



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-13

Title

Civil Practice and Procedure: Emergency
Rules for Unlawful Detainer and Foreclosure
Proceedings in Response to State of
Emergency Related to COVID-19 Pandemic

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, emergency rules
1 and 2

Recommended by

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

Action Requested

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

Please Respond By

12:00 p.m. on August 13, 2020

Date of Report

August 11, 2020

Contact

Judicial Council Support
judicialcouncil@jud.ca.gov

Executive Summary

On March 27, 2020, the Governor issued an executive order (N-38-20) giving the Judicial Council of California and the Chief Justice as Chair of the Judicial Council authority to take necessary action to respond to the emergency caused by the COVID-19 pandemic. This authority provided for the adoption of emergency rules of court that otherwise would be inconsistent with statutes concerning civil or criminal practice or procedure.

The Judicial Council, in consultation with the Executive Branch, acted quickly to adopt temporary emergency rules in an effort to balance providing access to justice with protecting the health and safety of the public, litigants, attorneys, court employees, and judicial officers who work in, use and otherwise attend the courts.

- At an emergency remote meeting on March 28, 2020, the Judicial Council took action to extend time periods on hearings and trials and encourage the use of technology in judicial proceedings.
- On April 6, 2020, the council voted remotely to approve 11 temporary emergency rules, including adoption of a COVID-bail schedule, staying eviction and foreclosure proceedings, extending statutes of limitations in civil actions, and extending timeframes for restraining orders. Two additional rules were added relating to electronic service (April 17, 2020) and requests to modify child, spousal, partner, or family support (April 20, 2020).
- On June 10, 2020, the council voted remotely to repeal emergency rule 4 relating to the COVID-bail schedule, returning the authority to set county bail schedules to local trial courts.

The two temporary emergency rules, rules 1 and 2, which are the subject of this report, were adopted on April 6. Emergency rule 1 deals with unlawful detainer actions, more commonly known as “eviction actions,” prohibiting the issuance of summons or entering of defaults in such actions unless the case involves public health and safety issues, and providing that trials be set at least 60 days after a request for trial. Emergency rule 2 addresses judicial foreclosure actions, staying all pending actions other than those involving issues of public health and safety, tolling the statute of limitations on filing such actions, and extending the deadlines for election or exercise of rights relating to such actions.

At the time of the council’s action and for several weeks thereafter, the Legislature was not in session. The council acted with the expectation that legislation to address these statutory issues would follow quickly once the Legislature reconvened. In her statement regarding the temporary emergency authority provided by the Governor, the Chief Justice expressly noted that the judicial branch cannot usurp the responsibility of the other two branches on a long-term basis to deal with the myriad impacts of the pandemic—that it is the duty of the judicial branch to resolve disputes not to legislate.

Two months later, on June 10, the Judicial Council was set to consider amendment of the sunset provisions of emergency rules 1 and 2 to appropriately allow for legislative action on these vital issues affecting tenants and landlords throughout California. However, after hearing from the Governor, legislative leaders, Judicial Council members, and thousands of residents with many different viewpoints, the Chief Justice suspended the vote in order to provide the executive and legislative branches more time to develop appropriate policy proposals and solutions to deal with the potential impacts of evictions and foreclosures during the COVID-19 pandemic.

After an additional six weeks, on July 24, during a regularly scheduled remote business meeting of the Judicial Council, the Chief Justice advised that the Judicial Council would once again vote on amending Emergency Rules 1 and 2. In stating her intent to call for a vote, the Chief Justice noted that the remedies sought for all the affected parties on unlawful detainer actions and judicial foreclosures are best left to the legislative and executive branches of government for open and transparent opportunities to be heard and for permanent measures and permanent solutions.

Because Governor Gavin Newsom and the Legislature are working on legislation relating to unlawful detainer actions and foreclosures, and to ensure the absolute integrity and fairness of the court system as an independent arbiter of law in the adjudication of unlawful detainer and judicial foreclosure cases, the chairs of the Judicial Council's six internal committees propose that the council amend emergency rules 1 and 2 to sunset on September 1, 2020.

Recommendation

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

- Emergency rule 1, to provide that the rule will remain in effect through September 1, 2020; and
- Emergency rule 2, to remove the tolling provision, because the tolling of all civil causes of action is addressed in emergency rule 9, and to provide that the remainder of the rule will remain in effect through September 1, 2020.

The proposed amendments to the rules are attached at pages 7–8.

