

MEMORANDUM

September 9, 2009

From: Judge Tom Lawrence

To: Supreme Court Advisory Committee

ISSUE: What happens if a party wants to file an appeal and the JP court is closed on the last day to file the appeal?

At the last Rules Committee meeting, or maybe the one before last, we discussed a letter from the Poverty Law Section that listed a number of issues including the one outlined above. No action was taken on proposed language on this issue at that meeting as a result of my request to be allowed to survey JP courts to determine the current practice.

I enlisted the Justices of the Peace and Constables Association to send out a survey to all JP's, which was done and I want to share the results now. There are about 850 JP's in Texas and 133 responded to the survey for a response rate of almost 16%. The results of the survey follow. The raw numbers are in (). As you will see not every judge answered every question.

Question # 1: Is your court open every day Monday through Friday for some period each day?

Response: 88.4 % (114) said yes and 11.6% (15) said no. 129 answered the question and 4 skipped the question.

Question # 2: Are you open the same hours each day or do your hours and days of operation vary each week?

Response: 87.7% (116) said same hours each day, and 13.5% (18) said their hours vary. 133 answered the question and none skipped the question.

Question # 3: If the days and hours you are open each week vary, do you post a sign indicating the hours you are open?

Response: 90.7% (78) said yes and 9.3% (8) said no. 86 answered the question and 47 skipped the question.

Question # 4: If your hours are the same each week but you are not open from 8AM until 5PM each day, do you have a sign posted indicating the hours you are open?

Response: 84.4% (81) said yes and 15.6% (15) said no. 96 answered the question and 37 skipped the question.

Question # 5: What do you do if a party wants to file an appeal bond on the last day to appeal but your court is closed?

Response: 115 answered the question and 18 skipped the question. The answers are listed below. **Each response is listed exactly as it was posted.**

1. Allow on the next business day that we are open
2. Allow until next business day that the court is open
3. File the next business day
4. If the party advises me that they tried to file an appeal bond during the time that we were closed and it was during a time that we would've normally been open, then I will accept the appeal bond provided they are at my office at the beginning of the next business day that we are open
5. My normal practice is that it's too late to file the appeal bond. Maybe we should consider a postmarked and or faxed notice of appeal with the bond to follow the next business day during business hours
6. My court is open every weekday, Mon.-Fri. Last day to appeal can not fall on a weekend or holiday
7. We honor as long as it is the following day open for business
8. We honor as long as it is the following day open for business
9. They are given the next day
10. Has not occurred yet, but most likely would deny it. We are open 8-5 Monday – Thursday, open 8-4 on Friday
11. Let them get it in the next business day
12. Tell them to mail it
13. Following business day
14. Accept next open day only
15. Accept appeal next working day
16. Following day
17. Haven't had this come up
18. Allow the appeal the next working day
19. Treat as if it were a holiday and go to next business day
20. Move appeal date to the next business day
21. Hasn't come up
22. Allow the appeal on the following business day
23. Have not had that happen
24. Never had that occur
25. This has not happened to us...but I would accept if the following business day....
26. I give them till the next working day
27. My court is open Monday-Friday, 8:00am-5:00pm, closed one hour for lunch
28. Extend to the next working day
29. Extend the appeal date to the following business day
30. If I was called out or attending a meeting I would give the party the next work day
31. It has to be received within our business hours; however, if the day you're referring to is a holiday, Saturday, or Sunday they have until the next day which is not a Saturday, Sunday, or holiday to file
32. Move filing date to the next Monday or next open day if it falls on a holiday
33. Accept it for filing the next day my office is closed
34. Never had this occur
35. Allow appeal on next open date

36. We treat it as a holiday and give them until the next day
37. They can do it the next working day
38. Does not apply. Court open Mon.-Fri., 8 to 5
39. Add until the next working day, treating the "closed" day as a weekend or holiday
40. We would give them the next business day
41. Let them file the next day of operation
42. Allow the filing on the next business day
43. I rarely have that to happen
44. If we had to close because of an emergency I would give them the next day
45. All parties are notified of the office hours and appeal time that is allowed. The only exception is for good cause shown in a motion
46. Clerk will contact me and I will come in to sign the appeal
47. We extend the appeal period to the next scheduled court day or defendant can mail the appeal so the post date can apply
48. Have them come in the following date we are open
49. Extend time to next date
50. They have to get it in before the deadline. Our hours hardly ever change
51. We treat this as if it were a holiday. Which means we would take care of this the first business day that we would be open again
52. They can file online and it is open 24/7
53. It's too bad
54. Allow to file next working day with one time perfected appeal
55. Next working day
56. Extend to the next work day
57. Accept the appeal
58. We accept on next business day
59. They have until the next working day if closed on the last appeal day
60. Give that party until the next business day to file
61. If its within the working hours and the office was closed will extend to next working day
62. If it is a legal holiday, our court would take the appeal on the next business day
63. Move to next day of business
64. They can file on the next business day
65. If are aware of it we will file it no matter the time of day
66. If are aware of it we will file it no matter the time of day
67. Let them file the appeal the next business day
68. Give them till the next working business day
69. The attorneys know to fax it in, so the date of the appeal filed is on the fax document
70. They have till the next business day to appeal
71. It carries until the following day open
72. Forwarded to the next working day
73. We take it the next day that the court is open, we are only closed on holidays
74. Advance to the next day

