



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-09

Title

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, emergency rule 9

Recommended by

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

Action Requested

VOTING MEMBERS ONLY: Submit votes by responding to the transmittal email.

Please Respond By

May 28, 2020

Date of Report

May 22, 2020

Contact

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Executive Summary

To protect parties who have a civil cause of action that accrued before or during the state of emergency related to the COVID-19 pandemic, the Judicial Council adopted California Rules of Court, emergency rule 9, which tolled statutes of limitations on the commencement of civil causes of action with the court for the duration of the state of emergency and 90 days thereafter. The chairs of the Judicial Council's six internal committees now propose that the council amend emergency rule 9 to shorten the time for tolling statutes of limitations for all civil causes of action and to clarify that the tolling applies also to statutes of repose.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective immediately, amend emergency rule 9 of the California Rules of Court to:

- Toll from April 6, 2020, until October 1, 2020, the statutes of limitation and repose for civil causes of action *that exceed 180 days*.
- Toll from April 6, 2020, until August 3, 2020, the statutes of limitation and repose for civil causes of action *that are 180 days or less*.
- Add an Advisory Committee Comment noting the intent of the rule.

The proposed amendment to the rule is attached at page 11.

Relevant Previous Council Action

On March 27, 2020, the Governor issued an order¹ giving the Judicial Council of California authority to take necessary action to respond to the COVID-19 pandemic, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil or criminal practice or procedure. The Governor's order also suspended statutes to the extent that they would be inconsistent with such emergency rules. Under that order, the council adopted emergency rules 1–11 on April 6, 2020. Among these rules, the Judicial Council adopted emergency rule 9, which tolls all statutes of limitation for civil causes of action until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

Analysis/Rationale

Background

The COVID-19 pandemic and state of emergency

As stated more fully in the April 4, 2020, report to the Judicial Council proposing emergency rules 1–11,² the United States is the epicenter of a global pandemic caused by the COVID-19 virus. As of May 21, 2020, the U.S. Centers for Disease Control and Prevention reported there were over 1.5 million cases in this country, with over 93,000 deaths.³

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the COVID-19 pandemic.⁴ On March 19, 2020, Governor Newsom issued a statewide

¹ Executive Order N-38-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

² Judicial Council of Cal., Internal Com. Chairs Rep., *Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic* (Apr. 4, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-426E-446C-8879-39B03DE418B3>.

³ U.S. Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Cases in the U.S., www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

⁴ State of emergency proclamation, www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

shelter-in-place order⁵ with limited exceptions for emergency and essential critical infrastructure services. In addition, several counties have issued local shelter-in-place orders that are more restrictive than the statewide order issued by the Governor. Despite sustained efforts by all levels of government, COVID-19 continues to spread and is affecting nearly all sectors of California. As of May 20, 2020, California’s Department of Public Health reported over 84,000 cases in the state and almost than 3,500 deaths.⁶

Response to the adoption of emergency rule 9

As noted above, on April 6, 2020, the council adopted emergency rule 9, which tolls all statutes of limitation for civil causes of action until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted. Shortly after adoption of the rule, the Judicial Council began receiving comments that raised issues concerning the application of the amended rule to actions brought under the California Environmental Quality Act (CEQA), which has particularly short deadlines, generally 30 or 35 days. Almost all of these commenters requested essentially the same thing: that the statutes of limitations for CEQA and other land use challenges be tolled only for the emergency period and not for the extra 90 days included in original rule 9. They stated that the additional 90 days of tolling beyond the state of emergency was inconsistent with the short limitation periods in statute and the intent that such causes of action be brought expeditiously. The existence of a state of emergency should not result, they asserted, in petitioners having triple the time to bring a challenge (for 30-day limitations) beyond the statutory time, even after the state of emergency has been lifted.

Circulating Order No. CO-20-08

In response to these comments, the chairs of the council’s internal committees proposed on April 29, 2020, with Circulating Order No. CO-20-08, an amended rule that split the original rule into two subdivisions. The proposed amended rule would have retained, for statutes of limitations that exceed 90 days, the tolling period in emergency rule 9: from April 6, 2020, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted. For statutes of limitations of 90 days or less, the proposed rule would have provided a tolling period from April 6, 2020, until 30 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted. The latter provision was consistent with the request made by many who submitted comments after the adoption of emergency rule 9 and would have applied primarily to CEQA and other land use causes of action.

Upon posting of Circulating Order No. CO-20-08, the Judicial Council received more comments—several from the same parties that had previously provided comments. Many of the commenters noted that the state of emergency potentially could be in effect for years, and that tolling the statute of limitations throughout that period for challenges to governmental approvals

⁵ Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁶ Cal. Dept. of Public Health, “COVID-19 by the Numbers,” news release May 20, 2020, www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers.

of new construction projects would have a significant impact on construction financing and so have a debilitating effect on homebuilding throughout the state.⁷ These commenters requested that emergency rule 9 be amended differently than proposed in the circulating order so that the tolling of statutes of limitations related to CEQA and other land use causes of action be eliminated entirely. Based on these comments, the chairs of the council's internal committees withdrew Circulating Order No. CO-02-08 on April 30, 2020, and circulated for public comment on May 5, 2020, an alternative proposal.⁸

The Proposal

This proposal will immediately amend emergency rule 9 to modify the tolling period and clarify the rule, as described below.

The proposed amendments modify the tolling period

When the council initially adopted emergency rule 9, the rule provided for tolling the statutes of limitations on all civil causes of action from April 6, 2020, (the date the rule was adopted) until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted. Tolling stops or suspends the running of time in statutes of limitations; when the tolling period ends, the time to bring an action in court (or be barred from doing so) will begin to run again. The rule provided parties and attorneys additional time to investigate, gather information and evidence, and determine whether to file an action.⁹ The rule tolled statutes of limitations not only for the period in which the state of emergency was in place, but also for an additional 90 days, in recognition that both litigants and the courts might need some time after shelter-in-place regulations were lifted to resume their work.

At the time the rule was adopted, the tolling period was pegged to the end of the state of emergency (plus 90 days) because it was uncertain at what point in time courts would be able to reopen and parties could begin to connect with each other once again. However, while the formal state of emergency period may last for many months or years, the Governor has announced plans to begin lifting the statewide shelter-in-place order, albeit in phases, over the coming months.¹⁰ In addition, some courts are accepting civil filings now and all are working on finding ways to

⁷ Construction workers are included in the state's list of essential critical infrastructure services. (See <https://covid19.ca.gov/essential-workforce/>.) They have been similarly exempted from stay-at-home orders in at least some of the stricter local ordinances. (See, e.g., City and County of San Francisco, Order of the Health Officer No. C19-07, www.sfdph.org/dph/alerts/files/HealthOrderC19-07-%20Shelter-in-Place.pdf.) Other local orders initially prohibited construction work but have added it to the list of permitted essential activities in revised orders. (See, e.g., Alameda County Public Health Order No. 20-10 (Apr. 29, 2020), at para. 16(f)(v), www.acphd.org/media/572718/health-officer-order-20-10-shelter-in-place-20200429.pdf.)

⁸ See www.courts.ca.gov/documents/sp20-01.pdf.

⁹ Statutes of limitations serve several purposes, including providing parties with peace of mind and reducing uncertainty; minimizing the deterioration of evidence, ensuring accurate fact-finding, and preventing fraud; and encouraging the prompt enforcement of substantive law.

¹⁰ Office of Governor Gavin Newsom, "Governor Newsom Provides Update on California's Progress Toward Stage 2 Reopening," news release May 4, 2020, www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/.

operate despite the existence of COVID-19. In light of this, and to provide litigants with greater certainty, the Judicial Council’s internal committee chairs are recommending that the rule be amended to provide specific dates to end the tolling periods.¹¹

Tolling period for causes of action with statutes of limitations of 180 days or less. Although many statutes of limitations run for a year or more,¹² statutes of limitations on some causes of action can be for a much shorter time. For example, the time for filing certain initial pleadings under the California Environmental Quality Act is 30, 35, or 180 days (Pub. Resources Code, § 21167); 60 days for claims under the California Coastal Act (Pub. Resources Code, § 30802) and validation actions (Code Civ. Proc., § 860); and 90 days for cases challenging governmental actions for which a shorter statute of limitations has not been set. Under current emergency rule 9, the time in which to bring such actions could be tripled beyond the statutory time even after the state of emergency has been lifted. A long tolling is inconsistent with the short limitation periods in statute and the Legislature’s intent that such causes of action be brought expeditiously. The proposed amendments would, as of August 3, 2020, end the tolling period for causes of action with statutes of limitations of 180 days or less. The internal chairs propose August 3, 2020, as the end date to ensure that courts will be able to process the civil actions and provide certainty and reasonable notice to litigants of the end of the tolling period, without overly impacting the construction industry and homebuilding or other areas in which the Legislature has mandated short statutes of limitation. The proposal would result in a total tolling period of approximately four months.¹³

Tolling period for causes of action with statutes of limitations of more than 180 days. For those limitations that statute sets at more than 180 days, the amendments would continue the tolling period until October 1, 2020.¹⁴ While the matters with shorter statutes of limitations are generally challenges to governmental actions and based on an administrative record, the matters with longer statutes of limitations require investigations and information gathering—actions difficult to complete swiftly in the current chaotic business environment. For this reason, a longer tolling period is proposed for those causes of action. The proposal would result in a tolling period of almost six months for these matters.

¹¹ This is consistent with the temporary nature of the emergency rules. The Judicial Council will continue to review the applicability of each of these rules as the state’s response to the pandemic changes and court operations resume, including adjustment of the sunset of individual rules.

¹² See, e.g., Code Civ. Proc., §§ 335.1 (two years on injury to persons), 337 (four years on written obligations), and 339 (two years on oral obligations).

¹³ Proposed Cal. Rules of Court, emergency rule 9(b). (This provides a 119-day tolling period for those actions. The 119-day tolling period was chosen to set an approximately 120-day tolling period, but avoid ending the tolling on a Sunday, which, although it would have been advanced to Monday under Code of Civil Procedure sections 12 and 12a, may have caused more confusion about the last date of the tolling period.)

