



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-093

For business meeting on March 11, 2022

Title

Judicial Branch Administration: Sunset
Emergency Rules in Response to the
COVID-19 Pandemic

Agenda Item Type

Action Required

Effective Date

March 11, 2022

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, emergency
rules 3, 5, 6, 7, 8, 9, 10, and 13

Date of Report

March 3, 2022

Recommended by

Hon. Marsha G. Slough, Chair, Executive
and Planning Committee
Hon. David M. Rubin, Chair, Judicial Branch
Budget Committee and Litigation
Management Committee
Hon. Kyle S. Brodie, Chair, Technology
Committee
Hon. Marla O. Anderson, Chair, Legislation
Committee
Hon. Carin Fujisaki, Chair, Rules Committee

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Executive Summary

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council amend emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 to sunset the rules on June 30, 2022. This recommendation responds to the request of Chief Justice Tani G. Cantil-Sakauye that the chairs of the internal committees develop and propose to the Judicial Council a plan for retiring any emergency rules that are still in effect. This is consistent with the council's original intent that the rules be temporary to address the emergency presented by the initial impact of the COVID-19 pandemic.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective March 11, 2022:

1. Amend emergency rules 3, 5, 6, 7, 8, and 13 to sunset on June 30, 2022; and
2. Amend emergency rules 9 and 10 to sunset on June 30, 2022, to confirm that the effect of the tolling or extension in the rules may extend beyond the date of the sunset, and to add advisory committee comments explaining the long-term effect of the two rules.

The proposed text of the amended rules is attached at pages 7–9.

Relevant Previous Council Action

The Judicial Council, on April 6, 2020, adopted 11 emergency rules on a variety of topics to address the impact of the COVID-19 pandemic on California residents and the courts in an effort to help courts continue to carry out their constitutional mission while protecting the health and safety of court users, court employees, and judicial officers.¹ The council then adopted emergency rule 12 (Electronic service) on April 17, 2020,² and emergency rule 13 (Effective date for requests to modify support) on April 20, 2020.³

As circumstances changed, the Legislature enacted certain statutory solutions to address the impact of the pandemic, and courts began to adapt to the new conditions. In response to these developments, the Judicial Council made changes to the emergency rules, repealing or sunsetting many of the rules. The most significant actions included the following:

- On June 10, 2020, the council repealed emergency rule 4 (Emergency bail schedule), returning to local trial courts the authority to set county bail schedules.⁴
- On August 13, 2020, the council amended emergency rule 1 (Unlawful detainers) and emergency rule 2 (Judicial foreclosures—suspension of actions), both effective September 1,

¹ Judicial Council of Cal., *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>.

² Judicial Council of Cal., *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>.

³ Judicial Council of Cal., *Family Law: Emergency Rule Regarding Effective Date to Modify Support in Response to COVID-19 Pandemic* (Apr. 19, 2020), <https://jcc.legistar.com/View.ashx?M=A&ID=777454&GUID=82EB3587-DFCC-42CE-AA75-97A21CE2507C>.

⁴ Judicial Council of Cal., *Criminal Procedure: Emergency Bail Schedule* (June 8, 2020), <https://jcc.legistar.com/View.ashx?M=A&ID=793396&GUID=148E67E5-F24A-4FEC-AA1B-609CA5D3B2D1>.

2020, in anticipation of the Legislature enacting statutes to address evictions during the pandemic.⁵

- On November 13, 2020, the council repealed emergency rule 11 (Depositions through remote electronic means) and emergency rule 12 (Electronic service) in response to Senate Bill 1146 (Stats. 2020, ch. 112), which codified and made permanent the provisions in the two rules.⁶
- On November 19, 2021, the council amended emergency rule 3 (Use of technology for remote appearances) to remove civil proceedings from the scope of the rule, effective January 1, 2022, to coincide with the effective date of Code of Civil Procedure section 367.75 (Sen. Bill 241; Stats. 2021, ch. 214), which the Legislature enacted to govern remote civil proceedings.⁷

Analysis/Rationale

Background

On March 4, 2020, Governor Gavin Newsom declared a state of emergency in response to the spread of COVID-19 in California. Continuing to respond to the crisis and assist the courts, Governor Newsom on March 27, 2020, issued Executive Order N-38-20,⁸ which, among other things, gave the Judicial Council of California and its Chairperson the authority to take actions necessary to maintain access to the essential operations of California’s court system while protecting the health and safety of California residents. Over the course of several months in 2020, the Judicial Council adopted 13 emergency rules and Chief Justice Tani G. Cantil-Sakauye signed four statewide emergency orders under her constitutional and other legal authority, including the authority granted in the executive order.

