

# Respect the Process: Late Appeals and Wrongful Use of Civil Proceedings

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Last week the Law Court handed down two decisions relating to judicial process, addressing the time limits for notices of appeal and the situations in which relief can be sought for wrongful use of civil proceedings.

In the first case, [\*Witham v. Board of Trustees of the Maine Criminal Justice Academy\*](#), a petitioner challenging an agency action failed to timely appeal from a Superior Court decision affirming the agency's action. Instead of filing a notice of appeal within 21 days of the court's judgment, the petitioner did not appeal until 160 days after entry of judgment. The problem arose because the petitioner never received notice of the Superior Court's decision; the clerk's office apparently mailed the judgment, but the postal service did not deliver it. The problem is, Maine Rule of Appellate Procedure 2B provides that the appeal period may only be extended by more than 21 days (but no more than 140 days) if the clerk failed to send the parties notice of entry of judgment. It isn't enough that the judgment gets lost in the mail and never gets delivered, if the clerk sent the judgment. Accordingly, the Law Court concluded that the Superior Court could not grant an extension of time to file the notice of appeal. The Law Court further noted that the rules do not allow for an extension of more than 21 days simply for "good cause" and that the outer limit for any extension is 140 days. Because these time limits are jurisdictional, the Law Court dismissed the untimely appeal.

In the second case, [\*Leighton v. Lowenberg\*](#), the Law Court tackled a different issue – the scope of claims for abuse of process and wrongful use of civil proceedings under Maine law. In that case, dentists had sued one of their patients for defamation based on a letter that the patient had written regarding the dentists' alleged malpractice. The problem was that the dentists did next to nothing to pursue the claim; they failed to produce any documents and provided unsworn interrogatory responses. The Superior Court ultimately dismissed the defamation suit because of the dentists' failure to comply with its discovery orders. The patient then sued the dentists for abuse of process and wrongful use of civil proceedings. As to the abuse of process claim, the Law Court concluded that the patient failed to state a claim because the term "process" refers specifically to orders of the court, not the legal process generally. Because the dentists had not used any "process" by invoking the authority of the court to cause an order to issue, they had not committed abuse of process. On the other hand, the Law Court concluded that the patient did state a claim for wrongful use of civil proceedings. There was no dispute that the civil proceedings had been initiated without probable cause and that the suit's primary purpose was not to adjudicate the claim. Accordingly, the only

question was whether the proceedings had terminated in favor of the patient. For dismissal to satisfy this standard, the Law Court concluded, the dismissal must indicate that the claims lacked merit. The Law Court found that dismissal for failure to cooperate in discovery indicated that the dentists' claims were meritless, and that therefore the dismissal was terminated in favor of the patient. Accordingly, the patient could seek damages.

The lesson from these two, very different cases? Judicial procedure matters. First, parties must pay strict attention to jurisdictional appeal timelines. Second, under the right circumstances, misuse of civil proceedings is actionable. Parties are obligated to follow the rules, and to avoid abusing those rules.

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