

States Must Toll Court Deadlines To Ensure Access To Justice

By **Adam Mendel and Rayna Kessler** (April 5, 2020)

In the wake of the COVID-19 pandemic, courts across the country are developing protocols to prioritize emergency applications and allow operations to continue to the fullest extent possible.

To manage this crisis, courts are suspending certain filing requirements that are temporarily incompatible with such efforts. One of the most important of these decisions is whether to toll or extend the statutes of limitations (time limits) that require a case to be brought within a specified time period.

There are several reasons why a state should consider temporarily lifting statutes of limitations.

First, doing so would decrease the number of filings and allow courts to focus on their essential operations during this health emergency. Second, less stringent deadlines would allow the legal community to better support efforts to flatten the curve and to encourage their clients to do the same. Third, such actions would promote the adjudication of claims on their merits once the public emergency subsides.

The most common approach thus far is to extend the statute of limitations to prevent the expiration during the state of emergency.

For example, on March 16, the New Hampshire Supreme Court ordered that “[s]tatutes of limitations and statutes of repose that would otherwise expire during the period between March 16 and April 6, 2020 are hereby extended to April 7, 2020.”[1] While the New Hampshire Supreme Court should be applauded for its clarity, this approach has the shortcoming of not providing for the possibility, if not likelihood, of the state of emergency extending past April 7. In other words, litigants need to be prepared to file on April 7, even if the state of emergency is extended and the Supreme Court issues a subsequent order

A preferable approach would be to toll the statute of limitations. While both extending and tolling statutes of limitation provide litigants with additional time to bring their claims in light of the pandemic, tolling has the added advantage of not requiring plaintiffs to prepare filings under quarantine.

For example, in its March 17 order, the Massachusetts Supreme Judicial Court ruled, “All statutes of limitations are tolled from the date of this Order through April 21, 2020.”[2] Effectively hitting the pause button, this order ensures that litigants will have as much time to prepare their complaints after the state of emergency subsides as they did when it began. Another example is New York, where on March 20, Gov. Andrew Cuomo issued an executive order tolling all statute of limitations until April 19.[3]

Whether tolling or extending a deadline, policymakers should be as clear as possible when crafting their orders. For example, on March 14, the Supreme Court of Georgia issued an order that “suspends, tolls, extends, and otherwise grants relief from any deadlines ... including, but not limited to any ... statute of limitation.”[4] Tolling, suspending, extending, and granting relief all have different implications on statutes of limitation, however, and it is



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unclear which approach Georgia is taking with this order.

A similarly muddled approach was taken by the District of Columbia Superior Court, which issued an order stating that “statutes of limitations [that would otherwise expire before May 15], are suspended, tolled, and extended during the period of the current emergency.”[5] While this order signals to litigants that the relevant statutes of limitations will not expire during the state of emergency, it is unclear how much time they will have to prepare their clients’ complaints for filing once the emergency is lifted. Considering the client input and investigation needed to prepare a complaint, this is a significant omission.

Perhaps most troubling, however, is when states are unclear about even whether the statutes of limitations will be affected. For example, the Rhode Island Supreme Court issued an executive order stating that “[r]equests for extensions to applicable statutes of limitations necessitated by the current health crisis shall be entertained by the respective courts after thirty (30) calendar days from the date of this Order.”[6]

While one would assume that courts would liberally grant extensions, merely allowing for the possibility of an extension provides little guidance for litigants. When crafting such orders, courts should be as forthcoming as possible in explaining to litigants how their rights may be secured.

In addition to supporting the essential functions of our judiciary system, tolling statute of limitation deadlines will also protect the rights of individual litigants, particularly those who are vulnerable and may not have the ability to act during this pandemic.

Indeed, the purpose of statutes of limitations is to prevent the unexpected enforcement of stale claims, not to deny a litigant’s right to be heard. As Americans focus on slowing the spread of the virus, taking care of loved ones, and supporting health care providers, policymakers can take actions now to preserve access to justice once we reach the other side of the apex.

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[1] Order Suspending In-Person Court Proceedings (N.H. Mar. 16, 2020), available at <https://www.courts.state.nh.us/supreme/orders/3-16-20-order.pdf>.

[2] Order Limiting In-Person Appearances in State Courthouses to Emergency Matters that Cannot Be Resolved Through a Videoconference or Telephonic Hearing, In re COVID-19 (Coronavirus) Pandemic (Mass. Mar. 17, 2020), available at <https://www.mass.gov/doc/supreme-judicial-court-order-limiting-in-person-appearances-in-state-courthouses-that-cannot-be/download>.

[3] Exec. Order 202.8, Continuing Temporary Suspension and Modification of Laws Relating

to the Disaster Emergency (N.Y. Mar. 20, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

[4] Order Declaring Statewide Judicial Emergency (Ga. Mar. 14, 2020), available at <https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf>.

[5] Order (D.C. Mar. 19, 2020), available at <https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Order-3-19-20.pdf>.

[6] Executive Order: COVID-19 Pandemic Response (R.I. Mar. 17, 2020), available at <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-04.pdf>.