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Changes Concerning Statutes of Limitations, Timing of Statutory Notices, Filing Deadlines and Court Operations in New York on Account of the Coronavirus (COVID-19)

March 27, 2020

INTRODUCTION

Over the past weeks, Governor Cuomo, other government officials and the court system have issued orders and implemented changes that have been affected the legal system in New York. From statutes of limitation to the operation of the courts, virtually nothing is the same as it was less than one month ago. We address some of those significant changes below.

A caveat: given the rapidly changing landscape, it is important to check for new orders and protocols on a regular basis. To that end, we set forth a list of helpful websites in the Resources section at the end of this advisory.

STATUTE OF LIMITATIONS AND RELATED CONCEPTS

On March 20, 2020, New York Governor Andrew M. Cuomo issued Executive Order No. 202.8. That Executive Order tolled the time to commence, file or serve any legal action, notice, motion, or other process or proceeding, including under the CPLR, Surrogate's Court Procedure Act, Uniform Court Acts, Court of Claims Act, Family Court Act and Criminal Procedure Law, from March 20, 2020 through April 19, 2020. In short, those 30 days will not be counted in determining when one must file suit or take any other action covered by the Executive Order. This covers, among other things, the time to file a notice of appeal or perfect an appeal. A similar tolling order was issued in New York in 2001 after the attacks of 9/11 and in 2012 in the wake of Superstorm Sandy. It is possible, and we believe likely, that the tolling period will be extended by a future Executive Order.

NEW YORK STATE COURTS

New York Court of Appeals

The Court of Appeals has adjourned cases scheduled for oral argument during the remainder of its March 2020 session. The Clerk's Office will be in contact with counsel to provide information regarding further consideration of their appeals. If changes are made to the April/May session oral argument calendar counsel will be notified as

soon as possible.

The Court will continue to consider previously filed pending matters, and it will continue to accept submissions by mail and, as permitted by its Rules, Court-PASS. Filings, including applications for stays, will not be accepted in person at the Clerk's Office until further notice. Persons who wish to file papers in person should call the Clerk's Office at 518-455-7700 for instructions on alternative ways to file.

Appellate Division of the Supreme Court of the State of New York

Here is a recap of how the four appellate departments are adjusting their calendars, policies and procedures in response to the coronavirus health emergency.

First Department

Calendared Matters - All appeals calendared for oral argument through Thursday, March 27, 2020 will be deemed submitted. Appeals calendared for the second and third weeks of the April 2020 term will be re-calendared. If there are changes to the April/May oral argument calendar counsel will be notified a soon as possible.

Motions/Applications - Except for matters perfected for the May and June 2020 terms, all motions or applications for an extension of time to perfect or file an appeal are granted. All other deadlines are suspended indefinitely. The Court will be able to entertain only emergency applications. Submissions for emergency applications shall be done electronically via email to AD1InterimApp@nycourts.gov, with notice via email to opposing counsel. Counsel will be notified by email as to the time and manner by which the application will be heard.

Second Department

Calendared Matters - All matters calendared for oral argument through Thursday, April 2, 2020 will be deemed submitted.

Motions/Applications - All motions or applications for an extension of time to perfect or file an appeal pending as of March 17, 2020 are adjourned until further order of the court. All other motions are adjourned without date. If you have a motion pending before the Court which you consider to be urgent, please contact the Court at ad2clerk@nycourts.gov. Please be sure to be specific about the nature of your pending motion and why you consider the matter to be of an urgent nature. Likewise, if you are awaiting a decision from the Court on an appeal or motion and you consider the matter to be urgent, please contact the Court at ad2clerk@nycourts.gov and provide specific information as to the nature of the urgency.

Third Department

Calendared Matters - All matters calendared for the March term will be heard on submission only. All matters currently scheduled for the April term are adjourned and will be re-calendared for a later term. If you have a matter scheduled for the March 2020 or April 2020 term that you deem an emergency, you must notify the Court

in writing, on notice to your adversaries, to request that the Court treat your matter as urgent. Said notification should be addressed to ad3clerksoffice@nycourts.gov, and must indicate in the subject of the email the urgent nature of the request.

Motions/Applications - All motions or applications, including for an extension of time to perfect or file an appeal pending as of March 17, 2020, are suspended indefinitely. The Court will only entertain emergency applications. Submissions for emergency applications shall be made by email to ad3motions@nycourts.gov. If you have a pending motion which you deem to be urgent, you must notify the Court, in writing, on notice to your adversaries, to request that your motion be treated as urgent. Said notification should be addressed to: ad3motions@nycourts.gov.

