NC 28801
T: 828-575-9700
F: 828-575-9705
C: 828-450-2897
BrianElstonLaw.com



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On Mon, Mar 23, 2020 at 2:22 PM Jarret Burr <executivedirector@ncbaa.com> wrote:
Brian,

We fully support you in this effort. Let us know what we can do to help. We are also working this on our end.

Also, our President Randy Cauthen attempted to send you this message earlier today, but it looks like it was sent to Bradshaw and not you:

"Thanks Brian, I'm Randy Cauthen President of the NC Bail Agents Association. If you don't mind I'll have our Executive Director send this to all bondsmen across the state.

Thanks,
Randy"

Thank you for your efforts to help in this situation.

--

Jarret B Burr

Executive Director

North Carolina Bail Agents Association

1220 Eastchester Dr., Ste 104

High Point, NC 27265

PHONE: 919-832-0867

www.ncbaa.com

On Mon, Mar 23, 2020 at 1:59 PM <pbrad29694@aol.com> wrote:

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

On Monday, March 23, 2020, Brian Elston <brian@brianelstonlaw.com> wrote:

Bail Agents and Stakeholders:

As many of you know, Governor Cooper and the North Carolina Supreme Court issued orders regarding social distancing. These orders extend the deadline to file motions to set aside. Unfortunately, the orders appear to fall short of protecting bail agents who risk exposure to COVID-19 in their efforts to satisfy the basis for the motions to set aside.

Accordingly, I have spoken with the Chief Justice's office, and have prepared the attached correspondence. I was advised that the more people can get behind this, the more likelihood it will receive the appropriate attention.

If you are in support, please reply back to me indicating your support, and anything else that you may feel is relevant. I will attach a copy of your response to my letter.

DUE TO THE TIME SENSITIVITY OF THIS ISSUE, PLEASE REPLY BACK BY 3:30 P.M.

Please let me know if you have any questions.

Best,

Brian

Brian Elston

[Brian Elston Law](http://BrianElstonLaw.com)

Patton Parker House

95 Charlotte Street

Asheville, NC 28801

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F: 828-575-9705

C: 828-450-2897

BrianElstonLaw.com



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Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Ace Office <bonds@acebondsn.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 3:00 PM

Hi Brian,
Yes, Ace Bail Bonds support this action for extending the 150 days and the set aside dates for pending forfeitures. Do I need to see if Palmetto Surety offers their support as well?
Thank you
Donna
828-545-9290



ACE BAIL BONDS
524 Hendersonville Rd. Suite B
ASHEVILLE, NC 28803

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On Mon, Mar 23, 2020 at 12:50 PM Brian Elston <brian@brianelstonlaw.com> wrote:
[Quoted text hidden]



Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Amy Wilkins <bonzbyamy@gmail.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 1:10 PM

Hello Brian -

Thank you for the email. Myself
And staff support this matter.

Amy M. Wilkins
Whitni L. Fields
Toni A. Shelton

We appreciate you taking your time to make the requests known to protect us during this dire and unfortunate time. Stay safe and healthy.

Amy

Amy M. Wilkins
NC Bail Agent Lic#[16141159](#)
Bonds by Amy - Owner/Agent
Bail Bond Partners, LLC *Partner
Fugitive Recovery Specialist
NC Notary Public
*Ordained
[336-655-6699](tel:336-655-6699) (24/7)
IG @bonzbyamy1

P.O. Box 21052
Downtown Branch
Winston Salem, NC 27120

Sent from my iPhone

On Mar 23, 2020, at 12:50 PM, Brian Elston <brian@brianelstonlaw.com> wrote:

[Quoted text hidden]

<2020_03_23_Requesting Judicial Intervention.pdf>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Amy Wilkins <bonzbyamy@gmail.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 1:23 PM

P.S. Several Agents have contacted me in regards to the Forsyth Co. Detention Center and surrenders of both pre/post breach offenders. The jail has denied surrender to a few Agents and are currently checking temperatures at the sally port. Anyone with a fever higher than 100.4 they will not take custody of.

Amy M. Wilkins
NC Bail Agent Lic#16141159
Bonds by Amy - Owner/Agent
Bail Bond Partners, LLC *Partner
Fugitive Recovery Specialist
NC Notary Public
*Ordained
336-655-6699 (24/7)
IG @bonzbyamy1

P.O. Box 21052
Downtown Branch
Winston Salem, NC 27120

Sent from my iPhone

On Mar 23, 2020, at 1:10 PM, Amy Wilkins <bonzbyamy@gmail.com> wrote:

Hello Brian -
[Quoted text hidden]

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Smith, Dustin M. <DUSTIN.SMITH@cfins.com>
To: "brian@brianelstonlaw.com" <brian@brianelstonlaw.com>
Cc: "Kennedy, Andrew" <AKennedy@bailusa.net>

Mon, Mar 23, 2020 at 2:25 PM

Hi Brian!

This is Dustin Smith, formerly with Accredited Surety and Casualty. Hope you are well. Andrew Kennedy who is now a co worker of mine forwarded this email to us. Crum and Forster and its family of companies are obviously in agreeance with this request. The reasons you bring up are very valid along with the issues below being brought to my attention by agents which vary by county:

Jails not allowing surrenders

Jails not wanting to serve warrants

Counties only allowing motions to be filed on the date the judgments are due

These are unprecedented times, we do ask for some reasonable leniency on these matters.

Dustin Smith

Asst VP Surety Bail

Please note my new email address is dustin.smith@cfins.com

From: Kennedy, Andrew
Sent: Monday, March 23, 2020 1:48 PM
To: Ziemer, Michael; Padilla, Michael; Marculis, Jeff; Smith, Dustin M.
Subject: FW: ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Hi guys,

Do any of you object to me replying to this email from Brian Elston or if one of you would prefer to answer on behalf of C&F?

