

MARCH 27, 2020

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EXECUTIVE ORDER 7G:

SHOULD ATTORNEYS RELY ON THE CONNECTICUT
GOVERNOR'S SUSPENSION OF STATUTORY DEADLINES
FOR COURT PROCEEDINGS DURING THE COVID-19 CRISIS?

During this difficult time of physical distancing and remote working, Connecticut's Governor has suspended statutory deadlines applicable to judicial proceedings. Many in the legal profession welcome this development as they and their clients cope with changes that affect both their work and personal lives. Yet, while the suspensions are intended to be helpful, the question must be asked: Are they legally valid and can lawyers rely on them?

In Executive Order 7G, issued on March 19, 2020, Governor Lamont listed statutory time and location limitations related to court filings and proceedings and suspended them for the duration of the health emergency. The statutory provisions related to civil cases include:

- Time limits for civil process (which includes deadlines for serving process and returning it to court before the return date and the two-month limit for the return date following the signing of the summons).
- Statutes of limitation and repose.
- Venue and court location requirements.
- Reasonable notice of the place and time when court will be held in the Superior Court.

- Time limit to file a petition for administrative appeal seeking judicial review of an agency decision.^[1]

While the order says these are merely illustrative and that all time requirements for court process, proceedings, and filings are suspended, the examples given are all statutes and not court rules. That appears to be a response to one set of separation of powers limitations on the Governor's power, as Connecticut has stringent case law regarding the inability of other branches of government to implement rules of court. Indeed, since this order was issued, the Superior Court Rules Committee has issued its own set of suspensions of some (but far from all) deadlines in the Practice Book rules.

At the same time, the order may violate another set of separation of powers limitations on the Governor's power, as it expressly overrides legislation by Executive Order. In Opinion 2005-19, the Connecticut Attorney General concluded that the Governor may not issue an Executive Order that conflicts with existing legislation or imposes new legally binding obligations.

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¹ The suspension also includes statutory time limits for courts, including the 120-day limit for a judge to render a decision following a bench trial.

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He also cited precedent that an Executive Order may not postpone an agency's statutorily mandated deadlines or alter statutory criteria and procedures for agency action.

Governor Lamont's Executive Order does, by its terms, contravene existing legislation. The suspension of statutes of limitation and the time for seeking judicial review of agency action falls outside the bounds of executive authority as articulated in the Attorney General's Opinion. Nevertheless, the legislature has conferred on the Governor authority to temporarily override laws in certain kinds of emergency situations.

On March 10, 2020, nine days before issuing Executive Order 7G, Governor Lamont issued a written declaration of "a public health emergency and civil preparedness emergency throughout the State," which he stated "shall remain in effect through September 9th, 2020, unless terminated earlier by me." This emergency declaration cited Section 19a-131a of the Connecticut General Statutes, which permits the Governor to declare a "public health emergency," defined in § 19a-131(8) as the occurrence or imminent threat of a communicable disease, an epidemic or pandemic disease, a natural disaster, or a chemical or nuclear release that poses a substantial risk of permanent or fatal harm to a significant number of people. The declaration can be overridden by a vote of certain specified legislative leaders. Once the emergency is declared, the statutory scheme allows

for quarantine and isolation orders.

The emergency declaration also cited Connecticut General Statutes § 28-9(a), which permits the Governor to declare a "civil preparedness emergency" in the event of "serious disaster, enemy attack, sabotage or other hostile action." The declaration can be overridden only by a vote of certain specified legislative leaders, but only for a disaster with a "man-made cause," implying that this section does apply to serious natural disasters.

In § 28-9(b), the legislature provided broad authority to the Governor whether the declaration is of a "public health emergency" under § 19a-131a or a "civil preparedness emergency" under § 28-9(a) – and Governor Lamont invoked both provisions. Pertinent to legislation governing court proceedings, the Governor may issue an order to modify or suspend, for up to six months,^[2] "any statute, regulation or requirement ... whenever the Governor finds such statute, regulation or requirement ... is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health." The order, once filed with the Secretary of the State, "shall have the full force and effect of law." In addition, the Governor "may take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state."

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² The March 10 emergency declaration specified a six-month emergency through September 9, unless earlier terminated by the Governor.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

Governor Lamont, in Executive Order 7G, specified that "in consultation with the Chief Court Administrator on behalf of the Chief Justice of the Supreme Court and the Judicial Branch, I have determined that there exists a compelling state interest that courts conduct only essential business in order to minimize the spread of COVID-19."^[3]

While there is no case law addressing whether the exercise of temporary executive power to override legislation during a declared emergency is permissible under the separation of powers principles of Connecticut's Constitution,^[4] Executive Order 7G should pass muster as an order that was authorized by the legislature in § 28-9(b) and consistent with that legislation. A defendant could file a motion to strike a complaint or a summary judgment motion to press a statute of limitations defense, or a motion to dismiss to challenge late service beyond a return date, but it's difficult to envision a court invalidating a short-term emergency suspension of time requirements in these circumstances, particularly where the Governor consulted with the Judicial Branch before doing so.

One last observation: One of the deadlines suspended by Governor Lamont is the deadline under Connecticut General Statutes § 4-183

to file an administrative appeal in Superior Court to review a final state agency decision. That statute has been construed by the courts as waiving sovereign immunity and must therefore be strictly construed and also strictly followed for the Superior Court to exercise jurisdiction in the action against the State. The Connecticut Supreme Court has on several occasions found waivers of sovereign immunity conferred by the Executive Branch to be ineffective, even if in contracts executed by an authorized state official, because only the legislature may waive sovereign immunity. While the Governor's statutory authority to suspend laws during an emergency is broad enough to extend to the deadline for administrative appeals, the suspension is still the act of an executive official and not of the legislature. The cautious attorney may not want to test the validity of Executive Order 7G to the extent the Governor purports to extend the deadline for commencing a civil action against the State. The same caution should be exercised if a client seeks to commence an action against the State for damages before the Claims Commissioner, even though Executive Order 7G purports to suspend statutory time deadlines beyond just those listed.

³ By court rule (Practice Book § 1-9B), the Governor's declaration of emergency also enables Connecticut's Chief Justice to call an emergency meeting of the Superior Court Rules Committee to adopt, suspend or amend on an interim basis any rule even absent a quorum. The Rules Committee acted under this authority on March 24, 2020. See <https://jud.ct.gov/Committees/rules/meeting.htm> (last visited Mar. 27, 2020).

⁴ One national study found that the laws of 42 states, including Connecticut, expressly permit the Governor to suspend laws that would interfere with an efficient, effective response to an emergency, making this type of executive authority a common feature of American law.