

Davis & Gilbert
ADVANTAGE

Coronavirus (COVID-19) New York Courts FAQs

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While the coronavirus certainly has disrupted “business as usual,” New York federal and state courts are trying, despite challenges, to remain open to address urgent matters and move pending cases forward without undue delay.

Davis & Gilbert litigation partners **Marc Rachman** and **Ina Scher** address the key questions on how the courts are modifying their practices. If you have additional questions on the status of New York courts, or any other jurisdictions, please contact them or the D&G attorney with whom you have regular contact.

Q: Are all New York courts shut down due to the COVID-19 crisis?

A: No, many courts remain open in New York, but are operating with a minimal number of judges and limited staff dedicated to addressing urgent matters. Judges are also working remotely and presiding over hearings and conferences by-phone or video.

- >> As of March 16, all new civil and criminal jury trials have been suspended. Jury selection has also been halted, and grand juries will not be empaneled “absent exceptional circumstances.”
- >> As of March 22, the New York state trial courts and county clerks have suspended filings for all matters other than essential proceedings.
- >> As of March 30, the federal court for the Southern District of New York in Manhattan will be open only to hear urgent criminal matters and applications for immediate injunctive relief.
- >> On a limited basis, the New York state appellate courts and Second Circuit Court of Appeals remain open and operational.

Q: What is considered an essential proceeding in New York state court? If you need emergency relief, is that sufficient?

A: For civil matters in Supreme Court, essential proceedings include only the following:

- >> Mental Hygiene Law (MHL) applications and hearings addressing patient retention or Release;
- >> MHL hearings addressing the involuntary administration of medication and other medical care;
- >> Newly filed MHL applications for an assisted outpatient treatment (AOT) plan

- >> Emergency applications in guardianship matters;
- >> Temporary orders of protection (including but not limited to matters involving domestic violence);
- >> Emergency applications related to the coronavirus;
- >> Emergency Election Law applications; and
- >> Extreme risk protection orders (ERPO)

Civil courts may also hear “any other matter the court deems essential.”

If your emergency relief does not concern any of the above, you cannot currently seek emergency relief in New York State Supreme Court. However, if there is a basis for federal jurisdiction, you may be able to seek such relief in a federal court in New York.

Q: Is discovery also stayed in New York court cases?

A: No, document and interrogatory discovery are proceeding in New York state and federal court cases, but the individual rules for the presiding judge should be checked. In addition, depositions are able to proceed remotely via video conferencing if they cannot be adjourned until a later date. In New York state court, the parties are to use their best efforts to agree upon extensions of no more than 90 days to address delays related to coronavirus health emergencies. The courts are also not going to hear disputes now if the parties cannot work it out, and no party is going to be penalized for delays “relating to the coronavirus public health emergency.”

Q: Can Landlords institute eviction proceedings against tenants right now in New York?

A: No, under New York Governor Andrew Cuomo’s March 20 Executive Order, as of March 20, there is a 90-day suspension of any eviction or foreclosure actions against both residential and commercial tenants.

Q: What if my case has a claim that is about to expire based upon an applicable statute of limitations and I can only bring it in New York state court?

A: All statutes of limitations under New York state law are currently tolled through April 19 meaning that a complaint that would otherwise have been dismissed as untimely if not filed before April 19 will remain viable and can be filed after that date.

Q: Can I bring any case in federal court instead of state court?

A: No, to bring a case in federal court, the case must either involve a claim based under a federal statute, or have complete diversity of citizenship between all of the parties (i.e., none can be headquartered, incorporated or reside in the same state) and the amount in controversy must be at least \$75,000, exclusive of interest and costs.

In light of the unavailability of New York state courts for new proceedings, consideration should be given to whether cases that may otherwise have been brought in state court can be brought in federal court. As an example, typically, restrictive covenant employment cases are brought in New York state court, but if the claims also include misappropriation of trade secrets, such cases could be brought in federal court under the Defend Trade Secrets Act. Delays, however, should be expected, especially in having judges assigned to new cases, and consideration should be given to only burdening the courts with new matters that are truly of an urgent nature.