

Impact of COVID-19 Pandemic on Court Rules and Procedures

The COVID-19 pandemic—and the attendant restrictions on public gatherings and directions to non-essential employees to remain home—has disrupted the normal functioning of the state and federal judiciaries. State governments, and both state and federal courts, have responded valiantly and accommodated the need for delayed litigation by issuing orders modifying their normal operating procedures. New York and Delaware state courts have automatically tolled the running of statutes of limitations and have adjourned other deadlines concerning court filings and procedures. The federal courts of New York and Delaware have not issued orders tolling statutes of limitations but have entered orders extending normal litigation deadlines and procedures.

This memorandum summarizes certain tolling orders and procedures entered in New York and Delaware state and federal courts. It remains important, however, to consult legal counsel when considering the impact of these orders, since many are drafted in a manner that may be subject to further interpretation. For example, even those tolling orders featuring “hard numbers,” such as a tolling period lasting for a specified number of days, require interpretation regarding how to implement the stated period. And certain orders specifically exclude from their scope jurisdictional time periods that must be adhered to in order to preserve a litigant’s rights.

Procedural matters alone can decide a case, which is why it is critical to pay close attention to time periods and deadlines that are subject to change and interpretation.

I. State Courts

A. New York State

According to a NY state executive order, dated March 20, 2020 (the “Tolling Order”), most time limits under New York law have been tolled until April 19, 2020.

- Any specific time limit for “the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding” is suspended and tolled from March 20, 2020 through April 19, 2020.
- This tolling applies to time limits “prescribed by any procedural laws” of New York, expressly including the civil practice law and rules (CPLR), criminal procedure law, the Family Court Act, the Court of Claims Act, the Surrogate’s Court Procedure Act, and the Uniform Court Acts, or “any other statute, local law, ordinance, rule, or regulation.”

According to an order by the Chief Administrative Judge of the New York State Courts, dated March 22, 2020 (the “Administrative Order”), court filings (electronic and paper) are prohibited in any matter not listed as an “essential matter,” “effective immediately and until further order.”

- No hard-copy and electronic filings of any papers will be accepted in a New York State court, effective immediately, in any matter that is “not essential.”
- This appears to apply to commercial matters, as the list of “essential matters” does not include commercial matters, but rather is limited to certain criminal, family court, civil/housing and mental hygiene matters.

It remains to be seen how any conflict between these orders, should one arise, will be resolved. For example, the Administrative Order on its face prohibits the filing of a pleading to commence litigation “until further order.” Should the Tolling Order not be extended, this could place litigants facing an expiring statute of limitations in the untenable position of deciding to violate the Administrative Order so as not to risk losing a cause of action.

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf

<http://nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

B. Delaware State Courts (including Chancery Court)

According to an order issued by the Delaware Supreme Court, dated March 22, 2020, statutes of limitations and statutes of repose that would otherwise expire on or before April 15 are extended, such that they will continue through April 21. The order likewise extends any default deadlines under Delaware court rules or Delaware statutes through April 21.

- On March 23, 2020, the Chancery Court issued a further statement stating that “many hearings and case schedules will have to be adjusted” and further stating that the Chancery Court will be “solicitous of granting any reasonable requests for extensions.”

<https://courts.delaware.gov/rules/pdf/Court-of-Chancery-Standing-Order-No2.pdf>

<https://courts.delaware.gov/forms/download.aspx?id=120578>.

<https://courts.delaware.gov/rules/pdf/Chancery-Stmt-re-Admin-Order.pdf>.

II. Federal Courts

As detailed below, statutes of limitations for federal claims remain in place for now. The federal courts of New York and Delaware, including the Court of Appeals for the Second Circuit, have, however, implemented certain procedures to help alleviate burdens associated with the COVID-19 pandemic. In addition, a number of federal judges have modified their individual rules to address the burdens of the COVID-19 pandemic.¹ Practitioners appearing in federal cases should consult the respective court website and their judge’s individual rules before taking any action.

A non-exhaustive summary of modifications adopted by federal courts in response to the COVID-19 pandemic is set forth below.

A. Southern District of New York (SDNY)

According to a standing order by Chief Judge McMahon, dated March 13, 2020:

- All civil and criminal jury trials scheduled to begin before April 27, 2020 are continued pending further order of the Court.

