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Updates on Court Protocols during COVID Emergency

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The combination of the Governor's shelter order and complimentary orders entered by many Michigan courts, including the Michigan Supreme Court (MSCt), has brought civil litigation to a virtual standstill. A few courts are holding remote access settlement conferences and time sensitive hearings. The MSCt has recently updated its rules for virtual court proceedings.

The MSCt has also entered an order extending both statutes of limitations and filing deadlines for new lawsuits. Information as to the stay orders in effect at Michigan courts are available on the Michigan State Bar website, at local court guidelines, and at courts.michigan.gov. All five federal court locations for the

Eastern District of Michigan remain indefinitely closed for trials.

Civil discovery has also dramatically slowed. One can only wonder when and if we will return to face to face depositions with multiple participants.

The timing for re-opening the courts is no clearer than that for reopening Michigan's economy. On May 7th Gov. Whitmer extended her Stay Safe Order until May 28. On May 6 the MSCt issued new orders

All phases require ongoing social distancing and use of PPE along with the now familiar enhanced hygiene practices.

extending closure provisions and encouraging continued maximum use of virtual hearings. It is expected that there will be expanded use of required or permitted video or phone conferences for motions and

other hearings in civil cases, given likely restrictions limiting crowd size in city and county buildings and individual court rooms. The MSCt has formed a committee to investigate the options for remote hearings and trials.

The MSCt issued a May 6 order entitled Return To Full Capacity: COVID 19 Guidelines for Michigan's Judiciary. The Guidelines are said to adopt CDC guidance. Each Chief Judge is required to assess the local situation and tailor an initial plan to that locale in consultation with local health officials. Ongoing data collection and consultation are required for development of new plans to move to the next more open state. The initial and all succeeding plans are required to be submitted to the State Court Administration Office for approval. The MSCt adopted a four phase plan with explicit Gating Criteria which must be met to progress to the next stage. Gating Criteria include any history of symptoms within the court facility, a decrease in local

cases of COVID 19, and the capacity of the local health system to treat Covid cases. Not until phase 3 may jury assembly areas be reopened.

Courts at every level, including the criminal justice system, have postponed or canceled proceedings. Even local law enforcement has slowed, and many departments have expanded citation in lieu of arrests, with the policy to only arrest persons with certain types of crimes, mainly those that are considered violent in nature. Every law enforcement department has created its own policies. Correctional facilities have been identified as extremely high risk for the spread of COVID-19. Therefore, there have been strategies to limit jail admissions and release persons from jail and prison whenever possible. At the juvenile justice level, only certain types of cases that involve dangerous situations for children, or certain emergency motions, limited to child safety issues, are being heard by the courts. Likewise, district courts and circuit courts have shut their doors to hearing criminal cases except for those that involve high felonies or dangerous crimes. Anything that can be done via a remote system is being utilized. Cases are on backlog, but with certainty cases will be adjudicated as soon as it is safe to do so.

The five federal court locations for the Eastern District of Michigan are not holding jury trials but are conducting some remote access hearings. No date has been announced for resumption of jury trials.

Wayne County has advised that no criminal jury trials will be heard before August 21 and no civil jury trials before September 1. On May 11, Oakland County's official advice is that no civil jury trials will be held prior to August 21 and that new dates for jury trials will be provided going forward. Unofficial comments by Oakland County and Wayne County Circuit Court judges have suggested civil trials will not resume until 2021. The Washtenaw County Circuit Court states resumption of civil jury trials will be decided day to day after May 1. Macomb County Circuit Court advises no jurors need report. In district and circuit courts in most counties besides Wayne, judges may face a backlog of criminal matters that often take scheduling preference over civil trials.

While civil jury trials have been and are certainly going to be delayed, it would require a great many legislative and cultural changes to eliminate them. It is too early to anticipate whether or not a resurgence of the virus may occur as our economy and

personal activities resume, and if a new spike does occur, how the court system will react. Even without a pronounced resurgence, a longstanding residual effect may be some form of social distancing in civil litigation and trials.

Many Michigan residents have been out of work and many who aren't have concern for the economic viability of small businesses they formerly frequented. Many potential jurors may have been reminded of the "value of a dollar" and that large verdicts against Michigan employers and governmental entities may have a detrimental indirect effect on themselves and their communities. It is anticipated the public outpouring of support for First Responders, medical providers and facilities will continue well after the stay home orders are lifted. Some plaintiffs may have a heightened need for access to funds which could be made available through timely settlement, and may not wish to wait and "roll the dice" at a very unpredictable future trial. Whether those feelings, along with the widespread reporting of difficult economic times at Michigan hospitals and other businesses, will translate into more conservative jury verdicts is difficult to predict but not out of the question. Prudent plaintiff lawyers may well feel a

somewhat lower settlement offered at this time may allow their clients to avoid delay and the possibility of jury bias.

Should such considerations prevail in the Michigan plaintiff's bar, it could result in an opportunity for favorable

settlements for hospitals and other defendants.◊



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