¹⁴ Proposed Cal. Rules of Court, emergency rule 9(a). (This provides a 178-day tolling period for those actions, as was proposed in the draft rule that was circulated for comment, and is intended to approximate a 180-day tolling period, but fall on a weekday and a conventional milestone, that is, the first of the month.)

The proposed amendments clarify the scope of the rule

The proposed amendments also add specific references to “statutes of repose.” This change is to clarify that the rule applies to all statutory limitation periods for a civil cause of action, even those limitation periods that run regardless of the accrual or discovery of an injury.¹⁵ Examples include the statutes of repose for construction defects in Code of Civil Procedure sections 337.1 and 337.15. Statutes of repose typically cannot be equitably tolled,¹⁶ which makes it all the more important that they be tolled by operation of law in this unprecedented crisis, to protect the rights of litigants who are unable to investigate or file actions as a result of the state of emergency related to the COVID-19 pandemic.

In addition, because the proposed amended rule is intended to apply broadly to toll any statutory limitation on the filing in court of a pleading commencing a civil cause of action,¹⁷ an Advisory Committee Comment has been added at the end of the rule to confirm this point. The rule refers to civil causes of action, which include special proceedings.¹⁸ The rule also applies to limitations on filing of causes of action found in statutes other than the Code of Civil Procedure, including the limitations on causes of action found in, for example, the Family Code, Probate Code, and Public Resources Code.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. Given the length of time that statewide and local shelter-in-place restrictions may be in place, attorneys and self-represented parties may have more difficulty timely filing initial pleadings in the trial court. For the same reasons, trial courts may have difficulty in processing all such pleadings and handling post-filing matters during this time. Tolling of the statutes of limitation and repose will protect the interests of litigants during the time the pandemic limits the ability of parties to exercise their rights in civil cases. The amendments recommended here attempt to balance those concerns with legislative policy that certain causes of action must be brought to court promptly.

¹⁵ “ [W]hile a statute of limitations normally sets the time within which proceedings must be commenced once a cause of action accrues, [a] statute of repose limits the time within which an action may be brought and is not related to accrual. Indeed, “the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a special event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.” [Citation.] A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded. [Citation.] ” (*McCann v. Foster Wheeler LLC* (2010) 48 Cal.4th 68, 78–79, fn. 2, quoting *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.)

¹⁶ *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 369–383.

¹⁷ The rule does not apply to time limits on the submission of claims to government entities, such as those under Government Code section 911.2.

¹⁸ “The word ‘action’ as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.” (Code Civ. Proc., § 363; see also *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186.)

Comments

Proposed amendments to emergency rule 9—ending the tolling period for actions with shorter statutes of limitations on June 15, 2020 and for actions with longer statutes of limitations on October 1, 2020—were circulated for comment from late Tuesday, May 5, until noon on Friday, May 8, 2020. A chart with the text of all the comments is attached at pages 14-49. The chairs of the council’s internal committees considered all the comments received before finalizing the recommendations in this memorandum. The comments and their responses are summarized below.

Forty-one individual comments were received. Commenters included governmental groups (League of California Cities, California State Association of Counties, Rural County Representatives of California, and City of Oakland), construction industry and development representatives (California Building Industry Association, California Business Properties Association, State Building and Construction Trades Council of California), housing advocates (Habitat for Humanity), Association of Environmental Planners of California, and the Natural Resources Defense Council, as well as two courts (Superior Courts of Monterey and Riverside Counties), several judicial officers, and many private attorneys. The comment submitted by the California Chamber of Commerce was made jointly by a coalition of 55 trade groups, planning associations, affordable housing providers, business associations, charitable organizations, infill developers, advocacy groups, and nonprofit organizations; and the comment submitted by YIMBY Law was signed by 10 housing advocacy groups.¹⁹

The comments can be divided into two groups: 23 comments focused on the rule generally, and 19 comments focused on how emergency rule 9 would, or should, relate to probate matters (one commenter is in both groups).²⁰ The probate commenters all ask for the same modification of the rule, addressed in D, below. Most of the other commenters agree with the proposal as circulated (with a proposed June 15 end to the tolling period for actions with shorter statutes of limitations).²¹ But some commenters either (1) oppose amending the tolling period completely or suggest a longer tolling period apply, at least for cases with shorter statutes of limitations; (2) suggest that the date for ending the tolling for cases with longer statutes of limitations be

¹⁹ The full list of groups that signed each comment is provided on the comment chart.

²⁰ The comment chart has been divided to reflect this, with all the probate comments separated out and placed in their own section after the others, so that comments are easier to follow.

²¹ The 15 comments agreeing in full with the circulated proposal are from the following:

- Superior Court of Riverside County, Superior Court of Monterey County, and Judge Barbara Kronlund (Superior Court of San Joaquin County);
- California State Association of Counties, League of California Cities, Rural County Representatives of California, City of Oakland, and Association of Environmental Planners of California;
- California Business Properties Association, California Chamber of Commerce (in coalition with 55 other groups), YIMBY Law (jointly with 9 other groups), and Habitat for Humanity of Greater San Francisco; and
- Attorneys Robert Ring and Whitney Hodges, and the firm of Ruben, Junius & Rose, LLP.

made sooner; or (3) ask to add the phrase “special proceedings” into the rule. These points are all discussed below.

A. Shorter tolling periods, particularly for actions with shorter statutes of limitations

Most commenters agree with the concept of two different tolling periods ending on set dates, with a shorter tolling for causes of action with a statute of limitations of 180 days or less. But a few commenters differed. Two judicial officers oppose amending the rule at all, wanting the tolling period to last until 90 days after the end of the state of emergency, so that parties and courts would have more time to prepare to resume civil litigation. The Natural Resources Defense Council (NRDC) wants to continue tying the tolling period to the state of emergency and shelter-in-place orders (with just a “fair number of days” after the state of emergency is ended), noting concern about courts being able to accept filings as of June 15 and parties needing more time to prepare. The State Construction and Building Trades Council (Trades Council) raises a similar concern about courts not all being open and suggests tying the end of the tolling period for an action to the date when the court that is the venue for the action is “fully open.” Another commenter agrees with the proposal to amend the rule to include dates certain, but suggests that the date for cases with shorter statutes of limitations be 90 days after the date the rule is amended, to provide the 90 days that the original rule provided after the state of emergency was ended (whenever that might be).

The chairs considered these comments, and concluded, for the reasons described above and asserted by other commenters, that it was better to provide a date certain for the end of the tolling periods, and to shorten the tolling period for the actions with shorter statutes of limitations to be in accord with the legislative policy that these proceed quickly. As the Superior Court of Monterey County commented:

The revised Emergency Rule 9 balances the equities for all sides of the civil disputes and recognizes that statutes of limitation terms vary greatly. For disputes with shorter statutes (i.e., less than 180 days), the revised rule provides proportionate relief. ... [To] now provide a “date certain” for the tolling period will result in less confusion to litigants and to court personnel. Another benefit of the revision will be the avoidance of inconsistent interpretations, which generally leads to increased litigation at a substantial cost to the parties.

The City of Oakland agrees, noting that “a shorter, certain tolling period balances all interests, including the need to build important infrastructure and affordable housing.”

The chairs propose, however, in light of the concerns expressed by the commenters asking for a longer period, to modify the proposed amendments and extend the date in subdivision (b) of the rule—for ending the tolling period for actions with shorter statutes of limitation—until August 3, 2020. This approximately 4-month tolling period—rather than the 3-month tolling period provided in the circulated proposal—will better address the concerns raised relating to courts being able to process civil filings and parties having adequate notice of the change to the tolling

period, while still considering the need for certainty and the legislative policy of achieving finality more quickly in certain areas.

B. Tolling period for actions with longer statutes of limitations is too long

Besides the comments noted above that the rule should not be amended at all, the only other concerns raised in the comments regarding the proposed date of October 1, 2020, for ending the tolling for actions with longer statutes of limitations were comments from two practitioners that the tolling period would still be too long. The chairs disagree, particularly in light of the numerous comments agreeing with the proposed amendments, and decline to modify the proposed amendment to subdivision (a) of the rule.

C. Addressing “special proceedings” in the rule or Advisory Committee Comment

Because the proposed amended rule is intended to apply broadly to toll any statutory limitation on the filing in a court of a pleading commencing a civil cause of action, and because there were concerns expressed as to whether the rule applied to statutes of limitations on special proceedings, including writs of mandamus (the manner by which most CEQA actions are raised), an Advisory Committee Comment was added at the end of the proposed amended rule to confirm that it does apply to such proceedings.²² Several commenters expressly agreed with this manner of dealing with the concerns previously raised on this point, including the NRDC, the Trades Council, and the California Business Properties Association. One CEQA practitioner, who otherwise agrees with the proposal, requests that a reference to “special proceedings” be placed in the rule, because of concerns that without the phrase being expressly included, opposing parties may challenge whether petitions for writs are covered by the rule.

The chairs considered all the comments and concluded that no further modification is required on this point. The law, the Advisory Committee Comment, and the statements in this report all confirm that the rule applies to special proceedings.

D. Requesting to expand rule to cover a variety of probate deadlines

Most of the 19 comments relating to probate matters, from 18 practitioners and 1 retired judicial officer, are essentially the same. They note that the Probate Code includes deadlines for many actions that are not “causes of action” and proposes, therefore, that either the rule or the advisory committee comment to it be amended to add another subdivision, as follows:

The term “statutes of limitation and repose for civil causes of action” under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code.

²² The rule refers to civil causes of action, which include special proceedings. “The word ‘action’ as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.” (Code Civ. Proc., § 363; see also *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186.)

The internal chairs considered the comments but disagreed that any modification of the proposal was appropriate. The rule already covers statutes of limitations within the Probate Code and is not intended to address other types of deadlines.²³

Alternatives considered

The chairs considered the alternative of taking no action and leaving the rule as originally adopted. However, the council received a substantial number of comments pointing out that the current rule has the unintended consequence of essentially halting development and construction of new housing throughout the state. The chairs of the Judicial Council's six internal committees agree that these concerns are legitimate and therefore recommend the proposed amendments to emergency rule 9 in this memorandum.

