



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-04

Title

Appellate Procedure: Emergency Orders to Toll and Extend Time

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.66

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, Judicial Council Technology Committee

Hon. Marla O. Anderson, Chair, Legislation Committee

Hon. Harry E. Hull, Jr., Chair, Rules Committee

Action Requested

VOTING MEMBERS ONLY: Vote and return by e-mail or fax. Additionally, return original signature page.

Please Respond By

April 3, 2020, at 5:00 PM

Date of Report

April 2, 2020

Contact

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Executive Summary

To assist the appellate courts in continuing to operate during the COVID-19 pandemic, the chairs of the Judicial Council's six internal committees recommend amending rule 8.66, the appellate rule governing extensions of time, because of a public emergency to provide for tolling in addition to extending time. They also recommend amendments to allow the Chair of the Judicial Council to order tolling or extensions of time for up to 30 days rather than 14 days, and to clarify and simplify various provisions of the rule.

Recommendation

The internal committee chairs recommend that the Judicial Council, effective April 4, 2020:

Amend Cal. Rules of Court, rule 8.66, to add a public health crisis as a type of public emergency, add tolling as a type of relief that can be ordered or authorized, increase to 30 days the tolling or extension of time that may be ordered by the Chair of the Judicial Council, clarify the process for additional tolling or extensions of time, add two advisory committee comments regarding tolling, and make other clarifying changes; and

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

Relevant Previous Council Action

The predecessor to rule 8.66 was adopted effective January 1, 1995. The rule was renumbered in 2007 and an advisory committee comment was added to clarify that the Chief Justice of California is the Chair of the Judicial Council. The rule has not been amended since 2007, and earlier amendments are not relevant to this proposal.

Analysis/Rationale

The COVID-19 pandemic is having unprecedented impacts on courts throughout the state, including the appellate courts. Over the last two weeks, under rule 8.66, all six Courts of Appeal and the Supreme Court have issued orders extending for 30 days the time periods specified in the appellate rules. In implementing these orders, however, the courts have become aware of shortcomings in the rule. In particular, the orders authorized by the rule provide for extensions of time, but not for tolling. Tolling stops or suspends the running of time; when the tolling period ends, the time starts running again. By contrast, extending time adds days to the end of a time period. Tolling gives courts flexibility and can be easier to apply.

In addition to adding tolling, the internal committee chairs recommend amending subdivision (a) to add a “public health crisis” as a type of public emergency that could necessitate an order under the rule, lengthen the time in (a)(1) that the Chair may order tolling or an extension from 14 days to 30 days to be consistent with the amount of time in (a)(2) that the Chair may authorize a court to extend time, and simplify language in (a)(1) and (a)(2).

The amendments to subdivision (b) add language regarding tolling, require in (b)(1) that the length of any tolling or extension ordered by the Chair under (a)(1) must be specified in the order, and make minor wording changes in (b)(1) and (b)(2).

The amendments to subdivision (c) update the language from *extending* the orders under the rule to *renewing* the orders, and add provisions that the Chair may renew an order with or without a request, an order may be renewed prior to its expiration, and orders under both (a)(1) and (a)(2) may be renewed for up to 30 days per renewal. In addition, the current rule appears to authorize only one extension of an order. The amendments make clear that an order may be renewed more than once, “for additional periods not to exceed 30 days per renewal.” As in subdivision (a), the

amendments remove the distinction between the length of time the Chair may extend an order (14 days) and the length of time the Chair may authorize the court to extend time (30 days), to provide for renewal for up to 30 days for both types.

Finally, the amendments include two new advisory committee comments regarding tolling. The first explains the concept of tolling and provides a case citation. The second clarifies that the tolling and extension of time authorized under this rule apply to all rules of court that govern finality in the Supreme Court and the Courts of Appeal.

The Chair may authorize that the revisions to be effected by the amended rule apply retroactively to orders already in effect, including insofar as those prior orders applied to deadlines before the rule was amended.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. The length of time the pandemic may impact the state is unknown. The appellate courts must adapt quickly and continue to provide critical services that affect the lives of many Californians, including some of the most vulnerable. The proposal supports the Judicial Council's mission of improving the administration of justice by providing more flexibility and guidance for the appellate courts with respect to emergency orders. In turn, this enhances the courts' ability to continue their operations and provide equal access to justice.

Comments

Due to the urgent situation created by the COVID-19 pandemic and the need for the appellate courts to adapt quickly and continue to provide necessary services, this proposal has not circulated for public comment. The proposed revisions were circulated, however, to each of the six administrative presiding justices of the Courts of Appeal, all of whom supported the proposal. The internal chairs recommend circulating an invitation to comment shortly after the amended rule takes effect.

