



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-10

Title

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

Rules, Forms, Standards, or Statutes Affected

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

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

June 10, 2020

Date of Report

June 8, 2020

Contact

Michael I. Giden, Legal Services
415-865-7977
michael.giden@jud.ca.gov

Anne M. Ronan, Legal Services
415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

As a result of the COVID-19 pandemic and state and local directives ordering shelter-in-place with limited exceptions, the Judicial Council adopted 13 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. Emergency rule 1 addresses unlawful detainer 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. Both rules are currently in effect for the duration of the state of emergency and 90 days thereafter. The chairs of the Judicial Council's six internal committees note the Legislature is currently reviewing these issues and now propose that the council amend emergency rules 1 and 2 so that they will sunset on August 3, 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 until August 3, 2020, or until otherwise amended by the Judicial Council;
- Amend California Rules of Court, 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 until August 3, 2020, or until otherwise amended by the Judicial Council; and
- Add an Advisory Committee Comment to each of the rules noting that if the Legislature acts on bills it is considering relating to unlawful detainers and judicial foreclosures before August 3, 2020, the council may amend the rules further.

The proposed amendments to the rules are attached at pages 8–9.

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 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, 2020.²

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 days after a request for trial is filed. The council also adopted emergency rule 2, staying all

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

² The council also subsequently adopted emergency rules 1213 by circulating order.

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

As stated more fully in the April 4, 2020 report to the Judicial Council proposing emergency rules 1–11,³ the United States is the epicenter of a global pandemic caused by the COVID-19 virus. As of June 4, 2020, the U.S. Centers for Disease Control and Prevention reported there were over 1.8 million cases in this country, with over 100,000 deaths;⁴ and California’s Department of Public Health reported over 119,000 cases in the state, with over 4,000 deaths.⁵

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the COVID-19 pandemic.⁶ On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order⁷ 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.

On March 27, 2020, the Governor issued an executive order providing an extended answer period (60 days) to residential tenants who have suffered COVID-19-related income loss and meet certain other requirements, and banning the enforcement of eviction orders on such tenants.⁸ The order remains in effect through May 31, 2020. This order was in addition to his previous order on March 16 authorizing local governments to halt evictions for renters impacted by the pandemic,

³ 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>.

⁴ 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.

⁵ Cal. Dept. of Public Health, “California COVID-19 by the Numbers,” news release (June 4, 2020), www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers.

⁶ State of emergency proclamation, www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

⁷ Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁸ Executive Order N-37-20, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf>.

which authorization originally was to expire on May 31, 2020,⁹ but which has now been extended and will expire on July 28, 2020.¹⁰

The Governor has implemented a four-phase framework for reopening California counties.¹¹ Counties that meet criteria specified by the California Department of Public Health can be granted a variance by the Governor and begin reopening. As of June 5, 51 counties have received a variance and are reopening.¹² In addition, local governments are also loosening the restrictions in their local orders and businesses are reopening.¹³

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. The council found that unlawful detainers were particularly problematic for several reasons. First, they are generally handled in departments with high volume caseloads involving many litigants in a single courtroom. As a result, it is difficult to adjudicate such cases and also limit the flow of people in the courts to prevent the potential spread of COVID-19 to court staff and in the community. Second, they require very fast legal responses (within five days) from defendants who are often self-represented and at a time when court self-help centers and legal aid services were not readily available. And, when involving residential property, unlawful detainer actions threaten to remove people from the very homes in which they had been ordered to remain. At the time, the Legislature was not in session to address these issues.

The Proposal

This proposal will immediately amend emergency rules 1 and 2 to modify the time period in which they will remain in effect to August 3, 2020, with some other amendments, as described below.¹⁴

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

⁹Executive Order N-28-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf.)

¹⁰ Executive Order N-66-20, <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.29.20-EO-N-66-20.pdf>.

¹¹ Update on California's Pandemic Roadmap, <https://www.gov.ca.gov/wp-content/uploads/2020/04/Update-on-California-Pandemic-Roadmap.pdf>.

¹² County Variance Information, <https://covid19.ca.gov/roadmap-counties/#track-data>.

¹³ See, e.g., "California's Reopening: See what's open and what's still shut down by county," San Francisco Chronicle (May 29, 2020), <https://projects.sfchronicle.com/2020/coronavirus-map/california-reopening/>.

¹⁴ 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, including adjustment of the sunset of individual rules, as the state's response to the pandemic changes and courts continue to resume operations.

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 it was uncertain at what point in time courts would be able to resume operations and parties could begin to connect with each other again. However, as noted above, while the formal state of emergency period may last for many months or years, the Governor has begun lifting the statewide shelter-in-place order by granting county variances for reopening, and various local governments are loosening the restrictions in their orders. In addition, courts are finding ways to operate despite the existence of COVID-19, including using remote technology in many situations. Moreover, the extended 60-day period to answer in unlawful detainer cases provided by Executive Order N-37-20 will not be available in cases filed after May 31, under the terms of that order,¹⁵ and eviction moratoriums by local governments are only authorized through July 28.¹⁶

In light of the above, and to provide parties with greater certainty as to when statutory provisions will be effective once again, the Judicial Council's internal committee chairs are recommending that the rule sunset on August 3, 2020. (Cal. Rules of Court, emergency rule 1(e).) This will provide courts and parties with almost two-months' notice of the amendment to the effective period of the emergency rule. The change in the sunset date means that as of August 4, 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 upon request subject to Code of Civil Procedure section 1170.5.

