JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
April 17, 2020

To
Presiding Judges of the Superior Courts

From
Hon. Marsha G. Slough, Chair, Executive and Planning Committee
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee
Hon. Kyle S. Brodie, Chair, Technology Committee
Hon. Marla O. Anderson, Chair, Legislation Committee
Hon. Harry E. Hull, Jr., Chair, Rules Committee

Subject
Advisory to Superior Courts on Civil Matters During the COVID-19 Pandemic

Action Requested
Please Review

Deadline
N/A

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Thank you for your continuing efforts in ensuring that the people of California continue to have access to justice during this state of emergency. This advisory is to assist the courts in protecting the rights of civil litigants while also protecting the health and safety of court users, court employees, judicial officers, and the public.

Previous Actions

On March 20, 2020, the Chief Justice issued an advisory recommending steps superior courts could take to mitigate the effect of reduced staffing and court operations and to protect the health

of judicial officers, court staff, and court users, while recognizing that courts are considered an essential service. Those actions included considering suspension of all civil trials, hearings, and proceedings for at least 60 days, with the exception of time-sensitive matters, such as restraining orders and urgent dependency, probate, and family matters. The advisory also provided that when possible, any urgent matters be done telephonically, under the general policy encouraging use of telephonic appearances in Code of Civil Procedure section 367.5(a) and California Rules of Court, rule 3.670.

In an order issued on March 23, 2020, the Chief Justice suspended jury trials for 60 days and authorized courts to adopt any proposed local rules or rule amendment intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for public comment.

On March 27, Governor Newsom issued Executive Order N-38-20, providing the Chief Justice and Judicial Council broad authority to address the impact of the COVID-19 pandemic on court practice and procedure. On April 6, 2020, the council adopted emergency rules under that authority, including emergency rule 3, regarding the use of technology by the courts for remote appearances and court operations. These actions were intended to provide courts with additional tools to assist them in continuing essential operations to address urgent matters, while complying with appropriate social-distancing regulations.

Courts are currently handling necessary operation and urgent proceedings with greatly reduced staff in order to maintain social distances and other health and safety measures.

Urgent Civil Matters

Courts are faced with the need to balance several interests, including protecting the rights of civil litigants while at the same time protecting the health and safety of their staff, judicial officers, court users, and of the public generally. In that balance, courts should proceed with urgent civil matters to the extent possible, using the broad authority under emergency rule 3 to use electronic means to hold proceedings remotely.

In particular, courts are urged to consider the following:

1. Prioritize petitions to approve a compromise of a disputed claim or pending action or disposition of proceeds of a judgment for a minor or a person with a disability under California Rules of Court, rules 7.950 or 7.950.5 if no hearing is required or, if a hearing is required, by a hearing with remote appearances.

2. Prioritize ex parte civil matters, when parties can appear remotely.

3. To the extent possible, handle matters that allow civil cases to proceed, such as settlement conferences and informal discovery conferences, taking advantage of the broad authority provided in rule 3 to use electronic means to do so remotely whenever possible.

Communicate About Status of Active Cases

Courts are urged to communicate with parties, either by local rules of court; orders, information, or a set of answers to "frequently asked questions" posted on the court website; or individual orders as to what parties should be doing regarding civil filings and motions, including:

- How the court is accepting filings, e.g., at the window, by drop box, by electronic filing, by fax transmission;
- When briefs are due for motions initially set for hearing while emergency orders are in effect;
- How or when pending motions are to be reset;
- How the parties should present urgent discovery motions; and
- Whether deadlines for motions tied to trial dates will be moved with any trial being reset or remain tied to the initial trial date.

Technology and Remote Proceedings

To support courts in conducting remote proceedings, the Judicial Council Center for Education and Research (CJER) is developing distance education for judges on the use of remote technology. Newly available on CJER Online is a podcast entitled "Security, Privacy, and Zoombombing: Videoconferencing for Judges." In the podcast, Judges Jackson Lucky (Riverside) and Paul Colin (Santa Clara) discuss the major videoconferencing platforms available for judicial work. The podcast can be found at *http://www2.courtinfo.ca.gov/cjer/judicial/2616.htm*.

A webinar on the use of technology for Mandatory Settlement Conferences is currently in development. The webinar will include an overview of the practical aspects of technology and what is possible with technology (for example, breakout rooms for talking to parties individually); concerns (including confidentiality and security); and demonstrations of features and techniques. The webinar is anticipated to be available in May, and will be accessible live and subsequently in a recorded version on CJER Online. Additional programming regarding use of technology in court proceedings will be forthcoming.

Finally, Judicial Council Information Technology will be publishing best practices for selecting and implementing video technology solutions later this month.

Your continued efforts to ensure access to justice for all Californians during this difficult time is greatly appreciated.

cc: Court Executive Officers of the Superior Courts