As noted above, as the courts and public adapted to changes resulting from the COVID-19 pandemic, the Judicial Council repealed or sunsetted five of the emergency rules.

On February 17, 2022, Governor Newsom announced a new plan for the state as we move from the pandemic phase of COVID-19 to a new endemic phase. The next week, on February 25, 2022, Governor Newsom signed Executive Order N-04-22, which states that many executive orders that Governor Newsom issued in response to the COVID-19 pandemic will expire between February 25, 2022 and June 30, 2022. Some expired that day, others will expire on

⁵ Judicial Council of Cal., *Civil Practice and Procedure: Emergency Rules for Unlawful Detainer and Foreclosure Proceedings in Response to State of Emergency Related to COVID-19 Pandemic* (Aug. 11, 2020), <https://jcc.legistar.com/View.ashx?M=A&ID=801461&GUID=192A1F2D-D881-4DE4-9711-4EC6ADAA8A5E>.

⁶ Judicial Council of Cal., *Civil Practice and Procedure: Emergency Rules for Remote Depositions and Electronic Service in Response to the COVID-19 Pandemic* (Oct. 23, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8875495&GUID=EDDD2187-8262-45AE-8DD7-28AD77CFD9E8>.

⁷ Judicial Council of Cal., *Judicial Branch Administration: Emergency Rule on Use of Technology for Remote Appearances* (Oct. 28, 2021), <https://jcc.legistar.com/View.ashx?M=F&ID=9943235&GUID=2151CCEB-D89E-4F7F-8D3C-01BD74D9C5E6>.

⁸ Executive Order N-38-20, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf>.

March 31, 2022, and still others will expire on June 30, 2022. Executive Order N-38-20 is among the last group of these executive orders, which will expire on June 30, 2022. These events mark an important and hopeful change as the residents and government of our state transition to a semblance of pre-COVID-19 California.

To ensure timely access to justice for all, and in alignment with the Governor's announcement and the imminent transition, the Chief Justice has asked the chairs of the internal committees to develop and present to the Judicial Council a proposal for retiring the eight emergency rules that currently remain in effect.

Proposed amendments

In response to the Chief Justice's request, based on the state's efforts to transition into a new approach to COVID-19, as well as the courts' increasing ability to accommodate the changes resulting from the pandemic, the chairs of the internal committees recommend that the following rules sunset on June 30, 2022:

- Emergency rule 3 (Use of technology for remote appearances)
- Emergency rule 5 (Personal appearance waivers of defendants during health emergency)
- Emergency rule 6 (Emergency orders: juvenile dependency proceedings)
- Emergency rule 7 (Emergency orders: juvenile delinquency proceedings)
- Emergency rule 8 (Emergency orders: temporary restraining or protective orders)
- Emergency rule 9 (Tolling statutes of limitations for civil causes of action)
- Emergency rule 10 (Extensions of time in which to bring a civil action to trial)
- Emergency rule 13 (Effective date for requests to modify support)

Effect of the sunsets

The proposed sunsets of the eight emergency rules do not nullify any of the valid actions that courts or litigants were authorized to take under the rules when they were in effect.

Although this is true for all eight emergency rules, it is particularly relevant for emergency rules 9 and 10, which by their nature may have an effect that extends beyond their proposed sunset dates. Emergency rule 9 tolled the statutes of limitation and repose for one of two time periods in 2020, depending on the length of the applicable statute of limitation or repose.⁹ Emergency rule 10 added six months to the time in which to bring a civil case to trial.

With respect to emergency rule 9, whether the effect of the tolling will go beyond the rule's sunset date will depend on the specific facts of the case and the applicable statute of limitation or repose. Two examples demonstrate this. In the first example, the effect of the tolling stays well within the sunset date: Assume the right to file a cause of action subject to the four-year statute of limitation in Code of Civil Procedure section 337 first accrued on February 15, 2017. The

⁹ Emergency rule 9(a) tolled the statutes of limitations and repose for civil causes of action that exceed 180 days from April 6, 2020, until October 1, 2020. Emergency rule 9(b) tolled the statutes of limitations and repose for civil causes of action under 180 days from April 6, 2020, until August 3, 2020.

statute of limitation, having been tolled from April 6, 2020, until October 1, 2020, under emergency rule 9(a), would expire in August 2021 rather than in February 2021—before the proposed June 30, 2022, sunset.

