

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is a formatted and unedited transcript of the last meeting. The official record of each meeting, the meeting minutes, are usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at [www.courts.ca.gov](http://www.courts.ca.gov).

>> Good afternoon. Welcome to a special meeting of the Judicial Council of California for Monday, April 6, 2020. This teleconference meeting is now in session. This is the Chief Justice of California, Tani Cantil-Sakauye. I'll request that Amber from Judicial Council Services call the roll of Judicial Council members, also outline some of our teleconference protocols to make the meeting as effective as possible for everyone participating and those listening. Amber?

>> Thank you, Chief. The Chief is present. Justice Chin?

>> Here.

>> Judge Anderson?

>> Present.

>> Assembly Member Bloom?

>> Here.

>> Judge Bottke?

>> Here.

>> Judge Boulware Eurie?

>> I'm here.

>> Judge Brodie?

>> Here.

>> Judge Conklin?

>> Here.

>> Judge Feng?

>> Present.

>> Justice Hill?

>> Present.

>> Ms. Rachel Hill?

>> Here.

>> Judge Hopp?

>> Here.

>> Justice Hull? [No response] Justice Hull?

>> Sorry, had it on mute. I'm here.

>> Thank you. Senator Jackson?

>> Here.

>> Mr. Kelly?

>> Here.

>> Judge Lyons?

>> Here.

>> Ms. Nelson?

>> Present.

>> Mr. Pritt?

>> Here.

>> Judge Rubin?

>> Here.

>> Justice Slough?

>> Present.

>> Judge Taylor?

>> Here.

>> Ms. Eberhardt?

>> Here.

>> Justice Fujisaki?

>> Here.

>> Mr. Harrigan?

>> Here.

>> Judge Hinrichs?

>> Here.

>> Judge Moorman?

>> Here.

>> Mr. Roddy?

>> Here.

>> Judge Nomoto Schumann?

>> Present.

>> Ms. Wallin-Rohmann?

>> Here.

>> Commissioner Wightman?

>> I'm here.

>> This meeting will be recorded through a recording feature. To ensure quality of sound, please identify yourself by name each time you speak. When asking questions, address individuals by name. Please remember to mute your phones when you're not actively speaking, and do not place the call on hold. Chief, all members are present.

>> Thank you, Amber. And thank you all for being here. This is our second special meeting in the last 10 days. These two meetings were convened to address critical access to justice issues following Governor Newsom's proclamation of a state of emergency on March 4 and then his Executive Order on March 27 to us to temporarily "enhance the authority of California's Judicial Branch to take emergency actions in the face of the COVID-19 crisis." We've also issued a circulating order in relation to appellate rule and advisory clarifying previous orders on

emergency relief measures for courts. And we will continue to use all of these options—Judicial Council meetings, circulating orders, orders from me as Chief Justice or as Chair of the Council, and possible advisories when necessary—to expedite the branch’s response to the COVID-19 pandemic and to protect access to justice. So thank you once again to our council members from the courts, the bar, and the Legislature for once again making yourselves available on short notice to address all of these number one access-to-justice issues and concerns. As I said at last week’s meeting, no need and no right will be overlooked. And that Martin noted at the meeting, “Everything is number one on our list, but we have to deal with them in some order.” To date, we have addressed the need to keep the public, court users, and staff safe by suspending jury trials and supporting social distancing and shelter-in-place requirements. I have issued emergency orders under Government Code section 68115 to support and protect local trial and appellate court operations, judicial officers, court staff, court users, litigants, the accused, the justice system partners, as well as the public. At our March 28th special meeting, we again acted to protect the health and well-being of all of our constituents by approving temporarily—and again, I say, temporarily with a capital T—emergency measures to continue essential court services. And yet we struggle, as evidenced by our teleconference issues at the very same meeting, with many of the same issues private businesses and public institutions have faced nationwide during this unprecedented crisis. But cognizant of our oath to both Constitutions, jurists and lawyers have struggled and continue to struggle to balance the health and safety needs of their local communities with the civil and constitutional rights and liberties of individuals and groups from our communities. Today, as part of our ongoing collective effort to flatten the curve, stem the spread of the virus, and assume the responsibility delegated to us by Governor Newsom with “utmost care and judiciousness,” we seek to address the issues of the faces behind the cases as those that support them in seeking relief, resolving disputes, or having their voice heard by the court. All are “number one” on our list. We have listened to and read the input, comments, and suggestions from our justice system partners, the public, and the courts and the media. Our staff has worked with council members to craft temporary rules that will be responsive to the needs and rights that we all swore an oath to protect and defend. This has been a collaborative effort perhaps not under our normal procedures but still effective in these daily changing, uncertain, fluid times. And thus, all of us are endeavoring to balance justice—again, in this overwhelming contagion—in order to minimize illness and death. I have heard examples again and again of local courts working successfully with local justice system partners, getting together virtually, discussing issues, working out effective local solutions that could work in other jurisdictions. We are judges, lawyers, and legal staff. We make important decisions for a living. And we do so still with the best information at hand, using information from our justice partners, the media, and the public and, in this case, making swift but meaningful and sobering deliberative decisions, trying our best to preserve rights and ultimately preserve lives. We are, at this point, truly with no guidance in either history, law, or precedents. And to say that there is no playbook is a gross understatement of the situation. But we’re working with Legal Aid and legal advocacy groups, public defenders, district attorneys, law enforcement, unions, attorneys, court reporters, and interpreters to preserve the rule of law and to protect the rights of victims, the accused, litigants, families, children, and all who come to us for justice. So we have to share

these best practices. We must be collaborative and cooperative. We must be justice partners in finding solutions during these uncommon times because it's in all of our best interests to do so, because we all still have essential jobs to do, and because it is our public duty. And unlike the vast majority of the public, we all swore oaths to do so. The judicial branch is doing its part by contributing to solutions that require government and the public we serve to work together, to share a collective and individual responsibility, and to do the right thing. We may be altering court procedures by a temporary rule or extending time for some, implementing social distancing and density controls, and supporting shelter-in-place and other public health and safety orders. And by our temporary orders and procedures, we are trying to balance access to justice with a safe court environment for others including first responders, police, fire, rescue, and ambulance crews, healthcare workers, nurses, doctors, all hospital staff, and health departments and research sciences, those working in and with our local communities to stop this pandemic and save lives. I thank you all for your service to our communities and our states. These welcoming and introductory remarks will serve as my report. At this time, I'll turn it over to Martin Hoshino, who may have some additional comments, as you know.

