Judicial Council of California

455 Golden Gate Ave.
San Francisco, CA
94102-3688

Meeting Minutes

Judicial Council

Meeting materials are available through the hyperlinks in this document.

Open to the Public Unless Indicated as Closed
(Cal. Rules of Court, rule 10.6(a))

Requests for ADA accommodation should be directed to JCCAccessCoordinator@jud.ca.gov

Monday, April 6, 2020	**12:00 PM**	**Teleconference**

This meeting was held to address an urgent matter and conducted telephonically.

CLOSED SESSION (RULE 10.6(B))—PLANNING, PERSONNEL, AND DISCUSSION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the closed session to order at 12:00 p.m.

OPEN SESSION (RULE 10.6(A)) — MEETING AGENDA

Attendance

Council Members

Present: 30 - Chief Justice Tani G. Cantil-Sakauye, Justice Ming W. Chin, Administrative Presiding Justice Brad R. Hill, Justice Carin T. Fujisaki, Justice Harry E. Hull Jr., Justice Marsha G. Slough, Presiding Judge Joyce D. Hinrichs, Presiding Judge Ann C. Moorman, Judge Marla O. Anderson, Judge C. Todd Bottke, Judge Stacy Boulware Eurie, Judge Kyle S. Brodie, Judge Jonathan B. Conklin, Judge Samuel K. Feng, Judge Harold W. Hopp, Judge Dalila Corral Lyons, Judge David M. Rubin, Judge Tam Nomoto Schumann (Ret.), Judge Eric C. Taylor, Commissioner Rebecca Wightman, Senator Hannah-Beth Jackson, Assembly Member Richard Bloom, Ms. Nancy CS Eberhardt, Ms. Rachel W. Hill, Mr. Patrick M. Kelly, Ms. Gretchen Nelson, Mr. Michael M. Roddy, Ms. Andrea K. Wallin-Rohmann, Mr. Kevin Harrigan, and Mr. Maxwell V. Pritt

Call to Order

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the open session to order at 12:20 p.m.

Chief Justice's Report

Chief Justice Tani G. Cantil-Sakauye thanked council members for attending the second special meeting in 10 days to address critical issues in response to Governor Newsom's executive order to temporarily enhance the authority of the judicial branch to take emergency actions in the face of the COVID-19 pandemic. She reported that since the March 28 meeting, a circulating order was issued to clarify previous orders on emergency relief measures for appellate courts. She noted that the Judicial Council will continue to use meetings, circulating orders, orders from her as Chief Justice or as Chair of the Judicial Council, and advisories to expedite the branch's response to the COVID-19 pandemic and to protect access to justice.

The Chief Justice summarized recent council actions taken to keep the public, court users, and staff safe. The council suspended jury trials to support social distancing and shelter-in-place requirements. The Chief issued emergency orders under Government Code section 68115 to support and protect local trial and appellate court operations. At the March 28 meeting, the council acted to approve temporary emergency measures to continue essential court services.

The April 6 meeting was convened to address the issues of "the faces behind the cases" and those who support them in seeking relief, resolving disputes, and having a voice in court, she stated. The Chief Justice reported that the Judicial Council has read the input, comments, and suggestions from courts, justice system partners, the media, and the public. Council staff worked with council members to craft temporary rules in response to the public's needs and rights. She noted that trial courts continue to work with their local justice system partners to discuss issues and develop local solutions that could work in other jurisdictions. Court procedures are being modified by temporary rules or extensions of time in order to comply with social distancing, density controls, shelter-in-place, and other public health and safety orders.

Administrative Director's Report

Administrative Director Martin Hoshino commented on the mechanics of meetings under the current circumstances. He explained that the executive team is in regular communication with the Governor's team and legislative staff. The council's executive team has received many letters and calls with constructive proposals and ideas. In addition to using meetings as a tool for decisionmaking, he noted that the Judicial Council will also utilize circulating orders to act between meetings and will issue advisories, as needed. Internally within the branch, frequently asked questions are posted. And a very active core of presiding judges and court executive officers are developing best practices in their respective communities and will circulate them to share; some of those may be replicated statewide while others are best left for the courts to determine what works in their particular community.

