

COVID-19 TEMPORARILY CHANGES THE RULES OF LITIGATION

In response to the COVID-19 Pandemic, the Texas Supreme Court has entered emergency orders that alter some of the basic rules of litigating in state court in Texas. These orders provide opportunities that are not possible under ordinary circumstances. In this extraordinary time, the Texas Supreme Court has made it easier to introduce testimony from a witness who cannot appear in person and has granted extensions of time to file lawsuits and prepare cases for trial. The Texas Supreme Court sacrificed otherwise non-negotiable legal rules for the greater good.

HEARSAY STATEMENTS AND TELE-APPEARANCES

When a party wishes to introduce the testimony of a witness at a trial or hearing, the party has two choices: (1) call the witness live; or (2) introduce the witness's prior deposition testimony. Affidavits, declarations, letters, and recorded statements are not an allowable substitute for live testimony because such testimony is hearsay—an out of court statement offered to prove the truth of the matter stated—which is inadmissible under Rule 802 of the Texas Rules of Evidence. While there are exceptions to the hearsay rule, it creates a huge obstacle to telling a story in court about what people said out of court without bringing witnesses to court to tell their story. But, the Texas Supreme Court has temporarily rewritten the hearsay rule as it relates to sworn statements made out of court. The court will now, temporarily, permit a trial court to "consider as evidence sworn statements made out of court." This presents an opportunity to use affidavits and sworn declarations as evidence in an evidentiary hearing. Another option now permitted by the Court when a witness cannot physically attend a court proceeding is remote video testimony. Under the Texas Supreme Court's emergency orders, a trial court can allow anyone involved in a hearing, including a witness, to participate remotely by teleconferencing. Imagine a witness halfway around the world who cannot be brought to court to testify and who has not been deposed. This witness can now testify through a teleconference. Unless extended, these special rules expire on July 31, 2020.

STATUTES OF LIMITATION

Texas has imposed fixed deadlines, called statutes of limitation, for filing suit on claims. While some deadlines can be extended by equitable rules, such as the discovery rule or the fraudulent concealment rule, these deadlines are usually hard and fixed deadlines and, if missed bar the filing of suit. The Texas Supreme Court has extended any statute of limitation deadline that would expire between March 13, 2020 and July 1, 2020 to August 15, 2020. This gives litigants who have delayed filing suit more time to get their lawsuits in under the extended deadline.

AN AUTOMATIC CONTINUANCE

With a few limited exceptions, the Texas Supreme Court is not permitting jury trials to occur in Texas before August 1, 2020. As a result, Texas trial courts have been required to reschedule almost all jury trials until after July 31, 2020. This backlog will be difficult to process and, as a result, most trials scheduled in 2020 will not occur until 2021 at the earliest. As a result, cases that were not ready for trial have gotten breathing room. And in most cases, trial courts are resetting pretrial deadlines as well, meaning that expired pretrial deadlines that would otherwise bar pleading amendments, discovery, expert designations, and dispositive motions are being extended.

The Texas Supreme Court has entered numerous emergency orders during the COVID-19 crisis, addressing many issues involving the Texas judicial system. And, local courts have, through power delegated to them by the Texas Supreme Court, also adopted special rules and have largely postponed most legal proceedings. The Texas Supreme Court's orders can be viewed at <https://www.txcourts.gov/supreme/administrative-orders/>.

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