75. The county does not provide me any assistance with any of my duties. I try not to schedule the initial hearing where there might be a chance of my office being closed. I also inform both parties of this situation and provide my cell number where they may reach me. (unless there is illness, family emergency, etc.)
76. Mailbox rule which applies to faxes as well
77. If the court is closed due to a holiday, it rolls to the next business day. If the party allows the time to expire he/she must take another course of action
78. I've never had that happen, but if it did, it would be accepted and exception made due to court being closed during business hours.
79. N/A
80. Time stamp process received at the Constables Office
81. If it is faxed in on time it is accepted
82. Roll over to the next business day
83. Forward date until next day we are open
84. Allow the party to file the appeal bond when the court is open
85. We are open Monday-Friday 8:00am – 4:30pm so they have plenty of time to come in
86. Has not happened
87. I have a number posted on the door and I will come to the office, even at night, if it calls for it. I am a clerkless court.
88. 8 to 5 (Mon. thru Thurs.) and 8 to 4 on Friday we let them know our office hours. Our office is open daily and has not had a problem with appeals. If the last day falls on a holiday we do extend to next business day
89. They are allowed to appeal on the following working day
90. Our court is not closed
91. Never had that happen
92. I have not had that happen yet. I have very few civil cases per year
93. The court is open Monday thru Friday
94. I give them the last office day to file
95. We allow them that extra day for appeal
96. We accept appeals or any other business until 4:30pm on the last day
97. Take it the next working day
98. They have until 5pm on the next day we are open to file the appeal
99. Take it the next business day, contact is made by mail, email, or fax that an attempt was made on the final day
100. Closed means closed
101. Probably accept it, however, it is very clear at the end of a case when it must be filed. Have not had that happen in 11 years
102. The appeal is accepted until the close of the next business day
103. If the last day to appeal is on a county holiday, the appeal will be accepted on the next regular day the office is open. Time is up at 4:30pm on the last day unless we are notified before 4:30 and the appellant is at the office before 5
104. Observe "mailbox rule" if postmarked; we are open till 5pm on every working non holiday

105. How would I know if we were closed? If I am aware of an litigant wanting to appeal and has time constraints, we will reasonably accommodate
106. I believe they would get to the next business day
107. Not applicable. My court is open 8-5 every weekday
108. Does not apply to this court...hours are 8-5 everyday
109. Give them until the next day
110. Accept it the next day
111. They may file the next business day
112. Give them the next day that the court is not closed, that is not a legal holiday
113. Have them come in the day before it closes
114. We are always open until 5pm
115. Take it on the next business day

Question # 6: Do you have clerks assigned to your court?

Response: 91.7% (122) said yes and 8.3% (11) said no. 133 answered the question and no one skipped the question.

Question # 7: If you have clerks assigned to your court, are they full time or part time?

Response: 88.4% (108) said full time and 11.5% (14) said part time. 122 answered the question and 11 skipped the question.

CONCLUSIONS:

1. Although a 16% response rate is less than I hoped for it is nonetheless the best information we have as no other records are kept. Also keep in mind that of the 3,513,053 cases filed in JP courts in Texas during the last reporting period 88 % were criminal cases and only 12 % were civil cases.
2. The responses indicate that 88% of the courts are open every day and 87% of those courts are open the same hours every day, which would be 650 courts open the same hours each day if you project the percentages onto all 850 courts in Texas.
3. For those courts whose hours of operation vary each week almost 91% post a sign indicating the hours they are open. For those courts whose hours are the same each week but are not open from 8AM until 5PM each day 84% post a sign indicating the hours they are open each day.
4. 8.3% of the JP courts in Texas, which projects out to 70 courts statewide, do not have clerks assigned. This means the judge must do everything without any clerical assistance. Of the 91.7% of the courts who do have clerks assigned only 88% of those have full time clerks and 11% have part time clerks. If you project those numbers out for all of the JP courts in Texas it means 86 courts have only part time clerks.
5. Assuming 850 JP courts in Texas at this time and assuming that the JP's who

answered the survey are representative then 70 courts do not have any clerks assigned and another 86 only have part time clerks. This means 156 or about 19% of the JP courts would have great difficulty maintaining office hours of 8AM until 5PM every day. Although I have no way to know for sure I suspect that most of these 156 courts are located in small counties with a minimal caseload, and most of what they have are probably traffic cases.

