

Detroit Bar Association Medical Malpractice Sections

Synopsis of April 2, 2020 Q & A Session with Hon. Patricia Perez Fresard:

Civil Division and MTA Operations During the State of Emergency

General Information

- Judge Kenny's order of March 23 extending scheduling order dates by 60 days applies to all cases, and includes extension of the date of case evaluation
- In cases in which case evaluation has already occurred, most Judges are willing and able to conduct settlement conferences and special conferences via telephone or Zoom
- Judges are encouraging parties to attend case evaluation or facilitation prior to reaching out to Court to schedule a settlement conference
 - Judges are unlikely to impose sanctions if counsel are unable to participate in ADR or a settlement conference, but are hoping counsel will take the initiative to keep cases moving as much as possible
 - If an attorney needs to reach a Judge, email his or her JA (see attached list of email addresses)

Discovery Issues

- In the event counsel reach an impasse on a discovery issue, they should contact the JA for the assigned Judge and arrange a conference
 - If an attorney is unable to reach the assigned judge, email Judge Fresard's law clerk, Fran, at Frances.Yturri@3rdcc.org and she will assist in forwarding the message or contacting the emergency judge, if necessary
 - The Civil Division Judges are having weekly Zoom meetings and are in regular communication with each other
- Remote discovery mediation may become available in the coming weeks
- With respect to whether remotely held depositions will be considered in compliance with the Michigan Court Rules, the State Court Administrative Office and Michigan Supreme Court are preparing guidance on remote proceedings; Judge Fresard will forward such information to the DBA to distribute to the bar as she receives it
- The Civil bench is encouraging counsel to be creative and flexible, and to stipulate to procedures as much as possible to get work done during this unprecedented time

Extensions of Time

- **Affidavits of meritorious defense:** With respect to whether there will be an extension of time for the filing of affidavits of meritorious defenses (given difficulty of obtaining notarizations, etc.), at this point, there are no blanket orders; each issue will be addressed on a case-by-case basis
- **Extensions of dates other than those in scheduling orders:** attorneys are encouraged to obtain stipulated orders
- **Extensions of summonses, alternate service:** There is no blanket extension of summonses at this point. Counsel should continue to e-file appropriate motions and orders for extensions of

summonses and alternate services, as Judges have access to orders that are e-filed, and County Clerks are available to process orders. Some Judges are unwilling to sign orders for alternate service that contradict social distancing requirements.

Case Evaluation

- Per Judge Kenny's order of March 23, case evaluation dates in scheduling orders are adjourned 60 days
- However, in those cases in which both sides have filed a case evaluation summary, there is an assumption both sides will contact the Mediation Tribunal to arrange a remote case evaluation, if possible
- Lisa Timmons, Director of the Mediation Tribunal Association, can be reached at Lisa.Timmons@3rdcc.org and is available to answer any case evaluation questions
- Lisa has a list of facilitators who are conducting remote facilitations

Motion Calls

- Guidance on hearings via Zoom will be forthcoming as the Michigan Supreme Court and State Court Administrative Office task force on remote proceedings finalizes procedures
- Judges and staff will likely return to the courthouse before it becomes open to the public, and the Court's Polycom systems will be used to conduct remote hearings