>> Thank you, Chief. I think I would like to take a few moments to talk a little bit about the mechanics of this meeting and maybe some of the mechanics and path and process forward, on how it is we will manage the public's business in this area, and indeed our own, going forward. Again, all subject to change with the caveat depending on how the crisis develops and unfolds and what those impacts might be. We are in regular communication with the Governor's team and his agencies and control agencies and have a very good flow of information there. We are also putting regular meetings together with members of the legislative staff that are there to channel issues that are of import to the public and our partners and stakeholders. We've got a lot of letters and calls. They come in at all times of the day and all days of the week, which is perfectly fine by us; and the vast majority of it is very constructive in the form of its suggestions and proposals and ideas. We've also now set up communication channels with certain partners and stakeholders and assigned point persons to handle those things. Today, you have in front of you 11 rules that span five different areas. We will make an effort to try and take those rules up in the sub-areas that each of them are in. But the reality is, depending on how the discussion goes, Justice Slough, who's our chair from Executive and Planning, and the Chief may call out a rule for a particular vote. And we will be taking a roll call vote on each one of those particular rules. I wanted to talk a little bit about maybe globally how the council may be proceeding and going forward. As the issues and the challenges and the problems and the impacts of the crisis continue to unfold and develop, we are actively trying to manage or match, basically, our methods and our processes for action to address those impacts and those issues. We have done the two meetings. We're about to finish the second meeting that the Chief referenced. We certainly have Judicial Council meetings as a tool, but we also have some other tools and methods that we can use to take action. One of them was already mentioned by the Chief in the form of what is called a circulating order. It is the ability for the council to really act in between these bigger meetings and bigger agendas. It's something that we usually do by exception; but this being, of course, an exceptional time, we could be making and seeing more of that exception in terms of a method of action more. Sometimes it's single issues; or it may,

in fact, be a technical adjustment for what is a large, statewide policy call that later may need to be adjusted based on another sub-policy issue or a procedural problem that develops during the course of implementation in the state. Then we also have issued before advisories, and we have no reason to think that more advisories won't come out. In fact, at least one of the actions today is kind of a permanent action that was once previously at least an advisory. So there is an interplay between all of these tools mechanically as we go forward. Then, of course, we have our frequently asked questions, things that we post inside the branch family. As the Chief referenced, we have a very active core of presiding judges, as well as court executive officers, that are constantly dialoguing with each other and developing best practices along the way. Some of those things come up for statewide replication, and some of them are just best left there for the courts to figure out what works and doesn't work in their particular community based on their capacities and the level and degree of whatever the issue or the problem may be. With that, again, I wanted to remind folks we're trying to as best we can map and match issues and problems and impacts of the crisis with the different methods and tools that we may have for action. So I wanted the members and the public to be aware of how it is we may be proceeding as things develop and unfold in going forward. [Musical interruption] Council members, as a reminder, don't put us on hold, please. We will end up in your particular Muzak (laughing). With that, Chief, I conclude my remarks.

>> Thank you, Martin. As Martin has alluded to, with messages coming in day and night, seven days a week, I'm going to turn this over now to Justice Marsha Slough regarding public comments that we have received.

>> Thank you. Chief, we've received numerous letters commenting on all the various proposed rules that are outlined in the report today. I think that really the care and the expression of concern and the points that are stated in these numerous letters is, again, evidence of the fact that people are paying attention. People are concerned. They are concerned about statewide justice during these days of crisis. We have, I have, I know all of you members have read these letters of support and letters of opposition. They are, have been, and will continue to inform us and direct us as we move forward. Chief, would you like me to go into the actual rules at this point?

>> Yes, I know that the written comments are available. Before you move into the actual agenda items, I do want to thank everyone who did contribute to public comments. It is important to the branch to know as much as we can about information in real time. I've read every one. I appreciate that the comments that have come in are on behalf of others and also concern the safety of our public. As well as I greatly appreciate the fact that they've all been civil; they've all been helpful; they've all been professional; they've all been clearly issues that I know you as a practitioner or a jurist on the front lines now know better than I. So I appreciate these comments; and because of our branch, I understand that we do best from conflict of comments, which often gets us to a better result. But I do want you to know that all of these comments—so we're not going to go through the hundreds of them—I tell you they were all written. They've all been discussed. We've had several further sub-discussions regarding them

in terms of how they inform the rule. As Justice Slough and as Martin has said, and which you'll hear from our Judicial Council presenters, we are making decisions in real time based on facts at the moment; and all of us know that that changes daily. So to the extent this rule in some way in your view may or may not go far enough or goes too far, understand that we are sensitive to those views and that based on the new information, we may be making changes via a circulating order and addressing them later. In the law, we often call that "reconsideration"; and we are open to that because we realize that we are getting information in the same real-time manner as the rest of the country. So at this time, Marsha, I turn it over to you for the discussion of the agenda items.

>> Thank you very much, Chief, I appreciate that. So as we move forward to the 11 proposed rules and our discussion regarding each of these rules, I want to say that these proposed rules are trying our best to address matters of concern to the people who turn to the court to resolve their issues. I want to say that we recognize that these rules don't even begin to solve all the problems. And know that we have much, much more work ahead to accomplish and present mechanisms, as Chief and Martin have already described, to as expeditiously as we can turn to those areas that are all ranked number one in our concern. We recognize that the proposals that are before you, Judicial Council, have been worked over and prepared in a matter, literally, of a few days and hours. They reflect what typically takes the branch months, and sometimes even years, to complete as we go through our normal rule change process. Try as we might to assure that they are correct and that there are no errors or that we haven't missed something, given the pace that we have been operating under over the last few days and given the broad spectrum of issues that we are attempting to address in today's meeting, I will say that we do need to make a correction to one particular piece of our report. And I want to thank Justice Fujisaki for catching it. That is, on our April 4, 2020, report, it includes two typographical errors. Specifically on page 4, under Previous Council Actions, bullets 4 and 5, they state that the March 28th action authorized the Chief to extend the deadlines by no more than 30 days. The typo is in the addition of the word "no." The word "no" in both bullet points should be stricken out. So we have that correction. What I also will say is that as we move forward with each one of our rules today, there will be some proposed modifications to several of them as we move along. Again, as I stated, these have been a work in progress. And I'm so grateful for the various people in the various areas that are touching each of these rules from (inaudible) juvenile to criminal justice to the civil bar to others. I'm so appreciative for your eyes, your efforts, and your commitment to justice. With that, I would like to take us to our first rule. I would ask, Judge Conklin, if you would please present rule 1 and rule 2. Then we will take those two rules as a collective vote. Judge Conklin, if you are ready, you may proceed.

>> Thank you, Chief, Justice Slough, and all members. I'm addressing rules 1 and 2; and, as just noted, I suggest that they be considered as a package. They essentially go hand in hand. The text of these rules are found at pages 15 and 16. Rule 1 is designed to address statutory and rule-based time limits for unlawful detainer actions. Typically, such actions involve what most think of as landlord-tenant cases, where the ultimate outcome is in many times eviction. If such action is filed, involved parties are required to take very quick action, many times within five

days of filing of the case, to avoid or delay eviction. In these unprecedented times, unlawful detainer actions become very problematic for all involved because they threaten to remove tenants at the very time those tenants need to remain safe and protected within their own residences. The Governor has issued orders to address the situation, but those orders may not provide sufficient assistance to tenants and courts to prevent the potential crisis of eviction. Also, responding to a court action may potentially deprive a tenant of the protections provided for in the Governor's most current order. Rule 1 would preclude a court from issuing a summons to a tenant and a default judgment which could potentially result in an order of eviction without further hearings that could result from failure to respond to such summons. As noted above, those summons typically require response from the tenant within 5 days. This rule would suspend the issuance of an unlawful detainer summons and potential default judgment and allow courts to set trials in which a defendant has appeared for more than 60 days after the request for such trial unless a trial is needed to protect public health and safety. Rule 2 relates to judicial foreclosure actions on mortgages and deeds of trust. This rule has three parts. First, it would stay those actions until 90 days after the current COVID-19 state of emergency is lifted. Next, it would toll the statute of limitations for filing such actions for that same time period. Finally, it would continue deadlines for exercising a claim of redemption on foreclosure sales. So those are the two rules in sum. Again, I suggest since they go hand in hand that if there is a motion, the person making that motion consider the two rules as a package. If there are any questions?

