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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-06

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<p><b>Title</b> Protective Orders: Emergency Rule on Extension of Restraining Orders</p>	<p><b>Action Requested</b> VOTING MEMBERS ONLY: Submit votes by responding to the transmittal e-mail.</p>
<p><b>Rules, Forms, Standards, or Statutes Affected</b> Amend Cal. Rules of Court, emergency rule 8</p>	<p><b>Please Respond By</b> April 19, 2020</p>
<p><b>Recommended by</b> 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</p>	<p><b>Date of Report</b> April 16, 2020</p> <p><b>Contact</b> Frances Ho, Attorney 415-865-7662 <a href="mailto:frances.ho@jud.ca.gov">frances.ho@jud.ca.gov</a></p> <p>Gregory S. Tanaka, Supervising Attorney 415-865-7671 <a href="mailto:gregory.tanaka@jud.ca.gov">gregory.tanaka@jud.ca.gov</a></p>

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## Executive Summary

The chairs of the Judicial Council's six internal committees recommend that the council amend emergency rule 8 of the California Rules of Court to allow persons protected by restraining orders to submit requests to renew restraining orders during the state of emergency related to the COVID-19 pandemic and to address the operational concerns of courts.

## Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective immediately, amend emergency rule 8 of the California Rules of Court as follows:

1. Require that courts provide a means for requests to renew long-term restraining orders that expire during the state of emergency to be filed either at a physical location, drop box, or electronically.

2. Allow courts to extend a long-term restraining order, upon a request to renew a restraining order being filed with the court, for up to 90 days.
3. Allow a party or attorney to electronically sign a request to renew a restraining order filed with the court.
4. Remove the requirement that emergency protective orders and restraining orders after hearing be automatically extended.
5. Replace the word “continued” with “remain in effect” in subdivision (b)(2) of the rule.

The text of the amended rule is attached at pages 5–6.

### **Relevant Previous Council Action**

On March 27, the Governor issued an order<sup>1</sup> giving 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 practice or procedure. The Governor’s order also suspended statutes to the extent they would be inconsistent with such emergency rules. Under that order, the council adopted emergency rules 1–11 on April 6, 2020, which included emergency rule 8, to address civil and criminal restraining orders.<sup>2</sup>

### **Analysis/Rationale**

#### **Renewal of long-term restraining order**

A request to renew a restraining order must be requested by the protected person within three months from the date of expiration of a long-term restraining order, also known as a restraining order after hearing.<sup>3</sup> The amendments proposed to emergency rule 8(b)(4) would require courts to accept requests to renew restraining orders and extend any long-term restraining order until the matter could be heard, for up to 90 days. As currently stated, the emergency rule requires courts to automatically extend any long-term restraining order that is due to expire during the state of emergency. Advisory committee members and courts have expressed concern with this requirement as courts do not have a way of tracking long-term restraining orders that have been granted, including when they were issued and set to expire. The judicial and administrative burdens of such a policy would be enormous, especially for those courts with less sophisticated case management systems. The rule also currently assumes that the protected person wants the restraining order to continue. Instead of automatically extending any long-term restraining order due to expire during the state of emergency, the proposed amendments would give those seeking

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<sup>1</sup> Executive Order N-38-20, [www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf](http://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf).

<sup>2</sup> Judicial Council of Cal., Internal Com. Chairs Rep., *Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic* (April 6, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-426E-446C-8879-39B03DE418B3>

<sup>3</sup> Family Code section 6345.

further protection access to the court system, while allowing other restraining orders to naturally expire when no request to renew is filed with the court.

### **Automatic extensions for emergency protective orders**

Courts have also expressed concern over the current mandate in emergency rule 8 that requires the automatic extension of emergency protective orders already issued to prevent domestic violence, elder abuse, stalking, child abuse, or child abduction. These orders typically last 5 to 7 days but under emergency rule 8 would be automatically extended for up to 30 days, if set to expire during the state of emergency. Having courts extend all emergency protective orders due to expire during this time period is problematic as it would require the creation of an entirely new business process to track all emergency protective orders previously issued by the court, including their expiration dates, and to extend those orders. Additionally, these orders do not generate the opening of a court case and therefore would not be searchable in court case management systems. This would create a significant operational burden on courts at a time when resources are scarce.

Under normal circumstances, individuals granted emergency protective orders who still need protection would be directed to file their own request for restraining order. During the state of emergency, all Californians should now be able to file a request for restraining order at their local court under emergency rule 8. This means that the current process can be relied on by members of the public who seek further protection through the courts after the expiration of an emergency protective order.<sup>4</sup> Additionally, during the state of emergency, rule 8 as amended will still provide courts with the ability to issue new emergency protective orders as noted above, for up to 30 days, recognizing that it may be harder for self-represented litigants to access services during this time.

### **Technical change to subdivision (b)(2)**

As currently stated, emergency rule 8(b)(2) requires any temporary restraining order or gun violence emergency protective order issued or expiring during the state of emergency to be “continued” until a hearing can be held, for up to 90 days. The proposed amendment to the rule replaces the word “continued” with language stating that the orders must instead “remain in effect.” This technical change would clarify any ambiguity in interpretation that may result in only the original hearing date set by the court being “continued,” without extending the actual expiration date of any temporary restraining order or gun violence emergency protective order previously granted.

