

After Hurricane Ian When Are Filings Due In Florida Federal Court?

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As inevitably happens after a major hurricane, as many in Florida deal with the devastating aftermath of Hurricane Ian, questions arise as to how to calculate court deadlines when the courts were closed.

1950's Borscht-belt jokes aside, lawyers are people. And, from personal experience, the stress of having to figure out whether something must be filed on a certain day when the power and internet are out is not pleasant.

So now is a good time to review applicable rules and case law regarding filings in the Florida federal court system.

We can start with a bit of background. Hurricane Irma hit in September 2017. While not the most destructive hurricane, many will remember Hurricane Irma as the hurricane that effected nearly every part of the state.

In 2018, a decision issued in the Southern District of Florida — *McElveen v. Westport Recovery Corp.*, 310 F. Supp. 3d 1374 (S.D. Fla. 2018) (Bloom, J.) — found that even though the clerk's office was closed because of Hurricane Irma, the time to file any papers due that day would not be tolled because the Case Management/Electronic Case Filing system (CM/ECF) was still operational and the party seeking tolling did not demonstrate that the hurricane interfered with their attorneys' ability to electronically file. The decision noted several recent cases supporting its holding. *See, e.g., Domazet v. Willoughby Supply Co.*, 2015 WL 4205279, at *3 (N.D.N.Y. July 10, 2015) (“[G]iven the advent of electronic case filing (ECF), a clerk’s office is no longer ‘inaccessible’ just because it may be physically closed on a particular day.”); *Westfield Ins. Co. v. Interline Brands, Inc.*, 2013 WL 1288194, at *5 (D.N.J. Mar. 25, 2013) (“Due to the electronic filing capabilities of the court, the [d]efendants were able to file their Notice of Removal on October 31, 2012, on the electronic filing system (CM/ECF) despite the fact that the Clerk’s Office was physically inaccessible on that date [*due to*

Hurricane Sandy].”); *McDow, Jr. v. Runkle (In re Runkle)*, 333 B.R. 734, 739 n. 3 (Bankr. D. Md. 2005) (“Filing by ECF ends the concept of the clerk’s office being inaccessible on weekends and legal holidays. Under ECF, the clerk’s office is always open for the reception of filings.”).

In the Southern District of Florida, immediately after *McElveen*, the Ad Hoc Committee on Rules and Procedures studied the decision and the applicable rules and reached two conclusions: (1) as a matter of policy, it was advisable for attorneys not to have to file and serve papers during periods of hurricane-related (or similar) court closures, and; (2) there was a rule-based way to accomplish this. Accordingly, the Committee recommended and the Court adopted S.D. Fla. L.R. 5.1(f), which became effective December 1, 2019 and says:

During the time that the Court (or the Courthouse located in a particular division of the Court) is closed pursuant to Administrative Order 2007-44 (In Re: Emergency Closure of Courthouse) or pursuant to separate order, the Clerk’s Office for the Court (or the particular division of the Court where the Courthouse is closed) shall be deemed inaccessible for purposes of Fed. R. Civ. 6(a)(3) and Fed. R. Crim. P. 45(a)(3).

In April 2022, the Eleventh Circuit issued a published opinion in *Circuitronix, LLC v. Kinwong Elec. (Hong Kong) Co.*, 993 F.3d 1299, 1304 (11th Cir. 2021), where it held:

We conclude that the closure of the courthouse — and with it, the physical closure of the clerk’s office — made the clerk’s office inaccessible for purposes of Rule 6(a)(3)(A). As we have explained in another context, “[o]fficial closure of the [c]lerk’s office for any reason makes that office ‘inaccessible.’” *Chao Lin v. U.S. Att’y Gen.*, 677 F.3d 1043, 1045 (11th Cir. 2012) (interpreting Federal Rule of Appellate Procedure 26(a)). This rule distinguishes official closure from inaccessibility that arises while the clerk’s office remains physically open — where the office is open but difficult to access, we require proof of extenuating circumstances. *Id.* at 1045–46.

We reject the argument that the clerk’s office remained accessible on July 5 because Kinwong could have filed its motion electronically. Rule 6 refers to the clerk’s physical office. *See* Fed. R. Civ. P. 6(a)(4)(B) (tying deadlines for non-electronic filing to “when the clerk’s office is scheduled to close”). **The clerk’s office is inaccessible when its building is officially closed or otherwise unavailable, even if the parties are still able to submit filings electronically, see *id.* R. 6, advisory committee’s note to 2009 amendment; *Chao Lin*, 677 F.3d at 1045–46, or through other means, *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 747 (9th Cir. 2001).**

So what does this all mean?

Hurricane Ian has led to court closures — to different extents — in all three Florida federal districts. If you find yourself with questions on what has to be filed/served in Florida federal cases during these

periods of closures, I would commend the *Circuitronix* to your attention, and, if in the Southern District, also S.D. Fla. L.R. 5.1(f).

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