>> Thank you, Judge Conklin. At this time, are there any questions to the rule? As you know, a motion can be made for recommendation or not for rules 1 and 2. And even though a motion may be made and/or seconded, there is still opportunity for questions and comments.

>> This is Richard Bloom. I'd like to move in support of the recommendation.

>> Second, Judge Hopp.

>> Thank you, Assembly Member Bloom, so moved. And I think I heard Judge Harold Hopp second. Thank you, appreciate that. Any discussion, remarks, questions? [No response] All in favor? Actually, I'll do a roll call vote.

>> Okay, on emergency rules 1 and 2, members, your choices are "yes," "no," "abstain," or "recuse." Justice Chin?

>> Yes.

>> Judge Anderson?

>> Yes.

>> Assembly Member Bloom?

>> Yes.

>> Judge Bottke?

>> Yes.

>> Bottke, yes. Judge Boulware Eurie?

>> Yes, I approve.

>> Approve, yes. Judge Brodie?

>> Yes.

>> Brodie, yes. Judge Conklin?

>> Yes.

>> Conklin, yes. Judge Feng?

>> Yes.

>> Feng, yes. Justice Hill?

>> Yes.

>> Hill, yes. Ms. Hill?

>> Yes.

>> Yes. Judge Hopp?

>> Yes.

>> Hopp, yes. Justice Hull?

>> Yes.

>> Hull, yes. Senator Jackson?

>> Yes.

>> Jackson, yes. Mr. Kelly?

>> Yes.

>> Kelly, yes. Judge Lyons?

>> Yes.

>> Lyons, yes. Ms. Nelson?

>> Yes.

>> Yes. Mr. Pritt?

>> Yes.

>> Pritt, yes. Judge Rubin?

>> Yes.

>> Justice Slough?

>> Yes.

>> Slough, yes. Judge Taylor?

>> Yes.

>> Measure passes.

>> Thank you, measure passes. Thank you, Judge Conklin, for that presentation.

>> Thank you.

>> And thank you, council. Next in line then, I think, Justice Slough, you have 3 through 5?

>> I do, thank you, Chief. So 3, 4, and 5 are a package of rules which address simple matters specifically remote appearance, uniform statewide bail schedule, and providing for personal appearance of counsel for defendants in pretrial criminal procedures. They come on the heels of the action that Judicial Council took on March 28th that extended the time frame for arraignments in preliminary hearings. Taken as a whole, what these proposed changes are attempting to do is strike a balance—and we believe that we can get to that balance as best we can with what we know now—a balance between the health and safety and the rights of defendants and the courts and the court workload, at least as we understand those elements today, understanding that this may change drastically in the days ahead. We will take each one of these separately because we did receive and thank each of you for your comments on each of these letters. We received a lot of comments regarding each of these. So let me start first with rule 3. Let me start out by saying like so many of the others, this rule would be in effect on a temporary basis until 90 days after the Governor declares the state of emergency lifted. The rule has a specific and direct sunset provision. And I want to say at the outset before I move into the heart of this rule that this rule, as well as the others, while in search of a perfect solution in an imperfect time, a perfect solution is unattainable. We've received, as I said, many comments and appreciate those comments on this rule. I'd also like to say at the outset that we're trying during these ever-changing days to establish a new rule; and, as I said earlier, that typically

takes months, if not years, to accomplish. Yet these are extraordinary times and require extraordinary efforts of us all. I will say that over the past two days, I have talked with many, many people regarding rule 3 and specifically as it relates to rule 3, subsection (a)(2). The main request is to strike the requirement that a defendant consent to the use of remote technology. I understand that some of the concerns are that a defendant could refuse, and the effect of that refusal could be perceived as a requirement that others come to the court for the hearing. I will say that is not the intent of the rule; and with that, in a moment I will offer a clarification to the rule. I know that the clarification that you will hear will not assuage all concerns. I also understand that some believe the expedient thing to do would be to simply strike that the defense consent in its entirety—to completely strike it out and move forward without consideration of the defendant’s rights in these hearings. Many have requested and point up that we, as council, could completely eliminate the provisions of section 977 that require the consent of the defendant. And I will say that I do not think that we are there at this point. Having the right to do it and it being the right thing to do are different things. We are not at a point and a time to throw away the rights of the defendant because it will be more expedient. The crisis should not be used as a means to remove civil rights and liberties. I also understand that many people fear that some may attempt to game the rule, to try to take advantage during this time. And to that, I say this. We find ourselves in a time that demands us all to be more flexible, to be more malleable with our justice partners than we ever have been before while at the same time assuring that we are each upholding our respective obligations to justice. I’ve heard it for years that we, our county, work well with our justice partners. We have great working relationships. And every time I’ve heard it, it is true. And I will simply say now, like at no other time, we must call on solid partnership, on true partnership, that is founded on the respect, based in trust, and grounded on the fact that we are all in this together. And together we can, and we will, do our work mindful of our different roles and yet work united in our collective efforts to find a workable solution. When the Chief Justice was granted the extraordinary power by the Governor a week or so ago, she made a statement; and I wish I had written it down and could quote it verbatim. But basically, what she was saying is that she takes this responsibility soberly and will exercise it “gently.” That’s my words, not hers. And what I mean by that is on a step-by-step-by-step basis, based on information that we know at the time and can move on and make solid, grounded, factual, legal determinations. With that, let me move to rule 3. Specifically, I am going to clarify rule 3(a)(2) with the following modification. It will now read: “In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the court may conduct any criminal proceeding remotely. As used in this rule, consent of the defendant means that the consent of the defendant is required only for the waiver of the defendant’s appearance as provided in emergency rule 5. For good cause shown, the court may require any witness to personally appear in a particular proceeding.” This amendment maintains the right of the defendant to appear in court but will not have the possible consequence of forcing other vulnerable populations into the courtroom when we have an effective way of addressing this concern. Additionally, a judge may require a witness to appear if there is good cause

established. With that, let me open it up for discussion, dialog, and/or a motion as it relates to rule 3.

>> Thank you, Justice Slough. I understand Justice Fujisaki may have a question, followed by Judge Taylor.

>> Hi, thank you. Justice Fujisaki here. I think with that amendment, it may obviate what I had perceived, what some of the appellate justices had perceived, in terms of just wanting to make clear that emergency rule 3(a)(2) was limited to general proceedings pending in the superior court. In other words, before I think the clarification that Justice Slough had read out, it was a little bit more ambiguous as to whether this particular rule as a whole was limited to or could be construed as applying at the appellate court level.

>> Thank you, Justice. That is actually correct. Hopefully, that amendment also clarifies your question. The intent is to relate just to the trial court level.

>> Thank you very much.

>> Thank you. Judge Taylor?

