

Court Deadlines after a Disaster

HURRICANE KATRINA'S RECENT DEVASTATION of New Orleans included the flooding of courthouses and the destruction of law offices. In California, courts and lawyers may have to confront natural disasters such as earthquakes, wildfires, and landslides, as well as problems of a more human origin, such as power failures, terrorist attacks, anthrax scares, or riots.

The job of gauging the impact of a disaster on timing requirements rests in the hands of the Judicial Council. In particular, Government Code Section 68115 vests the Judicial Council's chair with wide-ranging powers to mitigate a disaster's effects on the ability of litigants to file documents. These powers arise during war, insurrection, pestilence, public calamity, the destruction of a courthouse, or when mass arrests threaten orderly court operations.

The chair may, with proper public notice, authorize court sessions anywhere within the relevant county or transfer civil cases pending trial to adjacent counties.¹ The chair also may declare the dates of an emergency condition that interferes with the public's ability to file papers to be holidays for purposes of computing time for the filing of papers or conducting court proceedings.² Such an order provides relief because Code of Civil Procedure Sections 12 and 12a exclude holidays from the computation of legal time requirements.

A holiday declaration likewise extends the time for courts to conduct proceedings that otherwise would be subject to deadlines.³ These extensions must be kept to the fewest number of days necessary.⁴ The chair also has authority to grant extensions affecting matters such as temporary restraining orders, detention hearings, and other deadlines under penal and juvenile law.

When the Judicial Council issues an emergency order, the courts strictly construe it and show little sympathy to litigants who miss deadlines. For example, in *Power Partners International, Inc. v. Dominion Energy*,⁵ the trial court's jurisdictional deadline to decide a motion for judgment notwithstanding the verdict would have expired on October 27, 2003. Wildfires, however, prompted an emergency order that closed the court and declared October 27 through 29 to be judicial holidays, thus moving the court's deadline to rule to October 30. The trial court did not hear the posttrial motions, however, until October 31, when it granted JNOV.

The court of appeal voided the order, holding that the trial court's jurisdiction expired on October 30. The appellate court rejected the argument that the assigned judge's courtroom was closed on October 30, noting "the fact that an individual judge is not in attendance at an otherwise open courthouse does not create a courtroom-specific section 12b holiday for affected litigants."

The *Power Partners* court cited *Bennett v. Suncloud*,⁶ another example of strict adherence to an emergency order. In *Bennett*, the plaintiff's statute of limitations was to expire on January 18, 1994, and the plaintiff attempted to file a complaint that day at a "branch office" courthouse. This was the day after the Northridge earthquake killed 57 people and injured over 1,500. Because the courthouse was closed and cordoned off with yellow tape, the plaintiff could not

file his complaint until the next day. The trial court later sustained the defendant's demurrer on limitation grounds.

On appeal, the court of appeal explained that the closing of a branch courthouse did not suffice to create a holiday under Section 12b, because the language of that statute specifically excludes branch offices. Nonetheless, the court reversed the judgment because the plaintiff had presented a document indicating that the Downtown courthouse was also closed on January 18, thus raising a factual issue sufficient to overcome a demurrer.

The chair of the Judicial Council also has powers under Rule 45.1 of the Rules of Court to address appellate emergencies necessitated by an earthquake, fire, or other public calamity. This rule allows the chair to extend the deadline by 14 days for any act required to be done under the rules. The rule also allows the chair to authorize specified courts to extend deadlines by up to 30 days.

Rule 45.1, enacted in 1995, appears to be aimed at creating a flexible approach to emergency rules. Before the adoption of Rule 45.1, the Judicial Council enacted ad hoc emergency rules of appellate practice. For example, one week after the October 17, 1989, Loma Prieta earthquake, the council enacted former Emergency Rules A and B of the California Rules of Court. Rule A provided exclusions of time for specified acts between October 18 and November 1, 1989. Rule B extended the time for filing notices of appeal. Likewise, former Rules C and D arose in response to the January 17, 1994, Northridge earthquake. These four earthquake emergency rules remained on the books until they were repealed in 2002, having served their intended purpose. These rules may have given rise to the geographic flexibility embedded into Rule 45.1, because the lettered rules applied equally across regions unaffected by the specific earthquakes giving rise to the rules. The newer rule, Rule 45.1, avoids this anomaly by allowing specific courts to allow extensions. One emergency rule remains in effect today: Rule E, adopted September 11, 2001, excludes that date from any appellate court time computations.

Inevitably, California will confront disasters. At best, practitioners can hope that the need for Emergency Rule F will not arise soon. But when disaster strikes, California attorneys need to keep an eye on the Judicial Council or risk that their cases will become the disaster's next victim. ■

¹ GOV'T CODE §§68115(a) & (b); see *Ross v. Austill*, 2 Cal. 183 (1852) (The time and place of holding court should not be left in doubt.).

² GOV'T CODE §68115(c).

³ PENAL CODE §825; WELF. & INST. CODE §§313, 315, 631, 632, 637, 657.

⁴ GOV'T CODE §68115(d).

⁵ *Power Partners Int'l, Inc. v. Dominion Energy*, 2005 WL 2030875 (No. D043414, Aug. 2005).

⁶ *Bennett v. Suncloud*, 56 Cal. App. 4th 91 (1997).

Benjamin G. Shatz, a certified specialist in appellate law, is a member of the Appellate Practice Group of Manatt, Phelps & Phillips LLP. Melissa D. Goetz is an associate in the firm's Litigation Division.