

CLIENT ALERTS

AO 2020-3: What Does the Michigan Supreme Court's Tolling Order Mean for You?

3.24.2020

On Monday, March 23, 2020, Governor Whitmer issued a stay-home order requiring nonessential businesses and workers to stay home. For her order, see EO 2020-21. Less than two hours later, the Michigan Supreme Court issued an order tolling deadlines that apply to the commencement of all civil and probate-case types. For the Court's order, see AO 2020-3.

The Court's order is short, but there are three important takeaways:

First, the AO only applies to **State** cases. Federal court deadlines are not affected. **But** where a Michigan statute of limitations applies in a federal case (e.g., in diversity actions and in federal cases that borrow the limitations period from a State statute), litigators should argue that AO 2020-3 affects a question of substantive law under Erie.

Second, the AO only applies to State **trial courts**. Some might be tempted to read the order broadly and assume that the tolling for "deadlines pertaining to case initiation" applies to appeals. **We strongly caution against that approach.** The AO specifically talks about the filing of pleadings under MCR 2.110 and pre-answer motions under MCR 2.116. Under MCR 2.110(A), pleadings are limited to complaints, crossclaims, counterclaims, third-party complaints, answers to the foregoing, and replies to answers. Although lawyers sometimes call everything we file a pleading, in reality, anything not listed in MCR 2.110(A) is a "document" (or what's known as a "paper" in federal court). "Claims of appeal" and "applications for leave" are not pleadings under this rule, so there is a high risk that the Court of Appeals could hold that the AO does not apply to the deadlines for initiating appeals.

Related People

Daniel J. McCarthy
Shareholder

Joseph E. Richotte
Shareholder

Kurtis T. Wilder
Shareholder

Related Services

Appellate Law

Appellate Specialty Team

Litigation and Dispute
Resolution

CLIENT ALERTS

Third, the AO only applies to **civil and probate cases**. Prosecutors and criminal defense attorneys alike take note: this order does **not** toll deadlines to initiate criminal prosecutions or criminal appeals. Even though law enforcement is an essential service under the Governor's order, self-quarantine rules may pose staffing challenges for prosecutors' offices and backlogs in processing warrant requests. Prosecutors, prioritize old cases to avoid being barred by limitations periods. Defense attorneys, double-check that the statute of limitations hasn't expired. Defense attorneys should also plan to keep meeting deadlines for criminal appeals.

Our Appellate Practice Specialty Team is on standby to help you timely perfect appeals—whether by right or by leave—during COVID-19 interruptions. Contact us today for assistance.

Joe Richotte

248.258.1407

richotte@butzel.com

Kurt Wilder

313.983.7491

wilder@butzel.com

Dan McCarthy

248.258.1401

mccarthyd@butzel.com