Fiscal and Operational Impacts

Because this rule tolls filing deadlines for parties, it should have no fiscal or operational impacts on courts beyond potentially reducing the number of actions that will be filed during the state of emergency.

Attachments and Links

1. Cal. Rules of Court, emergency rule 9, at page 11
2. Voting instructions, at page 12
3. Vote and signature pages, at pages 13–14
4. Comments chart, at pages 15–50

²³ While there appears to be some ambiguity as to whether certain deadlines in the Probate Code operate as statutes of limitations, that is not an issue that should be addressed in a rule of court.

Emergency rule 9 of the California Rules of Court is amended, effective immediately, to read:

1 **Emergency rule 9. Tolling statutes of limitations for civil causes of action**

2
3 **(a) Tolling statutes of limitations over 180 days**

4
5 Notwithstanding any other law, the statutes of limitations and repose for civil
6 causes of action that exceed 180 days are tolled from April 6, 2020, until 90 days
7 after the Governor declares that the state of emergency related to the COVID-19
8 pandemic is lifted October 1, 2020.

9
10 **(b) Tolling statutes of limitations of 180 days or less**

11
12 Notwithstanding any other law, the statutes of limitations and repose for civil
13 causes of action that are 180 days or less are tolled from April 6, 2020, until August
14 3, 2020.

15
16 **Advisory Committee Comment**

17
18 Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a
19 pleading in court asserting a civil cause of action. The term “civil causes of action” includes
20 special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of
21 the Time of Commencing Civil Actions), is construed “as including a special proceeding of a
22 civil nature”]; special proceedings of a civil nature include all proceedings in title 3 of the code,
23 including mandamus actions under §§ 1085, 1088.5, and 1094.5—all the types of petitions for
24 writ made for California Environmental Quality Act (CEQA) and land use challenges]; see also
25 Pub. Resources Code, § 21167(a)–(e) [setting limitations periods for civil “action[s]” under
26 CEQA].)

27
28 The rule also applies to statutes of limitations on filing of causes of action in court found in codes
29 other than the Code of Civil Procedure, including the limitations on causes of action found in, for
30 example, the Family Code and Probate Code.

Instructions for Review and Action by Circulating Order

Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **Thursday, May 28, 2020**
- If you are unable to reply by Thursday, May 28, 2020, please do so as soon as possible thereafter.

Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages**

Effective immediately, the Judicial Council approves the amendments to Cal. Rules of Court, emergency rule 9.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Richard Bloom

_____/s/
C. Todd Bottke

_____/s/
Stacy Boulware Eurie

_____/s/
Kyle S. Brodie

_____/s/
Ming W. Chin

_____/s/
Jonathan B. Conklin

_____/s/
Samuel K. Feng

_____/s/
Brad R. Hill

_____/s/
Rachel W. Hill

_____/s/
Harold W. Hopp

_____/s/
Harry E. Hull, Jr.

_____/s/
Hannah-Beth Jackson

My vote is as follows:

Approve Disapprove Abstain

_____/s/
Patrick M. Kelly

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

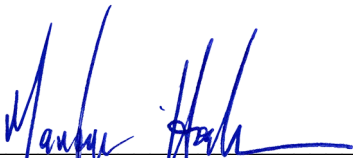
_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Eric C. Taylor

Date: 5/29/2020

Attest:



Administrative Director and
Secretary of the Judicial Council

SP20-01**Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)****List of Commenters and position stated (comments on charts following list)**

| | Commenter | Position | Comment |
|-----|--|-----------------|--------------------------------|
| 1. | Associations of Environmental Planners of CA, by Matt Klopfenstein, Legislative Committee | A | Comment below in general chart |
| 2. | Brad Baker Baker, Burton & Lundy, P.C. | AM | Comment below in Probate chart |
| 3. | Katherine Becker Santa Paula, CA | AM | Comment below in Probate chart |
| 4. | California Business Properties Association by Rex S. Hime, President & CEO | A | Comment below in general chart |
| 5. | California Chamber of Commerce By Adam Regele, Policy Advocate [with 55 others, listed at Comment] | A | Comment below in general chart |
| 6. | California State Association of Counties by Jennifer Henning, Litigation Counsel | A | Comment below in general chart |
| 7. | Maria L. Capritto Partner, Nelson, Comis, Kettle & Kinney, LLP | AM | Comment below in Probate chart |
| 8. | City of Oakland by Barbara J. Parker, City Attorney | A | Comment below in general chart |
| 9. | Hon. Bryan Foster, Judge Superior Court of San Bernardino County | NI | Comment below in general chart |
| 10. | James Gorton Partner, Gorton, Janosik & Poxon, LLP | AM | Comment below in Probate chart |
| 11. | Habitat for Humanity, Greater San Francisco by Maureen Sedonaen, Chief Executive Officer | A | Comment below in general chart |
| 12. | Eric A. Hirschberg Attorney, Jones, Lester, Schuck, Becker & Dehesa, LLP | AM | Comment below in Probate chart |
| 13. | Whitney Hodges Partner, Sheppard Mullin Richter & Hampton | A | Comment below in general chart |
| 14. | Hoffman Law Firm by Nathan Hoffman, Attorney | AM | Comment below in Probate chart |
| 15. | Hon. Barbara A. Kronlund, Judge, Superior Court of San Joaquin County | A | Comment below in general chart |
| 16. | Law Offices of Debra Graynom-Daly | N | Comment below in Probate chart |

SP20-01**Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)****List of Commenters and position stated (comments on charts following list)**

| | Commenter | Position | Comment |
|-----|--|-----------------|--------------------------------|
| | by Debra Graynom-Daly, Attorney | | |
| 17. | League of California Cities by Corrie Manning, General Counsel | A | Comment below in general chart |
| 18. | Mark Abbott Lester Attorney | AM | Comment below in Probate chart |
| 19. | Theresa Loss Senior Counsel, Jones, Lester, Schuck, Becker & Dehesa, LLP | AM | Comment below in Probate chart |
| 20. | Christopher R. Mallicoat Law Offices of Christopher R. Mallicoat | AM | Comment below in Probate chart |
| 21. | Richard D. Marks Richard D. Marks, Professional Corporation | NI | Comment below in Probate chart |
| 22. | Don Mooney Law Office of Donald B. Mooney | NI | Comment below in general chart |
| 23. | Natural Resources Defense Council by David R. Pettit, Senior Attorney | N | Comment below in general chart |
| 24. | Phillips Law Partners, LLP by George R. Phillips, Jr., Managing Partner | AM | Comment below in Probate chart |
| 25. | Hon. Michael Raphael Justice of the Court of Appeal, Fourth Appellate District | NI | Comment below in general chart |
| 26. | Hon. Glen Reiser (Ret.) | AM | Comment below in Probate chart |
| 27. | Robert A. Ring Ring & Green, APC | A | Comment below in general chart |
| 28. | Ruben, Junius & Rose, LLP by Tuija Catalano, Attorney | A | Comment below in general chart |
| 29. | Rural County Representatives of California by Arthur J. Wylene, General Counsel | A | Comment below in general chart |
| 30. | Mina Sirkin Attorney, Sirkin Law Group, PC | AM | Comment below in Probate chart |
| 31. | State Building and Construction Trades Council of CA by Tanya A. Gulesserian, and | AM | Comment below in general chart |

SP20-01**Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)****List of Commenters and position stated (comments on charts following list)**

| | Commenter | Position | Comment |
|-----|---|-----------------|--------------------------------|
| | Christina M. Caro, Adams Broadwell Joseph & Cardozo | | |
| 32. | K. Stern Attorney | AM | Comment below in general chart |
| 33. | Hon. Dylan Sullivan, Judge Superior Court of El Dorado County | N | Comment below in general chart |
| 34. | Superior Court of Monterey County by Katy Grant, Chief Operations Officer | A | Comment below in general chart |
| 35. | Superior Court of Riverside County by Tom Johnson | A | Comment below in general chart |
| 36. | John S. Torii Law Offices of John S. Torii | AM | Comment below in Probate chart |
| 37. | Kendall A. VanConas Attorney at Law Arnold, Larochelle, Mathews, VanConas & Zirbel, LLP | NI | Comment below in Probate chart |
| 38. | Todd Vigneux Associate Attorney, Pederson Law Offices | AM | Comment below in Probate chart |
| 39. | Borden Webb Borden D. Webb Law Corporation | AM | Comments in both charts |
| 40. | YIMBY Law by Sonya Trauss, President | A | Comment below in general chart |
| 41. | Kim Zimmerman Senior Associate Law Offices of Karen Knutson | AM | Comment below in Probate chart |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|----|--|----------|--|
| 1. | Associations of Environmental Planners of CA by Matt Klopfenstein, Legislative Committee | A | After reviewing the latest draft from Judicial Council, the AEP Legislative Committee believes it is appropriate and strikes the right balance. |
| 2. | California Business Properties Association by Rex S. Hime President & CEO | A | <p>California Business Properties Association (CBPA) strongly supports the proposed amendments to Emergency Rule 9, and, in particular, proposed new Emergency Rule 9(b) and the proposed Advisory Committee Comment. In our letter dated April 14, 2020, CBPA asked the California Judicial Council to modify Emergency Rule 9. Proposed Rule 9(b) resolves the concerns CBPA raised in our April 14, 2020 letter. The proposed amendment provides additional clarity by fixing the date the tolling ends and resolving any question that Emergency Rule 9 applies to special proceedings.</p> <p>CBPA thanks the Judicial Council's internal committees for their recommendation, and requests that the Judicial Council adopt the Emergency Rule 9 amendments.</p> |
| 3. | <p>California Chamber of Commerce By Adam Regele Policy Advocate</p> <p>Jointly with: Abode Communities Bay Area Housing Advocacy Coalition BIA Bay Area BILD Bridge Housing Building Industry Association of San Diego Building Industry Association of Southern California Building Industry Legal Defense Foundation Building Owners and Managers</p> | A | <p>This letter is submitted on behalf of a broad coalition of trade groups, planning associations, affordable housing providers, business associations, charitable organizations, infill developers, advocacy groups, and non-profit organizations who write to voice our collective support for the Judicial Council's proposed amendments to Emergency Rule No. 9 identified in SP20-01.</p> <p>We appreciate the Judicial Council's leadership and rapid response to the unprecedented events impacting our state and our courts and wholeheartedly endorse its proposed amendments to the emergency rule.</p> <p>Specifically, we agree with and support the Judicial Council's six internal committees' recommendation to amend immediately Emergency Rule No. 9 to:</p> <ul style="list-style-type: none"> • Eliminate reliance on the Governor declaring the state of emergency is lifted; • Toll from April 6, 2020, until October 1, 2020, the statute of limitations and repose for civil causes of action that exceed 180 days; and • Toll from April 6, 2020, until June 15, 2020, the statutes of limitations and repose for civil causes of action that are 180 days or less. |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

