

SAINT PAUL LEGAL LEDGER MINNESOTA LAWYER

LEF WS

[Prison inmate enrolls with Mitchell Hamline](#)

[Verdict withstands jury polling flaw](#)

[Judge axes Minneapolis 2040 Plan](#)

[Transgender inmate sues for surgery, prison transfer](#)

LEGAL FEATURES

[Briefly: How to oppose an extension if you really need to](#)

[Perspectives: Watergate broke in many new laws here](#)

[Breaking the Ice: Pro bono work brings high court victory, award](#)

[Modern Family: Recording prohibition consistent with 1st Amendment](#)

MORE HEADLINES

[Court rules religious schools can get Maine tuition aid](#)

[Judge resets trial to Oct. 24 for 2 ex-cops in Floyd killing](#)

[Commentary: Privacy not in Constitution, but it's everywhere in law](#)

[Feds taking steps toward revising race, ethnic terms](#)

[Home](#) / [Expert Testimony](#) / [Briefly: How to oppose an extension if you really need to](#)



Depositphotos.com image

Briefly: How to oppose an extension if you really need to

By: [Lauren J. Coppola](#) and [Rebecca Bact](#) June 21, 2022

Not too long ago, we wrote about briefing extensions in the appellate courts. See [Eric Magnuson and Luke Hasskamp, *How to get an extension if you really need one*, Minnesota Lawyer \(May 20, 2019\)](#). That article discussed both the procedure and the strategy for getting a briefing extension in state and federal court.

But what if you are on the receiving side of an extension request, and your client is adamant that you not agree to it? What arguments can you make — and what arguments *should* you make — considering how likely they are to succeed?

First, you should start with the understanding that no matter how strenuously you oppose a reasonable extension request, it is likely to be granted. Some appellate courts don't even give an opportunity to oppose a first request for an extension. For example, the Ninth Circuit's streamlined extension rule allows for an automatically granted 30-day extension for each party, so long as it is the first request, and a case is not expedited or scheduled for oral argument, the extension will be granted. See 9th Circuit Rule 31-2.2. In the 3rd Circuit, an extension request may be made by telephone and may be granted prior to the opportunity for opposition. See 3rd Circuit Rule 31.4. At the extreme end of the spectrum, the California state appellate courts allow a "grace period" of at least 15 days from the due dates for appellate briefs. To explain: if a brief is not filed on its due date, the clerk will eventually issue a notice setting the deadline for the brief as 15 days from the date of the notice. Cal. Rules of Court, rule 8.220(a). This period after the official due date acts as a de facto extension — and one that opposing counsel can do nothing about.

In any event, most appellate courts will give a party one, and sometimes two, reasonable extensions of time to file a brief unless there are some compelling circumstances which make the extension problematic. For example, an appeal from an order that grants or denies an injunction may become moot if the appeal is not decided by a particular impending deadline. But in the absence of a concrete reason why an extension would be harmful, it is unlikely that the court will deny a request.

Second, knowing the extension will likely be granted, consider reframing the opposition with a different goal in mind. Your odds of opposing any extension are generally not as good as the odds of trying to shorten the requested extension. A good practice is to try to shorten the period (from something like 30 days to two weeks, or 45 days to 30 days) by indicating to opposing counsel that you will consent to a shorter period but will oppose a request for the longer extension. If this does not work, you may still

have a decent shot at having the court impose that limit to an extension if you point out your offer of compromise in an alternative way. For example, you can say that you are willing to shorten the period if the court imposes that limit to an extension if you point out your offer of compromise in an alternative way. For example, you can say that you are willing to shorten the period if the court imposes that limit to an extension if you point out your offer of compromise in an alternative way.



Lauren J. Coppola

find yourself in need of an extension, and having argued against your opponent's request may come back to haunt you. It's our practice to nearly always agree with reasonable extension requests. Under some states' rules, unless it impacts your client's legal position, this is the kind of decision that is typically the lawyer's to make, and not the client's. *See, e.g.,* Mass. R. Prof. C. 1.2(a) ("A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client..."). Other jurisdictions, including Minnesota, have updated their rules to follow the ABA's Model Rule, and now suggest that the lawyer should "consult with the client as to the means by which [the objectives of representation] are to be pursued," omitting reference to decisions a lawyer may make without client input. Minn. R. Prof. C. 1.2(a). Regardless of the division of decision-making laid out in the rules of professional conduct, it is important to discuss extensions with the client if only to explain that opposing an extension is unlikely to be effective, and worse, could be counterproductive or could set a bad tone with the court.

But, sometimes, opposing an extension request can't be avoided. The most common situation is when opposing counsel makes repeated extension requests. At some point, a line needs to be drawn. And opposing an initial extension request, or perhaps a second one, may set the stage for more success in opposing subsequent extensions.

So how do these general principles work when drafting an opposition? First, as to timing: consider opposing only after the first or second request. It is helpful to be able to note that, as a matter of professional courtesy, you had in the past assented to the opposing party's initial extension request. This can strengthen the credibility of the opposition and show reasonable cooperation.



Rebecca Bact

Second, see if you can effectively highlight a larger pattern of delay and the resulting detrimental effects on your client's interests. You might lay out the procedural background of the case, and explain the protracted nature of the proceedings, including how long the underlying dispute has been brewing. Importantly, you should tie that delay to the prejudice your client is experiencing, including any continuing harm that could be resolved along with the appeal. For example, if the appellee is seeking protracted extensions, but actively seeking to enforce the judgment in the lower court (assuming no stay), you might use that fact to argue the unfairness of further delay.

Third, see if you can take apart your opposition's bases for its extension request. You might argue that any

reason based on "press of business" is not only a run-of-the-mill litigation reality, but a problem of the other party's own making, since its first extension, for example, created the overlap in deadlines for other matters. You could also go through any asserted conflicts one by one and point out how each did not merit the second lengthy extension. *See, e.g., Connecticut General Life Ins. Co. v. Chicago Title and Trust Co.*, 690 F.2d 115, 115 (7th Cir. 1982) (Judge Posner dismissing "conflicting commitments in other litigation" as "perfunctory" and denying extension request).

Even with these strategies, you may only get a partial victory — an extension period shorter than that requested. But realistically, outright denial of a requested extension is rare. Indeed, courts of appeals have been known to grant several extensions before a request is denied. *See, e.g., Stratford Trust v. Unigard Indemnity Company*, No. 19-55556, 2021 WL 1884022, at *1 (9th Cir. Jan. 26, 2021) (denying ninth extension request after eight were granted); *Connecticut General Life Ins. Co.*, 690 F.2d at 115 (denying sixth extension request after fifth grant included order stating no further extensions would be granted).

In the end, extensions of briefing deadlines are routine in the appellate courts. They are regularly granted, and hard to oppose. However, in a particular case, opposing an extension request may be necessary and could be effective. Understanding the playing field clearly will help you in preparing your opposition strategy, and in preparing your client for the likely outcome.

Lauren Coppola is the deputy managing partner of Robins Kaplan's Boston office, chair of the firm's Telecommunications Practice and an experienced trial and appellate litigator.

Rebecca Bact is an associate in Robins Kaplan's Boston office, where she practices commercial and appellate litigation.



ABOUT LAUREN J. COPPOLA AND REBECCA BACT



NEWS | FEATURES | SPECIAL SECTIONS | OPINIONS | LAWYER DIRECTORY | PARTNER CONTENT | PUBLIC NOTICES | EVENTS | RESOURCES | ADVERTISING

COVID-19