

The "Shutdown" Does Not Mean Your Cases Have to Shut Down

Related Professionals

Val H. Stieglitz
803.253.8262
vstieglitz@maynardnexsen.com

Practices

Litigation

04.20.2020

Courts across the United States have closed, are operating on limited schedules, are triaging their dockets, and otherwise narrowing the daily flow of "normal" civil litigation. In-person client-meetings, depositions, hearings, mediations, and trials are on hold. With the normal civil litigation machinery having shut down in so many respects, it might be easy to think your cases have shut down too. This would be a mistake, however. Consider these seven ideas for productive activities, both to keep pushing your case forward during this unprecedented interruption, and to be ready (perhaps even more ready) when the situation improves.

1. Of course, we know technological solutions are widely available for accomplishing many "normal" case tasks. Take a few minutes and make a list of all the activities in your cases that can actually be accomplished via video, the web, or even the old-fashioned telephone. You will be surprised. Then take the initiative and propose utilizing these solutions to your client and opposing counsel. Many of the activities we assume "have" to be carried out in-person, can be adequately handled by other means.
2. If you are in a big-documents case, this period can be a good time to revisit how you have documents organized, the status and thoroughness of reviews and productions, and nail down any thorny collection, review, or production issues that might have been nagging you.
3. Still in the "documents" vein, this is a good time to take a careful, overall review of the "good" and "bad" documents in your case, looking for patterns, inconsistencies, thinking through how you might deal with both types, and gleaning new ideas about your case. Taking a 360-degree view of your case documents is always a good way to develop new and creative ideas.
4. Get a head-start on preparing for depositions. Few things are as inefficient as scrambling to get ready to take an important

deposition or preparing a witness. Use this time to assemble the key documents, and make sure you are updated on the law relating to key claims / defenses and themes in the case. Stage a mock deposition of an especially important witness. Have a (remote) session in which you discuss only the key themes in the case with your important witnesses, saving more detailed, factual preparation for later.

5. Think about graphics, charts, and other visuals that will help you illustrate your case to the court and the jury. Brainstorm with others in your firm ways to depict events, facts, and themes in pictorial form – you will get some good ideas. Because these aids often have to be modified and refined from your initial concept, you now have time to do this in a thoughtful manner.
6. If it has been a while since you gave your client a comprehensive update, do so now. This is the time to take a pause, evaluate what has been accomplished, what has been learned about the case, and set forth a deliberate plan for what remains to be done. This relates to the next idea – develop at least a rudimentary “restart” plan for each of your cases. Yes, more can be achieved than you might think even during this “shutdown” period. But how best can you jog each case back into real motion when social-distancing concerns ease and courts begin holding hearings and trials on a “normal” basis again? Your client will appreciate you having thought about this, and having developed a basic plan for getting their case “back on track.”
7. If you are in the fact-development phase of a case, and still need to gather information from your client, or your client’s employees, have at least an initial interview by phone or video now. These kinds of interactions are almost always done best in-person, but it is perfectly possible to hold initial fact-finding interviews remotely; this will make the eventual “live” follow-up even more useful.

These are just a few ideas for ways to keep your case advancing during this unique period of time, which does not need to turn into “dead time” for your case.

Our Insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.