

# Trends: Close Up

October 2017

## Courts and Disaster Recovery

During times of crisis and disaster, courts were often treated not as an independent branch but as a local or state agency. That mindset has, to a degree, changed in recent years, post 9/11 and most certainly post-Hurricane Katrina, as courts have confronted issues related to their own operations and the need to provide a forum and venue to address not only their daily activities but also the special conditions that arise amid disaster. Key among these are two specific areas: who may exercise authority with respect to court operations, and what does that authority entail.

### Who May Exercise Disaster Authority?

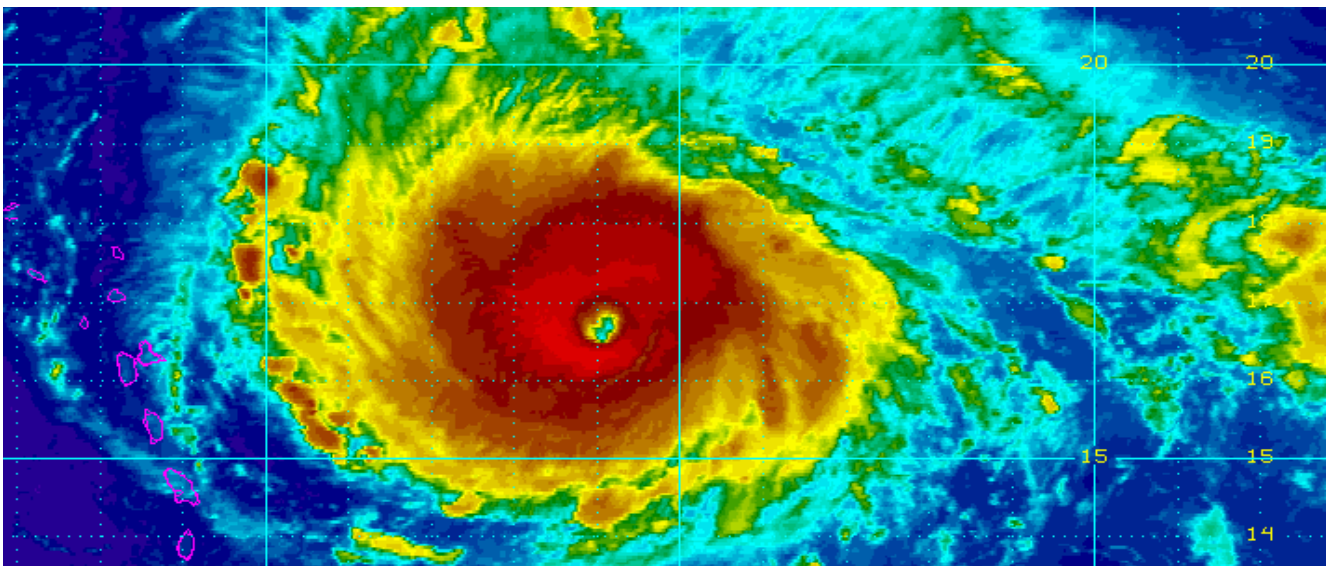
While courts have been recognized as exercising their own inherent authority to maintain their operations, many states grant executives (governors, mayors, etc.) the ability to declare emergencies and disasters. But what does this mean for court operations? Can the executive really close courts by directive? Over the last several years, the chief justice or local presiding/administrative judge has been granted the power to either independently declare a “judicial emergency” or use an existing executive declaration as the basis for modifying court operations.

## About the Series



These special reports are part of the National Center for State Courts’ “Trends in the State Courts” series and serve as informative and timely updates for state court leaders. Any opinions expressed herein are those of the authors, not necessarily of the National Center for State Courts.