Relevant Previous Council Action

On March 27, 2020, the Governor issued an executive order¹ giving the Judicial Council of California and the Chief Justice as chair of the Judicial Council authority to take necessary action to respond to the state of emergency related to the COVID-19 pandemic, including 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. At the time of this order and for several weeks thereafter, the Legislature was not in session. Under that order, the council adopted emergency rules 1–11 on April 6, 2020.

Among those rules, the Judicial Council adopted emergency rule 1, which prevents courts from issuing summons on unlawful detainer complaints or issuing defaults in such actions, unless the plaintiff can show the need to proceed on public health and safety grounds; and continues trials in any unlawful detainer actions for at least 60 days, with no new trials to be set until at least 60

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

days after a request for trial is filed. The council also adopted emergency rule 2, staying all judicial foreclosure actions brought under Code of Civil Procedure section 725a et seq., tolling the statute of limitation for such actions, and extending all deadlines of electing or exercising any rights related to such action. By their terms, both emergency rules 1 and 2 were to remain in effect 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

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the COVID-19 pandemic.² On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order³ with limited exceptions for emergency and essential critical infrastructure services. The courts were included in this category. In addition, several counties issued local shelter-in-place orders that were more restrictive than the statewide order issued by the Governor.

On March 16, 2020, the Governor issued an executive order authorizing local governments to halt evictions for renters affected by the pandemic. The authorization originally was to expire on May 31, 2020,⁴ but has now been extended and will expire on September 30, 2020.⁵

Current Rules

At the time emergency rules 1 and 2 were adopted, Californians were being ordered to stay at home to protect public health and safety. The Judicial Council adopted the emergency rules as part of its efforts to balance providing access to justice with ensuring the health and safety of the public, court employees, attorneys, litigants, and judicial officers. At the time, the Legislature was not in session to address these issues, but it has subsequently reconvened. Additionally, courts have put in place health and safety protocols for access to courthouses and expanded the use of remote technology solutions.

The Proposal

This proposal will immediately amend emergency rules 1 and 2 to modify the time period in which they will remain in effect through September 1, 2020, with some other amendments, as described below.⁶

² State of Emergency proclamation, www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

³ Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁴ Executive Order N-28-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf.)

⁵ Executive Order N-66-20, www.gov.ca.gov/wp-content/uploads/2020/05/5.29.20-EO-N-66-20.pdf.

⁶ This change is consistent with the temporary nature of the emergency rules. The Judicial Council will continue to review the applicability of each of these rules, including adjustment of the sunset of individual rules, as the state's response to the pandemic changes and courts continue to resume operations.

Proposed amendments to emergency rule 1

Emergency rule 1 prevents courts from issuing summons on unlawful detainer complaints or issuing defaults in such actions, unless the plaintiff can show the need to proceed on public health and safety grounds, and continues trials in any pending unlawful detainer actions for at least 60 days, with no new trials to be set until at least 60 days after a request for trial is filed. At the time emergency rule 1 was adopted, its effective period was pegged to the state of emergency (plus 90 days) because of the uncertainty of when courts would be able to resume operations and parties could begin to connect with each other again. Courts continue to find ways to operate despite the existence of COVID-19, including using remote technology in many situations.

Therefore, the Judicial Council’s internal committee chairs recommend that the rule sunset on September 1, 2020. (Cal. Rules of Court, emergency rule 1(e).) The change in the sunset date means that as of September 2, 2020, unless the Legislature has enacted law providing otherwise, courts will once again be authorized to issue summons on all unlawful detainer actions, enter defaults and issue writs of execution when appropriate, and set trial dates on request, subject to Code of Civil Procedure section 1170.5.

Although the rule will sunset on September 1, the amendments provide that any trial dates that have been set as of that date under the rule (and so set at least 60 days after the request for trial) are to remain set, unless a court orders otherwise. In other words, cases with trial dates that have been set under the rule do not become immediately subject to the trial-setting provisions of Code of Civil Procedure section 1170.5. Without this amendment, having to reset all such trial dates at once could cause confusion in unlawful detainer departments.

Proposed amendments to emergency rule 2

Emergency rule 2 applies to actions for judicial foreclosures brought under Code of Civil Procedure section 725a et seq. The rule generally stays all such actions currently pending in a court, tolls the statute of limitations for filing such an action, and extends the deadlines for exercising or electing any rights related to such actions. The internal committee chairs propose amendments to two provisions in this rule.

