

Overcoming Missed Deadlines

Anders Sleight: Welcome back to the Litigators Lounge. Devoted to exploring the world of commercial litigation with Offit Kurman's Commercial Litigators. I'm Anders Sleight, and joining me today is my partner, Niall McMillan. Niall, welcome back to the Lounge.

Niall McMillan: Thank you.

Anders Sleight: In today's world, deadlines, particularly in litigation, can come up quickly and sometimes you might find yourself or a client having missed a deadline.

In that scenario, what's something that a party can do if they've missed a deadline or need to get back on track?

Niall McMillan: Yeah, thank Anders. Sometimes you're served with a complaint. You don't know that you're served or you just miss the time to respond, there's two things that are gonna happen at two stages.

One, the court can enter a entry of default and that starts the process for a default judgment that comes later. As the time progresses [00:01:00] there, the chances and the reasons for you to be able to succeed on being able to have a chance to respond in the complaint, those do become more limited. So it's important to contact an attorney right away so you can have a better chance of being able to respond to that complaint and the timeline, not affecting you as much. For entry of default, first thing you wanna figure out is, why was I not served?

So why didn't I respond? If you weren't served at the correct address, it's something you can address. That's a jurisdictional issue. There's something like delay, talk to attorney. We can get creative about it and see what solutions are out there for you.

For a default judgment that becomes more limited because that means more time has passed on. However the service can always be grounds to vacate that. In DC and the federal jurisdictions, if you file a verified answer that shows you have good faith defenses to the claims against you, a lot of times you can get the motion set aside at that time too.

Anders Sleight: And how often does this happen? Is this a realistic thing where parties just don't respond [00:02:00] or timely and miss a deadline like that?

Niall McMillan: It happens much more often than you'd think. When that happens, it depends really on which side you're on. Sometimes you're on the plaintiff's side and it can be a good thing to some extent.

However if you're on the defendant's side, you definitely wanna make sure you get in there quickly and respond to it and figure out, what effect this may have on you.

Anders Sleight: If you're on the plaintiff's side, are there any downsides to reopening a case or might there be good reason for a plaintiff to even consider it in that circumstance?

Niall McMillan: Yeah, there is a lot of really good reasons for the plaintiff to consider. Well, do they want to grant the defendant to be able to respond to the complaint instead of proceeding with a default?

One of those could be is that there's uncertainty if you don't allow that and the defendant's gonna make a motion that you don't know what the result of that will be. And two, a lot of times you have a better chance of resolving the case through a settlement if you go through this process, rather than just through a default judgment. Which default judgment you're gonna have to collect on your own, find those [00:03:00] assets. With a settlement hopefully, you'll be able to get a payment directly from the defendant.

Anders Sleight: Absolutely. We all know that judges generally have a preference for resolving cases and disputes on the merits as well, even if there may have been a technical missed deadline.

Niall McMillan: Exactly.

Anders Sleight: Yeah. Well, thank you Niall. I think this is important to remember. It's a fast-paced world.

We all receive many, many emails. Maybe you may have missed service, of process notice from your registered agents. So keep an eye on those emails and if you have a missed deadline, please reach out to Niall so that he can assist you with that.

Niall McMillan: Thank you, Anders.

Anders Sleight: And just a reminder, Offit Kurman is a full service law firm with offices and litigators from coast to coast, providing litigation services ranging from employment, financial services, construction, government contracting, business dispute matters. So please reach out to Niall or myself if you have a litigation matter that requires attention.

Thank you.

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