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## Lawyer Obligations in the Time of COVID-19

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**Note: This Alert was revised after issuance of Executive Order 7Q on March 30, 2020. A new Alert concerning Executive Order 7Q and remote notarization may be found [here](#).**

The national coronavirus pandemic, and the unprecedented conditions of statewide lockdowns to protect public health, mean that law firms, like all businesses, face an ever increasing number of uncertainties in managing their operations, staff, payroll and finances. And in this all-encompassing crisis, lawyers must remain mindful of their professional duties to clients, non-clients and courts.

Here are some aspects of the current lockdown, recent Executive Orders, and Rules Committee actions that require particular attention from lawyers.

### FOR NOW: LAW FIRMS CONSIDERED AN “ESSENTIAL SERVICE”

Connecticut Governor Ned Lamont’s Executive Order 7H, issued March 20, 2020 (“the Executive Order”) provides that effective March 23, 2020 at 8:00 p.m., and through April 22, 2020 (unless terminated earlier or extended):

1. **All** businesses and not-for profit entities in the state shall employ “to the maximum extent possible” all telecommuting and work from home procedures that they safely can employ; and
2. All **non-essential** businesses and not for profit entities must reduce their in-person workforces at any workplace **by 100%**. (Executive Order 7J, issued March 22, 2020, included, among other things, a clarification of this restriction to permit certain exceptions so that non-essential retail businesses may be staffed to the extent necessary to facilitate remote ordering and curbside pickup or delivery,

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and so that non-essential businesses may have employees on the site to provide security, maintenance, and receipt of mail and packages.)

**“Essential businesses** or entities providing essential services, goods and functions” **are not subject to the 100% in-person workforce reduction**, although they still are subject to the less proscriptive restriction of employing work from home procedures to the extent possible.

The Executive Order provides preliminary guidance on the question of what businesses are “essential” by way of a list of some specific categories of businesses that will be deemed “essential.”

Among the businesses expressly deemed **“essential”** - and thus not subject to the 100% in person reduction in force rule - are “legal and accounting services.”

The March 20 Executive Order on workplace closures may be accessed by clicking [here](#).

### SUSPENSION OF STATUTES OF LIMITATIONS AND OTHER FILING DEADLINES

Under his Executive Order 7G, dated March 19, 2020, the Governor has, at least “for the duration of [the] public health...emergency,” suspended a number of the limitations periods and filing deadlines that lawyers must routinely consider in client matters. Among the now-suspended deadlines are, with emphasis added:

*all statutory ... time requirements, statutes of limitation or other limitations or deadlines relating to service of process, court proceedings or court filings; and ... all time requirements or deadlines related to the Supreme, Appellate and Superior courts or their judicial officials to issue notices, hold court, hear matters and/or render decisions including, but not limited to, the following:*

... All time limitations for rendering judgments in civil actions provided in C.G.S. § 5 I-I 83b;

... All time limitations concerning civil process, service and return...;

... All statutes of limitations provided in Chapter 926 of the General Statutes;

... All time constraints for the filing of administrative appeals provided in C.G.S. § 4-183;

... All time limitations in Title 46b of the General Statutes including, but not limited to, family, juvenile and child support matters....

Lawyers are dutybound to review the full list and familiarize themselves with each and every time limit suspension potentially applicable to their practice. They also should notify clients of any revision to filing or other deadlines that will have an impact on the client’s matter.

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Touching base with clients during the lockdown serves at least two functions. It meets the lawyer's obligation under Rule 1.4 of the Rules of Professional Conduct ("Communication") to "keep the client reasonably informed about the status of [his or her] matter." And it also makes business sense to remind clients while your firm's attorneys and staff may be working remotely, your firm's team is engaged and ready to assist notwithstanding the health crisis.