>> Thank you, Chief Justice. And thanks to Justice Slough and all that have clearly worked so diligently to create the emergency rules draft that is currently before us. I also really appreciate, and I think I need to say this firsthand, the very difficult work of the trial courts around the state and the tireless efforts of all of our presiding judges to meet the challenges of this dire pandemic. So to begin, I want to state that I support the rules and, in particular, the rules with respect to the criminal appearances in this draft. At the same time, I really need to say that I strongly support the concept of remote appearances during this crisis and have been working continuously in Los Angeles County over the last month with our court leaders and our justice partners to provide the option of remote appearances. But I, and many others, would hesitate to simply suspend the constitutional rights of any person to personally appear in court. And I believe that any such fundamental rights should be preserved wherever possible, except where there is a specific and compelling reason and data supporting it and where that analysis is made in each and every case and where there's no reasonable alternative. And if a defendant does not consent to a remote appearance in a significant hearing, the current alternative is to continue the case until their personal appearance is feasible and safe. This leaves the defense with the reasonable option to proceed immediately or to endure a short delay to have their traditional day in court. And again, I appreciate the work that's gone into drafting the pending rules and this rule in particular. And thank you, Justice Slough. And thank you again, Chief Justice.

>> Thank you, Judge Taylor. I understand Presiding Judge Hinrichs would like to speak; and I think besides Presiding Judge Hinrichs potentially Senator Jackson.

>> Thank you, Chief and council. Again, it has been my honor as to serve as the presiding judge chair of the advisory committee. I want to first apologize to Judge [sic] Slough a bit

because I may be a bit responsible for the onslaught of letters that came in from each individual court. Because of the timing, I felt like there was no way that I could get a meaningful summary of the position of the courts; and I wanted to make sure everyone felt like they were heard. And I want to thank Justice Slough for the fact that I think that she did spend a lot of time in considering what the concerns were and provide that information. And I just want to echo the comments that Judge Taylor just made in the matter. One of the reasons why—sometimes people ask, Well, why do you keep trial judges asking about what the Judicial Council is going to say or what the statewide rule is to some extent? And the harder part is—and I know fellow judges there know that—but the presiding judge, we are administrative officers. We don't tell our other judges how they're supposed to rule. So without clear guidance, often—or maybe not “often”—but sometimes it leaves the area for having a different interpretation in our courts, which in this time frame can be catastrophic to some extent. And so having that clarification helps us with our own judges, as well as with justice partners. And I really do want to thank everyone for listening to each of the courts and to me as the chair. I am just impressed; and it's so helpful to have you, Chief, internal chairs, and council staff, helping build the scaffolding that we're supposed to stand on in this tragic time so that we don't have to be doing it all ourselves in different kinds of ways. And it really will help us do justice in our communities because we have that. So mostly I want to just thank everyone for the efforts that they've done. I really think that it's been a lot of work, I know. And I think, and I trust, that any nuances that need to be made in addition or changes to make it better serve our communities, that everyone will listen to that. So again, thank you, Chief. Thank you, chairs and Judicial Council members, because I am really pleased with where we are now. Thank you.

>> Thank you, Presiding Judge Hinrichs. And I want to say to you, thank you for your good work with conveying the needs of the presiding judges to the Judicial Council—well, to all of us. And I neglected to say that I really thank Judge Taylor and Presiding Judge Brazile for the good, hard work that's being done in Los Angeles County. I know all courts are doing their very best. I say this because having spoken to you both, I didn't want it to go by that you didn't know that I appreciate your good work. After Senator Jackson speaks, I believe Judge Boulware Eurie has a request and then Justice Hill. Senator Jackson?

>> Yes, thank you, Chief. And thank you all for your willingness to consider some of the concerns about this particular item. If I could just share some of my perspectives wearing my non-legal hat. I tell people that being a lawyer as compared to a politician is way above my pay grade. So I did want to just get an understanding here and to share with you sort of where I'm coming from. In both the counties that I represent, I am hearing more and more about law enforcement personnel, particularly our jail personnel as well as our inmates, who are coming down being diagnosed with COVID-19 at alarming numbers. The notion of having to transport these individuals to court for non-jury trial-related matters is of great concern. And it's my understanding, and forgive me if I'm wrong here, that a defendant doesn't have the constitutional right to appear in court, per se, except for a jury trial. At that point, they are entitled to be present in court. So my concern is why would we extend the right of the defendant to determine whether or not he or she should be allowed to make that decision and

thus be transported and putting a number of people, including our court personnel, at risk in order to support a non-constitutional right? So that is the concern and the basis upon which I have expressed my objection to this rule or any alternative to remove the consent-by-the-defendant requirement. Could you explain to me how this proposed amendment or adjustment that you've articulated resolves that concern of mine?

>> Let me jump in here. And I appreciate that, Senator Jackson. I will say that this rule reflects a careful balance of the needs of both parties in a criminal action. And while it's true that case law recognizes a defendant's right to be present at all critical stages of the proceedings in order to better prepare and inform a defense, at this point while there may be question whether or not arraignment is part of that, certainly that is the first opportunity that a defendant has to meet his or her attorney. And also very often at arraignment, there is an exchange of discovery—not complete exchange of discovery but a certain fair amount of exchange of discovery. And some communication occurs. But in this particular case, we are not seeking to override the defendant's personal appearance in court at this point because, as you know, we have instituted many, many changes to the court process where we think that courts have more capacity, at least in terms of courtrooms and courthouses if they are open, as well as though they have diminished staff, by taking care of example rules 1 and 2 having to do with unlawful detainer and judicial foreclosure, as well as the effort made to suspend jury trials to 60 days. In my view at least, there is capacity in the courts at this point. I don't know to what capacity that is exactly, but at least it tells me that we have shrunk services to only urgent services. And I know that we have skeletal staff and judges and our court family, but I have not yet actually heard or seen evidence that it's physically impossible or nearly impossible or carries such risks that they couldn't transport. But at the same time, let me say that in my view, transport is the responsibility of the elected sheriffs and the jail. And I haven't heard from them, frankly. And I don't know where they are as far as justice partners in where we are in talking about our shared interest in ensuring that a defendant receives his or her rights. We all take that same oath, and I just don't know where we are. But I say all this with respect, but with also the point that things could change. Also, I take into consideration the important public comment made by the presiding judge of Butte, who indicated in the public comment that it may be different from county to county. There may be in some counties absolutely no evidence of the COVID virus within the jail. But then other counties may have, in fact, some epidemic within their population. I think then that requires a justice partner discussion. And maybe if it rises to the level of an order by the Judicial Council, that would be based on facts before us. But at this time, I am really loathe to override the defendant's consent at this time in light of what we know, in light of what we think is capacity, and in light of the fact that we happen to know that Los Angeles County, one of the largest counties frankly in the United States, is able to manage this. So I just think at this point, we have to act with the information that's in front of us; and this is what's in front of us. And as said previously, we act with the means of the least restrictive alternative. We act in incremental steps based on the evidence we have. And at this point, I don't see the need for courts to universally override the defendant's consent for these hearings at this time. I'm not saying it could change or not. But at this time, I've seen a hundred emergency order requests; and that has not been universally the requests that I am seeing. I'm

trying to base this on facts in evidence and trying to balance the right of the accused. So that's my answer at this point. I'm not saying it couldn't change next week. But based on the best information I have now, that's my position.

>> Thank you, Chief, and I appreciate that. I also appreciate the fact that it's important for our law enforcement, who have responsibility for transporting people from our jails, to be a little bit more open and transparent about their processes. And I appreciate that concern as well. Thank you, Chief.