Mr. Hoshino reported that the meeting agenda includes 11 emergency rules spanning five different areas. He explained that Justice Slough, chair of the Executive and Planning Committee, and the Chief Justice will determine if a rule will be voted on alone or in a group, and how the vote will be recorded, whether roll call or voice vote.

Public Comment

Justice Slough reported that numerous letters were received commenting on the various proposed emergency rules outlined in today's report. The emergency rules, she noted, have been prepared in a matter of a few days and hours; they reflect what typically takes the branch months to complete through the normal rule change process. Letters expressed concerns regarding statewide justice during the pandemic, expressing both support and opposition. She stated that the public comments have informed and continue to inform and direct the council as they move forward.

The Chief Justice added that she read every comment and appreciates that the comments are on behalf of others and concern the safety of the public, noting that the comments have been civil, helpful, and professional.

DISCUSSION AGENDA

20-141 **Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic (Action Required)**

Summary: Due to the immediate and ongoing impact the COVID-19 pandemic is having on California's judicial branch, and at the request of Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, the chairs of the Judicial Council's six internal committees recommend that the Judicial Council adopt rules of court to: suspend the entry of defaults in unlawful detainer actions; suspend judicial foreclosures; provide for remote appearance via technology; adopt a statewide emergency bail schedule that sets bail at $0 for most misdemeanor and lower-level felony offenses; provide for personal appearance through counsel for defendants in pretrial criminal proceedings; prioritize for juvenile dependency and juvenile delinquency proceedings various hearing and orders and set a structure for remote hearings and continuances; extend the timeframes for specified temporary restraining orders; and adopt miscellaneous civil proposals, including suspending the statutes of limitations governing civil actions. The Judicial Council should take these temporary actions in order to protect the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement during the state of emergency related to the COVID-19 pandemic.

Recommendation: The chairs of the Judicial Council's six internal committees recommend that the

Judicial Council adopt the following rules of court, to take effect immediately:

Unlawful Detainers and Foreclosures: Proposed Emergency Rules 1-2

1. Adopt emergency rule 1 to suspend the issuance of summons and entry of default and default judgments on unlawful detainer complaints, and to allow courts to set trials on any unlawful detainer actions in which a defendant has appeared more than 60 days after the request for such a trial, unless the court finds that earlier action is needed to protect public health and safety.

2. Adopt emergency rule 2 to stay all actions for judicial foreclosures on mortgages and deeds of trust and extend all deadlines related to such actions.

Use of Technology to Conduct Proceedings Remotely: Proposed Emergency Rule 3

3. Adopt emergency rule 3 to provide that courts may require that judicial proceedings and court operations be conducted remotely; however, in criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely. Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; and the use of remote interpreting, remote reporting, and electronic recording to make the official record of an action or proceeding.

Criminal Proceedings: Proposed Emergency Rules 4-5

4. Adopt emergency rule 4 establishing a statewide Emergency Bail Schedule that sets bail at $0 for most misdemeanor and lower-level felony offenses and includes other specified provisions.

5. Adopt emergency rule 5 to provide for appearance through counsel and remote appearance via technology for defendants in pretrial criminal proceedings.

Juvenile Dependency and Juvenile Delinquency Proceedings: Proposed Emergency Rules 6-7

6. Adopt emergency rule 6 for juvenile dependency proceedings that would prioritize specified hearings and orders and set a structure for remote hearings and continuances.

7. Adopt emergency rule 7 related to juvenile delinquency that would prioritize hearings and orders in juvenile delinquency proceedings and set a structure for remote hearings and continuances. Emergency rule 7 would also grant an

extension of time under Welfare and Institutions Code section 709.

Temporary Restraining Orders: Proposed Emergency Rule 8

8. Adopt emergency rule 8 related to temporary restraining orders that, among other changes, would extend the timeframes for specified orders and allow courts to transmit an order in any format to the entering agency for transmission into the California Department of Justice database.

Civil Proceedings: Proposed Emergency Rules 9-11

9. Adopt emergency rule 9 to toll the statutes of limitation for all civil causes of action from April 6, 2020, to 90 days after the state of emergency related to the COVID-19 pandemic is lifted.

10. Adopt emergency rule 10 to increase by six months, for all civil actions filed on or before April 6, 2020, the five years in which to bring the actions to trial under Code of Civil Procedure section 583.310 and the three years in which to bring a new trial of the actions under Code of Civil Procedure section 583.320.

