

# **Overcoming Hurricane Helene: How the Western North Carolina Legal Community Managed Court Closures, Sanitation Concerns**

Attorneys working in private and public practice spoke to Law.com about the devastation left by Helene, reflecting how their day-to-day legal operations were affected and how their professional community pulled together in the aftermath.



**Biltmore Village in Asheville, North Carolina. Credit: American Red Cross**

Located in western North Carolina, Asheville was just one area hit hard by severe conditions from Hurricane Helene's landfall in late September.

Situated in a broad valley surrounded by mountains, the town and its neighboring communities were not prepared for the destruction Helene brought. Nearby rivers crested at 26 feet, topping a century-old record from 1916 when two hurricanes swept through western North Carolina.

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## **'No One Expected It to Be as Bad as It Was'**

Steve Cash, a litigator and criminal defense attorney with Searson, Jones, Gottschalk & Cash, told Law.com that his first priority after the storm hit was stepping away from work to ensure his family and close friends were safe.

"The law practice just went away and we didn't even think about it," Cash said. "My first focus was checking on my family and friends because I didn't have any communication with my mom or dad, friends on the other side of the county that we didn't know how the weather had treated them. I touched base with my law partners and everyone was OK and safe somewhere."

Cash and his family had to wait days before they could return to their home in Marshall, North Carolina, located about 40 minutes north of downtown Asheville, where Searson Jones is based.

"No one expected it to be as bad as it was," Cash said. "It took a few days before we could get back across the French Broad River, and there was no cell service so my family was without power; our house was intact, but no cell service, no internet, nothing; we didn't know what was going on."

In the midst of the devastation, Cash said his law firm benefited from the "hard pause" brought by the North Carolina Supreme Court's Sept. 30 amended order that tolled deadlines for case filing in 28 counties, giving attorneys temporary relief to focus on their personal lives in addition to courthouse closures, property damage, displaced clients, and having to track down inmates in other county jails.

"We were able to talk to opposing counsel and everybody was understanding and great. Everybody sort of pulled together," Cash said.

Others in the legal community jumped into action. Two Charlotte-based attorneys, [Aaron Benjamin and Joseph Polonsky](#) of Cadwalader, Wickersham & Taft transported supplies to disaster-stricken areas. Benjamin, a licensed pilot, joined in Operation Airdrop's Operation Helene, while Polonsky drove an eight-hour round trip from Charlotte to Hendersonville, North Carolina, to deliver supplies.

Attorneys with Womble Bond Dickinson also helped. Partnering with the North Carolina Bar Foundation and Honeywell in "Wills for Heroes," lawyers offered free legal services to emergency personnel in the wake of the devastation.

## 'Things Were Kind of in Flux'

Asheville, the county seat of Buncombe County, had 43 confirmed fatalities, the highest among the region's total of 102 storm-related deaths, according to the [North Carolina Department of Health and Human Services](#).

"There's a lot of sadness and stress, and loss and grief in our community right now, and that certainly affects our work," Buncombe County Public Defender Susannah Knox told Law.com.

While some attorneys in the region were able to shift their legal priorities, the Public Defender's Office was forced to pick up the pieces in the epicenter of Helene's landfall.

"Attorneys, judges, clerks, court staff, bailiffs, the sheriff's department; everybody's dealing with a lack of child care, on top of everything else which is very stressful," Knox told Law.com. "Not having potable water in our homes, or any running water; we didn't have any running water at all; that's been an ongoing stressor. Most of Asheville still has no potable water and didn't have running water."

Buncombe County closed its courthouse on Sept. 26, and remained closed through the following week. During the first week of the closure, there was no internet service and some attorneys were left without cell service, making communication extremely difficult. The first day of a "modified" court setup, primarily hearing cases for those in custody, was Oct. 8.

"That's the main difference between us and private attorneys is that we work in a public building," Knox said. "The only other thing that would be arguably more difficult is that we have more clients, and our clients are a more vulnerable population, in general, so advocating for them is always hard."

At first, Buncombe public defenders were not able to use their usual office as no water for the sprinkler system presented a fire hazard. Knox and her colleagues operated out of "a small workspace" next to a courtroom.