Although the rule will sunset on August 3, 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. (*Id.*) 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.

The internal committee chairs also propose a new Advisory Committee Comment to emergency rule 1, to note that the Legislature is now working on urgency legislation relating to unlawful detainer actions for both residential and commercial property, which may provide different

¹⁵ As a result, after July 28, 2020, courts will no longer need to distinguish between actions that are covered by that order (and so are not subject to default for 60 days) and ones that are not (and so subject to default after 5 days).

¹⁶ As a result, July 29 will be the first day when landlords may serve 3-day notices on tenants protected under such moratoriums, and August 4 will be the first day on which complaints against them may be filed.

procedures in these cases.¹⁷ If such provisions are enacted before August 3, the council may revisit this rule to further amend it as appropriate.

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 election of rights related to such actions. There are proposed amendments to two provisions in this rule.

The first amendment affects the period during which the rule applies, changing it from the end of the state of emergency period (plus 90 days) to August 3, 2020, for many of the reasons discussed above in relation to the unlawful detainer actions. This means that as of August 4, stays on pending judicial foreclosure actions will be lifted and any deadlines in such actions will no longer be deferred. Because this too is an area in which the Legislature is currently considering making statutory amendments in urgency legislation, the internal committee chairs have added an Advisory Committee Comment similar to the one proposed for rule 1, noting that the rule may be further amended if the Legislature acts before August 3.¹⁸

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 than 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 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 allowing businesses to reopen and activities to resume, 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 is an indicator that courts are moving forward and able to provide 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.

¹⁷ See, for example, Assembly Bill 828 (Temporary moratorium on foreclosures and unlawful detainer actions: coronavirus (COVID-19)), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB828; and Senate Bill 939 (Emergencies: COVID-19: commercial tenancies: evictions), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB939.

¹⁸ See AB 828, *supra*.

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: they have served their purpose of addressing the immediate crisis, and, now that the Legislature is considering these areas of the law, the chairs concluded that it was appropriate to cede the balancing of the substantive policy to the consideration of the Legislature.

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, and the efforts of courts to resume operations, the chairs decided that an adjustment of the sunset of these rules was appropriate.

The chairs also considered adjusting the sunset to an earlier date, ending the rules sooner, but concluded that the August 3 date would ensure that courts will be able to process the civil actions and provide certainty and reasonable notice to litigants and their representatives and advisors of the ended rules.

Fiscal and Operational Impacts

The sunset of these two rules could have a significant impact on court operations, which have only 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 being considered 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 8–9
2. Voting instructions, at page 10
3. Vote and signature pages, at pages 11–12

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

1 **Emergency rule 1. Unlawful detainers**

2
3 ~~(a)–(c)~~ * * *

4
5 **(d) Time for trial**

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

12
13 **(e) Sunset of rule**

14
15 This rule will remain in effect until August 3, 2020, 90 days after the Governor
16 declares that the state of emergency related to the COVID-19 pandemic is lifted, or
17 until amended or repealed by the Judicial Council. Notwithstanding Code of Civil
18 Procedure section 1170.5 and this subdivision, any trial date set under (d) as of
19 August 3, 2020, will remain as set unless a court otherwise orders.

20
21 **Advisory Committee Comment**

22
23 The Legislature is currently considering bills that address this area of law. If statutes are enacted
24 that address this area before August 3, 2020, the council may further amend or repeal the rule.

25
26
27 **Emergency rule 2. Judicial foreclosures—suspension of actions**

28
29 Notwithstanding any other law, this rule applies to any action for foreclosure on a
30 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
31 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
32 provides that, until August 3, 2020, 90 days after the Governor declares that the state of
33 emergency related to the COVID-19 pandemic is lifted, or until this rule is amended or
34 repealed by the Judicial Council:

35
36 (1) All such actions are stayed, and the court may take no action and issue no
37 decisions or judgments unless the court finds that action is required to further the
38 public health and safety.

39
40 ~~(2) Any statute of limitations for filing such an action is tolled.~~

1 ~~(3)~~(2) The period for electing or exercising any rights under that chapter, including
2 exercising any right of redemption from a foreclosure sale or petitioning the court
3 in relation to such a right, is extended.
4

5 **Advisory Committee Comment**
6

7 The Legislature is currently considering bills that address this area of law. If statutes are enacted
8 that address this area before August 3, 2020, the council may further amend or repeal the rule.
9

10 The provision for tolling any applicable statute of limitations in prior subdivision (2) has been
11 removed as unnecessary because the tolling provisions in emergency rule 9 apply to actions
12 subject to this rule.
13

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 **4:00 p.m., Wednesday, June 10, 2020.**
- If you are unable to reply by Wednesday, June 10, 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 amends California Rules of Court, emergency rules 1 and 2.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

Marla O. Anderson

Richard Bloom

C. Todd Bottke

Stacy Boulware Eurie

Kyle S. Brodie

Ming W. Chin

Jonathan B. Conklin

Samuel K. Feng

Brad R. Hill

Rachel W. Hill

Harold W. Hopp

Harry E. Hull, Jr.

Hannah-Beth Jackson

My vote is as follows:

Approve

Disapprove

Abstain

Patrick M. Kelly

Dalila Corral Lyons

Gretchen Nelson

Maxwell V. Pritt

David M. Rubin

Marsha G. Slough

Eric C. Taylor

Date: _____

Attest:

Administrative Director and
Secretary of the Judicial Council