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TEXAS LAW★ALERT

Litigation in the Midst of a Pandemic

As a starting point, this article is coming to you from one of Fletcher Farley's newest locations: my home office. I'm accompanied not by our fantastic staff but by a canine companion who tends to sleep (and snore) on the job. We're working on that! But never fear, legal practice and litigation continues!

Several of you have asked us about both the short-term and long-term impacts the COVID-19 pandemic may have on your pending litigation cases. The following is a brief synopsis of the current orders impacting our civil litigation system as well as an evaluation of the potential longer-term consequences. The highest state court in Texas for civil cases is our Texas Supreme Court, which has the authority to issue orders governing the proceedings in all civil district and appellate courts. As of this article, the Court has issued seven emergency orders addressing court proceedings in light of the pandemic- two of which concern general civil matters.

On March 13, 2020, the Court issued its First Emergency Order which states that all Texas courts may, and must do so if necessary to avoid risk to court staff, parties, attorneys, jurors, and the public:

- Modify or suspend any and all deadlines and procedures for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted;
- Allow or require anyone involved in any hearing, deposition or other proceeding of any kind to participate remotely via teleconferencing, videoconferencing or other means;
- Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;
- Conduct proceedings away from the court's usual location, but in the county of venue, and only with reasonable notice and access to the participants and the public.

Significantly, this Order also states that Texas courts may extend the statute of limitations in any civil case for a state period ending no later than 30 days after the Governor's state of disaster has been lifted. This Order expires on May 8, 2020 unless extended.

On March 19, 2020 the Court issued its Third Emergency Order which expressly prohibits Courts from conducting any non-essential proceedings in person which would violate local, state or national directives, whichever is most restrictive, regarding maximum group size.

So, what do these Orders mean for our cases? First, we have noted that many of the judges that we have cases in front of have elected to consider the majority of written motions, particularly motions for summary judgment, by submission rather than holding hearings. Second, courts have postponed non-essential hearings for the time being to allow for technological alternatives to be set up such as Zoom, YouTube, etc. Some of the courts are already up and running with this technology and have resumed hearings. Third, depositions which were scheduled for the end of March and early April have been rescheduled due to restrictions in travel and group size. The court reporting firms we work with regularly have advised that they are working to be able to host and transcribe depositions via

videoconferencing systems, as permitted by the Supreme Court's order. Finally, mediators across Texas are also adapting to conduct mediations via videoconferencing as well. We expect that this technology will permit a resumption of many depositions and mediations in the next few weeks. The Court's first order specifically allows for extension of deadlines, such as the discovery and expert deadlines, to allow for the time lost to these delays.

The most significant impacts of this Order for the future concern the suspension of jury trials until May 8, 2020 and the discretion afforded to courts to extend the statute of limitations. Court staff, like all of us, are working in uncertain times and to date, no court has been able to advise how the cancellation of approximately seven weeks of jury trials will be handled on the court's schedule doing forward. Some courts may work those cases into their first available jury weeks when the restriction is limited, pushing other scheduled cases to new dates. Other courts may keep scheduled cases and reset the cancelled cases to new dates. We expect some of this will depend on the preference of individual judges if there is no guidance issued by the Texas Supreme Court on the issue. The attorneys handling your cases will inform you as to changing trial dates as that information becomes available. As to the extension of the statute of limitations, this is specifically discretionary under the Court's order. In this age where pleadings can be filed electronically, we expect that judges evaluating cases attempting to invoke the extended limitations period will need to receive some evidence that the pandemic affected the ability to timely file the suit.

The US Supreme Court has issued similar Orders for all Federal courts. Many of the Federal courts already do a great deal of their work via submission of written motions and teleconferences and that has continued. Federal trials will likewise be rescheduled and we will advise of new trial dates on any cases with our Firm which have been impacted.

Remember, although our physical offices are closed, our home offices are up and running. Please email us with any questions, concerns, or needs and we will be happy to assist. Also, keep in mind that serious accidents happen even during pandemics and our Rapid Response does too!

Stay home (if able) and most of all, stay safe.

[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.

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