



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-217

For business meeting on: November 13, 2020

Title

Civil Practice and Procedure: Emergency Rules for Remote Depositions and Electronic Service in Response to the COVID-19 Pandemic

Rules, Forms, Standards, or Statutes Affected

Repeal Cal. Rules of Court, emergency rules 11 and 12

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. Marla O. Anderson, Chair, Legislation Committee
Hon. Harry E. Hull, Jr., Chair, Rules Committee
Hon. Kyle S. Brodie, Chair, Technology Committee

Agenda Item Type

Action Required

Effective Date

November 13, 2020

Date of Report

October 23, 2020

Contact

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Executive Summary

The chairs of the Judicial Council's six internal committees recommend repealing California Rules of Court, emergency rule 11 (Depositions through remote electronic means) and emergency rule 12 (Electronic service). Recently enacted Senate Bill 1146 codified and made permanent the provisions in these rules. Because the Legislature enacted statutes codifying the

provisions in the rules, which were intended to be temporary, emergency rules 11 and 12 are no longer needed, and the council should repeal them.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that, because the Legislature has enacted statutes codifying the provisions of emergency rules 11 and 12, the Judicial Council should, effective immediately, repeal:

- Emergency rule 11, Depositions through remote electronic means; and
- Emergency rule 12, Electronic service.

The proposed repealed rules are attached at pages 4–5.

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. At the time of this order, and for several weeks thereafter, the Legislature was not in session.

Citing this order, the council adopted emergency rules 1 through 11 on April 6, 2020.² Emergency rule 11 allows a party or nonparty deponent, at their election or the election of the deposing party, to appear at a deposition remotely through electronic means.

The council later adopted emergency rule 12 on April 17, 2020.³ Emergency rule 12 mandates that a represented party accept electronic service of, and on the request of any party, electronically serve, all nonjurisdictional notices and documents. The rule applies in general civil actions and in proceedings under the Family Code and Probate Code.

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 Coms. 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>. The rules as adopted, <https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>.

³ Judicial Council of Cal., Internal Coms. Chairs Circ. Order, *Civil Practice and Procedure: Emergency Electronic Service Rule in Response to the COVID-19 Pandemic* (Apr. 14, 2020), <https://jcc.legistar.com/View.ashx?M=M&ID=777460&GUID=6220851F-3454-4B7D-AEEC-626FC7AC965F>.

Both emergency rules 11 and 12 were intended to be temporary and state that they would “remain in effect until 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.”

Analysis/Rationale

On September 18, 2020, the Governor signed Senate Bill 1146 (Stats. 2020, ch. 112),⁴ making it effective immediately. Among the stated objectives of SB 1146 is the intent to codify the provisions of emergency rules 11 and 12 by allowing deponents to appear for deposition remotely and mandating under specified circumstances the electronic service and acceptance of nonjurisdictional notices and documents between represented parties in certain civil proceedings.⁵

Emergency rules 11 and 12 were adopted while the Legislature was not in session as temporary measures to address the impact of the COVID-19 pandemic on the judicial branch. With the enactment of SB 1146, which codifies the provisions of emergency rules 11 and 12, there is no further need for the rules and they should be repealed.

Policy implications

The COVID-19 pandemic has presented an unprecedented crisis that threatens the lives, health, and safety of all Californians. The Judicial Council acted swiftly to adopt a number of emergency rules to maintain access to justice. Because SB 1146 codifies the provisions of emergency rules 11 and 12, however, the two rules are no longer necessary and should be repealed.

Comments

This proposal has not been circulated for comment because it is uncontroversial that the rules are no longer needed following the enactment of SB 1146.

Alternatives considered

The council could take no action. It is preferable, however, to repeal emergency rules 11 and 12 to avoid any confusion about which legal authorities apply to remote depositions and electronic service.

Fiscal and Operational Impacts

No associated costs result from this proposal.

Attachments and Links

1. Cal. Rules of Court, rules 11 and 12, at pages 4–5

⁴ Sen. Bill 1146, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1146.

⁵ Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1146 (2019–2020 Reg. Sess.) as amended Aug. 27, 2020, pp. 1, 3–4.

Emergency rules 11 and 12 of the California Rules of Court are repealed, effective November 13, 2020, to read:

1 **Emergency rule 11. ~~Depositions through remote electronic means~~**

2
3 **(a) ~~Deponents appearing remotely~~**

4
5 Notwithstanding any other law, including Code of Civil Procedure section
6 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at
7 their election or the election of the deposing party, is not required to be present
8 with the deposition officer at the time of the deposition.
9

10 **(b) ~~Sunset of rule~~**

11
12 This rule will remain in effect until 90 days after the Governor declares that the
13 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
14 repealed by the Judicial Council.
15
16

17 **Emergency rule 12. ~~Electronic service~~**

18
19 **(a) ~~Application~~**

20
21 (1) ~~Notwithstanding any other law, including Code of Civil Procedure section~~
22 ~~1010.6, Probate Code section 1215, and rule 2.251, this rule applies in all~~
23 ~~general civil cases and proceedings under the Family and Probate Codes,~~
24 ~~unless a court orders otherwise.~~
25

26 (2) ~~Notwithstanding (1), the rule does not apply in cases where parties are~~
27 ~~already required by court order or local rule to provide or accept notices and~~
28 ~~documents by electronic service, and is not intended to prohibit electronic~~
29 ~~service in cases not addressed by this rule.~~
30

31 **(b) ~~Required electronic service~~**

32
33 (1) ~~A party represented by counsel, who has appeared in an action or proceeding,~~
34 ~~must accept electronic service of a notice or document that may be served by~~
35 ~~mail, express mail, overnight delivery, or facsimile transmission. Before first~~
36 ~~servicing a represented party electronically, the serving party must confirm by~~
37 ~~telephone or email the appropriate electronic service address for counsel~~
38 ~~being served.~~
39

40 (2) ~~A party represented by counsel must, upon the request of any party who has~~
41 ~~appeared in an action or proceeding and who provides an electronic service~~
42 ~~address and a copy of this rule, electronically serve the requesting party with~~

1 any notice or document that may be served by mail, express mail, overnight
2 delivery, or facsimile transmission.

3
4 **(e) — Permissive electronic service**

5
6 ~~Electronic service on a self-represented party is permitted only with consent of that~~
7 ~~party, confirmed in writing. The written consent to accept electronic service may be~~
8 ~~exchanged electronically.~~

9
10 **(d) — Time**

11
12 ~~(1) — In general civil cases and proceedings under the Family Code, the provisions~~
13 ~~of Code of Civil Procedure section 1010.6(a)(4) and (5) apply to electronic~~
14 ~~service under this rule.~~

15
16 ~~(2) — In proceedings under the Probate Code, the provisions of Probate Code~~
17 ~~section 1215(c)(2) apply to electronic service under this rule.~~

18
19 **(e) — Confidential documents**

20
21 ~~Confidential or sealed records electronically served must be served through~~
22 ~~encrypted methods to ensure that the documents are not improperly disclosed.~~

23
24 **(f) — Sunset of rule**

25
26 ~~This rule will remain in effect until 90 days after the Governor declares that the~~
27 ~~state of emergency related to the COVID-19 pandemic is lifted, or until amended or~~
28 ~~repealed by the Judicial Council.~~