General Chart--Comments related to amendments to Emergency Rule 9 generally

| Commenter | Position | Comment |
|---|----------|--|
| Association, CA Burbank Housing California Apartment Association California Association of Realtors California Association of Winegrape Growers California Building Industry Association California Business Properties Association California Construction and Industrial Materials Association (CalCIMA) California Housing Consortium California Renters Legal Association and Education Fund (CARLA) California Retailers Association California YIMBY Carlsbad Chamber of Commerce Coalition for Responsible Community Development Community Corporation of Santa Monica EAH Housing Eden Housing Excelerate Housing Group Greater Coachella Valley Chamber of Commerce Greater Conejo Valley Chamber of Commerce Habitat for Humanity Hollywood Community Housing Corporation International Council of Shopping | | <p>We appreciate the Judicial Council’s recognition that a declaration of a state of emergency is not an appropriate reference point for tolling purposes. States of emergency remain in effect long after initial dangers have ended. Federal relief directly correlated with the ongoing state of emergency can be necessary to aid in a state’s economic recovery even after the immediate dangers of the emergency have subsided. A state of emergency remaining in effect also has other purposes, such as ensuring that anti-price gouging laws can be enforced and providing streamlined unemployment insurance application procedures to help people get relief sooner.</p> <p>States of emergency regularly last for significant periods of time, long past the time of a pressing emergency. For example, the emergencies declared on November 8, 2018 and October 27, 2019 due to wildfires and extreme weather conditions in Ventura County and other counties remain in effect today, long after the fire season ended.</p> <p>On December 23, 2019, Governor Newsom terminated more than 70 ongoing states of emergency that had been declared at various times over the last decade, from January 27, 2011 to November 30, 2018.</p> <p>In light of the Governor’s announcements to begin lifting the statewide shelter-in-place orders and the fact that many superior courts are already proceeding, or may soon be proceeding, to allow plaintiffs and petitioners to file any valid challenges they have via e-filing, fax-filing, or “drop box” physical filing, setting a date certain for the end to tolling statutes of limitation is reasonable and appropriate. These amendments are especially important to avoid any unintended impact on housing and other construction projects. As many of us indicated in our prior correspondence, the State of California is suffering from an unprecedented housing crisis that calls for the production of 3.5 million homes to house our state’s population.</p> <p>Over the course of the past several years, the California State Legislature has enacted dozens of housing laws to streamline the entitlement approvals process, including more than 30 new bills in 2019 alone. The new housing requires expanded and modernized infrastructure and public service facilities such as fire stations and schools.</p> <p>In addition, federal, state and local health officers have deemed construction activity, (inclusive of housing, commercial, and mixed-use construction) as an essential activity. Further,</p> |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

General Chart--Comments related to amendments to Emergency Rule 9 generally

| Commenter | Position | Comment |
|--|----------|---|
| <p>Centers LINC Housing Little Tokyo Service Center Many Mansions Menorah Housing Project Mercy Housing NAIOP of California Nonprofit Housing Association of Northern California (NPH) PATH Ventures People for Housing Orange County San Diego Regional Chamber of Commerce San Francisco Bay Area Planning and Urban Research Association (SPUR) Santa Ana Chamber of Commerce Santa Maria Valley Chamber of Commerce Silicon Valley at Home Simi Valley Chamber of Commerce Southern California Affordable Nonprofit Housing Association (SCANPH) Southwest California Legislative Council The Silicon Valley Organization TMG Partners Valley Industry & Commerce Association West Coast Lumber & Building Material Association West Hollywood Community Housing Corporation</p> | | <p>construction of housing and infrastructure has and will again be a critical component of the economic recovery, employing hundreds of thousands of workers statewide.</p> <p>Recognizing the importance of quickly identifying litigation challenges to agency approvals of construction projects (and agency plans and programs guiding such projects), the Legislature enacted short statutes of limitations (30-180 days) under laws like the California Environmental Quality Act (“CEQA”), Public Resources Code sections, 21000 et seq., for litigation challenges to agency approvals of projects.</p> <p>Unless amended as proposed, Emergency Rule No. 9 will conflict with the Legislature’s intent by indefinitely extending the statute of limitations for filing lawsuits challenging agency approvals of housing and other construction projects until the Governor entirely lifts the COVID-19 state of emergency, creating substantial litigation risk. Until this risk period has expired, the construction funding needed to build these approved projects – funding from agencies, lenders and foundations – is withheld, and construction cannot start or be completed.</p> <p>Moreover, as the Judicial Council recognizes, the claims raised in these lawsuits are adjudicated based on the content of the administrative record of the agency, and do not require fact-gathering, evidentiary proceedings, or pre-trial motion practice. The first several months after such lawsuits are filed do not require court time and include, for example, assembling the administrative record and conducting a settlement conference. Before the hearing on the merits, court supervision is typically limited to resolving record disputes and holding short case management conferences to set briefing schedules and page limits. The hearing on the merits is set at the court’s discretion.</p> <p>Requiring the filing of such claims is both appropriate and consistent with the Judicial Council’s goals of promoting judicial economy and equitable access to justice.</p> <p>To the extent a petitioner is located in a county where no suits can be filed, any dates the courts do not accept filings are already considered holidays. It would be fundamentally inequitable to allow very short land use limitations periods to be extended indefinitely, even where there is no barrier to plaintiffs or petitioners filing any valid challenges they may have.</p> <p>The narrow revisions recommended by the Judicial Council also eliminate any prejudice to</p> |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|----|---|----------|---|
| | Western Community Housing YIMBY Law | | potential petitioners and plaintiffs by providing more than a month of notice to allow sufficient time to prepare and file claims. We appreciate the Judicial Council's time and attention to this important matter and respectfully request that the Judicial Council revise Emergency Rule No. 9 in the manner proposed in SP20-01 for the protection and benefit of all Californians. |
| 4. | California State Association of Counties by Jennifer Henning Litigation Counsel | A | No specific comment. |
| 5. | City of Oakland by Barbara J. Parker City Attorney | A | I write in support of amending California Rules of Court, emergency rule 9, to provide certainty and account for actions that have shorter limitations periods. I very much appreciate and applaud the Judicial Council's efforts to protect litigants' rights during this unprecedented crisis. In the case of actions that have shorter limitations periods—such as the California Environmental Quality Act—a shorter, certain tolling period balances all interests, including the need to build important infrastructure and affordable housing. Accordingly, I support the Council's proposed amendments as set forth in Item No. SP20-01. |
| 6. | Hon. Bryan Foster, Judge of the Superior Court of San Bernardino | NI | I do not favor shortening the 90 day provision regarding the statute of limitations. I do favor its application to statute of repose. During these difficult times it may take a significant effort to obtain information necessary to prepare a case to be filed and as such the time for filing should be expanded |
| 7. | Habitat for Humanity, Greater San Francisco by Maureen Sedonaen, Chief Executive Officer | A | I write further to my letter of April 23 to endorse the approach proposed in SP20-01 to amend emergency rule 9. As previously explained, Habitat for Humanity Greater San Francisco was concerned about the inadvertent consequences of tolling the statutes of limitation indefinitely with respect to civil matters. As it stands, the rule denies homebuilders the certainty of knowing whether litigation will be forthcoming on a project, with the practical result of stopping developers from breaking ground on new construction until this is established. |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|--|----------|--|
| | | | <p>We specifically endorse the proposals to:</p> <ul style="list-style-type: none">• Eliminate reliance on the state of emergency being lifted• Toll from 4/6/20, until 10/1/20, the statutes of limitations and repose for civil causes of action that exceed 180 days; and• Toll from 4/6/20, until 6/15/20, the statutes of limitation and repose for civil causes of action that are 180 days or less. <p>I deeply appreciate the Judicial Council's time and attention in addressing these critical issues.</p> |
| 8. | Whitney Hodges Partner Sheppard Mullin Richter & Hampton | A | No specific comment. |
| 9. | Hon. Barbara A. Kronlund Judge of the Superior Court of San Joaquin County | A | This proposal makes perfect sense in light of this unprecedented crisis. Access to justice will best be served by the proposed amendments delineating specific dates for the tolling of the statutes of limitation and repose eliminating the ambiguity and reducing possible litigation over this issue. |
| 10. | League of California Cities by Corrie Manning General Counsel | A | No specific comment. |
| 11. | Donald Mooney Law Office of Donald B. Mooney | NI | <p>Thank you for the opportunity to comment on the Judicial Council's proposed amendment to California Rules of Court, Emergency Rule 9. For the last 25 years I have represented petitioners in well over one-hundred actions brought under the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 et seq. I provide the following comments based upon that experience.</p> <p>Given the uncertainty surrounding the COVID-19 pandemic and the uncertainty of access to courts as well as access to our clients, tolling the statute of limitations for civil actions is not only appropriate, but necessary. Emergency Rule 9 and the proposed amendments to Emergency Rule 9 state that the rule applies to civil causes of action.</p> <p>While civil actions incorporate and encompass special proceedings such as those brought under</p> |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|--|----------|---|
| | | | <p>CEQA, Public Resources Code section 21167, some in the legal community that represent respondents and real parties have asserted otherwise and have attempted to create confusion regarding the meaning and intent of Emergency Rule 9 as it applies to CEQA actions and other special proceedings. The Judicial Council's comments on the proposed ruled indicate that it applies to special proceeding such as CEQA actions. Thus, while it is clearly the Judicial Council's intent that Emergency Rule 9 applies to special proceedings, lawyers and law firms that represent respondents and real parties in interest have indicated their intent to challenge any CEQA action that relied upon the tolling provisions provided for in Emergency Rule 9. While any such demurrer would be frivolous and violate Emergency Rule 9, I have no doubt that numerous counsel for respondents and real parties will file demurrers or motions to dismiss CEQA actions based upon statute of limitations claims. This will not only result in useless and costly demurrers that further delay litigation, but could also result in confusion among trial and appellate courts.</p> <p>Given that the Judicial Council's comments on the proposed amendment to Emergency Rule 9 clearly indicate that the amended rule applies to special proceedings such as CEQA actions, the proposed amendment should be modified to indicate that it specifically applies to special proceedings. To that end, the following simple modifications to the proposed amended rule would clarify that the rule applies to special proceedings.</p> <p>Toll from April 6, 2020, until October 1, 2020, the statutes of limitations and repose for civil causes of action <u>and special proceedings</u> that exceed 180 days; and</p> <p>Toll from April 6, 2020, until June 15, 2020, the statutes of limitations and repose for civil causes of action <u>and special proceedings</u> that are 180 days or less.</p> <p>Finally, while the proposed amendments seek to shorten the tolling periods provided in the current Emergency Rule 9, I would request that the Judicial Council remain open to further extensions of the tolling period if all of the superior courts are not open and available for filing of complaints/petitions and other matters involving civil actions and special proceedings.</p> |
| 12. | Natural Resources Defense Council by David R. Pettit | N | Thank you for the invitation to comment on the proposed changes to Emergency Rule 9 that would fix hard end dates for the current emergency tolling rules for statutes of limitation. I am |

