

## **“EXCUSABLE NEGLIGENCE” DOES NOT JUSTIFY RULE 60(C) RELIEF FROM A JUDGEMENT BASED ON THE STATUTE OF LIMITATIONS**

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*Porter v. Spader*

Ct. Appeals, Div. One, September 21, 2010

Authored by the [JSH Appellate Team](#)

Plaintiff filed a complaint six days before the limitations period was to expire. The envelope was returned to the law office one day prior to the expiration of the statute due to insufficient postage. Without reviewing the contents or consulting with the attorney, the law office staff member attached the appropriate amount of postage and resubmitted the envelope to the court. Consequently, the complaint was filed one day after the limitations period expired.

Defendant moved for summary judgment based on the statute of limitations. In response, Plaintiff conceded her complaint was filed after the limitations period, but argued that under Rule 60(c)(1), even if summary judgment were granted, the judgment should be set aside based on the excusable neglect of the law office staff member. The trial court granted the defense motion, finding that Plaintiff had not met her burden of showing excusable neglect.

The court of appeals held that Rule 60(c) relief was not available to Plaintiff. Although the purpose of Rule 60(c)(1) is to allow the court discretion to relieve a party's failure to comply with court-established rules, the court does not have discretion to apply Rule 60(c)(1) to allow the untimely filing of a complaint. Even assuming without deciding that the failure to timely file the complaint was properly attributed to excusable neglect as contemplated by Rule 60(c)(1), absent more, “excusable neglect” does not justify relief from the applicable statute of limitations.