>> Thank you, Senator, for your good thoughts. I think Judge Boulware Erie has a request.

>> Thank you, Chief. The request is whether or not Justice Slough can repeat the amendment. I want to make sure that I fully heard it, particularly as it relates to the good cause portion for our court to either proceed over a defendant's objection to a remote proceeding or a court's authority to make a good cause finding to require a witness to appear in person should that defendant not consent. So, Justice Slough, if you could reread your amendment, I would greatly appreciate it.

>> Of course I'll be happy to do that. So rule 3(a)(2) will now read: "In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the court may conduct any criminal proceeding remotely. As used in this rule, consent of the defendant means that the consent of the defendant is required only for the waiver of his or her appearance as provided in emergency rule 5. For good cause shown, the court may require any witness to personally appear in a particular proceeding."

>> Thank you.

>> Thank you. Justice Hill, I believe you wished to be heard.

>> Yes, I did. Thank you, Chief. As we all know, there's nothing easy about this process. Chief, as you indicated, there's no playbook, no road map to follow. We're all trying to do the very best that we can to protect not only the courts and the public and those appearing before us. I would just note that I believe it's important to mention that although I very much understand and appreciate the concerns of those individuals who have expressed concerns about how this is to be implemented, and having been a trial court PJ, I can certainly empathize that the logistics can sometimes be more than a bit difficult, I believe that if the implementation of this rule actually becomes an insurmountable logistical problem, we, as the Judicial Council, can adjust. And we will adjust quickly. We can, and we will, monitor what is happening to trial courts to see how it's working, whether it's working, and if adjustments need to be made. And if adjustments need to be made, we can do so in very short order. With that, I would move approval of rule 3.

>> Conklin, second.

>> I second.

>> Second by Lyons. Thank you. So I would indicate Justice Hill moved, and Judges Conklin and Lyons second. We are still open for comments and discussion. Thank you, Justice Hill, for those comments about the fact that we could very well revisit this, which we'll know is that the order may change.

>> This is Tam Nomoto Schumann. If I could just make a suggestion, please. Again, echoing everyone's comments, I appreciate all the hard work that went into this. But I was wondering if we could just make an addition of one minor change. And that is if we could please add in the list of e-filing, e-service, et cetera, if we could also add e-signature. There's a lot of confusion as to whether e-signatures are being permitted or not. And I'm hearing also that in the amendment, which Justice Slough was kind enough to repeat, there is mention of a written waiver. Again, it would be really nice if we could have that option of e-signatures. There's a lot of gray areas in the law, for example with signatures on depositions. We have case law that it has to be an in-person signature. And that has caused a little bit of a problem for the bar. So what I would ask to be considered is at the very end of rule 3, prior to e-filing and e-service, if we could please consider the addition of e-signatures.

>> Let me ask this. This is the Chief. Justice Nomoto Schumann, I understand your point; and I don't disagree with it. And I have seen that request in a few other public comments. I wonder if there would be an objection if we could handle this by circulating order. I don't see it as an issue, honestly. I think we all agree it's just something that was honestly overlooked in our list of number ones, and I thank you for bringing it to our attention. But because it has universal application—criminally, civilly, administratively—just, for example, just for all my signatures say affidavits across the board. I'd like to be able to write a comprehensive rule that covers e-signature. I don't think there's any objection to that. But I think I'm asking you if you would withdraw your amendment, your friendly amendment, with my assurance that we will address it in a circulating order immediately.

>> Yes, I would be happy to do that.

>> I appreciate that. Thank you for your understanding, Judge Nomoto Schumann.

>> This is Marsha Slough. Just to assure further, this is a conversation that we are continuing to have with our justice partners, the civil bar; and we'll also add it to this particular as well on our plate of things to do to come.

>> Thank you.

>> Thank you.

>> I appreciate that. I appreciate that, thank you. At this time then, I'm going to call for a roll call vote for amended rule 3. And you will see the amendment in writing as soon as possible if you haven't already captured the gist of it. But we're happy to repeat it as well again. Martin?

>> Yes, and staff can resend the amended version to the members in the event that no member saw it. Starting with Justice Chin, the choices are “yes,” “no,” “abstain,” and “recuse.” Justice Chin?

>> Yes,

>> Judge Anderson?

>> Yes, as amended.

>> Yes. Assembly Member Bloom?

>> Yes.

>> Yes. Judge Bottke?

>> Yes, as amended with Senator Jackson’s comments. I agree with those.

>> That’s a yes. Judge Boulware Eurie?

>> Yes.

>> Approve, yes. Judge Brodie?

>> Yes.

>> Brodie, yes. Judge Conklin?

>> Yes.

>> Conklin, yes. Judge Feng?

>> Yes.

>> Feng, yes. Justice Hill?

>> Yes.

>> Hill, yes. Ms. Hill?

>> Yes.

>> Hill, yes. Judge Hopp?

>> Yes.

>> Hopp, yes. Justice Hull?

>> Yes.

>> Hull, yes. Senator Jackson?

>> I'm going to abstain.

>> Jackson abstains. Mr. Kelly?

>> Yes.

>> Kelly, yes. Judge Lyons?

>> Yes.

>> Lyons, yes. Ms. Nelson?

>> Yes.

>> Nelson, yes. Mr. Pritt?

>> Yes.

>> Yes. Judge Rubin?

>> Rubin, yes.

>> Justice Slough?

>> Yes.

>> Slough, yes. Judge Taylor?

>> Yes.

>> Taylor, yes. Item passes.

>> Thank you, council. Justice Slough, I think you have proposed emergency rule 4 also?

>> I do. Thank you, Chief. Proposed rule 4 seeks to strike a balance between public safety and public health rules that support a statewide emergency bail schedule that sets bail at zero for most misdemeanor and court-level felony offenses. Serious and violent offenders, domestic violence, sex offenses, restraining order violations, and certain gun offenses are some of the charges that would remain at the current local bail schedule. This change will apply to those who are arrested going forward and for those currently in jail awaiting trial. This change will reduce the number of individuals who are currently awaiting trial in county jails, thus alleviating the time frames related to timely arraignments. On March 20th, Chief, you issued an advisory that recommended courts consider a zero-bail schedule for certain offenses. Following

that advisory, a few courts did indeed adopt an emergency bail schedule. During this time, however, there is a need for greater uniformity throughout the state. This proposal provides that uniformity while still allowing for higher amounts of bail and local discretion for the most serious offenses. The schedule was, according to the report, scheduled to take effect on April 10th at 5 p.m. However, in order to address the workload concerns, I have proposed an amendment to the rule that moves the implementation date from April 10 at 5 p.m. to Monday, April 13, 5 p.m. My final statement on this is just a reminder that if this rule passes that zero bail is not no bail. We know “no bail” means no bail. It needs to be specifically, affirmatively stated, zero-dollar bail. With that, Chief, I open it up to comments.

>> Thank you, Justice Slough. I understand there are at this point no questions or remarks, and so I would entertain a motion.

>> Judge Bottke, motion to—

>> I make a motion to pass. This is—Judge Lyons, second.

>> Judge Bottke moved, I think; and Judge Lyons seconds, I believe.

>> That’s correct.