Hurricanes Harvey and Irma, in August and September 2017, provide recent examples. In Florida, the governor declared a state of emergency and directed all state offices be closed, but it was the chief justice (referencing in his administrative order the governor’s actions) who ordered the closure of all courts in the state. South Carolina’s chief justice took a different tack. Again, referencing that the state’s governor had declared a state of emergency, the chief justice indicated that state judicial officers and employees should follow the decisions made by county government officials in regard to office delays or closings. Texas makes the declaration by the governor critical; under a 2009 law, that state’s supreme court can issue certain orders amid a disaster, but only if the governor has declared an emergency first.



## “Hurricanes Harvey and Irma have once again reminded the courts to be prepared.”

Within the judicial branch there is the question of who may exercise what authority and when. For example, if a snowstorm makes entrance into a courthouse difficult, who has the authority to shut down the courthouse when there are multiple court types inside it? What happens when the chief judge of the superior court directs that court remain open while the chief judge of the circuit court in the same building orders that court closed? The modern solution is often some sort of power-sharing agreement (both chief judges decide jointly) or deferral to the chief judge of the higher/highest court. Another possibility is chief justices, as in the case of Florida, simply directing court closures.

### What Does the Exercise of Disaster Authority Entail?

Regardless of which judicial officer is granted authority in a disaster, or even the power to declare a disaster in the first place, what does that mean for operations? States vary in terms of what options the courts have. For example, Connecticut has enacted broad statutory authority. Since 2009, the chief justice and the state court administrator have had the power to “take any action necessary in the event of a major disaster, emergency . . . to ensure the continued efficient operation of the [courts].” Other states focus on more specific grants of power.

A big consideration in recent years has been the movement of parties, judges,

and cases, in particular those states that require the court to sit “in the county seat” or make similar provisions. Displaced parties in civil or criminal proceedings may have difficulty having their cases heard, or emergency custody or other orders enforced, when their case documents are a county away. Judges are a different matter; while there was a point in time in which judges’ jurisdictions ended at the county line, most states now have granted the state’s chief justice or court of last resort the power to temporarily reassign judges to post-disaster areas to assist in restoring

court operations. Other states direct the transfer of judges to different locations or counties and allow the judges and courts to operate as if they were back in their original locations for jurisdictional purposes. A 2014 Ohio law allows the local administrative judge in a county to direct the moving of a court to some other temporary location. New York in 2009 somewhat split the difference. While the governor retains the power to direct the moving of a court to a temporary location, if the governor is unable to do so the power defaults to the chief judge of the state’s highest court.

*Courts need to know their authority when a state of emergency has been declared.*

## 5 questions to consider:



Does the declaration of a state of emergency apply to court operations and the authority of judges to issue orders?



Does the declaration of a state of emergency toll the statute of limitations or speedy-trial requirements?



What is the authority of trial courts to continue court operations in a state of emergency?



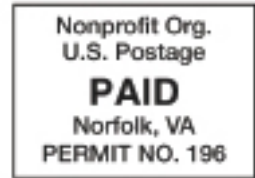
Can cases be transferred to another part of the state unaffected by the emergency declaration?



Who has the authority to order transfers?



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In addition to moving courts and judges, a very common power now exercised by courts in disasters is the ability to toll or extend various deadlines. For example, a 2007 South Dakota law specifically grants the chief justice the power to toll or suspend deadlines. In Texas, the highest court in civil matters (supreme court) issued an order during Hurricane Harvey resetting deadlines and dates in civil cases. The supreme court also issued a joint order with the state's other top court (court of criminal appeals) providing that disaster-caused delays were "good cause" for modifying or suspending all deadlines and procedures.

### For More Information

Hurricanes Harvey and Irma have once again reminded the courts to be prepared. By creating guidebooks and procedures, courts can prevent panic and protect the essential courthouse job functions from potential disasters. Please consider consulting some of the following resources: CCJ/COSCA's *Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators* (2016); CCJ/COSCA's *Court Security Handbook: Ten Essential Elements for Court Security and Emergency Preparedness* (2012); and NCSC's online *Emergency Preparedness/Disaster Recovery Resource Guide* ([www.ncsc.org/emergencyprep](http://www.ncsc.org/emergencyprep)).