

# Trial Law TIPS

Roy D. Wasson's  
TIP #94

**ROY D. WASSON** is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

## Excusable Neglect No Excuse for Failing to File Something on Sunday

I have written before about the fact that, “[f]or a variety of reasons, most trial lawyers avoid federal court.”<sup>i</sup> One trap for the unwary that can lead to loss of an important motion or the entire case is the missing of a non-jurisdictional filing deadline by a single day because a motion or memorandum was filed on the Monday following the weekend in which it was due. It may surprise you to learn that a federal court order or pretrial stipulation setting a filing deadline for “August 30, 2020,” for example requires you to make that filing on or before Sunday, the 30<sup>th</sup>, and does not carry forward to the next business day. Further, under the applicable federal standard, the failure to file on the weekend will be sufficient grounds to deny your motion, strike your late filing, and possibly terminate the case, *even if you make a showing of excusable*

*neglect*. Instead, you will demonstrate it was impossible for you to have complied with that deadline.

In *Destra v. Demings*, 725 F. App'x. 855 (11<sup>th</sup> Cir. 2018) the district court had entered into a scheduling order pursuant to the deadlines entered into by the parties which would have extended the discovery deadline to January 9, 2017, and the dispositive motions deadline to January 16, 2017.” *Id.* at 857. That deadline was on a holiday, Martin Luther King, Jr.’s birthday. The defendant had scheduled a meeting for that day to finalize the motion for summary judgment he intended to file but, a funeral the defendant was attending had been rescheduled for late that afternoon because one of the parties’ mothers had taken ill. “Defendants’ counsel immediately telephoned Destra’s counsel and informed him of the situation. Defendants’ counsel also explained his understanding that, because January 16, 2017, was a legal holiday . . . the deadline for defendants’ motion automatically extended to the following day.” *Id.* at 858. The meeting to finalize the motion for summary judgment was scheduled for the next day, the first business day following the holiday weekend. “The motion was filed the same day.” The court struck the motion for summary judgment and thereafter denied the defendants’ motion for extension of time to file it, arguing excusable neglect. In holding that the district court did not abuse its discretion in striking the motion for summary judgment filed one day late, and noting that excusable neglect is insufficient reason to extend deadlines set by a scheduling order, the Eleventh Circuit held as follows:

**B. The district court’s January 18 order striking Defendants’ motion for summary judgment**

The district court did not abuse its discretion when it initially struck Defendants’ motion for summary judgment as untimely. Defendants’ motion for summary judgment was one day late. That the deadline fell on a legal holiday is irrelevant. The advisory committee notes to Rule 6 indicate that **Rule**

***6(a), which provides that a deadline that falls on a legal holiday is automatically extended to the next day that is not a Saturday, Sunday, or legal holiday, does not apply when the district court sets a deadline on a date certain. Fed. R. Civ. P. 6 advisory committee note (2009).***

Because Defendants' motion for summary judgment was filed late without any explanation, the district court's initial decision to strike that motion was not an abuse of its discretion. Accordingly, the only remaining issue is whether the district court abused its discretion in denying Defendants' motion for an extension of time.

**C. The district court's January 23 order denying Defendants' motion for an extension of time**

When a deadline appears in a scheduling order and a motion is filed after the deadline, "*Rule 16* is the proper guide for determining whether a party's delay may be excused." *Sosa*, 133 F.3d at 1418 n.2. In *Sosa*, we rejected the argument that the excusable-neglect standard in *Rule 6(b)* governs such extensions. *Id.*; *cf. Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1338 n.8 (11th Cir. 2014) ("Rule 6(b)(1)(B) applies generally, when a more precise rule does not govern the situation.").

Accordingly, in order to receive an extension of time to file their motion for summary judgment, Defendants were required to show "good cause" for missing the deadline. *See* Fed. R. Civ. P. 16(b)(4); *Sosa*, 133 F.3d at 1418-19, 1418 n.2. Rule 16(b)'s ***good-cause standard "precludes modification unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'"*** *Sosa*, 133 F.3d at 1418 (quoting Fed. R. Civ. P. 6 advisory committee note (1983)).

*Id.* at 859 (emphasis added).

Although remanding for further proceedings to determine whether the unexpected family illness and rescheduling the funeral constituted “good cause,” the case should be a fair warning that a “date certain” deadline falling upon a weekend does not carry forward to the next business day. And be warned that excusable neglect will not be cause to rectify a late filing.

It is nearly impossible to keep up with the nuances of federal trial practice, all you can do is:

***Keep Tryin!***

***Roy***

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<sup>i</sup> Roy D. Wasson, *Removal and Remand—Third Party Defendant Cannot Remove Case to Federal District Court*, 609 Fla. J. Ass’n. Journal 50 (Jul/Aug 2019) as was read into the record by the federal district judge (outside the presence of the jury) during my last federal trial upon taking the bench one morning and addressing the “Mr. Wasson I have been reading something you wrote”), “[u]nyielding deadlines, the need for memoranda of law on every motion, and the rarity of live hearings, make things unpleasant for plaintiff’s lawyers when the defense removes a case” from state court to federal court. *Id.*