

Checking In With Delaware Courts Amid the COVID-19 Crisis

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While Delaware's "stay at home" order remains in place amid the COVID-19 pandemic, the Delaware Supreme Court and Court of Chancery are still operational, and legal services providers, which are deemed "essential," may continue to conduct business. Given the state's prominence in establishing and enforcing corporate laws, businesses should note that corporate litigation pending in Delaware continues with relatively minimal interruptions and new matters may be filed in the state or federal courts when the need arises. Below are key highlights regarding the courts' current status and procedures. While the situation continues to evolve, Delaware's courts are well-positioned to operate in the current climate.

Parties May Continue To File Documents With the Courts

From a corporate and commercial perspective, filings are largely proceeding without interruption. Delaware courts are better prepared than many to deal with the current crisis. Long before COVID-19 surfaced, the Delaware state and federal courts mandated electronic filing for virtually all corporate and commercial matters. Thus, the recent disruption caused by the pandemic has not prevented litigants from filing pleadings and other documents in Delaware or the courts from receiving them.

"The Delaware Supreme Court has taken steps to adjust procedural requirements that could have curtailed a litigant's ability to file papers." For example, many types of filings, including complaints and counterclaims in the Delaware Court of Chancery, require notarized verifications or affidavits to be included in support of the filing. Gaining access to a notary in the current environment could present substantial challenges. As a result, the Delaware Supreme Court has temporarily suspended the need for notarized documents and instead allowed litigants to submit declarations made under penalty of perjury.¹

All Delaware Courts Continue To Issue Decisions, and Several Are Scheduling Telephonic Hearings

Although all state courthouses in Delaware are closed to the public until May 14, 2020, the Court of Chancery continues to schedule hearings and hear telephonic arguments from litigants, and the Delaware Supreme Court continues to issue decisions on pending cases.² Delaware federal courts are also open for official business and holding hearings telephonically, including for commercial disputes.³

The Court of Chancery is conducting virtually all hearings telephonically. The court has a long tradition of accommodating parties and counsel by holding hearings telephonically, positioning it to minimize disruption as a result of COVID-19. If conducting a hearing telephonically is not practicable, the hearing shall be continued in person. A party may

¹ Similarly, the U.S. Bankruptcy Court in Delaware has temporarily suspended the requirement for physical signatures from a debtor for any documents filed electronically, subject to certain requirements.

² The Delaware Superior Court, including its Complex Commercial Litigation Division (the CCLD), has announced that civil jury trials are suspended through and including May 29, 2020. The court has also announced that all "nonessential" proceedings, including all commercial disputes, are postponed until further notice. However, the CCLD and the Superior Court as a whole continue to issue opinions.

³ Individual judicial officers in the District of Delaware have discretion to continue to hold hearings and other proceedings by telephone, videoconferencing or otherwise. All civil jury trials in the District of Delaware scheduled to begin before May 31, 2020, have been continued indefinitely. The U.S. Bankruptcy Court continued all matters that are not time sensitive until after May 18, 2020, and any proceedings necessary prior to May 18, 2020, are conducted telephonically or by videoconference. All deadlines under federal or local rules, or existing scheduling orders, are to remain in effect unless modified by the court.

request by motion that the court conduct an in-person hearing in the event of an exigent need. The Court of Chancery has also expressed a willingness to hold trials electronically, if necessary. Because trials in the Court of Chancery do not involve juries, it has more flexibility to conduct trials remotely. Unlike many courts, the Court of Chancery largely relies on the parties to agree to an order detailing the schedules governing briefing on motions and other pretrial procedures. These scheduling orders remain in effect. However, the Court of Chancery has stated that it will consider any requests for relief from these scheduling orders related to COVID-19 issues, and anecdotal evidence to date suggests that the court is routinely granting such requests.

The Delaware Supreme Court announced that all oral arguments scheduled through the end of May 2020 are canceled and that the court will decide those appeals on the briefs. The court has allowed parties to file a motion requesting oral argument.

Certain Deadlines and Statutes of Limitation and Repose Have Been Tolled

While courts continue to proceed with as little disruption as possible under the current circumstances, the Delaware Supreme Court

has provided relief to potential litigants facing a looming statute of limitations. In an April 14, 2020, administrative order, the court extended its earlier order from March 22, 2020, and stated that:

Deadlines in court rules or state or local statutes and ordinances applicable to the judiciary that expire between March 23, 2020 and May 14, 2020 are extended through June 1, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period between March 23, 2020 and May 14, 2020 are extended through June 1, 2020. Deadlines, 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.

As a result, litigants with deadlines imposed under court rules or potential litigants in Delaware state courts who were required to file claims between March 23, 2020, and May 14, 2020, or risk being barred now have until June 1, 2020, to file their papers. For now, litigants with rule-imposed or statutory deadlines after May 14, 2020, still must file by the applicable state or local deadline. Note that, as described above, this does not alleviate deadlines imposed by scheduling orders.

Takeaways

- The governor of Delaware has declared that legal services providers are “essential” and the state and federal courts in Delaware are operational. Litigation continues to proceed and litigants may continue to bring new disputes to the courts.
- Parties may continue to file pleadings and other papers with the state and federal courts via electronic filing.
- The Delaware courts continue to issue decisions. The Court of Chancery and the Delaware federal courts are continuing to schedule new hearings telephonically, though leeway is being granted to amend schedules for COVID-19-related reasons. Parties should anticipate that any hearing scheduled between now and (at a minimum) mid-May 2020 will be held telephonically.
- The Delaware Supreme Court has tolled deadlines set by state statutes or court rules, including statutes of limitations, that would otherwise expire during the period between March 23, 2020, and May 14, 2020. These deadlines have been extended through June 1, 2020. However, this extension does not apply to deadlines agreed to or imposed in existing scheduling orders. Relief from those deadlines is considered on a case-by-case basis by the court.