In the second example, assume the right to file a cause of action subject to the four-year statute of limitation in Code of Civil Procedure section 337 first accrued on February 15, 2020. The statute of limitation, having been tolled from April 6, 2020, until October 1, 2020, under emergency rule 9(a), would expire in August 2024 rather than February 2024—almost two years after the proposed June 30, 2022, sunset date. To ensure that the litigant in this second example does not lose the benefit of the tolling period due to the sunset date, the proposed amendment clarifies that the “sunset does not nullify the effect of the tolling of the statutes of limitation and repose under the rule.”

The same two possibilities exist under the proposed amendment to rule 10. In the first example, assume a civil action subject to Code of Civil Procedure section 583.310 was filed on February 15, 2016. The time in which to bring the action to trial would fall in August 2021, having been extended by six months for a total time of five years and six months, rather than February 2021—before the proposed June 30, 2022, sunset.

In the second example, assume a civil action subject to Code of Civil Procedure section 583.310 was filed on February 15, 2020. The time in which to bring the action to trial would fall in August 2025, having been extended by six months for a total time of five years and six months, rather than February 2025—several years after the sunset date. Again, to assure that the litigant in this second example does not lose the benefit of the six-month extension due to the sunset date, the proposed amendment to emergency rule 10 clarifies that the “sunset does not nullify the effect of the extension of time in which to bring a civil action to trial under the rule.”

The internal chairs also propose that both of the advisory committee comments be amended to explain that the sunset does not nullify the effect of either the tolling (in emergency rule 9) or the extension of time in which to bring a case to trial (in emergency rule 10). In addition, the comments include an example of how the effect of the rule may extend beyond the sunset date, depending on the facts in the case, and that the benefit of the rules still accrue to the litigant after the sunset date.

Looking to the future

The Legislature has already enacted legislation to perpetuate or expand on some of the earlier sunsetted and repealed emergency rules. For example, coinciding with the sunset of emergency rule 1, the Legislature enacted a series of bills that expanded on the rule to comprehensively address the issues facing landlords and tenants during the pandemic.¹⁰ Similarly, in Senate Bill

¹⁰ Assembly Bill 3088 (Stats. 2020, ch. 37), Senate Bill 91 (Stats. 2021, ch. 2), Assembly Bill 81 (Stats. 2021, ch. 5), and Assembly Bill 832 (Stats. 2021, ch. 27).

1146 (Stats. 2020, ch. 112), the Legislature enacted statutes that codified emergency rule 11 (Depositions through remote electronic means) and emergency rule 12 (Electronic service).

Prior to the Judicial Council’s adoption of emergency rules 3 and 5 in 2020, trial courts had no statutory authority to use remote technology for criminal proceedings, except under limited circumstances. During the past two years, trial courts relied on these two emergency rules to provide for appearances in criminal cases via remote technology, which has been useful both in minimizing the spread of COVID-19 and also in increasing efficiencies in criminal court calendars. Now that emergency rules 3 and 5 are being sunsetted, these efficiencies and the increased access to justice that they enabled should be extended post-pandemic—but that would best be accomplished with statutory changes. The Judicial Council is eager to work with the Governor’s administration, the Legislature, and justice partners to enact a statutory authorization for remote criminal appearances. If a bill were to be enacted, courts would be better situated to transition criminal cases to post-pandemic operations, consistent with how remote proceedings in civil cases transitioned from the emergency rules to Code of Civil Procedure section 367.75 (Sen. Bill 241, stats. 2021, ch. 214).

Policy implications

The eight emergency rules to be retired under this proposal have capably served their purpose to temporarily address an emergency situation. Consistent with the council’s mission, they increased access to justice, and protected the rights of litigants while allowing courts to safeguard the health of court users, court employees, and judicial officers. Now that the state and courts are transitioning to a new post-pandemic era, it is time for these eight remaining emergency rules to sunset.

Comments

Consistent with rule 10.75(o), this proposal was posted to provide the public with notice and an opportunity to comment for 24 hours before being submitted to the Rules Committee and Executive and Planning Committee for action by email.

Alternatives considered

The internal committee chairs considered taking no action on these eight emergency rules. To do so, however, would be inconsistent with the temporary nature of the emergency rules, which are authorized under the Governor’s executive order.

Fiscal and Operational Impacts

There may be some costs and operational impacts resulting from the proposed retirement of the eight emergency rules. But these impacts are the result of the need to return to pre-pandemic procedures and operations.