Fourth Department

Calendared Matters - Matters scheduled for oral argument during the Court's March-April term, which commences on Monday, March 30 and concludes on Thursday, April 9, are deemed submitted. If you believe that your matter scheduled for the March/April 2020 term should be deemed urgent, you must notify the Court in writing, on notice to all parties, to request that the Court consider your matter on an expedited basis. Said notification should be addressed to ad4-clerk@nycourts.gov, and must indicate the urgent nature of the request. Such notification must be made not later than April 9, 2020.

All matters currently scheduled for the May 2020 term are adjourned and will be re-calendared for a later term.

Motions/Applications – All motions or applications, including for an extension of time to perfect or file an appeal pending as of March 17, 2020, are suspended indefinitely. The Court will entertain only emergency applications brought by order to show cause. Such emergency applications shall be filed by sending them via email to ad4-clerk@nycourts.gov. If you have a pending motion which you deem to be urgent, you must notify the Court, in writing, on notice to all parties, to request that your motion be treated as urgent. Said notification should be addressed to: ad4-clerk@nycourts.gov. CPL 245.70 applications shall be made via email to: ad4-clerk@nycourts.gov.

Supreme Court – Trial Level

In a March 19, 2020 memorandum, Chief Administrative Judge Lawrence Marks set forth that "[t]he prosecution of pending civil matters (including discovery) in a manner that requires in-person appearances or travel, or otherwise requires actions inconsistent with prevailing health and safety directives relating to the coronavirus health emergency, is strongly discouraged. With regard to discovery he also stated that "the parties shall use best efforts to postpone proceedings by agreement and stipulation for a period not to exceed 90 days. Absent such agreement, the proceedings shall be deferred until such later date when the court can review the matter and issue appropriate directives. In no event will participants in civil litigation be penalized if discovery compliance is delayed for reasons relating to the coronavirus public health emergency."

Further, in a March 22, 2020 Order, Judge Marks ordered that "no papers shall be accepted for filing by a county clerk or a court in any matter" not deemed essential. Essential matters consist of an enumerated list of cases, set

forth in the Order, which includes Mental Hygiene Law applications and hearings addressing patient retention or release, emergency applications related to the coronavirus, and emergency applications in guardianship cases. This Order applies to both electronic and paper filings.

In general, all non-essential functions of the courts have been suspended until further notice. County Clerk offices have also addressed the situation differently. The best advice is to check with your attorneys regarding specific matters.

New York City Civil Courts/District Courts/Other Courts

On March 15, 2020, New York Chief Administrative Judge Lawrence Marks announced in a memo to court employees that "all eviction proceedings and pending eviction orders shall be suspended statewide until further notice." In addition, marshals and sheriffs are not permitted to execute eviction warrants during the moratorium. On March 20, Governor Cuomo issued Executive Order 202.8 which not only extended the moratorium on evictions for 90 days but included foreclosures within that moratorium.

With evictions are not proceeding, the Landlord-Tenant courts remain open but only for "essential applications" such as serious housing code violations, landlord lockouts, and repair orders, would be permitted to proceed, according to the memo. All other matters (including appearances in civil and housing cases) are administratively adjourned for a period of 45 days.

In Nassau County, all non-essential functions of the District Court are postponed. Essential functions are to be held at the County Court located in Mineola.

In Suffolk County, all courts are closed, and any emergency District Court proceedings will be held at the Cohalan Court Complex in Central Islip.

With regard to Village Courts, the individual court should be contacted to determine the specific procedure to follow at this time.

NEW YORK FEDERAL COURTS

Second Circuit Court of Appeals

General Filings/Deadlines - effective March 16, 2020 through May 17, 2020, all filing deadlines have been extended by a period of 21 days. However, in counseled civil cases, automatic dismissal provisions in the order setting the original filing date remain in effect. Moreover, a judge may order the parties to comply with a different filing date as deemed necessary. The due date for a notice of appeal, petition for review, or other document which confers jurisdiction upon the Court of Appeals is not affected this extension and the deadline remains as is required pursuant applicable statutes and rules.

Oral Arguments/Motions - all oral arguments on appeals and motions will be heard via teleconference. Attorneys and pro se litigants will be provided with instructions for the teleconference from the Court.

Access to the Court - The Court of Appeals remains open, but individuals without any official business at the Court will not be permitted to enter. Additionally, litigants are encouraged to email all correspondence/filings that are unable to be electronically filed. If an emergency application or stay must be filed, it must be done either via email or electronic filing, and then the filer must contact the Clerk of the Court at 646-584-2696 to discuss the urgency of the application.