### **Comments**

This proposal has not been circulated for comment due to the speed with which the COVID-19 pandemic has spread and the urgent need to allow parties the means required to access the courts

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<sup>4</sup> Emergency rule 8(c) provides that courts should provide a means for people to file requests for restraining orders and requests to renew restraining orders.

for protection from violence and lessen the burden on court operations during the state of emergency, while considering the health and safety of parties, counsel, and the public.

### **Alternatives considered**

The chairs of the council's six internal committees considered taking no action. However, since emergency rule 8 was adopted by the council, attorneys and the courts have reported substantial difficulty and challenges in understanding how the current emergency rule 8, requiring automatic extension of all long-term restraining orders, should be implemented. Given the severity of the crisis, and the need to ensure the protection of vulnerable populations from violence, the chairs of the Judicial Council's six internal committees concluded that proposed amended emergency rule 8 is necessary for courts to reasonably implement the emergency rules while still providing access to our court system for those in need of protection.

### **Fiscal and Operational Impacts**

This amended emergency rule minimizes the anticipated burden on court operations and case management systems by eliminating the requirement to identify and automatically extend thousands of expiring long-term restraining orders and emergency protective orders statewide. Instead, the amended rule would allow courts to extend a long-term restraining order only when requested by the protected person and issue any emergency protective order for an extended time period during the state of emergency.

### **Attachments and Links**

1. Cal. Rules of Court, amended emergency rule 8, at pages 5–6
2. Voting instructions, at page 7
3. Vote and signature pages, at pages 8-9

Emergency rule 8 of the California Rules of Court is amended immediately to read:

1 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

2  
3 **(a) Application**

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5 Notwithstanding any other law, this rule applies to any emergency protective order,  
6 temporary restraining order, or criminal protective order that was requested, issued,  
7 or set to expire during the state of emergency related to the COVID-19 pandemic.  
8 This includes requests and orders issued under Family Code sections 6250 or 6300,  
9 Code of Civil Procedure sections 527.6, 527.8, or 527.85, Penal Code sections  
10 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304,  
11 362.4, or 15657.03, and including any of the foregoing orders issued in connection  
12 with an order for modification of a custody or visitation order issued pursuant to a  
13 dissolution, legal separation, nullity, or parentage proceeding under Family Code  
14 section 6221.

15  
16 **(b) Duration of orders**

- 17  
18 (1) Any emergency protective order made under Family Code section 6250 that  
19 is issued ~~or set to expire~~ during the state of emergency, must remain in effect  
20 for up to 30 days from the date of issuance.  
21  
22 (2) Any temporary restraining order or gun violence emergency protective order,  
23 issued or set to expire during the state of emergency related to the COVID-19  
24 pandemic, must ~~be continued~~ remain in effect for a period of time that the  
25 court determines is sufficient to allow for a hearing on the long-term order to  
26 occur, for up to 90 days.  
27  
28 (3) Any criminal protective order, subject to this rule, set to expire during the  
29 state of emergency, must be automatically extended for a period of 90 days,  
30 or until the matter can be heard, whichever occurs first.  
31  
32 (4) Upon the filing of a request to renew a restraining order after hearing, that is  
33 set to expire during the state of emergency related to the COVID-19  
34 pandemic, the current restraining order after hearing must remain in effect  
35 until a hearing on the renewal can occur, for up to 90 days from the date of  
36 expiration.  
37 ~~Any restraining order or protective order after hearing that is set to expire~~  
38 ~~during the state of emergency related to the COVID-19 pandemic must be~~  
39 ~~automatically extended for up to 90 days from the date of expiration to enable~~  
40 ~~a protected party to seek a renewal of the restraining order.~~

Emergency rule 8 of the California Rules of Court is amended immediately to read:

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**(c) Ex parte requests and requests to renew restraining orders**

- (1) Courts must provide a means for the filing of ex parte requests for temporary restraining orders and requests to renew restraining orders. Courts may do so by providing a physical location, drop box, or, if feasible, through electronic means.
- (2) Any ex parte request and request to renew restraining orders may be filed using an electronic signature by a party or a party's attorney.

## **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 **12:00 p.m., Sunday April 19, 2020.**
- If you are unable to reply by **April 19, 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 amendments to emergency rule 8 of the California Rules of Court.

My vote is as follows:

Approve       Disapprove       Abstain

\_\_\_\_\_  
Tani G. Cantil-Sakauye, Chair

\_\_\_\_\_  
Marla O. Anderson

\_\_\_\_\_  
Richard Bloom

\_\_\_\_\_  
C. Todd Bottke

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Stacy Boulware Eurie

\_\_\_\_\_  
Kyle S. Brodie

\_\_\_\_\_  
Ming W. Chin

\_\_\_\_\_  
Jonathan B. Conklin

\_\_\_\_\_  
Samuel K. Feng

\_\_\_\_\_  
Brad R. Hill

\_\_\_\_\_  
Rachel W. Hill

\_\_\_\_\_  
Harold W. Hopp

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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