In the midst of navigating through the logistics of courtroom procedures and confusing directions, some attorneys found themselves without access to restrooms. Some snuck around caution tape to use the facilities and were eventually warned that they could be held in contempt of court, according to Knox.

"Things were kind of flux; we would show up and not really know what the protocol was going to be for that day," Knox said.

While the courthouse has reopened and the bathrooms are now operational, the county remains under a boil advisory, according to [county administrators](#). The Buncombe County courthouse has also established internet connection and can conduct hearings remotely.

The [Madison and Yancey county courthouses](#), which do not yet have access to electronic filing, suffered property damage at their local courthouses. The Madison courthouse, located in Marshall, North Carolina, experienced several feet of water damage and flooding and is expected to remain closed until the end of the year. It has since reopened at a different site.

## **'If People Are No Threat to Public Safety, Do We Need to Lock Them Up?'**

At the Buncombe County jail, sanitary conditions were even worse.

According to Knox, there was a period where inmates only got two bottles of water in four days while the community sorted through getting its utilities up and running. She also noted reports of inmates jumping off the mezzanine to injure themselves so they could be transported to better care at a hospital.

"Helene led to terrible suffering among inmates: toilets overflowing with feces and vomit, deprivation of food and water, and the emotional agony of not knowing if loved ones were safe," said criminal defense attorney David Kahn, who is based in Asheville.

Portable toilets were reportedly brought in but inmates were supposedly only allowed to use them once per day, while the rest of the time they were provided biohazard bags. The smell at the jail was overwhelming when attorneys met their clients behind plexiglass.

"When we got word that conditions in the jail had gotten really bad, some of my colleagues and I who had internet connection had gotten together to make a list of folks in jail that we presented to the DA's office to ask for emergency dismissal, just to get people out of jail," Knox said. "When the court isn't open, that's the only way you can get people out of jail is if the DA dismisses cases."

Knox said that the Public Defender's Office did its best to advocate for their clients remotely.

Cash commended the public defenders' efforts as some clients charged with criminal offenses were moved to have their first court appearances in Charlotte.

"The public defender's office was remarkable, in checking with clients in the jail because the jail had no power and no water," Cash said. "I think as a whole, there was a lot of resiliency and we bounced back pretty well."

Helene's disruption also exposed an underlying flaw in the justice system: holding too many people in jail, Kahn told Law.com.

"One way to avoid similar incidents in the future would be to examine whether everyone in jail needs to be there," Kahn said. "If people are no threat to public safety, do we need to lock them up?"

As of now it is unknown if any of the jail conditions, or any other issues stemming from the hurricane's wrath, will lead to litigation.

## **Giving Grace**

Some of the lingering issues stem from expiring court orders as life continues after such devastation.

For awhile, there was a grace period for electronic filings and for those who couldn't make their court appearances. Failure-to-appear arrests began around the end of October, and jury trials were began again as of Nov. 1.

Knox added that a general extension of grace for those still struggling should replace the "blanket policy" of automatically pushing court dates down the road.

"We have to be in touch with [our clients] and we have to know why they can't come into court, as opposed to the first few weeks where it was just automatically setting another court date and giving people another chance," Knox said.

Buncombe County and federal agencies are collaborating as [more than 1,500 residents remain in hotels](#), according to the Asheville Citizen Times. One of Knox's clients lived in a camper and lost everything he owned during the storm. Remarkably, he still managed to make it to court to resolve his case, she said.

"For many of us, obviously for people who didn't leave their homes and could still come to work everyday, it's important to remember that there are members of our community who are still really suffering," she continued. "Even for those who are physically safe, their lives have been destabilized and so I think grace should be extended more generally for a while, but I understand that can't last forever and at some point people need to start coming to court again."

The North Carolina Bar Association has [established resources](#) for those affected by Helene. The bar association's Young Lawyers Division also coordinates the North Carolina Disaster Legal Services effort in partnership with the Young Lawyers Division of the American Bar Association, the Federal Emergency Management Agency, and Legal Aid of North Carolina. For more information on volunteering, visit the [bar's website](#).