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|--|----------|--|
| | Senior Attorney | | <p>an attorney at the Natural Resources Defense Council in Santa Monica and I sometimes litigate CEQA cases on behalf of community and environmental groups.</p> <p>Preliminarily, it is good to see that the proposed changes include clarification that the tolling applies to special proceedings such as writs of mandate. This will avoid substantial expensive and mischievous law and motion practice.</p> <p>But the fixing of hard tolling deadlines, especially the June 15 deadline for matters, like CEQA cases, that have short statutes of limitation is problematic because we have no idea at this time whether the California courts will be open for filing cases on June 15, or indeed on any particular date in the future. The hard deadline raises issues of fairness and of due process for CEQA petitioners.</p> <p>The Judicial Council internal committee considering this rule change explained that the tolling rule rationale is:</p> <p>[T]o allow parties and attorneys time to investigate, gather information and evidence, and determine whether to file an action. During the pendency of the shelter-in-place order, the ability to do so is restricted.</p> <p>This is true whether the courts are open or closed so long as the shelter in place orders remain in effect. As of this writing, we have no idea whether those orders will be lifted by June 15, or any other date.</p> <p>CEQA gives important protections to local communities and to NRDC’s community clients. Litigating a complex CEQA matter from one’s kitchen table makes our work even more difficult. Accordingly, I urge to reject the proposed amendment setting out a hard end to the tolling period, and adopt instead a rule that ties the end of the tolling period to a fair number of days after the state of emergency and shelter in place orders are lifted.</p> |
| 13. | Hon. Michael Raphael Justice of the Court of Appeal, Fourth Appellate District | NI | It seems to me it would normally be unwise to shorten a statute of limitations for <i>existing</i> civil causes of action, particularly where that statute of limitations already is short. This means that attorneys who correctly believe they have more time to file a claim may suddenly have less time |

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Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|-------------------------------------|----------|--|
| | | | <p>to do so. I would like to ensure that we have considered that the proposed June 15 termination of tolling for short civil statutes of limitations (those less than 90 days) is worth doing what seems to amount to this type of shortening.</p> <p>As I understand it, the April 6 order provides that all civil claims are tolled for at least 90 days following a future date that will be announced. (That future date was to be the Governor's end of the state of an emergency.) While the 90-day period could start at any time, attorneys would have been ensured that they have at least 90 days of tolling to prepare and file any claim.</p> <p>If, today, an order were to announce that the 90-day tolling period starts to run immediately, I do not believe that would cause the concern I am articulating. That would be the 90-day period that plaintiffs were granted, even if it perhaps was not going to start until the formal end of the state of emergency.</p> <p>But, as I understand it, the order will trigger something closer to 30 days of tolling, to end on June 15. (The precise number of days of tolling depends on the date on which the order issues.) That truncates the 90-day period that previously was granted.</p> <p>In practice, if an attorney had, say, 5 days left to file a claim on April 6, that would mean that the attorney will effectively be given notice, rather suddenly, that the claim must be filed on June 20. The attorney may, at all times since April 6, have thought that she had at least 90 days to file the claim. Whether this will matter to members of the Bar, I cannot say. But it seems to me that shortening the time granted to file an existing cause of action is an unusual action to take, and the proposed June 15 deadline effectively works such a shortening. Whether it is worth doing so instead of simply providing the formerly announced 90 days of tolling should be considered.</p> |
| 14. | Robert A. Ring Ring & Green, APC | A | <p>The proposed change to Rule 9 makes sense for two reasons. First, a date certain is better than having to count days. There will always be some confusion when there is counting. Second, shorter statutes of limitation should have a shorter extension for logical reasons.</p> <p>Thank you for doing what you need to do.</p> |
| 15. | Ruben, Junius & Rose, LLP | A | See letter marked as Attachment A for complete comment. |

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|---|----------|---|
| | by Tuija Catalano, Attorney | | Summary: <ul style="list-style-type: none"> • Agree should use actual date, because some states of emergency are not lifted for years • Shorter tolling important in order to avoid any unintended impacts on housing and other construction projects. • Construction now considered essential activity in Bay Area. • |
| 16. | Rural County Representatives of California by Arthur J. Wylene General Counsel | A | On behalf of the Rural County Representatives of California (RCRC), representing California's 37 rural counties, we support the proposed changes and thank the Judicial Council and staff for their hard work. |
| 17. | State Building and Construction Trades Council of CA (AFL/CIO) by Tanya A. Gulesserian, Christina M. Caro, Adams Broadwell Joseph & Cardozo | AM | See letter marked as Attachment B for complete comment. Summary <ul style="list-style-type: none"> • Agree with advisory committee comment • Concerned with end of tolling being on certain date when do not know if courts will be accepting filings at that time • Suggest tolling period end on “the date on which the Superior Court(s) of proper venue for the action fully reopen following the COVID-19 emergency closures.” |
| 18. | K. Stern Attorney | AM | I think the tolling period for cases with a greater than 180 day statute of limitations is too long. |
| 19. | Hon. Dylan Sullivan Judge of the Superior Court of El Dorado County | N | Thanks for being leaders during this crisis. When you change the Emergency Rules, the courts have to respond to create implementation plans with significantly less staff. We don't know when the Governor will fully lift the state of emergency. If the Rule allows the courts to stop tolling on Oct. 6 and COVID-19 is still with us, or there are still restrictions requiring social distancing, or if we have a resurgence of COVID-19 during the Fall, then the JCC will have to amend the Rule again. The Rule works now. |
| 20. | Superior Court of Monterey County by Katy Grant Chief Operations Officer | A | Thank you for addressing Emergency Rule 9 and the protection of parties with a civil cause of action. We agree with the revision. Given the unprecedented scope of the state of emergency related to the COVID-19 pandemic which has revealed the varying abilities of the courts in the various counties of California to |

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General Chart--Comments related to amendments to Emergency Rule 9 generally

| | Commenter | Position | Comment |
|-----|---|----------|--|
| | | | <p>continue to process civil filings and the challenges for persons accessing attorneys and self help centers, providing emergency relief to parties was necessary. However, with Phase Two imminent, it is very important to re-visit the rule(s) to respond to changes and the lessons learned over the past 6-7 weeks.</p> <p>In Monterey County, an e-filing county, our Court continued processing documents both at the courthouse and remotely. Recently, we have begun hearing civil matters via remote technologies. One of the questions that the attorneys and litigants have grappled with regarding these hearings is how to adhere to timing requirements in the Code of Civil Procedure, given emergency orders providing relief.</p> <p>The revised Emergency Rule 9 balances the equities for all sides of the civil disputes, and recognizes that statutes of limitation terms vary greatly. For disputes with shorter statutes (i.e., less than 180 days), the revised rule provides proportionate relief.</p> <p>By revising Emergency Rule 9 to now provide a “date certain” for the tolling period will result in less confusion to litigants and to court personnel. Another benefit of the revision will be the avoidance of inconsistent interpretations, which generally leads to increased litigation at a substantial cost to the parties.</p> |
| 21. | Superior Court of Riverside County by Tom Johnson | A | Our court is in favor of this amendment. It equitably addresses problems with the current rule. |
| 22. | YIMBY Law by Sonya Trauss, President also signed by: YIMBY Action by Laura Foote, Executive Director People for Housing - Orange County YIMBY by Elizabeth Hansburg, Executive Director | A | <p>We are writing to support the Judicial Council’s proposed amendments to Emergency Rule No. 9 identified in SP20-01.</p> <p>We agree with and support the Judicial Council’s six internal committees’ recommendation to amend immediately Emergency Rule No. 9 to:</p> <ol style="list-style-type: none"> 1. Eliminate reliance on the Governor declaring the state of emergency is lifted; 2. Toll from April 6, 2020, until October 1, 2020, the statute of limitations and repose for civil causes of action that exceed 180 days; and 3. Toll from April 6, 2020, until June 15, 2020, the statutes of limitations and repose for civil causes of action that are 180 days or less. |