6. For those courts who are not open from 8AM until 5PM each day an average of 744 (again projected state wide) post a sign indicating what days and hours they are open. I would assume that at least some of those who did not answer did not do so because they are open from 8AM until 5PM every day.

7. From analyzing the answers to question # 5 it appears that only five of the 115 respondents (4.5%) would clearly not allow an appeal if it were filed late even though the office may have been closed all or part of the last day to appeal. Three other responders (2.6%) did not say they would refuse to accept a late filing but also did not say they would accept it late either so their answer, although ambivalent may indicate they would not accept a late filing. It is difficult to project these percentages statewide without knowing exactly how many courts are not open from 8AM until 5PM every day but clearly it is a relatively small number. There is no way to determine if any of those courts who indicated they would not accept a late filing have ever in fact denied one or if it has even come up. I thought the responses “closed means closed” and “it’s too bad” were the pretty clear expressions.

8. All but a few of the other respondents said they would accept a late filing on the next business day if the court were closed when they tried to file an appeal. There were a significant number of responses, which said they had never had this problem occur. It appears that the JP courts have generally adopted an informal solution to insure a litigant has a right to appeal, even though their methods are not strictly within the rules. The problem is that about 156 JP courts may not physically be able to staff a court from 8AM until 5PM every day. For the other courts who are not open from 8AM until 5PM every day the decision as to the hours of operation is made by an independent elected official who is allowed to set the hours their court is open. I am not sure the Texas Supreme Court has the authority to regulate those hours of operation, but that is for the court to decide. Many JP courts are open from 8AM until 5PM every day but I do not know how many.

RECOMMENDATIONS:

Make no changes in the rules because it appears it is not a big problem. Some courts are open from 8AM until 5PM Monday through Friday. I estimate that about 751 courts are open every day for some period of time and most post those hours on a sign. Of those courts who are not open from 8AM until 5PM every day Monday through Friday I estimate 95.5% would probably accept an appeal filed the next business day, and at least 93.5% would definitely accept a late filing the next day. This assumes the responses received could be projected out for all of the JP courts in Texas.

Also if Rules 571 and 749 were changed to specifically provide for an appeal to be filed late if a JP court was closed on the last day to appeal, would you also allow the appeal to be filed late if the JP court was closed for only part of that last day to appeal? For example if the court were open until 4PM would that trigger the rule allowing the appeal to be filed the next business day or is there something magical about being open until 5PM?

Perhaps as few as 9.3% and as many as 15.6% of the courts who are not open from 8AM until 5PM every day do not post a sign to indicate the hours they are open. This could be between 79 and 132 statewide who do not post a sign and are not open from 8AM until 5PM every day. How would you resolve arguments over whether or not the court was actually open until 5PM on the last day to appeal?

Another issue, which would have to be addressed, is whether or not a rule change would only apply to appeals? For example there are other rules for JP courts which have 5 and 10 day deadlines to do something, so if a JP court were closed on the last day to file a motion for a new trial under Rule 569 would that deadline be extended to the next business day also? The other rules that involve deadlines to file a motion or take some action within 5 or 10 days are Rules 535, 537, 538, 544, 566, 567, 569, 744, 748, 749b and 749c.

If it is the sense of the committee to draft a rule in accordance with the Poverty Law Section letter then I ask that it be crafted to restrict the right to file a late appeal to the next business day the court is open without regard to the hours the court is actually open on that day. In other words it should be restricted to the next day only even if the court is not open from 8AM until 5PM on that day.

If the rule were changed when would a judgment become final if a court is not open until 5PM on the last day to appeal? For example in an eviction case would the judge have to wait an extra day to sign a writ of possession? If the trial were held today and a judgment was rendered for the plaintiff for possession the defendant would have 5 days to appeal from the date of the judgment. So if the trial was on Thursday the last day to appeal would be the following Tuesday and if there were no appeal filed then the plaintiff could come in for a writ of possession on Wednesday at 8 AM. However if the rule were changed then I suppose the plaintiff could not get a writ of possession until Thursday if the court were not open until 5PM on Tuesday because the court would have to wait and see if the defendant was going to come in on Thursday to appeal.