



COVID-19 and Civil Litigation - Continuing Adjustments for Courts and Litigants

As you may have seen from our newsletters, all of us at Fletcher Farley have been working from our homes with help (or non-help) from furry companions while juggling the care and education of children, mediating high-stakes Netflix disputes, and trying to tune-out our family members' telephone calls and Zoom meetings. Wow it has certainly been a challenging past few months! We are grateful for the technology that has allowed us to work safely remotely, to continue to communicate with each other and you all, and to continue to zealously represent our clients. We are also grateful to have been able to give back to our communities during this time, including the privilege of providing meals to our local hospital workers. We hope that you also have been able to help or have been helped by your communities.

In our last alert, we discussed the uncertainty about the impacts the COVID-19 pandemic would have on pending litigation cases. Over the last two months, the Office of Court Administration ("OCA") has issued multiple guidelines and the Texas Supreme Court has issued sixteen Emergency Orders addressing court proceedings in light of the pandemic. These prior guidelines and Orders have allowed for discovery, depositions, mediations, and some hearings to continue. We know many of you have experienced the "new" ways in which litigation is being conducted utilizing the available technology, including Zoom mediations, and WebEx and Teams meetings. If you missed it, be sure to watch the recording of Joanna Salinas' panel presentation on adapting negotiating strategies for use with these remote proceedings. You can view the webinar on-demand by [clicking here](#).

While technology has allowed some hearings to continue, there is no question that COVID-19 has had the most significant impact on our litigation system via the postponement of jury trials- both criminal and civil. There are substantial safety concerns in calling (in many counties) hundreds of prospective jurors for jury selection- where 40 to 60 people or more are seated side by side in small courtroom galleries- and then seating twelve people in a jury box thereafter. On May 27, 2020, the Texas Supreme Court issued its Seventeenth Emergency Order. This Order directly addresses the tentative plan for the resumption of in-person jury trials in Texas. It is the Order of the Texas Supreme Court that no party be compelled to appear for an in-person jury trial until August 1, 2020.

The Supreme Court has authorized Courts to resume optional in-person jury trials after June 1, 2020 but only on a limited basis and only if the Court proposing to hold an in-person, binding jury trial meets the following requirements:

1. The holding court has submitted an operating plan to the Regional Presiding Judge and the OCA which is consistent with the OCA's guidelines in terms of limiting the

- number of potential jurors summoned, safe social distancing for participants and jurors, limitations on the number of persons present, use of technology to allow public viewing of the proceedings, sanitation of the court facilities, health screenings of participants and jurors, and wearing of masks by all attendees;
2. All parties consent to the in-person jury trial;
 3. The court permits the Office of Court Administration to observe and report on the proceedings; and
 4. The court does not permit or require a juror to appear remotely unless the Court ensures all potential and selected petit jurors have access to technology to participate remotely.

What does this new Emergency Order mean? Most importantly, this order confirms that we will not have civil jury trials in Texas state courts on a state-wide basis until at least August 1, 2020. If you have a case with a trial setting prior to August 1, 2020, your handling attorney will be contacting you once new dates are received from the trial court. Many of our cases are pending in courts which hear both civil and criminal cases. Because criminal defendants have a constitutional right to a speedy trial and civil litigants do not, criminal cases will receive priority in these courts once jury trials fully resume. We are anticipating delays in these courts well into 2021 for civil cases. Even in our larger counties with courts of exclusively civil jurisdiction, we expect the delays to be substantial as cases set for trial in March, April, May, June and July will have to be re-set. The Supreme Court and OCA have continued to give individual courts discretion in how they address this backlog on their dockets- some courts have advised that they will re-set these cases to their fall settings and bump any cases currently set on those fall dockets to 2021 while other courts are electing to re-set these postponed cases for 2021 and keep their other cases on their current fall settings.

While the Supreme Court has made it optional to have a civil jury trial between June 1, 2020 and August 1, 2020, it is important to note that this must be agreed to by all parties. In essence, these proceedings will be test proceedings for courts to see how jury trials work during this period. Frankly, we do not expect many civil courts or litigants to elect this voluntary option because of the challenges in summoning prospective jurors for an in-person proceeding, the likelihood of a very high no-show percentage for summoned jurors, and the stringent social distancing, sanitation, scheduling, and mask requirements during the proceeding.

We also wanted to let you know that the Supreme Court has extended the tolling of statutes of limitations for filing and serving lawsuits to August 15, 2020 for cases where the limitations period would run between March 13, 2020 and July 1, 2020. The current Emergency Order makes this tolling mandatory rather than discretionary for the trial courts.

In short, the wheels are beginning to turn on resuming jury trials in Texas state courts but there is still a great amount of uncertainty as to when and how this will occur. We are continuing to monitor all developments and the attorneys handling your cases will advise as information and guidance become available. In the meantime, we wish you all continued safety and good health.

[ABOUT THE AUTHOR:](#)

[Kristi Kautz](#) has been called an “excellent advocate for her client” by opposing counsel and she considers this to be one of the best compliments any attorney can receive. She is an experienced litigator who thrives on representing clients in cases ranging from simple to complex, from single-party to multi-party, and from pre-suit to post-judgment litigation. She has achieved excellent results in numerous fields including transportation, construction defect, product liability, premises liability, insurance coverage, and personal injury. Her practice extends to jurisdictions across Texas and you’ll find her equally at home advocating for her client in the courtroom and at the bargaining table.

[ABOUT THE FIRM:](#)

Fletcher, Farley, Shipman & Salinas LLP is a dedicated business defense firm with offices in Dallas and Austin. The firm’s attorneys leverage their extensive experience and skills as trial and appellate attorneys to achieve resolution both inside and outside of the

courthouse in matters including the defense of tort litigation, business and commercial litigation, construction, insurance, employment and dispute resolution. The firm's unique Rapid Response Team™ provides a legal forensic service that can be deployed nationwide around the clock, within moments, to assist clients in responding to catastrophic losses.

Information presented in this article is accurate as of date of publication. The information provided is not legal advice and use of this information does not create an attorney-client relationship. You should always consult an attorney for more current information, changes in the law or any other information specific to your situation.

Fletcher Farley Shipman & Salinas LLP

fletcherfarley.com

Contact Us

