

## **That is No Excuse**

By Audrey Priolo, Litigation Procedure Attorney

I will never forget the day I appeared in front of a Los Angeles County Superior Court judge requesting a trial continuance because the trial date was set on the same day as the due date of my first child. The judge peered down at me with no sympathy or remorse and told me plainly, "Someone else from your firm will have to try the case." The fact that I worked for a small 3-person firm did nothing to persuade him.

Similarly, a Federal Judge in Dallas recently found 2 attorney deaths and a tornado unpersuasive to justify the plaintiff's increase damages in a supplemental expert report. Previously, the parties agreed to continue the original expert designation deadline. The plaintiff, Premier Electronics, filed a damages expert report two days after the continued deadline. The plaintiff amended the report the next month but did not increase the amount of damages. Two months later, the plaintiff attempted to amend the report again with a significant increase in the claim for damages. Plaintiff indicated that its report required amendment because its expert experienced a power outage from a tornado just days before the original report was filed. Subsequently, plaintiff's counsel's small firm had an associate leave the firm abruptly and two unexpected attorney deaths which left counsel as the only full-time litigator in the firm.

While the judge sympathized, she said it was not enough to allow plaintiff to increase its damages due to the prejudice it would cause the defendant, ADT, Inc. This case highlights the importance of continuing to monitor all deadlines even when your firm undoubtedly has an abundance of excuses to justify a missed deadline. I get it, litigating amidst a pandemic is not easy. There are many obstacles that may get in the way of meeting deadlines including illness, court and business closures, technology issues, and conflicting court orders. However, every firm and attorney has very similar, if not identical excuses. While some judges may be understanding, it is always best to assume that you need to try to move mountains to meet your deadlines. Save yourself and your clients both time and money and make every effort possible to avoid being the attorney who is told their excuse is just not good enough. Stop making excuses and start making changes by being extra diligent and filing early.

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