Alternatives considered

The internal committee chairs considered taking no action, but rejected this alternative in light of the public emergency confronting the courts and litigants.

The internal committee chairs also considered listing the specific rules governing finality in the second new advisory committee comment, rather than referring to them collectively. The committee rejected this option because a list could be, or could become, incomplete. In addition, rule numbers may change, and updating cross-references can be cumbersome.

Fiscal and Operational Impacts

It is anticipated that the proposal will facilitate appellate court operations by expanding the types of relief that can be ordered, clarifying that additional periods of relief, if necessary, are authorized, and making other changes to improve the working of the rule. Operational impacts will include the time to inform judicial officers and court staff regarding the amendments, and

could include changes to case management systems. It is unclear what fiscal impact the proposal may have on the appellate courts.

Attachments and Links

1. Cal. Rules of Court, rule 8.66, at pages 5–6
2. Voting instructions, at page 7
3. Vote and signature pages, at pages 8-9

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

6
7 Article 4. Applications and Motions; Extending and Shortening Time

8
9
10 Rule 8.66. ~~Extending~~ Tolling or extending time because of public emergency

11
12 (a) Emergency tolling or extensions of time

13
14 If made necessary by the occurrence or danger of an earthquake, fire, public health
15 crisis, or other public emergency, or by the destruction of or danger to a building
16 housing a reviewing court, the Chair of the Judicial Council, notwithstanding any
17 other rule in this title, may:

- 18
19 (1) ~~Extend Toll for up to 30 days or extend by no more than 14 additional 30~~
20 ~~days the time to do any act required or permitted under any time periods~~
21 specified by these rules; or
22
23 (2) Authorize specified courts to toll for up to 30 days or extend by no more than
24 30 additional days the time to do any act required or permitted under any
25 time periods specified by these rules.

26
27 (b) Applicability of order

- 28
29 (1) An order under (a)(1) must specify the length of the tolling or extension and
30 whether it the order applies throughout the state, only to specified courts, or
31 only to courts or attorneys in specified geographic areas, or applies in some
32 other manner.
33
34 (2) An order ~~of the Chair of the Judicial Council~~ under (a)(2) must specify the
35 length of the authorized tolling or extension.

36
37 (c) ~~Additional extensions~~ Renewed orders

38
39 If made necessary by the nature or extent of the public emergency, with or without
40 a request, the Chair of the Judicial Council may ~~extend or~~ renew an order issued
41 under ~~(a)~~ this rule prior to its expiration. An order may be renewed for an
42 additional periods of: not to exceed 30 days per renewal.
43

1 ~~(1) — No more than 14 days for an order under (a)(1); or~~

2

3 ~~(2) — No more than 30 days for an order under (a)(2).~~

4

5

Advisory Committee Comment

6

7 The Chief Justice of California is the Chair of the Judicial Council (see rule 10.2).

8

9 Any tolling ordered under this rule is excluded from the time period specified by the rules. (See
10 *Woods v. Young* (1991) 53 Cal.3d 315, 326, fn. 3 [“Tolling may be analogized to a clock that is
11 stopped and then restarted. Whatever period of time that remained when the clock is stopped is
12 available when the clock is restarted, that is, when the tolling period has ended.”].)

13

14 The tolling and extension of time authorized under this rule include and apply to all rules of court
15 that govern finality in both the Supreme Court and the Courts of Appeal.

16

Instructions for Review and Action by Circulating Order

Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **5:00 p.m., April 3, 2020**
- If you are unable to reply by **April 3, 2020**, please do so as soon as possible thereafter.

Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages**

Effective immediately, the Judicial Council approves the *amendments to Cal. Rules of Court, rule 8.66.*

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Richard Bloom

_____/s/
C. Todd Bottke

_____/s/
Stacy Boulware Eurie

_____/s/
Kyle S. Brodie

_____/s/
Ming W. Chin

_____/s/
Jonathan B. Conklin

_____/s/
Samuel K. Feng

_____/s/
Brad R. Hill

_____/s/
Rachel W. Hill

_____/s/
Harold W. Hopp

_____/s/
Harry E. Hull, Jr.

_____/s/
Hannah-Beth Jackson

My vote is as follows:

Approve

Disapprove

Abstain

_____/s/
Patrick M. Kelly

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt


_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Eric C. Taylor

Date: April 3, 2020

Attest:



Administrative Director and
Secretary of the Judicial Council