

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9168

EMERGENCY ORDER ON ENLARGEMENT OF TIME

ORDERED that:

1. For reasons explained below, 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 of the Texas Rules of Civil Procedure and any other provisions of the Rules of Civil Procedure and the Rules of Appellate Procedure that permit an enlargement of time on a showing of good cause, or a similar showing.

2. In calculating the time for filing a motion for new trial, any day that the clerk's office of the court in which the case is pending is closed or inaccessible during regular hours is not to be included. The closing or inaccessibility of the clerk's office may be proved by a certificate of the clerk or counsel, by a party's affidavit, or by any other satisfactory proof, and may be controverted in the same manner.

3. This Order will expire on October 31, 2005, unless extended by further Order of the Court.

4. The Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. 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*;
- c. send a copy of this Order to each member of the Legislature;
- d. submit a copy of the Order for publication in the *Texas Register*; and
- e. publish a copy of the Order on the Court's website.

SIGNED AND ENTERED this 26th day of September, 2005.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. 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 Rita, resulting in the closure of court clerk's offices in affected areas. It cannot be determined at this time when these offices can reopen. Office closings or inaccessibility should not affect deadlines under the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure.

In addition, the storm has resulted in lawyers' offices being closed or inaccessible in many areas. Of course, the inability of lawyers to respond to procedural deadlines because of the storm should also be considered in determining whether time periods should be enlarged.

Rule 4.1(b) of the Rules of Appellate Procedure 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 of the Rules of Civil Procedure provides for the extension of any time period when the last day is a "legal holiday", and for the calculation of other periods 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 of the Texas Civil Practice and Remedies 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 of the Texas Rules of Civil Procedure. *Martinez v. Windsor Park Development 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 Centers of Texas, Inc.*, 55 S.W.3d 674, 681 n.5 (Tex. App.—Texarkana 2001, no writ) (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. Texas Employment Commission*, 675 S.W.2d 809 (Tex. App.—El Paso 1984, writ ref'd n.r.e.) (workers' compensation claims).

Rule 5 of the Rules of Civil Procedure allows the court on motion to enlarge a time period after it has expired for “good cause”. 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 of the Texas Rules of Civil Procedure and any other provisions of the Rules of Civil Procedure and the Rules of Appellate Procedure 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 orders a change in the manner of calculating the period of time for filing a motion for new trial.

This Order is issued in response to a natural disaster and is temporary. It expires October 31, 2005, unless extended by further Order of the Court.