Thanks,
Andy

Andrew Kennedy | Assistant Vice President
Crum & Forster | Bail USA, Inc.
157 Main St. | Greenville, PA 16125 | United States
t +1.724.638.6491 | m +1.213.395.8976
akennedy@bailusa.net | www.bailusa.net
andrew.kennedy@cfins.com | www.cfins.com



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From: Brian Elston [mailto:brian@brianelstonlaw.com]
Sent: Monday, March 23, 2020 12:51 PM
To: Brian Elston; Jenna Jarrett
Subject: ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Bail Agents and Stakeholders:

[Quoted text hidden]

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Lisa Thompson <lthompson@fcsurety.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 1:14 PM

FCS is in support. The situation is very fluid and changes each day. As such, it is paramount that we take appropriate measures to ensure the health and safety of NC residents and work to slow the spread of COVID-19.

Best Regards,

Lisa B. Thompson | General Counsel

3131 Eastside Suite 250, Houston, TX 77098

T 713.351.8406 C 941.713.9365

lthompson@fcsurety.com | www.fcsurety.com



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Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Jeff Botellio <jeffbotellio@gmail.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 12:53 PM

I support it.

[Quoted text hidden]



Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

quinn@bobcatsurety.com <quinn@bobcatsurety.com>

Mon, Mar 23, 2020 at 1:21 PM

To: Brian Elston <brian@brianelstonlaw.com>

Cc: Jenna Jarrett <jenna@brianelstonlaw.com>

Thank you

I and my organization are in full support of an Order requesting Judicial Intervention. All of the variables mentioned in your brief are immediate concerns shared among individual agents, insurers, and agencies of the Bail Bond industry.

Please keep me informed of any progress or need for further cooperation from me.

Quinn Cokley
Pres. of Operations

Bobcat Surety Services
817 E. Trade St. FI2
Charlotte NC 28202
704.333.3678

Quoting Brian Elston <brian@brianelstonlaw.com>:

Bail Agents and Stakeholders:

As many of you know, Governor Cooper and the North Carolina Supreme Court issued orders regarding social distancing. These orders extend the deadline to file motions to set aside. Unfortunately, the orders appear to fall short of protecting bail agents who risk exposure to COVID-19 in their efforts to satisfy the basis for the motions to set aside.

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DUE TO THE TIME SENSITIVITY OF THIS ISSUE, PLEASE REPLY BACK BY 3:30 P.M.

Please let me know if you have any questions.

Best,

Brian

Brian Elston
<<http://brianelstonlaw.com/>>
Patton Parker House <<http://brianelstonlaw.com/patton-parker-house/>>
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[3m4!1s0x0:0xba7cb6ae03078931!8m2!3d35.602693!4d-82.545952](https://www.google.com/maps/place/Brian+Elston+Law/@35.602693,-82.545952,15z/data=!4m5!3m4!1s0x0:0xba7cb6ae03078931!8m2!3d35.602693!4d-82.545952)>

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Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Michael Woody <mwoody@828bailbonds.com>
To: Brian Elston <brian@brianelstonlaw.com>
Cc: Jenna Jarrett <jenna@brianelstonlaw.com>

Mon, Mar 23, 2020 at 1:13 PM

I agree with the request. I feel it's an appropriate response to the Governmers request of social distancing.

Sent from my iPhone

On Mar 23, 2020, at 12:50 PM, Brian Elston <brian@brianelstonlaw.com> wrote:

[Quoted text hidden]
<2020_03_23_Requesting Judicial Intervention.pdf>



Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Todd Alston <toddalston451@gmail.com>

Mon, Mar 23, 2020 at 3:02 PM

To: Brian Elston <brian@brianelstonlaw.com>, Elicia Ward <eliciaward@gmail.com>

Brian,

Thank you for the time and consideration you have given to this matter. Existing precedence for bail agents in this current environment almost seems impossible. I completely agree with the requests you have outlined in your letter. I hope the necessary adjustments can be made to ensure the health and safety of bail agents, defendants, jailers, magistrates, and families of all.

Best Regards
Todd Alston
KC 24/7 Bonding

On Mon, Mar 23, 2020 at 12:50 PM Brian Elston <brian@brianelstonlaw.com> wrote:

[Quoted text hidden]

 **2020_03_23_Requesting Judicial Intervention.pdf**
156K



Brian Elston <brian@brianelstonlaw.com>

Bails Bondsman and COVID-19

Robert May <robert.may@banzetlaw.com>
To: brian@brianelstonlaw.com

Tue, Mar 24, 2020 at 11:33 AM

Hey Brian

In my neck of the woods, the jails in Warren, Vance and Franklin Counties are refusing to accept individuals surrendered by a bondsman. This operating procedure, per my client, is mandated by the Sheriff in each County to combat the spread of COVID-19 in their facilities. Definitely adds a new wrinkle to the issue.

Let me know if you need anything.

Robby

Banzet, Thompson, Styers & May, PLLC

Robert T. May, Jr.

Attorney at Law

robert.may@banzetlaw.com

www.Banzetlaw.com

101 N. Front Street

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Facsimile: 252-257-2053

Warrenton, NC 27589

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Brian Elston <brian@brianelstonlaw.com>

ACTION REQUIRED - Judicial Intervention for Motions to Set Aside

Bail Bond Partners <bailbondpartners@gmail.com>
To: Brian Elston <brian@brianelstonlaw.com>

Mon, Mar 23, 2020 at 12:56 PM

This is Omar Williams, I support
[Quoted text hidden]