>> Thank you. At this time, as you know, it’s an amended order, rule 4. And the amendment, as you know, is under mandatory application because it changes the April 10 date to April 13 under subdivision (b). So with this amended emergency bail schedule, all in—we’ll do a roll call vote.

>> Sure.

>> Yep.

>> Your decision.

>> All in favor, please say aye.

>> Aye.

>> Any opposed? [No response] Any abstentions? [No response] The matter passes unanimously, thank you. Justice Slough, emergency rule 5.

>> Thank you, Chief. Moving on to proposed rule 5, this proposal would permit a defendant to appear through counsel at all pretrial motions of criminal proceedings. This proposed change will allow defendants to decide whether they wish to appear for a particular phase of the proceeding through counsel or remotely via technology. This will minimize the number of individuals transported to jails, thus reducing the health risks to defendants, court personnel, and jail staff. I’d like to offer one clarifying amendment to this rule and then make one

comment with the rule. The amendment would read—well, actually what it does is clarify that Penal Code section 977.2 is not affected by this rule. And that, as we've currently (inaudible), a defendant who is in state prison can be required to appear at the arraignment by video. This does not impact that rule. So the beginning of the rule would 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."

>> Thank you, Jus—

>> If I might, Chief, I'm sorry, my comment about this rule, this proposal, is that it gives us one more avenue to help the situation that the lawyers and the courts and the defendants are faced with. Because what it does is it will allow a counsel for defendant to make a representation orally on the record that they have the permission to proceed without the client present and without the client on video. So currently, that can be done in writing; but now the change would allow that to be done orally and on the record. So with that, Chief, I open it up for comment.

>> Thank you, Justice Slough, for that amendment and that remark. At this time, I'm open to any questions or observations or remarks—otherwise, as you know, open to entertaining a motion.

>> Move approval, this is Rachel Hill.

>> Thank you. Ms. Hill moves to approve.

>> This is Gretchen Nelson. I will second that.

>> Thank you. Ms. Nelson seconds. For then amended emergency rule 5, I'll do a roll call—I will do actually, having not heard questions at this point, a voice vote. All in favor, please say aye.

>> Aye.

>> Any opposed? [No response] Any abstentions? [No response] Thank you. Amended rule 5 concludes. Thank you, Justice Slough. While this may be the last opportunity for me to talk to you on this meeting in any event, I thank you for your tireless work, even those 11 a.m. phone messages. I thank you, and I thank you and Jill for the open communication, the hard work, the dedication, the wise counsel and, as we always say, common sense in uncommon times. Thank you, Justice Slough.

>> You're very welcome, Chief. And I will just say to Judge Hinrichs, you do not need to apologize for the letters coming in. They were helpful and very informative—no need to apologize.

>> Thank you all. Next, we have emergency rules 6 and 7. I ask that Stacy Boulware Eurie could present.

>> Thank you, Chief. Proposed emergency rules 6 and 7 relate to child welfare and juvenile justice proceedings. For those of you following along, the text of each of those rules is found on pages 21 through 27. Proposed emergency rule 6 provides specificity as to which hearings and orders dependency courts should prioritize within existing statutory time requirements. It also creates a structure for remote hearings and continuances. The emergency rule is proposed with the informed understanding that the delay of the referenced hearings and orders could have lifelong ramifications for children and youth in the child welfare system, particularly when the early attachment and bonding is disrupted for a child and supportive services are delayed or cut off for that child and their family. Proposed emergency rule 7 mirrors rule 6 except it is specific to juvenile hearings and the juvenile justice courts. Rule 7 further creates an extension for competency proceedings under Welfare and Institutions Code section 709. The essential hearings outlined and referenced in rules 6 and 7 are those that are critical to the protection of children, families, and their communities. For both child welfare and juvenile justice youths, emergency rules 6 and 7 prioritize for the juvenile court oversight to ensure that there are no unnecessary or unsupported detentions; that children and youth are not placed in unsafe and/or unsupported situations or placements. It ensures that remote technology is maximized by the courts for those proceedings, and that within those proceedings where technology does enable the court to proceed in a timely fashion that the rules of confidentiality are maintained. Further, I would highlight that rule 6 also speaks to visitation orders are to be rendered on a case-by-case basis and that it balances the current public health directives as well as the best interests of the child before the court. Before we open it up for discussion, Chief, I would like to provide a proposed revision, a technical revision for rule 6 and a proposed revision for rule 7. For rule 6, the technical change would be found at page 24, line 7, where there is a drafting error in section (c)(7)(B). The cross-reference in that should refer to (c)(7) instead of (b)(6). So it would read: "A request for the court to review the change in visitation during this time period must be made within 14 days of the change." In reviewing the change in visitation, the court should take into consideration the factors in (c)(7). My proposed revision for rule 7 is to add an Advisory Committee Comment to clarify the authority of the juvenile court to release detained youth. This will be found on what would follow at page 27, line 6. The Advisory Committee Comment would read as follows: "The emergency rule is being adopted in part to ensure that detention hearings for juveniles in delinquency courts 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 courts 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." With that, Chief, I'm happy to answer any questions.

>> Chief, this is Justice Hull. I do have one question. I was following Judge Boulware Eurie's comments and I may not have scrolled down fast enough but under (b), at least the (b) I'm reading, "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." I thought I heard Justice Boulware Eurie say between 14 days of the change. If I misheard that, I apologize, but I understand that the change was at the bottom under (c)(7). But is it 14 court days or 14 days?

>> Fourteen court days, Justice Hull.

>> Great, thank you so much.

>> Thank you, Justice Hull. And thank you, Justice Boulware Eurie, for your keen eye on the subject matter. Judge Hopp, you wish to be heard?

>> Yes, thank you, Chief. Earlier this morning, I submitted a comment from the Riverside County juvenile presiding judge and a letter from the Riverside County public health officer who supported a temporary overall suspension, not on a case-by-case basis, of in-person visitation. As I read subsection (c)(7) here in rule 6, we'd have to make particularized findings to do that given the current state of public health in our county anyway, particularly as advised by our public health officer. I'd like to find some way that we could accommodate an overall suspension without particularized determinations for a temporary period of time. I'm not sure what language to suggest to do that, but that's the concept.

>> Thank you, Judge Hopp. I know that that is something I don't know that we can universally address regarding the other counties and their practice. As you know, there are a number of stakeholders interested in this particular issue. And I am also confident that every county is going to have its own unique challenges with this visitation issue, depending on the status of the health in the county facility. I'm not saying that I think that this, and your interest, is undesirable in any way. I'm just not sure at this point, given the input that has been made to this particular rule, that we can accommodate it. But I will say, Judge Hopp, that we will take it under consideration. Perhaps it is something that your presiding judge could put in an emergency order to me under section 68115 based on the particular circumstances of your county, which I would be willing to entertain to the greatest extent of my ability under section 68115. And/or if that avenue is not available for some reason, then this might be something that comes out as an advisory to the 58 courts to use good cause and make a record as to the different practice because each county may have different circumstances that affect its ability to provide visitations.

>> Thank you, Chief. Either of those things makes sense to me, thank you.

>> I appreciate your interest. Thank you, Judge Hopp. I understand at this point there are no further questions regarding amended emergency rules 6 and 7, and so I would entertain a motion and a second.

