

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 08-9140

EMERGENCY ORDER ON ENLARGEMENT OF TIME

ORDERED that:

1. For reasons explained below, in determining a filing deadline under the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure, including the time for filing a motion for new trial:

a. the closure of a clerk's office is good cause for an enlargement of time, but a court may also take into consideration whether alternative arrangements for conducting court proceedings were in place; and

b. a court should consider the dislocation and hardship of counsel in deciding whether to enlarge the applicable time period.

2. This Order expires October 31, 2008, unless extended by further Order of the Court.

3. The Clerk is directed to:

a. post a copy of this Order on the Court's internet website at www.courts.state.tx.us;

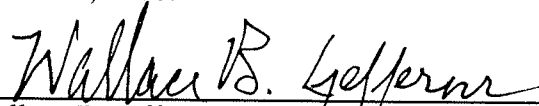
b. file a copy of this Order with the Secretary of State;

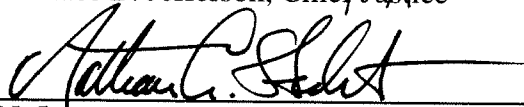
c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

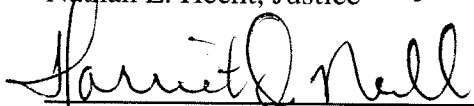
d. send a copy of this Order to each member of the Legislature; and


e. submit a copy of the Order for publication in the *Texas Register*.


SIGNED AND ENTERED this 17th day of September, 2008.

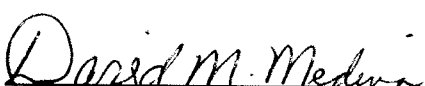

Wallace B. Jefferson, Chief Justice

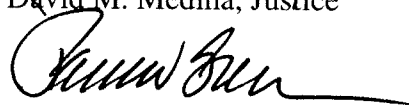

Nathan L. Hecht, Justice

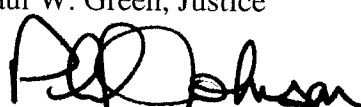

Harriet O'Neill, Justice


Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

PER CURIAM

This past weekend, Texas was struck by Hurricane Ike, resulting in the closure or inaccessibility of court clerks' offices and lawyers' offices. The resulting exigencies should be considered in enlarging time periods prescribed by the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure.

Rule 4.1(b), TEX. R. APP. P., provides for the extension of time for filing a document when "the clerk's office where the document is to be filed is closed or inaccessible during regular hours on the last day for filing the document". Rule 4, TEX. R. CIV. P., provides for the extension of any time period when the last day is a "legal holiday", and for the calculation of other period that include "legal holidays". A "legal holiday" includes a day "on which the clerk's office for the court in which the case is pending is officially closed." *Miller Brewing Co. v. Villarreal*, 829 S.W.2d 770, 772 (Tex. 1992) (per curiam). Section 16.072, TEX. CIV. PRAC. & REM. CODE, extends limitation periods when the last day falls on a holiday. The word "holiday" in the statute has the same meaning as "legal holiday" in Rule 4, TEX. R. CIV. P. *Martinez v. Windsor Park Dev. Co.*, 833 S.W.2d 950, 951 (Tex. 1992) (per curiam). The Court has expressed no view on the application of Section 16.072 to other statutes of limitations and does not do so here. *Cf. Simmons v. Healthcare Ctrs. of Tex., Inc.*, 55 S.W.3d 674, 681 n.5 (Tex. App.—Texarkana 2001, no pet.) (health care liability claims); *Morin v. Helfrick*, 930 S.W.2d 733, 737 n.1 (Tex. App.—Houston [1st Dist.] 1996, no writ (health care liability claims); *Green v. Tex. Employment Comm'n*, 675 S.W.2d 809 (Tex. App.—El Paso 1984, writ ref'd n.r.e.) (workers' compensation claims).

Rule 5, TEX. R. CIV. P., allows the court on motion for “good cause” to enlarge a time period after it has expired. Several provisions of the Texas Rules of Appellate Procedure allow an appellate court to enlarge time periods. To provide clarity to the judiciary and to the bar in this difficult period in the aftermath of a natural disaster, the Court orders that the closure of a court clerk’s office is “good cause” for enlarging the time for filing any document within the meaning of Rule 5, TEX. R. CIV. P., and any other procedural rules that permit an enlargement of time on a showing of good cause, or a similar showing. Of course, there may be other good cause for an enlargement of time, including the dislocation of counsel. The Court further allows the deadline for filing a motion for new trial to be extended.

House Bill 1076, enacted in 2007, provides that in certain coastal counties, if a court cannot conduct proceedings at the county seat because of a disaster, the presiding judge of the administrative judicial region, with the approval of the judge of the affected court, may designate an alternative location in the judicial district at which the court may conduct proceedings. TEX. GOV’T CODE §§ 24.033, 25.0019, 25.0032, 26.009. *See id.* § 418.004(1) (defining disaster); TEX. INS. CODE § 2210.003(4), (11) (listing “first tier” and “second tier” coastal counties). Also, Section 74.094(e), of the TEX. GOV’T CODE, provides that “[a] judge who has jurisdiction over a suit pending in one county may, unless objected to by any party, conduct any of the judicial proceedings except the trial on the merits in a different county.” *See* TEX. CONST. art. V, § 7. In deciding whether to extend a filing deadline, a court should also take into account whether arrangements have been made under these statutes.

It should be noted that the Court's Order does not affect a statutory deadline that cannot be enlarged by rule.

This Order is issued in response to a natural disaster and is temporary. It expires October 31, 2008, unless extended by further Order of the Court.