Supreme Court of Louisiana

Resolution

Whereas, Hurricane Katrina caused the Governor to issue Proclamation No. 48 KBB 2005, in which a state of emergency was declared throughout the State of Louisiana; and

Whereas, Because of the damage caused by Hurricane Katrina, the state of emergency declared in Proclamation No. 48 KBB 2005 was extended through the Governor's issuance of Proclamation No. 54 KBB 2005; and

Whereas, Hurricane Rita caused the Governor to issue Proclamation No. 53 KBB 2005, in which a state of emergency was also declared throughout the State of Louisiana; and

Whereas, pursuant to Executive Orders KBB 2005-32 and KBB 2005-48, the Governor suspended all deadlines in legal proceedings in all courts throughout the state; and

Whereas, Executive Order KBB 2005-48 acknowledges this Court's constitutional authority to shorten or lift the suspension of such deadlines through Supreme Court Order; and

Whereas, this Court has determined that it should exercise its express and inherent constitutional authority to confect a temporary procedure to allow legal proceedings to proceed when the attorneys and parties have been unaffected by Hurricanes Katrina and Rita; and

Whereas, this Court has determined that it should exercise its express and inherent constitutional authority to confect a temporary procedure to have judges consider allowing legal proceedings to proceed where justice and equity mandate the shortening or lifting of the suspension of legal deadlines;

Now, Therefore, be it Resolved that the following temporary procedure be and is hereby adopted to facilitate the shortening or lifting of the suspension of legal deadlines in appropriate cases.

1. The judge(s) of any Louisiana court, trial or appellate, may lift or shorten the suspension periods outlined in Executive Orders KBB 2005-32 and KBB 2005-48 in the event a joint motion is filed in the pending proceeding by all parties (represented or unrepresented) in the litigation, in which all parties certify that no attorney or party to the proceeding has been adversely impacted by Hurricanes Rita or Katrina.

2. The judge(s) of any Louisiana court, trial or appellate, may lift or shorten the suspension periods outlined in the aforementioned Executive Orders in the event a joint motion is filed in the pending proceeding by all parties (represented or unrepresented) in the litigation, in which all parties certify that, notwithstanding the fact that a party or attorney has been adversely impacted by either Hurricane Katrina or Rita, the impacted party or parties are nonetheless in agreement that the suspension periods should be lifted or shortened and the legal proceeding should be allowed to proceed. In such cases, affidavits shall be appended to the joint motion by all adversely impacted parties or attorneys. The affiants should attest to their willingness to have the suspension of legal deadlines lifted or shortened.

3. Any party who is unaffected by Hurricanes Katrina or Rita, or any party that, although adversely impacted by Hurricanes Katrina or Rita, nonetheless wishes to shorten or lift the suspension of legal deadlines, may file a Rule to Show Cause, or similar Motion in criminal proceedings, asking the Court to lift or shorten the suspension of legal deadlines. Prior to filing such a Rule or Motion, the moving party shall discuss with all other parties the reasons the party or parties have for objecting to a shortening or lifting of the legal deadlines, and shall include in the Rule or Motion an explanation of the reasons any party has for objecting to the lifting or shortening of the legal deadlines.

    a. The Rule to Show Cause or Motion shall be served on all parties to the proceeding.
    b. Within three (3) days of service of the Rule or Motion, any party may file a written objection.
    c. At any time after the three day period for objecting, the presiding judge or judges may render a decision on the Rule or Motion.
    d. In assessing the Rule to Show Cause or Motion, the presiding judge or judges shall apply a rebuttable presumption that the Rule or Motion should be denied in any case in which an objecting party or attorney maintained his/her domicile or principal place of business in a Parish that was under an evacuation order for at least two (2) days.
    e. Absent extraordinary circumstances, the Rule to Show Cause or Motion shall be denied in any case in which an objecting party or attorney offers proof that either the objecting party or the party's attorney maintains his/her domicile or principal place of business in a Parish that was under an evacuation order at the time of the filing of the Rule or Motion. Absent extraordinary circumstances, the Rule or Motion shall also be denied in any case in which an attorney or party offers proof that he/she was displaced from his/her domicile or principal place of business for more than seven (7) days because of an evacuation order, or because damage to the attorney's or party's domicile or principal place of business caused the attorney or party to be

displaced from his/her domicile or principal place of business for more than seven (7) days.

4. No party or attorney for any party shall have cause to object to a shortening or lifting of the suspension of legal deadlines pursuant to this temporary rule if neither the party, nor the party's attorney, has been adversely impacted by Hurricanes Katrina or Rita.

5. No Order lifting or shortening the suspension of legal deadlines shall serve to lift the suspension of liberative prescriptive periods or peremptive periods.

6. For purposes of this temporary rule, the term "adversely impacted" means the ability of a party or a party's attorney to proceed with the legal proceeding has been substantially impaired by Hurricane Katrina or Rita.

7. Writs from adverse trial court decisions on any Rule to Show Cause or Motion shall be taken in accordance with law.

This Resolution and Temporary Rule shall become effective upon signing and shall remain in full force and effect through the 25th day of October, 2005. In the event the Governor issues any future Executive Order(s) extending the time period for the suspension of deadlines applicable to legal proceedings, this Resolution and Temporary Rule shall automatically become effective for the time period(s) of any such extension.

Baton Rouge, Louisiana, this 3rd day of October, 2005.

Pascal F. Calogero, Jr.
For the Court

SUPREME COURT OF LOUISIANA
A TRUE COPY
Jeffrey C. Collins
Chief Deputy Clerk of Court