

Litigation Update

April 22, 2020

Courts and Municipalities Go Remote

As the COVID-19 pandemic reached New York, courts and the state have responded by quickly suspending filing deadlines, preventing the filing of new actions and proceedings in state courts, and altering how they manage cases. Each court and municipality has done so differently, which we summarize below.

State Courts at the trial level have suspended any filings (including hard copy and e-filing) in non-essential matters. That includes a moratorium on the filing of new, non-essential cases. Chief Administrative Judge Order 78 (03/22/20) ceased all paper and e-filing in non-essential matters, the Second Amended Administrative Order (03/30/20) adjourned all non-essential civil matters until April 30, 2020, and New York's statutes of limitations have been tolled through May 7, 2020. Executive Order 202.14 (04/07/20).

But despite these orders, courts have continued to operate and the definition of "essential matters" is both expansive and flexible. Filers can opt to fill out a coversheet (linked below) on their filings and assert their matter should be included as essential. So, *essentially*, it's up to the court whether your matter will be deemed essential and your filing allowed. The duration of this filing restriction is currently indefinite, but it's likely to last at least until May 7, because, again, that's the date until which the state has tolled statutes of limitations. Executive Order 202.14 (04/07/20). It's worth noting that tolling won't revive previously time-barred claims, but it does prolong the statute of limitations for plaintiffs with unfiled-but-viable claims.

It's also worth noting that the preclusion on filing hasn't stopped courts from continuing to receive and respond to e-mails, phone calls, or correspondence. So litigants can, on a case-by-case basis, get their issue heard. And while the court initially suspended all court conferences, remote courts have been implemented statewide and activity has resumed. Under a recent administrative order of the chief administrative judge (04/08/20), as of April 13, 2020, non-essential conferences began to pick back up. Although the prohibition on filings in new and pending non-essential matters remains in effect, pending matters have begun to be conferenced remotely, via Skype Business or telephone conference. Notwithstanding, all deadlines established by a judicial directive (like a scheduling order or local rule) have been extended by 90 days from the original deadline. Third Amended Administrative Order (4/15/20). So while litigants will have a little more time to accomplish their discovery, most discovery has been made accessible, anyway: vendors and court reporters have adjusted to remote work, depositions can be conducted remotely, and documents can be exchanged electronically. And nevertheless, Judges are still deciding motions, holding settlement conferences, and even conducting oral argument over the phone or by video-conference.

Federal and appellate courts have taken different, almost opposite tacks from the state trial court. Generally, federal litigation has slowed but procedure hasn't changed. Individual hearings or

conferences may have been adjourned (or may not have been) on a case-by-case basis. Procedure has been left up to the individual judges. Filings are still allowed, motions and are still being made, cases are still being initiated, and conferences are ongoing, albeit usually remotely. No deadlines or statutes of limitations have been automatically extended.

New York State Appellate Courts have taken a similar approach. There is no prohibition on filings. Applications for extensions of time have been automatically granted, and the time to perfect appeals or file has been automatically extended. Litigants should check their matters to determine their new deadlines because those extensions have been deemed “indefinite,” but it appears that the First and Second Departments will begin resetting deadlines in early May. Also as regards the First and Second Departments: while they continue to accept all filings, those filings must be done electronically. They are not accepting any hard-copy papers. And their oral arguments are being held by videoconference only.

Municipal boards are permitted to conduct their public meetings via conference call or video conference pursuant to Executive Order 202.1 (03/12/20). And they have been, though many have been adjourned. Under the order, municipalities (including zoning and planning boards) can continue to conduct official business over video or telephone conference. We recommend you consult the municipality to determine whether a particular hearing has been adjourned, is proceeding remotely, or otherwise.

Hollis, Laidlaw & Simon, P.C. has continued to conduct its Litigation and Zoning practice in accordance with the above new regulations. If you have any questions about how your case may be affected, please contact us.

Related links:

Chief Administrative Judge Order 78 (3/22/20)
<https://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

Executive Order 202.1 (3/12/20)
<https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

Executive Order 202.8 (3/20/20) <http://www.nycourts.gov/whatsnew/pdf/EO-202.8-ocr.pdf>

Executive Order 202.13 (4/7/20)
<https://www.governor.ny.gov/news/no-20213-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

Executive Order 202.14 (4/7/20)
https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.14_final.pdf

Administrative Order of the Chief Administrative Judge (4/8/20)
<https://www.nycourts.gov/whatsnew/pdf/AO-85-20.pdf>

Administrative Order No. 2020-06 (E.D.N.Y.)
https://img.nyed.uscourts.gov/files/general-ordes/2020-06_In_Re_CoronavirusCovid19Pandemic.pdf

Third Amended Administrative Order (4/15/20)
https://www.nycourts.gov/LegacyPDFS/courts/9jd/pdfs/THIRD_AMENDED_Administrative_Order.pdf

SDNY Bar Memorandum (3/20/20)
<https://nysd.uscourts.gov/sites/default/files/2020-03/COVID%20Memorandum%20-%20FINAL.pdf>

Fourth Department Administrative Order (3/17/20)
<https://nysba.org/app/uploads/2020/03/4th-Dept-Order.pdf>

Third Department Administrative Order (3/17/20)
<https://nysba.org/app/uploads/2020/03/3rd-Dept-Order.pdf>

First and Second Department Administrative Orders (3/17/20)
<https://phpny.com/wp-content/uploads/2020/03/Court-Updates-AD1-and-Ad2-1.pdf>

Essential Matters coversheet:
<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/NoticeEssentialFiling.pdf>