11. Adopt emergency rule 11 to allow a party or nonparty deponent, at their election or the election of the deposing party, to appear at a deposition remotely through electronic means.

Rules 1 and 2: Unlawful Detainers and Foreclosures
A motion was made by Assembly Member Bloom, seconded by Judge Hopp, to adopt rules 1 and 2. The motion carried by a unanimous roll call vote.

Rule 3: Use of Technology to Conduct Proceedings Remotely
A motion was made by Justice Hill, seconded by Judge Conklin and Judge Lyons, to adopt rule 3, as amended. Rule 3(a)(2) will read: "In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5." The motion carried by a unanimous roll call vote; Senator Jackson abstained.

Rule 4: Criminal Proceedings: Statewide Emergency Bail Schedule
A motion was made by Judge Bottke, seconded by Judge Lyons, to adopt rule 4 with an amendment that moves the implementation date from April 10 at 5 p.m. to Monday, April 13, 5 p.m. under subdivision (b). The motion carried by a unanimous voice vote.

Rule 5: Criminal Proceedings: Remote Appearances Through Counsel/Technology

A motion was made by Ms. Hill, seconded by Ms. Nelson, to adopt rule 5 with an amendment to read: "Notwithstanding any other law, including Penal Code sections 865 and 977, this rule applies to all criminal proceedings except cases alleging murder with special circumstances and cases in which the defendant is currently incarcerated in state prison as governed by Penal Code section 977.2." The motion carried by a unanimous voice vote.

Rules 6 and 7: Juvenile Dependency and Delinquency Proceedings
A motion was made by Judge Lyons, seconded by Mr. Kelly and Judge Taylor, to adopt the rules as amended.

In rule 6, a technical change will be made to page 24, line 7, to correct a drafting error in subdivision (c)(7)(B). The cross-reference should refer to (c)(7) instead of (b)(6) and should read: "A request for the court to review the change in visitation during this time period must be made within 14 court days of the change. In reviewing the change in visitation, the court should take into consideration the factors in (c)(7)."

The amendment to rule 7 clarifies the authority of the juvenile court to release detained youth. On page 27, line 6, the Advisory Committee comment would read as follows: "This emergency rule is being adopted in part to ensure that detention hearings for juveniles in delinquency court must be held in a timely manner to ensure that no child is detained who does not need to be detained to protect the child or the community. The statutory scheme for juveniles who come under the jurisdiction of the delinquency court is focused on the rehabilitation of the child and thus makes detention of a child the exceptional practice, rather than the rule. Juvenile courts are able to use their broad discretion under current law to release detained juveniles to protect the health of those juveniles and the health and safety of the others in detention during the current state of emergency related to the COVID-19 pandemic."

The motion carried by a unanimous voice vote.

Rule 8: Temporary Restraining Orders
A motion was made by Judge Lyons, seconded by Judge Hopp and Commissioner Wightman, to adopt rule 8 as amended. The language in (b)(2) will be changed to read as follows: "Any temporary restraining order or gun violence emergency protective order issued or set to expire during the state of emergency must be continued," therefore striking the language "remain in effect," "for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days," striking the remaining portion of the sentence. Also, an addition to (b)(4) will read as follows: "Any restraining order or protective order after hearing that is set to expire during the state of emergency related to the COVID-19 pandemic must be automatically extended for up to 90 days from the date of expiration to

enable a protective party to seek a renewal of this restraining order." The motion carried by a unanimous voice vote.

Rules 9-11: Civil Proceedings
A motion was made by Mr. Kelly, seconded by Judge Lyons and Justice Chin, to adopt rules 9-11. A friendly amendment was made to rule 11 to include a sunset period of 90 days after the Governor lifts the state of emergency. Rules 9 and 10 carried by a unanimous voice vote. Mr. Pritt opposed rule 11.

Circulating Orders

20-139 **Circulating Orders since the last business meeting.**

Adjournment

With the meeting's business completed, the Chief Justice adjourned the meeting at approximately 1:30 p.m.

Respectfully submitted by Administrative Director Martin Hoshino, Secretary to the Judicial Council, on May 15, 2020.