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|-----|---|-----------------|--|
| | Peninsula for Everyone by Kelsey Banes, PhD, Executive Director The Kelsey by Caroline Bas, Chief Operations Officer SLOCounty YIMBY by Krista Jeffries, Lead Organizer Urban Environmentalists by Zack Subin, Volunteer Co-Lead South Bay YIMBY by Dustin Harber, Volunteer Lead Abundant Housing LA by Leonora Camner, Managing Director Tenderloin Neighborhood Development Corporation by Donald Falk, Chief Executive Officer | | Housing production and construction are an essential service during this stressful time, and always. Housing is essential infrastructure. In addition, the construction industry is an essential part of our economy. The undersigned organizations fight in cities across California to ensure that city councils, planning commissions and planning departments plan for and approve housing sufficient to meet California’s burgeoning needs. Thank you for your leadership during this uncertain time. |
| 23. | Borden Webb Attorney Borden D. Webb Law Corporation | AM | October 1 gives the litigant too much time. Lawyers are more flexible than that. If they had the case in the office, they could have been using this down time to prepare their complaints, etc. |

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Probate Chart--Comments related to how Emergency Rule 9 impacts probate matters

| | Commenter | Position | Comment |
|----|---|----------|--|
| 1. | Brad Baker Baker, Burton & Lundy, P.C. | AM | <p>I think in probate "causes of action" can be interpreted in many ways.</p> <p>Responding to pleadings such as petitions does not have a statute of limitations. Are response times at all included in this new order? I have a hearing on May 12 in which my pleading was to have been filed. If memory serves me, May 12th was the last day of the stay. How much time do I really have to now file the pleading?</p> <p>Do motions to compel discovery get covered by this new order? I think not.</p> <p>It might be good to include a section that indicates the types of things that are NOT covered by this order. It would probably have to be phrased as "including but not limited to the following:" This would give us a better level of comfort which most of us do not currently have.</p> <p>Not an easy chore. I appreciate all of the efforts expended to attempt to balance the equities of all concerned while still moving things forward.</p> |
| 2. | Katherine Becker Santa Paula, CA | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 3. | Maria L. Capritto Partner Nelson, Comis, Kettle & Kinney, LLP | AM | <p>Emergency Rule 9 needs to be modified as it applies to the Probate Code. As currently written, all deadlines for taking action on statutes that expired during the court closure would be extended for 90 days after the Governor declares an end to the state of emergency. That means we will not be able to close probates or continue with court supervised trust administration because there is no end date for the end of the state of emergency.</p> <p>I recommend the following modification:</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-01

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

Probate Chart--Comments related to how Emergency Rule 9 impacts probate matters

| | Commenter | Position | Comment |
|----|--|----------|---|
| | | | The term "statutes of limitation and repose for civil causes of action" under Emergency Rule 9 shall include, but shall not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code. |
| 4. | James Gorton Partner Gorton, Janosik & Poxon, LLP | AM | <p>Mark Lester, Esq. has proposed a clarification of the suggested modification of Emergency Rule 9 which I endorse. His comment and clarification are as follows:</p> <p>"The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 5. | Eric A. Hirschberg Attorney Jones, Lester, Schuck, Becker & Dehesa, LLP | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 6. | Hoffman Law Firm by Nathan Hoffman Attorney | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I</p> |

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SP20-01

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

Probate Chart--Comments related to how Emergency Rule 9 impacts probate matters

| | Commenter | Position | Comment |
|----|--|----------|---|
| | | | <p>suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 7. | Law Offices of Debra Graynom-Daly by Debra Graynom-Daly Attorney | N | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations.</p> <p>Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> <p>By getting the rule so modified any required action that has a 180 day or less limitation for action – such as §16016.7 notices, creditor claim filings, etc. – that expired during the court shutdown will have a deadline of June 15, 2020 for filing or taking action. Any action that had longer than a 180 day deadline for action expire during the shutdown – such as bringing an action on an accounting – will have an October 1, 2020 deadline for filing or taking action.</p> <p>The current rule if unmodified may mean that ALL deadlines for taking action that expired during this period must be extended for 90 days after the Governor declares an end to the state of emergency. That will wreak havoc on trying to get probate and trust administration matters moving forward or closing. And it's not clear that Emergency Rule 9 is meant to apply to deadlines and actions under the Probate Code rather than "causes of action" only.</p> |
| 8. | Mark Abbott Lester CA Certified Specialist in Estate Planning, Trust & Probate Law CA Board of Legal Specialization | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Rule 9 or the Advisory Committee Comment, I suggest the following modification:</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP20-01

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

Probate Chart--Comments related to how Emergency Rule 9 impacts probate matters

| | Commenter | Position | Comment |
|-----|--|----------|---|
| | | | "The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code" |
| 9. | Theresa Loss Senior Counsel Jones, Lester, Schuck, Becker & Dehesa, LLP | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 10. | Christopher R. Mallicoat Attorney Law Offices of Christopher R. Mallicoat | AM | <p>CA Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 11. | Richard D. Marks Attorney Richard D. Marks Professional Corporation | NI | <p>The Probate Code refers to deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> |

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SP20-01

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

All comments are verbatim unless indicated by an asterisk (*).

Probate Chart--Comments related to how Emergency Rule 9 impacts probate matters

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| | | | <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> <p>By getting the rule so modified any required action that has a 180 day or less limitation for action – such as §16016.7 notices, creditor claim filings, etc. – that expired during the court shutdown will have a deadline of June 15, 2020 for filing or taking action. Any action that had longer than a 180 day deadline for action expire during the shutdown – such as bringing an action on an accounting – will have an October 1, 2020 deadline for filing or taking action.</p> <p>The current rule if unmodified may mean that ALL deadlines for taking action that expired during this period must be extended for 90 days after the Governor declares an end to the state of emergency. That will wreak havoc on trying to get probate and trust administration matters moving forward or closing. And it's not clear that Emergency Rule 9 is meant to apply to deadlines and actions under the Probate Code rather than "causes of action" only.</p> |
| 12. | Phillips Law Partners, LLP by George R. Phillips, Jr. Managing Partner | AM | <p>The Probate Code refers to deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code."</p> |
| 13. | Hon. Glen Reiser (Ret.) | AM | <p>The proposed revision to Emergency Rule 9 should respectfully include a subparagraph (c) which states:</p> <p>"The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or</p> |

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SP20-01

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic (Amend Cal. Rules of Court, emergency rule 9)

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| | Commenter | Position | Comment |
|-----|--|----------|--|
| | | | <p>other document or taking an action as set forth under the Probate Code.”</p> <p>This addition will foster preservation of rights across a wide spectrum of probate, trust, conservatorship and guardianship matters for which there is presently no meaningful access to the courts.</p> |
| 14. | Mina Sirkin Attorney Sirkin Law Group, PC | AM | <p>There are probate rules such as PC 8200 which require sending the will for safekeeping to the Court.</p> <p>These re not statutes of limitations but affect other deadlines. Please expand it to other deadlines, not just statutes of limitations.</p> |
| 15. | John S. Torii Attorney Law Offices of John S. Torii | AM | <p>The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification:</p> <p>“(c) The terms 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code.”</p> |
| 16. | Kendall A. VanConas Attorney at Law Arnold, Larochelle, Mathews, VanConas & Zirbel, LLP | NI | <p>I am an attorney in Ventura County and have reviewed the proposed change to emergency rule 9. Under the change, all statutes of limitations for civil causes of action would be tolled until October 1, 2020; the current rule tolls such statutes of the limitations until 90 days after the Governor declares that the state of emergency regarding the COVID-19 pandemic is lifted.</p> <p>I am a trusts & estates attorney and am concerned that the rule doesn't adequately address the unique issues in matters commenced under the Probate Code. The Probate Code refers to deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that</p> |

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| | | | would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification: "The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code." |
| 17. | Todd Vigneux Associate Attorney Pederson Law Offices | AM | The Probate Code refers deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification: "The term 'statutes of limitation and repose for civil causes of action' under Emergency Rule 9 shall include, but not be limited to, any deadline for filing a petition, pleading or other document or taking an action as set forth under the Probate Code. |
| 18. | Borden Webb Attorney Borden D. Webb Law Corporation | AM | My other comment has to do with the claims of creditors. We understood that the claim filing period for creditor's claims would be extended till the end of the holiday period. that worked for us. There is no guidance in the proposed changes. The claim filing period can be critical for knowing when an estate can be closed, and whether there might or might not be a large claim filed at the last minute, which would change everything about distribution, shares, etc. |
| 19. | Kim Zimmerman Senior Associate Law Offices of Karen Knutson | AM | I endorse the comment submitted by Mark A. Lester as follows: The Probate Code refers to deadlines for filing petitions, pleadings or other documents and/or taking various actions rather than to "causes of action." For example, in a probate administration a creditor must file and serve a creditor claim within certain specified time limits but does not have to file an action that would otherwise be barred by the statute of limitations. Therefore, for purposes of clarity either in Emergency Rule 9 or the Advisory Committee Comment to it, I suggest the following modification: |

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REUBEN, JUNIUS & ROSE, LLP

May 8, 2020

Tuija I. Catalano
tcatalano@reubenlaw.com

Delivered Via Email (invitations@jud.ca.gov)

Hon. Tani Cantil-Sakauye and Councilmembers
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Support for Amending Emergency Rule No. 9 as Provided in SP20-0

Dear Honorable Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Please accept this letter from our law firm on behalf of many of our clients who entitle and construct a wide variety of projects. Our clients' projects encompass most land uses from residential to office, retail, school, industrial and other projects, and range in size from some of the largest San Francisco and Bay Area developments to small single-family homes and mom-and-pop retail stores. We are providing this letter to advocate support for the Judicial Council's proposed amendments to Emergency Rule No. 9 as identified in SP20-01.

We appreciate the Judicial Council's quick response to the unique circumstances that are impacting our state and our courts. We specifically support the Judicial Council's internal committees' recommendation to immediately amend Emergency Rule No. 9, e.g. by eliminating reliance on the Governor declaring that the state of emergency is lifted, and amending the tolling of the statute of limitation periods.

We agree with the Judicial Council's recognition that a declaration of a state of emergency is not an appropriate reference point for tolling purposes. States of emergency often last for significant periods of time, after the time of a pressing emergency. For example, the emergencies declared on November 8, 2018 and October 27, 2019 due to wildfires and extreme weather conditions in Ventura County and other counties remain in effect today, long after the fire season ended. On December 23, 2019, Governor Newsom terminated more than 70 ongoing states of emergency that had been declared at various times over the last decade, from January 27, 2011 to November 30, 2018.