>> I will make a motion. This is Judge Lyons. (Multiple voices)

>> Judge Lyons moved, and I understand Pat Kelly seconds. I didn't hear the voice of the third—the second second.

>> Judge Taylor.

>> But at this time—thank you, Judge Taylor. Thank you, Eric. At this time, all in favor of adopting amended rules 6 and 7, please say aye.

>> Aye.

>> Any opposed? [No response] Any abstentions? [No response] Rules 6 and 7 pass. Thank you very much. Next, I'd like to ask Judge Ann Moorman to present emergency rule 8.

>> Yes, good afternoon, Chief, and thank you. It is my privilege to present for its consideration to the council proposed emergency rule 8. Emergency rule 8 concerns temporary restraining orders and orders issued after hearing in the myriad of statutory contexts in which they arise. I will direct the members of the council, and anybody else who may be listening, that the text of the proposed rule appears at pages 27 and 28 of your materials. In addition to the rule addressing the myriad of restraining orders, both temporary and otherwise, that appear in the Family Code, the Welfare and Institutions Code, and the Code of Civil Procedure, as well as the Penal Code and the Family Code, if I didn't mention it, the rule is intended to make sure that all citizens throughout California have access for our court services statewide and ensure that the individuals needing protection have valid and enforceable orders during court closures. It is therefore recommended that the council adopt the following emergency rule. I will not repeat the text, but there are two modifications. The application provision in subdivision (a) is self-explanatory. It covers the emergency protective orders, our domestic violence restraining orders, our civil harassment orders, our workplace harassment orders, school violence, criminal protective orders, gun violence restraining orders, and dependency actions and restraining orders to protect dependent adults and our elders. Under subdivision (b) in the duration provision, I would like to bring everybody's attention to a proposed change to (b)(2). We are proposing that the language in (b)(2) 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. The purpose of that change—it's intended to clarify that the deadlines are from the date of the emergency, not necessarily the date of the issuance of the order. I would also like to bring to the council's attention a proposed addition to emergency rule 8, and that would also appear in subdivision (b). It would be an addition of subdivision (4). That addition would read as follows: "Any restraining order or protective order after hearing that is set to expire during the state of emergency shall 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." And, as is made clear from

the language, this addition is intended to address the issue of orders after hearing that may be susceptible to expiring during the state of emergency. I would also just note that some of the comments that we received were answered by Justice Slough under emergency rule 3, and that is providing for the use of court seals—on a facsimile of court seals so that orders can be delivered to litigants via electronic means or facsimile or something other than personal delivery. With that, Chief, I'm happy to entertain any questions.

>> Thank you, Judge Moorman. While people are thinking about questions or remarks, I do want to thank the Superior Court of Alameda County for bringing those amendments to our attention. I will say that in every single section 68115 emergency order I have signed, it pertained to restraining orders in all 58 counties multiple times. So without—

>> (Inaudible comment)

>> Thank you. Laura informs me that all council members have received the amendment. So for emergency amended rule 8, I would entertain a motion to move and a second, please.

>> So moved.

>> Second, Judge Hopp.

>> Second, Commissioner Wightman.

>> Thank you. Thank you, Judge Lyons, moved. Judge Hopp and Commissioner Wightman, second. All in favor of amended emergency rule 8, please say aye.

>> Aye.

>> Any opposed? [No response] Any abstentions? [No response] Rule 8 passes unanimously. Thank you for presenting, Judge Moorman. Next, I would ask Ms. Gretchen Nelson to present emergency rules 9 through 11.

>> Well, thank you very much, Chief Justice, and to Justice Chin and to all of the council members. There are three proposed rule changes being presented to you today, which we will take up collectively. These changes apply broadly to civil cases pending in all of the state's trial courts. They are being proposed as a means of alleviating certain issues that lawyers and their clients will undoubtedly encounter as a result of the broad-ranging emergency stay-in-place orders that have been issued by the Governor statewide, as well as by county and local governments, in an effort to slow the progress of the pandemic. These proposals are the product of ongoing discussions with members of the plaintiffs' and the defense civil bar and are endorsed by them, as well as the California Lawyers Association and California ABOTA. Before I outline the proposals, a word of gratitude from the civil bar is in order to the Chief Justice, Justice Slough, Martin Hoshino, and all others who have been working tirelessly to address the many problems that the courts have encountered as a result of this state of emergency. These problems affect every aspect of the judicial system, from judges to litigants

to lawyers to court staff to jurors to people in jails and prisons to the disenfranchised in our communities and others. We have confronted emergencies in this state before from deadly fires and devastating earthquakes. But never before, at least in my lifetime, have we encountered an emergency on the scale of this one, which has affected every court in the state as far north as Siskiyou County to San Diego. The scope of this emergency has required a massive effort by the Chief Justice and the Judicial Council to act broadly on a wide variety of issues affecting cases of all types. And we truly do understand and appreciate how difficult it must be to navigate these issues during this time, and we are very grateful for your work. These three proposed changes will address statutes of limitations, statutory time periods to bring cases to trial, and alleviate the need in remote depositions to have the witness or a party appear in person before the deposition officer, either the court reporter or a notary, who swears the witness in. We anticipate additional proposals that the Chief Justice and the Judicial Council will address in the short term to aid in the resolution of other issues affecting civil matters. These issues are the subject of ongoing dialogue and discussions between the civil, plaintiff, and defense bars and the Judicial Council. Lawyers in all types of civil cases are confronting difficult times, and we are grateful for the consideration given by the Chief Justice and everyone working so hard at the Judicial Council to ensure uniformity in the processing of cases throughout the state and to bring order out of a time of crisis and potential chaos. I urge all of my colleagues, both in the plaintiff and defense bars, to remain calm and steady and to work together with the Chief Justice and the Judicial Council staff and members of the Judicial Council and the courts to keep the engine of justice moving forward. I will now review the three proposals in summary. The actual text is contained in the report and appears on pages 28 and 29 of your materials. If there are questions, we can take those up after. Otherwise, at the conclusion of my presentation the Chief Justice will entertain a motion as to all three of these proposals as a group, and I urge your approval. The first, emergency rule 9, will toll the statutes of limitations for civil causes of action to a period of up until 90 days after the Governor declares the state of emergency is lifted. That period starts today, April 6, 2020. It is necessary to allow counsel and clients to be able to conduct the necessary investigation and to gather evidence that would be necessary in order to decide whether to file suit. Emergency rule 10 will extend the time period in which a civil action needs to be brought to trial, either a case that is, at its first instance, approaching its first trial and there is a five-year period that is in existence. That five-year period will be extended for six months. The second, emergency rule 10(b), would extend the period of time to bring a case to trial after a new trial is granted; and the extension again would be six months added onto the three-year period. Finally, emergency rule 11 relates to the issues of depositions through remote electronic means. It would allow at the election of either the party deponent or nonparty deponent or the deposing party to not require the presence of a deposition officer in the same room at the same time with the deponent. This rule will allow more depositions to proceed during this difficult time, allow lawyers to be able to prosecute their cases so that when this emergency is over, things can get back to normal quicker than they otherwise might. With that, I thank you again. And I thank the Chief Justice for all of her hard work and for every member of the staff for what I know must be Herculean efforts on your part.

>> Thank you, Ms. Nelson. I believe we have two people who wish to be heard, Mr. Patrick Kelly and Judge Harold Hopp.