### SUSPENSION OF PRACTICE BOOK TIME AND LOCATION REQUIREMENTS

The Rules Committee of the Superior Court met in emergency session on March 24, 2020 to address the suspension of certain Practice Book rules. Acting pursuant to Practice Book Section 1-9B (Emergency Power of Rules Committee), the Rules Committee unanimously: (1) approved the suspension of a number of Practice Book provisions for time and location requirements, effective immediately, all in furtherance of the public health and civil preparedness emergencies the Governor has declared under C.G.S. §§ 19a-131a and 28-9; and (2) recognizing that new issues may arise, adopted a new rule providing that "The Chief Administrative Judge of each division, in consultation with the appropriate Presiding Judge of each Judicial District, if possible, and subject to the approval of the Chief Court Administrator, shall have the authority to adjust or suspend any time or location requirement in the Practice Book," subject to the Rules Committee's authority to subsequently reject (prospectively) such suspension or adjustment.

The suspension of existing rules and the adoption of the new rule "shall remain in effect for the duration of the declared emergency or until such time, as soon as practicable, as a meeting of the Superior Court Judges can be convened to consider a vote on the changes."

Of particular significance for litigation attorneys is that the emergency measure did not suspend any of the time requirements of Chapter 10 (pleadings) or Chapter 13 (discovery). This means that attorneys can still file pleadings and conduct discovery, and must meet applicable deadlines. (Though it is unclear when the courts will again be holding short calendar hearings.)

And one provision subject to suspension affects nearly every Connecticut lawyer: Sec. 2-27A, the provision for MCLE. As explained in the Rules Committee's master list of Practice Book provisions that are now suspended, "[d]ue to limitations of public gatherings, it is appropriate to suspend this rule."

### MAINTAINING CLIENT CONFIDENTIALITY WHILE WORKING REMOTELY

On March 12, a committee of the New York State Bar Association issued a report entitled "Tips for Working Securely While Working Remotely." The Committee provides law firms with a checklist of sensible reminders for both professionals and staff members on how to meet their confidentiality obligations when working from home.

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Among the work from home and cybersecurity steps the Committee recommends are these:

- “Make sure attorneys and staff know how to access their work voicemail (and know their passcode).”
- “Share personal telephone numbers among colleagues as a communications backup.”
- Make sure that in utilizing e-mail and in drafting and editing any work related documents, law firm personnel are doing so only on the firm’s designated Virtual Private Network (VPN).
- No law office should be using a VPN without so-called multi-factor authentication, “meaning that even if the wrong person gains control over an attorney or staff member’s personal device, [he or she] cannot access the firm’s digital workspace unless...also [in possession of] that second device.”
- The law firm should confirm that all personnel know how to use the firm’s VPN.
- If arranging for video conferencing capability from home, make sure to provide only a reliable and secure service. “Some attorneys may be tempted to use free services, which may not be secure, or services [that] keep recordings of conversations and meetings by default, leaving those recordings out of the firm’s control and protection. You should not do so.”
- Similarly remind attorneys and staff about “the dangers of linking to the firm’s systems using insecure publicly-available WiFi, or using [any] home WiFi connection that lacks strong password protection.”
- Instruct personnel they must not share a firm issued laptop with family members.
- Instruct firm personnel to be mindful of protocols at home for discarding paper documents, including drafts. The preferred method: after using, do not discard in either the home garbage or recycling bin; either use a shredder at home or bring the documents to the office for shredding.
- The firm’s personnel should be instructed to be aware of cybersecurity risks when working remotely. Yet another reason to prohibit any client or firm related work to be created or stored on personal devices or on any system *other than* the firm’s system, using the VPN. “Personal devices likely do not have the...virus detectors installed on firm systems, and often lack required patches to security flaws in their operating system[s]...”

The alert concludes with this advice (noting the wise admonition to never let a crisis go to waste): “[C]onsider the challenges of practicing law amid the Coronavirus/COVID-19 outbreak as a good time to review (or create) your firm’s written Business Continuity Plan, and consider whether your firm has appropriate cybersecurity insurance, including for social engineering (and an appropriate amount of coverage).”

### Conclusion

With so many aspects of the pandemic still unknown, and with the salient circumstances constantly evolving, lawyers will only be able to meet their professional obligations by being alert to each new development, and by doubling down on the risk management practices and procedures followed during normal times.

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**Pullman & Comley attorneys have been closely monitoring the many developing implications of the COVID-19 pandemic for businesses and for professionals, including law firms. We have been responding, and will continue to respond, to a wide range of risk management questions. The firm's FOCUS page for the latest COVID-19 advisories may be found here.**

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