The Governor has made announcements to begin lifting the statewide shelter-in-place orders and many superior courts are already proceeding, or may soon be proceeding, to allow plaintiffs and petitioners to file any valid challenges they have via e-filing, fax-filing, or "drop box" physical filing, setting a date certain for the end tolling of statutes of limitation is reasonable and appropriate, and provides much needed certainty to development projects that are affected by the tolling.

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The amendments are particularly important in order to avoid any unintended impacts on housing and other construction projects. Long before the COVID-19 pandemic, the state has already been suffering from a housing crisis that calls for the production of more homes throughout California. In recent years, California State Legislature has adopted many new housing laws in an effort to streamline entitlement processes and to produce more housing.

As of May 4, 2020, local health officers in several Bay Area counties already deemed construction activities as essential activities, allowing them to proceed. Being able to continue and commence construction and completion of development projects will be critical to the State's economic recovery. City of San Francisco and many other Bay Area jurisdictions have proceeded with Planning Commission and other hearings virtually and development projects are being reviewed and approved each week. Entitlement approvals typically require the project sponsor to proceed with permitting expeditiously and to start construction by a certain deadline, depending on the specific approval. The receipt of project approvals, however, becomes somewhat meaningless if litigation challenge deadlines are continued extensively and without a date certain. Amendment of Rule 9 is necessary to ensure that development and construction activity can continue, and that approved projects are not stopped due to extraordinarily long or uncertain litigation statutes of limitation.

Emergency Rule No. 9, in its current form, conflicts with the State Legislature's intent to identify litigation challenges quickly, which in turn (in the absence of litigation filings) enables project construction to commence relatively soon after project approvals have been obtained. The indefinite extension of the statutes of limitation by Emergency Rule 9 in its current form directly impacts the ability to start construction for many projects.

By way of an example, one of our clients obtained approvals for a 274-unit new construction housing project in San Francisco in late February 2020. The project filed a Notice of Determination with San Francisco County Clerk on the Environmental Impact Report ("EIR") on April 3, 2020, which was possible to achieve via mail and online postings even though the shelter-in-place was already effective. Under normal rules pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code sections, 21000 *et seq.*, the deadline for the filing of a writ on the EIR would have been 30 days thereafter, i.e. on May 4, 2020 on this particular project. Instead, the deadline has now been extended significantly, and instead of a short 30-day period, the deadline under current Emergency Rule 9 is now equal to the unknown duration of the State Emergency, plus 90 days, plus the remainder of the initial 30-day period that had not run as of April 6, 2020. Even if the State of Emergency was lifted today, the statute of limitation would not end until early September. There is no reason to think that the State of Emergency is going to be lifted any time soon, and thus the statute of limitation is extended even further.

In the meanwhile, the large, almost 5-acre site in the middle of an established residential neighborhood sits largely vacant as the prior occupant has already ceased most of its operations. It is imperative that projects like this, that contribute to construction employment significantly and produce much needed housing, are able to proceed and not get held up by unintended consequences from Emergency Rule 9, as it is drafted in its current form.

Amending Rule 9 to shorten the statutes of limitation so that they are more in line with the short deadlines provided e.g. by CEQA laws will not overburden the courts, since the most immediate actions following the filing of a challenge involve the parties, including the preparation of an administrative record and settlement conferences between the parties. The amendments will, however, provide greater certainty to the industry and will allow many important development projects to proceed.

We appreciate the Judicial Council's time and attention to this important matter and respectfully request that the Judicial Council revise Emergency Rule No. 9 in the manner proposed in SP20-01.

Thank you for your time.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Tuija Catalano

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*Admitted in Colorado

May 8, 2020

Via Email and U.S. Mail

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Benita Y. Downs, Legal Services (benita.downs@jud.ca.gov)
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Anne M. Ronan, Legal Services (anne.ronan@jud.ca.gov)

**Re: Invitation to Comment on Proposed Amendments to
Emergency Rule No. 9 (SP20-01)**

Dear Honorable Chief Justice Cantil-Sakauye, Members of the Judicial Council, Ms. Downs, Mr. Giden, Ms. Ronan:

We write on behalf of the State Building & Construction Trades Council of California, AFL-CIO ("SBCTC") in response to the Judicial Council's Invitation to Comment on Proposed Amendments to Emergency Rule No. 9 (SP20-01: Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic) ("Emergency Rule 9").

SBCTC represents over 450,000 construction workers, including 65,000 apprentices, that California depends on to build its energy, communication, transportation, industrial and other infrastructure. SBCTC's mission includes improving the health, safety, and economic conditions of its affiliate members, and of all working men and women in the California construction industry. SBCTC's affiliates participate in environmental permitting and regulatory proceedings for projects throughout the State to advocate for stronger environmental protections,
1644-088acp

reduced health and safety impacts, and greater community benefits for all Californians.

SBCTC submitted comments on the original Emergency Rule 9 on April 22, 2020.¹ We requested a clarifying amendment to explain that the Rule applies to special proceedings, including writs of mandate, and acknowledged that a shorter tolling period may be appropriate for civil actions under the California Environmental Quality Act (“CEQA”) and other State laws which have limitations periods of 90 days or less.

We now write in support of the Council’s proposed Advisory Committee Comment, which clarifies that Emergency Rule 9 is intended to apply broadly to toll any statutory limitation on the filing of a pleading asserting a civil cause of action, including mandamus actions under Code of Civil Procedure §§ 1085, 1088.5, and 1094.5, petitions for writ of mandate under the California Environmental Quality Act (“CEQA”), and other land use challenges and special proceedings of a civil nature. We also propose additional clarifying amendments to ensure that the civil tolling periods authorized by the Rule do not end prematurely, while some Superior Courts remain partially or fully closed due to the COVID-19 pandemic.

Emergency Rule 9 Should Apply to All Civil Proceedings

SBCTC supports the addition of the Advisory Committee Comment and the Council’s reasoning that Emergency Rule 9 applies to all civil causes of action, including special proceedings under CEQA and other limitations “found in statutes other than those in the Code of Civil Procedure.”² The Comment is consistent with the stated intent of the Rule “to apply broadly to toll any statutory limitation on the filing of a pleading asserting a civil cause of action.”³

¹ See April 22, 2020 letter from Adams Broadwell Joseph & Cardozo to Judicial Council re *Proposed Amendments to Emergency Rule No. 9*, attached hereto as Exhibit A.

² Staff Report, pp. 3-4, citing Code Civ. Proc., § 363 and *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186; Advisory Committee Comment.

³ Staff Report, p. 4; see Advisory Committee Comment, p. 1. Civil “causes of action” are common to all civil cases, whether the case is framed as a “civil action” under Title 2 of the Code of Civil Procedure, a “Special Proceeding” under Title 3 of the Code of Civil Procedure or, as the Advisory Comment explains, “causes of action found in statutes other than those in the Code of Civil Procedure.”

Some stakeholders may assert that the Advisory Committee Comment is inconsistent with the Supreme Court's holding in cases such as *People v. Yartz*⁴ or *People v. Succop*.⁵ In *People v. Yartz*, the Court held that a criminal conviction could be used to support a claim that a defendant was a sexually violent predator under the Sexually Violent Predators Act ("SVPA") because SVPA proceedings were not "civil suits" within the meaning of the Penal Code. *People v. Yartz* did not address statutes of limitations for civil cause of action. Rather, *People v. Yartz* addressed the narrow issue of whether a "civil commitment proceeding" brought under the SVPA is a "special proceeding of a civil nature" or a "civil suit" under Penal Code section 1016, former subdivision (3).⁶ *People v. Succop* similarly held that Section 5500 et seq. of the Welfare and Institutions Code establishes special proceedings of a civil nature relating to mentally disordered sex offenders, and did not address statutes of limitations.⁷ Such cases are inapposite to Emergency Rule 9.

By contrast, in *Parker v. Walker*,⁸ cited by the Council, the Court of Appeal held that special proceedings are construed as "actions" under Code of Civil Procedure section 363 for purposes of civil statutes of limitations.⁹ The Advisory Committee Comment is consistent with this holding. The Comment is also consistent with CEQA's statutes of limitations set forth in Public Resources Code section 21167, which defines CEQA actions interchangeably as "an action or proceeding" for purposes of establishing the limitations periods to file a CEQA lawsuit.¹⁰ Finally, the Comment is consistent with the California Rules of Court ("CRC"), which define "action" to include "special proceeding"¹¹ and "civil case" to include "all cases except criminal cases and petitions for habeas corpus;"¹² and explain that the "Civil Rules" in Title 3 "apply to all actions brought under the

⁴ *People v. Yartz* (2005) 37 Cal.4th 529.

⁵ *People v. Succop* (1967) 67 Cal.2d 785.

⁶ *People v. Yartz*, 37 Cal.4th at 534.

⁷ *People v. Succop*, 67 Cal.2d at 789.

⁸ *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186; *see also Tide Water Associated Oil Co. v. Super. Ct.* (1955) 43 Cal.2d 815, 825-26 (it is within the power of the court to determine whether Code of Civil Procedure sections applicable to actions may be similarly applied to special proceedings when "in harmony with the purposes of the particular type of suit").

holding that actions brought to enjoin waste of gas pursuant to the Public Resources Code

⁹ *Id.* at 1186.

¹⁰ See Pub. Res. Code section 21167(a) (failure to conduct CEQA review), (b) (challenges to negative declarations), (c) (challenges to EIRs), (d) (challenges to CEQA exemptions), (e) (acts or omissions).

¹¹ CRC Rule 1.6(1).

¹² CRC Rule 1.6(3).

