

CLIENT ALERT

APRIL 17, 2020

U.S. Insight: Delaware Court's Response to the COVID-19 (Coronavirus) Pandemic

In light of the coronavirus public health emergency, on April 14, 2020, Delaware Supreme Court Chief Justice Collins J. Seitz, Jr. issued Administrative Order No. 4, extending through June 1, 2020 those litigation deadlines set to expire between March 23, 2020 and May 14, 2020.¹ This Order comes after Chief Justice Seitz's March 22 Order which had extended through April 21, 2020 deadlines set to expire between March 23 and April 15.² The Delaware Court of Chancery and the Delaware Superior Court have also entered their own orders in response to the pandemic.

Delaware Supreme Court

Administrative Order No. 4 extends through June 1, 2020 "deadlines in court rules or state or local statutes and ordinances applicable to the judiciary," statutes of limitation, and statutes of repose set to expire between March 23, 2020 and May 14, 2020³ The Order clarifies that "[d]eadlines, statutes of limitations, and statutes of repose that are not set to expire between March 23, 2020 and May 14, 2020 are not extended or tolled by this order."⁴ Any deadlines imposed by court order remain in place but may be extended for good cause shown, including a COVID-19 related cause.⁵

Administrative Order No. 4 further provides that all courthouses and administrative offices in Delaware are closed to the public through May 14, 2020.⁶ Access to courts is restricted to identified personnel and "emergency and essential hearings and operation."⁷ The Order authorizes courts to continue to utilize audiovisual technology at court facilities or remotely in order to conduct all proceedings except for jury trials.⁸ Non-emergency and non-essential telephonic arguments, telephonic hearings, or video conferences shall proceed electronically at the discretion of each state court.⁹ The Order also extends the previous declaration of judicial emergency through May 14¹⁰ which

¹ In re Covid-19 Precautionary Measures, Administrative Order No. 4, ¶ 9 (Del. Sup. Ct. April 14, 2020).

² In re Covid-19 Precautionary Measures, Administrative Order No. 3, ¶ 6 (Del. Sup. Ct. Mar. 22, 2020).

³ In re Covid-19 Precautionary Measures, Administrative Order No. 4, ¶ 9 (Del. Sup. Ct. April 14, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, ¶ 4.

⁷ *Id.*

⁸ *Id.*, ¶ 2.

⁹ *Id.*, ¶ 8.

¹⁰ *Id.*, ¶ 1.

gave trial courts discretion “to continue trials and hearings in civil and criminal cases for a period of 30 days.”¹¹

Delaware Court of Chancery

On March 23, the Delaware Court of Chancery issued “Statement Concerning Supreme Court Administrative Order No. 3,” elaborating on the measures set forth in Administrative Order No. 3.¹² The Statement clarified that litigants who have the ability to file documents electronically must continue to do so.¹³ Additionally, the Court recognized “that many hearings and case schedules will have to be adjusted, perhaps multiple times.”¹⁴ The Court “will be solicitous of granting any reasonable requests for extensions” and asked parties to work together to agree on extensions without involving the Court.¹⁵

In Standing Order No. 2, dated March 16, the Chancery Court ordered that all hearings and trials be conducted telephonically and where impracticable, the hearing or trial shall be continued.¹⁶

On April 15, the Chancery Court issued Standing Order No. 4 extending the measures it implemented in Standing Order No. 2 for an additional 30 days beginning on April 15.¹⁷ Specifically, the Chancery Court ordered all hearing and trials to be conducted by telephone or other electronic means; if the presiding judicial officer deems it to be impracticable to conduct the hearing in this way, the hearing or trial shall be continued.¹⁸ The Order also allows a party to request an in-person hearing “in the event of an exigent need, e.g., the existence of a threat of imminent irreparable harm.”¹⁹ The party requesting the in-person hearing must show good cause for having an in-person hearing and that all other means of conducting the hearing are impracticable.²⁰

¹¹ Order Declaring a Judicial Emergency, ¶ 2 (Del. Sup. Ct. Mar. 13, 2020).

¹² Statement from the Court of Chancery Concerning Supreme Court Administrative Order No. 3, <https://courts.delaware.gov/rules/pdf/Chancery-Stmt-re-Admin-Order.pdf>

¹³ *Id.*

¹⁴ Statement from the Court of Chancery Concerning Supreme Court Administrative Order No. 3, <https://courts.delaware.gov/rules/pdf/Chancery-Stmt-re-Admin-Order.pdf>

¹⁵ *Id.*

¹⁶ Standing Order No. 2, Concerning Covid-19 Precautionary Measures, ¶ 1 (Del. Ct. Chancery Mar. 16, 2020).

¹⁷ Standing Order No. 3, Extension of Standing Order No. 2 Concerning Covid-19 Precautionary Measures, ¶ 2 (Del. Ct. Chancery April 15, 2016).

¹⁸ *Id.* ¶1(a).

¹⁹ *Id.* ¶ 2(a).

²⁰ *Id.*

Delaware Superior Court

On April 15, the Delaware Superior Court issued Standing Order No. 6, extending any expiration dates set forth in previous Standing Orders to May 14, 2020.²¹ Specifically, all civil jury trials through and including May 29, 2020 are suspended and will be rescheduled “as early as reasonably practicable.”²² The Court also suspended deadlines for pre-trial filings, such as pretrial stipulations, proposed jury instructions, and motions *in limine*, for civil cases that have been suspended.²³

The Court postponed “non-essential” civil matters until further notice and ordered “essential matters,” including “civil commitments, gun relinquishments and public health quarantine and/or isolation petitions” to be conducted through video or phone technology.²⁴ The Court stated that “[d]eadlines imposed by court order continue to remain in place but may be extended, consistent with court practices, for good cause shown, including a COVID-19-related cause.”²⁵ The Court urged litigants to work together to reach agreements on reasonable deadline extensions without involving the court.²⁶ The Court has also waived the requirement of providing paper copies, unless a judge makes a specific request.²⁷

²¹ Standing Order No. 6, Concerning Covid-19 Precautionary Measures, ¶ 1 (Del. Superior Ct. April 15, 2020).

²² Amended Standing Order No. 4, Concerning Covid-19 Precautionary Measures, ¶ 1 (Del. Superior Ct. April 15, 2020).

²³ *Id.*

²⁴ *Id.* ¶ 2.

²⁵ *Id.* ¶ 7.

²⁶ *Id.*

²⁷ Standing Order No. 3, Suspending “Courtesy” Copies to Chambers, ¶ 1 (Del. Superior Ct. Mar. 16, 2020).

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