JUDICIAL COUNCIL OF CALIFORNIA

STATEWIDE EMERGENCY ORDER BY TANI G. CANTIL-SAKAUYE,

CHIEF JUSTICE OF CALIFORNIA AND CHAIR OF THE JUDICIAL COUNCIL

APRIL 29, 2020

The World Health Organization, the United States Centers for Disease Control and Prevention (CDC), and the State of California have recognized that the world, country, and state face a life-threatening pandemic caused by the COVID-19 virus. As of April 27, 2020, the CDC reported that there were almost 1,000,000 cases in this country and almost 54,000 deaths. In California, the Department of Public Health reports more than 43,000 confirmed cases and more than 1,700 deaths. Health officials expect these figures to continue to rise unless the population adheres to shelter-in-place guidelines and appropriate social distancing. As of this date, there is no known cure or vaccination.

In response to the spread of COVID-19, Governor Newsom on March 4, 2020, declared a state of emergency in California, which was followed on March 13, 2020, by President Trump declaring a national emergency. Beginning on March 16, 2020, California counties began issuing shelter-in-place or stay-at-home orders. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all Californians to stay home, subject to certain limited exemptions. Courts are included in this exemption.

The CDC, the California Department of Public Health, and local county health departments have recommended stringent social distancing measures of at least six feet between people and encouraged vulnerable individuals to avoid public spaces. The continuous operation of our courts is essential for our constitutional form of government, and for providing due process and protecting the public. However, courts are clearly places of high risk during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries—well in excess of the numbers allowed for gathering under current executive and health orders.

In response to these circumstances, on March 20, 2020, I issued an advisory recommending steps superior courts could take to mitigate the effect of reduced staffing and court closures, and

to protect the health of judges, court staff, and court users. The advisory included actions that superior courts could take immediately to protect constitutional and due process rights of court users, including (1) revising on an emergency basis the countywide bail schedule; and (2) prioritizing arraignments and preliminary hearings for in-custody defendants, the issuance of restraining orders, and juvenile dependency detention hearings. In addition, on March 23, 2020, I issued an order requiring superior courts to suspend jury trials for 60 days, unless they were able to conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate; extending statutory deadlines for holding last-day trials in criminal and civil proceedings; and authorizing courts to adopt any proposed local rules or rule amendments that are intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for 45 days of public comment.

Governor Newsom, also responding to the crisis, on March 27, 2020, issued Executive Order N-38-20, which, among other things, suspends Government Code section 68115 and any other provision of law to the extent that those laws impose or imply a limitation on my authority to authorize via emergency order or statewide rule, any court to take any action I deem necessary to maintain the safe and orderly operation of the courts.

On March 28, 2020, the Judicial Council met telephonically in an emergency session, and authorized and supported my issuing statewide emergency orders to extend statutory deadlines for preliminary hearings, arraignments, and last-day trials in both criminal and civil proceedings.

On March 30, 2020, I issued a second order, which (1) authorized superior courts to issue implementation orders to extend the statutory time provided for conducting arraignments and preliminary examinations, and the holding of criminal and civil trials; (2) clarified that the 60-day continuance of jury trials that I ordered on March 23, 2020, be calculated from the date on which the trial was set or the last date on which the statutory deadline otherwise would have expired, whichever was longer; and (3) suspended any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely.

The Judicial Council met telephonically on April 6, 2020, for a second emergency session and adopted 11 emergency rules of court that addressed the suspension of certain civil proceedings (emergency rules 1 and 2), the use of technology for court proceedings and operations (emergency rule 3), the conduct of criminal proceedings (emergency rules 4 and 5), the conduct of juvenile dependency and delinquency proceedings (emergency rules 6 and 7), the issuance of emergency protective orders (emergency rule 8), and the conduct of civil proceedings and discovery (emergency rules 9, 10, and 11). Since adopting these emergency rules, the council has by circulating order adopted additional rules on electronic service of papers (emergency rule 12) and the effective date for modification of support orders (emergency rule 13), and has amended emergency rule 8.

Pursuant to my constitutional and other legal authority, including the authority granted by Governor Newsom and the Judicial Council, and by the California Constitution, article VI, section 6, and Government Code section 68115, and after careful consideration, balancing the constitutional due process rights of parties in criminal proceedings with the health and safety of these parties, the public, court staff, judicial officers, attorneys, witnesses, jurors, and others present at these proceedings, among other considerations, I find good cause to order:

1. The 60-day continuance of criminal jury trials and the 60-day extension of time in which to conduct a criminal trial under Penal Code section 1382, both of which I first authorized in my order of March 23, 2020, are to be extended an additional 30 days. The total extension of 90 days shall be calculated from the last date on which the trial initially could have been conducted under Penal Code section 1382, as illustrated below.

2. This extension applies only to those matters for which the last date on which the trial could be conducted under Penal Code section 1382 occurred or will occur between March 16, 2020, and June 15, 2020. This will result in a range of trial dates as follows: A criminal trial for which March 16, 2020, is the last day a trial could be conducted under Penal Code section 1382 would be extended to June 14, 2020, and a criminal trial for which June 15, 2020, is the last day a trial could be conducted under Penal Code section 1382 would be extended until September 13, 2020.

3. Any previously issued extensions of time in which to conduct a criminal trial under Penal Code section 1382 that I authorized in an emergency order or orders issued to an individual court pursuant to Government Code section 68115(a)(10) shall run concurrently with the extension authorized in this paragraph, such that the total authorized extension of the section 1382 deadline in a case is 90 days.

4. Courts are strongly encouraged to collaborate with local justice partners to conduct a trial at an earlier date, if a court may do so in compliance with applicable health and safety laws, regulations, and orders, including through the use of remote technology, when appropriate.

5. To the extent a court needs a further extension of time in which to conduct criminal trials, it shall submit a request under Government Code section 68115 and describe the specific facts supporting the request, and specifically address the efforts the court is making to avoid the necessity of further extensions, including collaboration with justice partners and use of available technology.

Courts are urged to timely communicate with justice partners regarding the status of pending proceedings.

Courts are further urged to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court, in compliance with applicable health and safety laws, regulations, and orders, including through the use of remote technology, when appropriate.

This relief is temporary, intended to address the current COVID-19 pandemic as it poses a challenge to court proceedings. I reserve the authority to rescind or modify this order, as appropriate, to address changing circumstances. This order may be deemed part of the record in affected cases for purposes of appeal, without the need to file the order in each case.

Date: April 29, 2020

Tani G. Cantil-Sakauye

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Chief Justice of California and
Chair of the Judicial Council