California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.”¹³

Finally, even if *People v. Yartz* or similar cases were arguably applicable, the Governor’s Executive Order N-38-20 (March 27, 2020) gave the Judicial Council authority to respond to the State-of-Emergency by adopting emergency rules that would otherwise be inconsistent with statutes concerning civil practice or procedure.¹⁴ The Governor’s order also suspended statutes to the extent that they would be inconsistent with such emergency rules.¹⁵ Thus, the Council has the authority under EO N-38-20 to apply Emergency Rule 9 to special proceedings, even if doing so were otherwise inconsistent with the Code of Civil Procedure, which it is not.¹⁶

The Advisory Committee Comment therefore correctly explains that Emergency Rule 9 applies to CEQA actions and to the limitations periods for all other special proceedings of a civil nature.¹⁷

Tolling Periods Should Continue Until Superior Courts Reopen

The proposed amendments to Emergency Rule 9 would modify the tolling period for civil causes of action with statutes of limitations and repose of 180 days or less to end on June 15, 2020, and for civil causes of action with statutes of limitations and repose which exceed 180 days to end on October 1, 2020. The modified dates are in response to the Governor’s recent announcement of plans to begin lifting the statewide shelter-in-place order over the coming months.

SBCTC supports the safe reopening of California courts and businesses. However, some Superior Courts remain partially or fully closed in response to the

¹³ CRC Rule 3.2200. Rule 3.2200 contains limited exceptions for actions under Pub. Res.Code sections 21168.6, 21178-21189.3, and 21189.50-21189.57, but not for standard CEQA actions brought under Pub. Res. Code section 21167.

¹⁴ EO N-38-20, pars. 1, 2, 3.

¹⁵ *Id.*

¹⁶ Gov. Code §§ 8567, 8571, 8627 (Governor’s emergency authority); Cal. Const. Art. VI, sec. 6 (Judicial Council).

¹⁷ In the event the Council seeks to further clarify the Rule, SBCTC respectfully proposes a clarifying amendment to add the term “in all civil actions, including special proceedings of a civil nature” immediately following “civil causes of action” in Emergency Rule 9, subsections (a) and (b).

COVID-19 pandemic.¹⁸ There is no Executive Order requiring all Superior Courts to be open and accept new civil filings by June 15, 2020 or even October 1, 2020, when the civil tolling periods would end. Superior Courts may also continue to seek emergency orders under Government Code section 68115 to extend closures or alter the conduct of their proceedings where necessary to respond to the emergency.¹⁹ Therefore, under the modified tolling periods, litigants could encounter their deadline to file a new civil lawsuit while the appropriate Superior Court venue is closed. This could result in civil litigants missing filing deadlines, and would contradict one of the stated purposes of Emergency Rule 9, which is to create uniformity for civil litigants during the State-of-Emergency.

The courts strictly construe Judicial Council emergency orders, and rule against litigants who miss deadlines due to emergency court closures.²⁰ In order to ensure that the rights of civil litigants throughout the State are protected, the Judicial Council should amend Emergency Rule 9 to end civil tolling periods based on the date the Superior Courts of proper venue fully reopen following the COVID-19 emergency closures.

SBCTC respectfully proposes the following amendment to Emergency Rule 9 (proposed additions are underlined / proposed deletions are in ~~striketrough~~):

**Emergency rule 9. Tolling statutes of limitations for civil causes of action
(a) Tolling statutes of limitations over 180 days**

Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020 ~~the date on which the Superior Court(s) of proper venue for the action fully reopen following the COVID-19 emergency closures.~~

¹⁸ For example, Alameda Superior Court remains physically closed to the public through May 29, 2020, after the Governor's proposed "Stage 2" reopening is anticipated to begin. See e.g. Alameda Superior Court 5/1/20 EO /press release, available at www.alameda.courts.ca.gov/Resources/Documents/May%201,%202020%20-%20Press%20Release.pdf and <http://www.alameda.courts.ca.gov/Resources/Documents/Signed%20EO%20-%20Alameda%203.pdf> (last visited 5/7/20).

¹⁹ Gov. Code § 68115(a).

²⁰ See *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91, 98-99 (Northridge earthquake caused closure of some branch courts, but because other superior courts were open there was no section 12b extension on expiring statute of limitations.); see *Power Partners Intern., Inc. v. Dominion Energy* (Cal. Ct. App., Aug. 23, 2005, No. D043414) 2005 WL 2030875, at *3 (voiding trial court order granting a motion for judgment notwithstanding the verdict entered one day after statutory deadline due to emergency court closure).

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(b) Tolling statutes of limitations of 180 days or less

Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that are 180 days or less are tolled from April 6, 2020, until ~~June 15, 2020~~ the date on which the Superior Court(s) of proper venue for the action fully reopen following the COVID-19 emergency closures.

Thank you for the opportunity to submit these comments, and for the Judicial Council's work to ensure the ongoing access to justice in the court system.

Sincerely,



Tanya A. Gulesserian
Christina M. Caro

Attachment

CMC:acp

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EXHIBIT A

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April 22, 2020

Via Email and U.S. Mail

Honorable Tani Cantil-Sakauye, Chair
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Re: Proposed Amendments to Emergency Rule No. 9

Dear Honorable Chief Justice Cantil-Sakauye, Members of the Judicial Council:

We write on behalf of the State Building & Construction Trades Council of California, AFL-CIO ("SBCTC") regarding the Judicial Council's recently adopted Emergency Rule 9, which tolls statutes of limitations for civil actions until 90 days after the Governor lifts the existing COVID-19 Emergency Order.

SBCTC represents over 450,000 construction workers, including 65,000 apprentices, that California depends on to build its energy, communication, transportation, industrial and other infrastructure. SBCTC's mission includes improving the health, safety, and economic conditions of its affiliate members, and of all working men and women in the California construction industry. SBCTC's affiliates participate in environmental permitting and regulatory proceedings for projects throughout the State to advocate for stronger environmental protections, reduced health and safety impacts, and greater community benefits for all Californians.

SBCTC recognizes that the COVID-19 pandemic is having a severe impact on the lives and well-being of all Californians. In addition to its devastating health impacts, the COVID-19 crisis has left thousands of Californians out of work, including members of many of SBCTC's affiliates. More than 3.1 million Californians have filed for unemployment benefits since the outbreak began. It is imperative for the economic recovery of the State that the construction industry

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rebound as quickly as possible when the Emergency Order is lifted. To do so, housing, commercial, energy, communication, transportation, and other infrastructure projects with valid land use approvals must move forward.

Other stakeholders have submitted letters to the Judicial Council expressing concerns about Emergency Rule 9's effect on new lawsuits challenging development projects under the California Environmental Quality Act ("CEQA") and other land use laws, which in some cases have shorter filing deadlines (e.g. 30 or 35 days for certain CEQA lawsuits). Local agencies and private developers are concerned about project delays if land use lawsuits are delayed by Emergency Rule 9, because lenders may put project funding on hold until the deadline to file a lawsuit challenging the project has passed. To the extent that lenders withhold funding for projects that have undergone legally adequate environmental review, SBCTC shares this concern.

SBCTC also recognizes that State courts and their workforces have been impacted by COVID-19, and that the disruption in court operations may have long-term impacts on the courts after the Emergency Order is lifted. As an organization that enforces worker and public rights, SBCTC understands the Judicial Council's desire to allow time for court staff to address the backlog of existing cases before accepting new civil lawsuits. As an organization whose affiliates participate in CEQA and land use litigation, SBCTC also recognizes the need to protect the rights of litigants to gather evidence and determine whether to file a civil action during a time when access to public records and resources may be limited due to State and local shelter-in-place orders.

Finally, some lawyers believe that Emergency Rule 9 doesn't apply to special civil proceedings, such as writs of mandate. While this is inconsistent with State law definitions of civil actions,¹ this misunderstanding could result in unnecessary litigation over the limitations periods that are extended by Emergency Rule 9.

¹ "Civil causes of action" refers to civil actions, which includes writs of mandate and other special proceedings. See Cal. Code Civ. Proc. ("CCP") §§ 312; 363 ("action," as used in Title 2 of the CCP, is construed "as including a special proceeding of a civil nature"); CCP Title 3 ("Special Proceedings of a Civil Nature" includes mandamus actions under CCP §§ 1085, 1088.5, and 1094.5); Cal Pub. Res. Code § 21167(a)-(e) (setting limitations periods for civil "action[s]" under CEQA); *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186 ("time limitations for civil actions set out in part 2, title 2 of the Code of Civil Procedure apply equally to actions and special proceedings, pursuant to Code Civ. Proc., § 363, providing that 'action' is to be construed as including a special proceeding of a civil nature").

For these reasons, SBCTC respectfully proposes a clarifying amendment to Emergency Rule 9 to address this issue, as follows (proposed additions are underlined):

Emergency rule 9. Toll the statutes of limitations for civil causes of action. Notwithstanding any other law, the statutes of limitation for civil causes of action in all civil actions, including special proceedings of a civil nature, are tolled from April 6, 2020, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

SBCTC believes that this clarifying amendment would help conserve judicial resources and protect public rights by reducing litigation over the applicable civil tolling periods under Emergency Rule 9.

If the Judicial Council is considering amendments to Emergency Rule 9 to address shorter statutes of limitations periods that apply to some land use actions under CEQA, the Coastal Act, the Brown Act, and other State laws, SBCTC respectfully proposes the following amendment to Emergency Rule 9 (proposed additions are underlined / proposed deletions are in ~~strike through~~):

Emergency rule 9. Toll the statutes of limitations for civil causes of action. Notwithstanding any other law, the statutes of limitation for civil causes of action in all civil actions, including special proceedings of a civil nature, are tolled from April 6, 2020, as follows: (1) claims with regularly applicable statutory or regulatory limitations periods of more than 90 days shall be tolled through and including until the 90th days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted; (2) claims with regularly applicable statutory or regulatory limitations periods that are equal to or less than 90 days shall restart the claim's regularly applicable limitations period on the first calendar day following the date on which the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

If feasible for the courts, SBCTC believes that this amendment would help balance the interests of the State's post-COVID-19 economic recovery by recognizing the urgency of resolving civil land use litigation under shorter limitations periods, while protecting litigants' rights under the limitations periods that would normally apply to pending claims after the Emergency Order is lifted.

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Thank you for the opportunity to submit these comments, and for the Judicial Council's work to ensure the ongoing access to justice in the court system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tanya Gulesserian".

Tanya A. Gulesserian
Christina M. Caro

CMC:acp

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