

# Opinion Creates Uncertainty for Deadlines on Motions Seeking Extensions

Commentary by Amanda Ingersoll and Christopher Walsh

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Florida's Second District Court of Appeal issued an opinion recently holding that filing a motion for extension of time does not suspend the deadline subject to the motion while the motion is pending.

While focusing specifically on the period of time subject to Florida's proposal for settlement rules, the opinion is applicable to other deadlines and directly conflicts with prior case law from the Fifth District. Until the Florida Supreme Court weighs in, attorneys practicing in Florida state courts are subject to inconsistent applications of arguably one of the most imperative aspects of the practice of law: adherence to deadlines.

The Second District's opinion in *Ochoa v. Koppel*, arises out of an action for injuries Ochoa claims to have suffered in an automobile accident. At the trial level, Ochoa timely served a proposal for settlement on the defendant, offering to settle for \$100,000. Florida's proposal for settlement rules are designed to encourage settlement by setting strict deadlines for acceptance and penalties for unreasonable rejection. A proposal made under the rules is "deemed rejected" by operation of law if not accepted in writing within 30 days. If the party who served the proposal obtains a judgment "beating" the proposal by at least 25 percent, that party may also seek attorney fees and costs incurred from the date the proposal was served. Because a fees and costs award is in degradation of common law, courts must strictly construe the provisions of the rules, including applicable deadlines.

In *Ochoa*, one day before expiration of the 30-day acceptance period, the defendant filed a motion to enlarge her time to respond. About 60 days later, after a hearing on the motion for extension but before the court issued its ruling, the defendant filed a notice accepting the proposal. Two days later, the court entered an order denying the motion for enlargement of time. Relying on the Fifth District's previous decision, *Goldy v. Corbett Cranes Services*, holding that a motion for enlargement tolled the responsive period until the motion could be heard, the *Ochoa* defendant moved the court to enforce the settlement, arguing she accepted before the acceptance period expired. The Pinellas County trial court agreed, granted the motion to enforce settlement and entered final judgment.

On appeal, *Ochoa* argued that the filing of a motion for enlargement did not toll the acceptance period, and the proposal was deemed rejected by operation of the proposal rules. Reviewing the applicable rules, the Second District noted that Florida Rule of Civil Procedure 1.090 allows a court to enlarge a period within which a party must act, and subject to limitations of the rule itself, a court may enlarge a period if a request is made before expiration of the period.

However, neither the proposal for settlement rules nor Rule 1.090 provide for suspension of time while a motion to enlarge is pending. Therefore, to hold that a motion to enlarge automatically tolls a period until the motion is decided would require inserting the necessary text into at least one of the rules.

Recognizing that courts are prohibited from adding words to or rewriting the rules, the Second District held that the filing of a motion to enlarge time to accept a proposal for settlement does not toll the acceptance period. Unable to reconcile its duty to give the rules their plain and ordinary meaning and the Fifth District's decision in *Goldy*, the Second District also certified conflict with the *Goldy* decision.

### Tolling

Until a further decision is issued, trial courts in counties in the Second District are bound by the Ochoa no-tolling ruling, while trial courts in counties in the Fifth District are bound by the *Goldy* ruling allowing tolling. Absent their own ruling, trial courts in counties outside of these districts are free to follow either decision.

Practitioners also must consider how trial courts may apply the rulings to deadlines other than proposal for settlement deadlines. For example, *Goldy* relied upon prior case law recognizing the 120-day period to serve initial process and 90-day period to substitute a party following suggestion of death could be tolled by motion made prior to the period expiring. *Goldy* was also cited itself to support the argument that procedural deadlines could be tolled pending ruling on a motion for extension.

Should the Florida Supreme Court exercise jurisdiction to review the conflict, its review could focus on simply answering whether a motion to enlarge would toll the proposal for settlement acceptance period. However, further guidance from the court may deter additional inconsistent application. For example, the motion for enlargement in Ochoa

was arguably moot at the time of the trial court's ruling.

If the trial court was of the opinion that filing the motion for enlargement tolled the acceptance period, the proposal was accepted two days before the trial court's ruling, leaving no reason to extend the deadline. Therefore, the motion's ultimate denial should not carry substantial weight on appeal.

However, if the motion had been granted, but the time period not tolled, after 30 days the proposal would have been deemed rejected by operation of law. A court should require more than a motion for extension as a basis for reversing this determination. Further, rather than just granting an extension, a court would have to effectively revive an expired settlement offer, which raises prejudice issues depending upon the posture of the case at the time.

Until further guidance is available, practitioners should consider erring on the side of caution by seeking a ruling on motions for extension prior to expiration of a pending deadline. As difficult as securing hearing time on short notice may be, uncertainty now governs a very fundamental aspect of the practice of law, one that if not adhered to is sometimes accompanied by profound consequences.



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