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Irma's Impact on Filing Deadlines in Civil Actions

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We are now dealing with the aftermath of Hurricane Irma. Many attorneys and litigants lost—and some remain without—power in their homes and offices, and could be dealing with temporary and permanent loss of property, including, potentially, electronic and paper files. Many South Florida courts, including Broward and Miami, remained closed through Sept. 15 and did not re-open until Sept. 18. This begs the question: what is the impact of Florida court closures on filing deadlines, and in particular, the deadline to timely file original civil actions and appeals?



Fallick

As Irma was approaching and courts were closed, Florida Supreme Court Justice Jorge Labarga signed an administrative order on Sept. 6, which relieved parties in “all pending cases” statewide by “extending legal time limits that they otherwise would have been unable to meet due to Hurricane Irma.” The order states that “all time limits prescribed or allowed by rule of procedure, court order, statutes applicable to court proceedings, or otherwise

pertaining to court proceedings are extended from the close of business on Thursday, Sept. 7, until the close of business on Monday, Sept. 11, 2017.”

The order made clear that the state-wide extension of time periods applied only when the last day of those periods fell within the Sept. 7 to Sept. 11 period. The order did not operate to toll a statute of limitations or other original filing deadlines that expired at a later time. Stated otherwise, the order does not allow the extension period to be used to tack on additional days to a statute of limitations or time period to commence an appellate proceeding, which would otherwise expire after the extended period under the order.

Recognizing such potential issues, the order provides that, as a result of this emergency, there may be instances where other time limits and deadlines could not be met within the extended period. In such instances, the Order instructs litigants to specifically assert such a claim and seek relief in “the court in which jurisdiction is vested on a case-by-base basis when a party demonstrates that the lack of compliance with requisite time periods was directly attributable to this emergency and that equitable remedy is required.” The order gives each court the authority to close offices regarding the storm, and instructs chief judges to file reports with the Supreme Court, which may include

a request for an order further extending time limits.

The Florida Supreme Court clerk’s website includes all orders further extending legal deadlines as requests are received from local courts. These orders are issued retroactively once a court re-opens and on a county-by-county basis. With respect to South Florida courts,

as of the date of this writing, emergency requests to extend deadlines were made by, and administrative orders entered for the Third

and Fourth District Courts of Appeal and Palm Beach County courts. All time limits prescribed by rule of procedure, court order, statutes applicable to court proceedings, or otherwise were further extended until the close of business on Sept. 14, in Third District Court of Appeal and Palm Beach County, and until the close of business on Sept. 15 in the Fourth District Court of Appeal.

Attorneys practicing in Broward and Miami-Dade should monitor these court’s websites and the Florida Supreme Court website for similar orders. As a precautionary measure, it should be noted that the legal time limits are generally not extended past the dates of court closures in these orders. Where an attorney has yet to file a lawsuit on claims for which the applicable statute of limitations expired or institute appellate proceedings during the extended time periods, court

closures, or otherwise in the period of Irma’s aftermath, the attorney should immediately seek relief, including an enlargement of time, in the court vested with jurisdiction and demonstrate how the lack of compliance was directly attributable to Hurricane Irma. This showing could include, for example, court closures, files and property being damaged or destroyed, the lack of electricity or internet access, flooding and dangerous conditions preventing travel to an office or courthouse, injury caused by the storm, the electronic filing system being down, and other good cause shown regarding the hardships of these extenuating circumstances.

We clearly are not out of the woods of hurricane season, as shown by storms, such as Maria, looming. Of course, there is always next year’s hurricane season and the next storm. If possible, attempt to preserve the claim and appellate rights by filing a lawsuit or a notice of appeal before the court closure, and, if necessary, amend after the storm. If that cannot be done, promptly take action at the first available opportunity to commence original proceedings, and seek relief in the appropriate court to enlarge applicable time limitations.

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