>> Thank you, Your Honor or Chief. This is Pat Kelly. I believe that my friend Gretchen has correctly stated that the litigation bars are in favor of these resolutions. But I would say beyond that that we are in extraordinary times where we need to take extraordinary measures. I endorse everything Gretchen said, and I too want to thank the Court and the staff for putting forward the many resolutions or rules we have today. And I would like to move the three rules proposed by Gretchen Nelson. (Multiple voices)

>> Thank you.

>> Is there an opportunity to speak prior to the vote?

>> Of course. Let me first though just record what I thought I heard. And that is Mr. Kelly moved. The only voice that I heard second it that I recognized was Justice Chin, but I understand there were others.

>> I seconded as well, Chief. This is Judge Lyons.

>> Thank you, Judge Lyons. And, yes, we are, as you know, still open for comments. And I believe Judge Hopp wishes to be heard as well, but please proceed.

>> Thank you, Chief. The only question I had is Governor Newsom put his statewide stay-in-place order in effect, I believe, on March 20. This rule relates back to April 6 instead of March 20. I'm probably overlooking an obvious reason for the difference. But, Ms. Nelson, could you explain why we didn't go back to the stay-in-place order day?

>> Yes, I can. I believe you're talking about the statutes of limitation period as well as the five years.

>> Yes, that's right, thank you.

>> It relates to the Governor's order to the Chief Justice which provides that emergency rules can take effect as of the date of the action of the Judicial Council. And if I have misstated that, that is what I believe is the reason that it will—these two proposed rules, emergency rules 9 and 10, will take effect today, April 6th, as of our action on those items.

>> Well, that makes sense, thank you.

>> Thank you.

>> Senator Jackson here. Have all the identified speakers spoken? Once they have, I'd like to just make a comment.

>> Thank you, please proceed, Senator Jackson.

>> Thank you so much. I too want to join in and thank you for your extraordinary efforts when it comes to the civil justice system. As chair of the Senate Judiciary Committee, of course this is an area where I have been hearing from practicing lawyers ad nauseam—well, not ad nauseam, but with great concern about what some of the rules are going to be. It's my understanding that there are some additional issues that we haven't—that this isn't the definitive end-all for addressing some of those additional concerns. Retroactivity was just mentioned. The notion of creating some kind of statewide directives on civil motions is another area. Electronic service is one. And there are probably half a dozen additional issues that have come to my attention from the civil bar. I just would like to inquire as to whether those issues are still before you and will subsequently come before us either as circulating orders or as subject to an additional Judicial Council meeting so that we can address those as well.

>> Thank you. Martin?

>> Senator Jackson, yes, it's Martin Hoshino, you are correct. There is more on the list and the things of work to do. And we too have been having discussions with those interested parties that you mentioned and stakeholders, and we were able to resolve or get to where we wanted to get to given the time that we had. Again, we had the 11 rules, I think, that spread across the five areas. But we did commit and promise that we would continue to work through some of the things that you referenced are additional work to be done. And I'm sure that is the case also in some other areas and probably some things we haven't even heard yet that we're about to learn. But absolutely, we've made the commitment to continue to work through things, and that's why I think I mentioned a little bit more about what all of the other avenues and tools we might have. You may see elements of that again on another council meeting, but we may handle some of them and some of the methods that we referenced earlier and that you referenced in your remarks.

>> Well, very much appreciated. Again, I don't want to sound ungrateful. There's so much out there, and I appreciate all you've done and look forward to some of the other issues that need to get resolved.

>> Thank you. Senator Jackson, I want to say that you have always been a very helpful and committed and active member of the Judicial Council. We have conversations, you and I, quite a bit about what's needed out there. So I know that we will continue to work on these issues. But I never fear that you will help me understand what I'm missing. So I greatly appreciate that. I do, so thank you.

>> Thank you, Chief.

>> Is there someone on the line?

>> This is Gretchen Nelson, and I apologize. Maybe in my next lifetime, I'll be perfect. But I forgot to mention that as to emergency rule 11, although it is not expressly stated in the text as presented, I believe that it is accurate to state that that rule, as with the other rules, will have a

sunset period, which would be 90 days after the Governor lifts the state of emergency. And I can state that as an amendment and hope that those who moved would accept that as a friendly amendment. Or it may be, and Mr. Hoshino may be able to answer this, it may be automatic as a result of the nature of this.

>> Thank you.

>> This is Kelly. If it's not automatic, I will accept that as a friendly amendment.

>> I will as well.

>> Thank you, Mr. Pritt. Please go forward.

>> I would just like to know if Ms. Nelson would confirm that it is not the intent of emergency rule 11 to force a party or nonparty to take or defend a deposition remotely if the party does not wish to do so.

>> I appreciate that. I think the language speaks for itself; and so I appreciate your comment, Mr. Pritt. I do want to say—well, I'll say this after the vote. All in favor of amended emergency rule 11 but also rules 9 and 10, as originally stated, please say aye.

>> Aye.

>> Any opposed?

>> Yes, Mr. Pritt.

>> Mr. Pritt, your opposition is to all or which one?

>> Emergency rule 11.

>> Thank you. Any abstentions? [No response] Thank you, the matter carries as indicated with opposition to rule 11 registered by Mr. Pritt. Let me say before we conclude this meeting several things. The first is I greatly appreciate all of the input that we've received but will point out that with the collaboration of Consumer Attorneys of California, the California Defense Counsel North and South, California Lawyers Association and, of course, ABOTA, the expertise and the willingness and the negotiations that preceded the development of these emergency proposed rules, as Gretchen has indicated, greatly enhanced our ability to address these in a timely fashion and to be able to have the kind of negotiation and give and take. It has been my experience as Chief that some of our best rules come out of civil when you all offer it to us as something that you all have worked out. And it's been incredibly helpful to us because we are so immersed in issues of the moment that to have had your groups meet to give us an opportunity to look at your products and to ask questions and to meet in person built on our long-standing relationships, honestly, has made all the difference for us to be able to act with expediency. So I thank your organizations for that. Additionally, while I know that PJs all work

to the bone and the judges who are coming in are working every day on the front line with their staff, their work family, and also I know that all the Courts of Appeal are still operating and still hearing cases in oral arguments as well as the Supreme Court, it cannot be overlooked that normally the Judicial Council is doing extraordinary work on a regular basis. But under these circumstances, I can tell you that it is beyond extraordinary. It is beyond the call of duty where I have seen drafts of rules at 11 o'clock on a Friday night and that the LSO team, led by Debbie and Eric and Charlie and—I mean, I could go on and on, Millicent, John, Martin, Amber, Laura—all are working hard and beyond hours to be able that council could present this. And then when council gets these, we put on our judges' hats, and we examine grammar and context. And so this has been truly the most remarkable effort I have seen ever in personal or professional life. And cannot thank Judicial Council staff enough for their tireless, heartfelt commitment to trying to keep the judiciary afloat at a time of great crisis and the unknown. So I just really want to thank them, recognizing the PJs of course, recognizing everyone here about how truly this branch is special. And so I conclude by asking you all to stay healthy, be well, err on the side of caution, take care of yourselves. Thank you so much for your work on behalf of the judicial branch. This concludes our meeting.

>> Thank you, Chief.