



Judicial Council of California

455 Golden Gate Ave.
San Francisco, CA
94102-3688

Meeting Minutes

Judicial Council

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Saturday, March 28, 2020

12:00 PM

Teleconference

This meeting was held to address an urgent matter and was conducted telephonically.

CLOSED SESSION (RULE 10.6(B))—PLANNING, PERSONNEL, AND DISCUSSION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the closed session to order at 12:00 p.m.

OPEN SESSION (RULE 10.6(A)) — MEETING AGENDA

Attendance

Council Members

Present: 30 - Chief Justice Tani G. Cantil-Sakauye, Justice Ming W. Chin, Administrative Presiding Justice Brad R. Hill, Justice Carin T. Fujisaki, Justice Harry E. Hull Jr., Justice Marsha G. Slough, Presiding Judge Joyce D. Hinrichs, Presiding Judge Ann C. Moorman, Judge Marla O. Anderson, Judge C. Todd Bottke, Judge Stacy Boulware Eurie, Judge Kyle S. Brodie, Judge Jonathan B. Conklin, Judge Samuel K. Feng, Judge Harold W. Hopp, Judge Dalila Corral Lyons, Judge David M. Rubin, Judge Tam Nomoto Schumann (Ret.), Judge Eric C. Taylor, Commissioner Rebecca Wightman, Senator Hannah-Beth Jackson, Assembly Member Richard Bloom, Ms. Nancy CS Eberhardt, Ms. Rachel W. Hill, Mr. Patrick M. Kelly, Ms. Gretchen Nelson, Mr. Michael M. Roddy, Ms. Andrea K. Wallin-Rohmann, Mr. Kevin Harrigan, and Mr. Maxwell V. Pritt

Call to Order

Chief Justice Tani G. Cantil-Sakauye, chair of the Judicial Council, called the open session to order at approximately 12:30 pm. via public teleconference.

Opening Remarks

Chief Justice Tani G. Cantil-Sakauye explained that the emergency meeting was called two days prior to address issues that had arisen requiring prompt action in relation to the COVID-19 pandemic. The meeting was made open to the public via teleconference line.

The purpose of the meeting was for council members to deliberate and act on how to carry out essential court services under the unprecedented circumstances. She noted that their goal should be to protect the rights and needs of the accused in a safe way while protecting the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement.

The Chief Justice explained that typically council action would fall under the authority of article VI, section 6, of the California Constitution. However, under the Executive Order on Judicial Council Emergency Authority, Governor Gavin Newsom delegates temporary authorities to the Judicial Council of California and its Chairperson. The order reflects a deep concern to not only protect the health and safety needs of California, but also to ensure that justice will still be available to those most in need. She noted that the council's duty to support consistent, independent, impartial, and accessible justice for the benefit of the public statewide remains unchanged.

The Chief stated that the council must balance the imperative to stem the spread of the virus to protect the health and well-being of Californians alongside preserving the rule of law to protect their rights and liberties. She noted that the council's actions fit under her Access 3-D vision for the judicial branch by providing physical, remote, and equal access to justice. Care and consideration for the workforce of the judiciary is also a priority in supporting the digital court, even if the digital court will be temporary. Such an approach will support both shelter-in-place and social distancing orders while acting to ensure equal access for justice, she added.

Administrative Director Martin Hoshino stated a quorum was present. He commented that given the interface between the public and the workforce in the trial courts and judicial branch, the Chief suspended jury trials, as they posed the largest risk for COVID-19 exposure. Mr. Hoshino explained that the action before council for consideration addresses the high volume of preliminary hearings and arraignments that occur throughout the system that would present substantial exposure.

Mr. Hoshino added that further action would need to be taken in collaboration with the Legislature in the weeks ahead to address other court issues such as concerns related to unlawful detainees, risks to families losing their homes during this crisis, and children in out-of-home placements who may need court oversight. He added that

timeline extensions would be necessary to ensure litigants in civil matters have access to justice. Intake at state prisons was halted to protect the health and safety of the staff and inmates in already burdened jail populations. Additional work with justice partners will be necessary to address pretrial releases. Lastly, Mr. Hoshino assured attendees that the council will develop processes and procedures to resume the level of operations they are accustomed to.