¹ For updates to individual judges’ motion practices and rules, *see, e.g.*, <https://nysd.uscourts.gov/judges/district-judges>; <https://www.nyed.uscourts.gov/judges-info>.

- Compliance with all trial-specific deadlines in civil and criminal cases scheduled to begin before April 27, 2020 is at the discretion of the assigned judge.
- Individual judges may continue to hold hearings, conferences, and bench trials in exercise of their discretion, consistent with the Order.

[https://nysd.uscourts.gov/sites/default/files/2020-03/20%20MISC%20154a%20\(002\)%20-%20In%20Re%20Coronavirus-COVID-19%20Pandemic.pdf](https://nysd.uscourts.gov/sites/default/files/2020-03/20%20MISC%20154a%20(002)%20-%20In%20Re%20Coronavirus-COVID-19%20Pandemic.pdf)

B. Eastern District of New York (EDNY)

According to multiple administrative orders, dated March 18, 2020:

- All civil and criminal jury trials scheduled to begin before April 27, 2020 are continued pending further order of the Court.
- Compliance with all trial-specific deadlines in civil and criminal cases scheduled to begin before April 27, 2020 is at the discretion of the assigned judge.
- In all criminal matters in which a magistrate judge must conduct a preliminary hearing on or between March 18, 2020 and April 27, 2020 pursuant to Federal Rule of Criminal Procedure 5.1(a), the time within which the magistrate judge must hold the preliminary hearing is extended 60 days after the initial appearance.

https://img.nyed.uscourts.gov/files/general-ordes/2020-06_In_Re_CoronavirusCovid19Pandemic.pdf

C. District of Delaware

According to standing orders, dated March 17 and 18, 2020:

- All civil and criminal jury selections and jury trials scheduled to begin before April 30, 2020 are continued pending further order. Deadlines remain in effect unless notified.
- All currently scheduled change of pleas, sentencings, and supervised release violation hearings during the period from March 18, 2020 through April 30, 2020 are continued until no earlier than April 30, 2020.
- Sitting grand juries are authorized to meet, but no new grand juries will be empaneled from March 18, 2020 to April 30, 2020.

Further, according to an order, dated March 18, 2020, sealed criminal documents should be electronically submitted to the Court in PDF format, subject to the guidelines outlined in the order.

The Delaware Court has created an electronic civil summons form (AO 440) for counsel to complete and use without requiring the Clerk to print, sign, and seal and handle the originals.

<https://www.ded.uscourts.gov/sites/ded/files/news/StandingOrder-03-17-20-Courthouse%20Access.pdf>

<https://www.ded.uscourts.gov/sites/ded/files/news/StandingOrder-3-18-20-Court%20Operations.pdf>

<https://www.ded.uscourts.gov/sites/ded/files/news/Sealed%20Criminal%20Filing%20Procedures%203-18-2020.pdf>

D. Second Circuit Court of Appeals

According to an order from the Chief Judge, dated March 16, 2020, all filing deadlines and other deadlines set out in the Federal Rules of Appellate Procedure, the Court's Local Rules and the Court's orders are extended or tolled, "as may be appropriate," by 21 days.

- For brief filing dates in counseled civil cases, the automatic dismissal provision in the order that set the original filing date remains in effect.
- The due date for a notice of appeal, petition for review or other document that confers jurisdiction on the Court is not affected by the order. The filing dates for those papers remain as stated in the statute or rule that confers jurisdiction.

<http://www.ca2.uscourts.gov/docs/Order%20-%20RAK%20Extending%20Filing%20Dates%20FINAL%2031620.pdf>

On March 19, 2020, the Second Circuit advised that "[e]ffective March 23, 2020 and until the COVID-19 crisis passes, the Court will hear all oral arguments using a teleconference platform." Counsel also were reminded that an appellate panel may determine "on submission" any appeal that meets the standard set out at Rule 34(a)(2) of the Federal Rules of Appellate Procedure. The Court's public calendar through April 17, 2020, suggests that the Court has availed itself of this authority to determine appeals on submission in a substantial number of matters.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Joel Kurtzberg at 212.701.3120 or jkurtzberg@cahill.com; or Peter J. Linken at 212.701.3715 or plinken@cahill.com; or email publications@cahill.com.