Attachments and Links

1. Proposed Cal. Rules of Court, emergency rules 3, 5, 6, 7, 8, 9, 10, and 13, at pages 7–9

Emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 of the California Rules of Court are amended, effective March 11, 2022, to read:

1 **Emergency rule 3. Use of technology for remote appearances**

2
3 (a) * * *

4
5 (b) **Sunset of rule**

6
7 This rule will ~~remain in effect until 90 days after the Governor declares that the~~
8 ~~state of emergency related to the COVID-19 pandemic is lifted, or until sunset on~~
9 June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

10
11
12 **Emergency rule 5. Personal appearance waivers of defendants during health**
13 **emergency**

14
15 (a)–(e) * * *

16
17 (f) **Sunset of rule**

18
19 This rule will ~~remain in effect until 90 days after the Governor declares that the~~
20 ~~state of emergency related to the COVID-19 pandemic is lifted, or until sunset on~~
21 June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

22
23
24 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

25
26 (a)–(c) * * *

27
28 (d) **Sunset of rule**

29
30 This rule will ~~remain in effect until 90 days after the Governor declares that the~~
31 ~~state of emergency related to the COVID-19 pandemic is lifted, or until sunset on~~
32 June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

33
34 * * *

35
36
37 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

38
39 (a)–(e) * * *

40
41 (f) **Sunset of rule**

Emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 of the California Rules of Court are amended, effective March 11, 2022, to read:

1 This rule will ~~remain in effect until 90 days after the Governor declares that the~~
2 ~~state of emergency related to the COVID-19 pandemic is lifted, or until sunset on~~
3 June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

4
5 * * *

6
7
8 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

9
10 (a)–(e) * * *

11
12 **(f) Sunset of rule**

13
14 This rule will sunset on June 30, 2022, unless otherwise amended or repealed by
15 the Judicial Council.

16
17
18 **Emergency rule 9. Tolling statutes of limitations for civil causes of action**

19
20 (a)–(b) * * *

21
22 **(c) Sunset of rule**

23
24 This rule will sunset on June 30, 2022, unless otherwise amended or repealed by
25 the Judicial Council. This sunset does not nullify the effect of the tolling of the
26 statutes of limitation and repose under the rule.

27
28 **Advisory Committee Comment**

29
30 Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a
31 pleading in court asserting a civil cause of action. The term “civil causes of action” includes
32 special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of
33 the Time of Commencing Civil Actions), is construed “as including a special proceeding of a
34 civil nature”]; special proceedings of a civil nature include all proceedings in title 3 of the code,
35 including mandamus actions under §§ 1085, 1088.5, and 1094.5—all the types of petitions for
36 writ made for California Environmental Quality Act (CEQA) and land use challenges]; see also
37 Pub. Resources Code, § 21167(a)–(e) [setting limitations periods for civil “action[s]” under
38 CEQA].)

39
40 The rule also applies to statutes of limitations on filing of causes of action in court found in codes
41 other than the Code of Civil Procedure, including the limitations on causes of action found in, for
42 example, the Family Code and Probate Code.

Emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 of the California Rules of Court are amended, effective March 11, 2022, to read:

1 **Subdivision (c).** The sunset of the rule does not nullify the effect of the tolling of the statutes of
2 limitation and repose established by the rule. Depending on the specific facts of the case and the
3 applicable statute of limitation or repose, the effect of the tolling may survive beyond the sunset
4 date of the rule. For example, if the right to file a cause of action subject to the four-year statute
5 of limitation in Code of Civil Procedure section 337 first accrued on February 15, 2020, the
6 statute of limitation, having been tolled from April 6, 2020, until October 1, 2020, under
7 subdivision (a), would expire in August 2024 rather than February 2024.
8
9

10 **Emergency rule 10. Extensions of time in which to bring a civil action to trial**

11
12 **(a)–(b) * * ***

13
14 **(c) Sunset of rule**

15
16 This rule will sunset on June 30, 2022, unless otherwise amended or repealed by
17 the Judicial Council. This sunset does not nullify the effect of the extension of time
18 in which to bring a civil action to trial under the rule.

19
20 **Advisory Committee Comment**

21
22 The sunset of the rule does not nullify the effect of the six-month extension established by the
23 rule for all civil actions filed on or before April 6, 2020. Depending on the specific facts of the
24 case, the effect of the extension may survive beyond the sunset date of the rule. For example, if a
25 civil action subject to Code of Civil Procedure section 583.310 was filed on February 15, 2020,
26 the time in which to bring the action to trial would fall in August 2025, having been extended by
27 six months for a total time of five years and six months, rather than February 2025.
28
29

30 **Emergency rule 13. Effective date for requests to modify support**

31
32 **(a)–(d) * * ***

33
34 **(e) Sunset of rule**

35
36 This rule will remain in effect until 90 days after the Governor declares that the
37 state of emergency related to the COVID-19 pandemic is lifted, or until sunset on
38 June 30, 2022, unless otherwise amended or repealed by the Judicial Council.
39