Public Comment

Justice Marsha G. Slough, chair of the Executive and Planning Committee, reported that the council had invited written public comment in lieu of in-person comment due to the meeting being conducted telephonically. She noted that many written comments were received, and she encouraged the public to continue to submit their concerns in writing.

She stated that there was much concern whether the council's actions would delay people being released from custody and reported that the extensions proposed in the report on the discussion agenda are not meant to be an opportunity to sit and wait, but rather, they are an opportunity to provide courts the ability to address arraignments and preliminary hearings as they are able.

In response to concerns raised from the trial courts about preliminary hearings, she shared a quote from the Chief Justice on March 20 in an advisory memo: "We should revise the countywide bail schedule to lower bail amounts significantly for the duration of the emergency, including lowering the bail amount to zero for many lower-level offenses, for all misdemeanors, except for those listed in Penal Code 1270.1 and for lower-level felonies. This will result in fewer individuals in county jails, thus alleviating some of the pressures for arraignment within the 48 hours, as well as the time frames related to preliminary hearings." As the chair of the Pretrial Reform Operations Workgroup, Justice Slough added that they have learned about effective release of low-and moderate-risk defendants utilizing probation monitoring when warranted. She noted that courts and justice partners need to continue working together to safely reduce the number of individuals who are detained pre-arraignment.

DISCUSSION AGENDA

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Judicial Branch Administration | Response to the COVID-19 Pandemic (Action Required)

Summary: Pursuant to its authority under article VI, section 6 of the California Constitution as the policy-making body of the California judicial branch, the Judicial Council should take actions due to the unprecedented nature of the COVID-19 pandemic, in order to protect the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement.

Recommendation: The chairs of the Judicial Council's six internal committees recommend that the Judicial Council:

- A. Authorize and support the Chief Justice and Chair of the Judicial Council, in issuing statewide orders that do the following until 90 days after the state of emergency related to COVID-19 is lifted:
 - 1. Extending the 10 court day period provided in Penal Code section 859b for the holding of a preliminary examination and the defendant's right of release to 30 court days;
 - 2. Extending the time period provided in Penal Code section 825 for the time in which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than 7 days;
 - 3. Extending the time period provided in Penal Code section 1382 for the holding of a criminal trial by more than 30 days; and
 - 4. Extending the time periods provided in Code of Civil Procedure sections 583.310 and 583.320 to bring an action to trial by more than 30 days.
- B. Direct the superior courts to:
 - 1. Make use of available technology, when possible, to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings, the electronic exchange and authentication of documentary evidence, and the use of e-filing and e-service; and
 - 2. For criminal and juvenile proceedings, including arraignments and preliminary examinations, prioritize use of available technology to meet current statutory time requirements and ensure that defendants are not held in custody, and children are not held in custody or removed from the custody of their parents or guardians, without timely due process of law or in violation of constitutional rights.
- C. Recommend to the Governor that he issue an executive order, effective until 90 days after the state of emergency related to COVID-19 is lifted that, notwithstanding current law:
 - 1. Extends the 10 court day period provided in Penal Code section 859b for the

holding of a preliminary examination and the defendant's right of release to 30 court days;

2. Extends the time period provided in Penal Code section 825 for the time in which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than 7 days;
3. Extends the authority in Government Code section 68115 to allow the Chair of the Judicial Council to issue statewide emergency orders without the need for individual requests; and
4. Suspends all statutory authority that impedes the courts from making use of technology that allows courts to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings, the electronic exchange and authentication of documentary evidence, and the use of e-filing and e-service.

A motion was made by Administrative Presiding Justice Hill, seconded by Judge Boulware Eurie, that this proposal be approved with an amendment to delete part C of the recommendation. The motion carried by a unanimous vote.

Adjournment

With the meeting's business completed, the Chief Justice adjourned the meeting at approximately 2:00 p.m.