The first amendment affects the end of the period during which the rule applies, changing it from the end of the state of emergency period (plus 90 days) to September 1, 2020, for many of the reasons discussed above in relation to the unlawful detainer actions. Thus, after September 1, stays on pending judicial foreclosure actions will be lifted and any deadlines in such actions will no longer be deferred.

The second amendment deletes paragraph (2) from the rule, which tolls all statutes of limitations for bringing judicial foreclosure actions. This provision is unnecessary because emergency rule 9 tolls statutes of limitations for *all* civil causes of action. Having a separate tolling provision in rule 2 could raise questions as to whether this provision is in some way different from the tolling provision in rule 9, when it is not. The intent behind this amendment is noted in the new advisory committee comment to rule 2.

Policy implications

Emergency rules 1 and 2 were adopted at a point in the state of emergency regarding the COVID-19 pandemic when most courts were unable to handle nonurgent civil matters. Just as state and local governments are loosening shelter-in-place orders and monitoring the reopening of businesses and resumption of activities, courts have been and are now resuming court operations, often using remote technology, and finding ways to continue to provide important services. Placing an end date on these rules reflects the progress of the judicial branch in moving forward and providing access to justice to more parties.

To the extent provisions are needed to protect the homes or commercial properties of those whose income or businesses have been lost or diminished due to the COVID-19 pandemic, the Legislature is in session again and working on such issues.

Comments

This proposal to change the sunset dates of emergency rules 1 and 2 has not been circulated for comment. These rules were intended to be temporary and, now that the Legislature is considering these areas of the law, the chairs concluded that to cede the balancing of the substantive policy to the consideration of the Legislature was appropriate.

Alternatives considered

The chairs of the internal committees considered leaving these rules as originally adopted, tied to the end of the state of emergency. However, given the length of time for which the formal state of emergency may be in place, the state's changing responses to the pandemic, the efforts of courts to resume operations, and the Legislature's current consideration of statutory changes, the chairs decided that an adjustment of the sunset of these rules was appropriate.

Fiscal and Operational Impacts

The sunset of these two rules could have a significant impact on court operations, which have had a very limited number of new unlawful detainer and judicial foreclosure filings to process and adjudicate since the rules were adopted on April 6. The impact may be mitigated somewhat if bills currently under consideration by the Legislature are enacted as urgency legislation. But, if not, the return to adjudicating these types of cases could present some challenges to courts as they continue their efforts to provide access to justice during this pandemic.

Attachments and Links

1. Cal. Rules of Court, emergency rules 1 and 2, at pages 7–8
2. Voting instructions, at page 9
3. Vote and signature pages, at pages 10–11

Emergency rules 1 and 2 of the California Rules of Court are amended, effective immediately, to read:

Emergency rule 1. Unlawful detainers

~~(a)–(c)~~ * * *

(d) Time for trial

If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

(e) Sunset of rule

This rule will remain in effect until through September 1, 2020, 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council. Notwithstanding Code of Civil Procedure section 1170.5 and this subdivision, any trial date set under (d) as of September 1, 2020, will remain as set unless a court otherwise orders.

Emergency rule 2. Judicial foreclosures—suspension of actions

Notwithstanding any other law, this rule applies to any action for foreclosure on a mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil Procedure, beginning at section 725a, including any action for a deficiency judgment, and provides that, until through September 1, 2020, 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by the Judicial Council:

(1) All such actions are stayed, and the court may take no action and issue no decisions or judgments unless the court finds that action is required to further the public health and safety.

~~(2) Any statute of limitations for filing such an action is tolled.~~

~~(3)~~(2) The period for electing or exercising any rights under that chapter, including exercising any right of redemption from a foreclosure sale or petitioning the court in relation to such a right, is extended.

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Advisory Committee Comment

The provision for tolling any applicable statute of limitations, in prior subdivision (2), has been removed as unnecessary because the tolling provisions in emergency rule 9 apply to actions subject to this rule.

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, August 13, 2020 at 12:00 p.m.
- If you are unable to reply by Thursday August 13, 2020 at 12:00 p.m., 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 amends California Rules of Court, emergency Rules 1 and 2.

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

 /n/
Maxwell V. Pritt

 /s/
David M. Rubin

 /s/
Marsha G. Slough

 /s/
Eric C. Taylor

Date: 8/13/2020

Attest:



Administrative Director and
Secretary of the Judicial Council