District Courts and Bankruptcy Courts

The federal district courts and bankruptcy courts have generally left the operations of civil matters to the discretion of the individual judge handling the matter. In many cases, the judge has issued specific orders either adjourning all set dates in a matter, or directing certain conferences take place by teleconference. Thus, parties should contact the judge handling a matter, or check the docket of their case, to determine how to proceed in a federal civil matter. The U.S. Trustee for the Bankruptcy Courts in the Second Circuit has issued an order that all in-person meetings in Chapter 7, 12 and 13 section 341 meetings scheduled through April 10, 2020 are adjourned to a let date. Counsel in cases which have been scheduled for telephonic meetings should check the court's website as they may proceed as scheduled subject to the order of the judge

The federal courts and bankruptcy courts have issued restrictions on who can enter their courhouses.In the event an individual does need to enter a federal district court, restrictions have been placed on who can enter. Individuals who have visited any country included in a Level 3 or Level 2 Travel Health Notice regarding COVID-19 within the past 14 days will not be permitted to enter (i.e. China, Iran, Italy, Japan, South Korea), nor will an individual who has come into close contact with an individual who has recently visited one of these countries. Moreover, individuals asked to self-quarantine by any health professional or health agency cannot enter, nor can individuals diagnosed with COVID-19 or individuals who have come into close contact with an individual diagnosed with COVID-19. Finally, individuals with a fever and/or shortness of breath will not be permitted to enter.

Southern District of New York

Appearances/Case Management – In-court appearances are limited to emergency matters, and these should be conducted by teleconference or video conference to the extent possible. Many judges have adopted their own emergency rules, which can be found at: https://www.nysd.uscourts.gov/judges. Thus, parties are directed to the individual judge's rules to determine how to proceed with their case.

When an emergency application is to be heard in person (after being filed as set forth below), it will be held in room 23B or 24A of the Daniel Patrick Moynihan Courthouse or Room 110 or 318 of the Thurgood Marshall Courthouse (both in Manhattan) or Room 318 of the Charles Brieant Courthouse (White Plains), depending on who is on duty. The emergency part will only be staffed between 8:30 AM and 4:00 PM Monday through Friday. Applications to appear by phone will be entertained by the presiding judge.

Filings – Filings will be accepted only by mail/drop box outside of the court. Emergency applications should be filed electronically and the Court should then be contacted to be made aware that such application was filed.

Eastern District of New York

Appearances/Case Management – Parties should contact the individual judge to determine how to proceed. As related to civil litigation, access to the Court is prohibited to all individuals unless an individual has been ordered to appear by any judge, or is a debtor or creditor (or the attorney of a debtor or creditor) who has case-related business before the Bankruptcy Court. Moreover, individuals falling into one of the general categories discussed above are not permitted even if they meet this criteria.

Filings – The Clerk's Office in Brooklyn and Central Islip is open to the public between 10 am and 12 pm and 1 to 3 pm, but no financial transactions will be accepted after 2:45 pm. Attorneys are encouraged to file all papers electronically.

Western District of New York

Appearances/Case Management – All civil trials are adjourned for 60 days. Judges are encouraged to reduce personal appearances as much as possible. Thus, parties should contact the assigned judge to determine if a matter may be adjourned, or if an appearance can be handled via phone or video conference.

Filings - The Clerk's Office is available by telephone, and intake offices remain open for filings.

Northern District of New York

Appearances/Case Management – All trials scheduled to begin before April 30, 2020 are adjourned pending further Order of the Court. Exceptions can be ordered at the discretion of the Court after consultation with Counsel. Motions that can be resolved without oral argument or by telephone or video conference are not affected by the Court's order adjourning trials.

Filings – The Clerk's office is available by telephone and the intake office is available for filings.

ADMINISTRATIVE AGENCIES

New York State Division of Human Rights - All public hearings are adjourned and in-person visits and meetings are by appointment only.

Equal Employment Opportunity Commission – Agencywide tele-network implemented for all employees. Charge intake will be done over the phone.

RESOURCES

Coronavirus and the New York State Courts
www.nycourts.gov

Eastern District of New York
https://www.nyed.uscourts.gov/

Law.com
https://www.law.com/newyorklawjournal/2020/03/16/court-notes/

Nassau County Bar Association – Updates Regarding COVID-19
https://www.nassaubar.org/announcements/update-regarding-covid-19/

New York State Bar Association Coronavirus Information Center
https://nysba.org/covid-19-information-updates/

Northern District of New York
https://www.nynd.uscourts.gov/

Second Circuit Court of Appeals
http://www.ca2.uscourts.gov/

Southern District of New York
https://nysd.uscourts.gov/

Southern District of New York Individual Judge Rules
https://www.nysd.uscourts.gov/judges

Western District of New York
https://www.nywd.uscourts.gov/

Practices

- Financial Institutions and Lending
- Commercial Litigation
- Construction Litigation
- General Liability, Tort and Insurance Defense

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