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## LAW ALERT

### CIVIL LITIGATION HITS THE PAUSE BUTTON: CALIFORNIA COURTS RESPOND TO THE COVID-19 PANDEMIC

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On March 27, 2020, the Governor of California issued an order allowing the state Judicial Council to adopt emergency procedural rules for courts statewide, and on April 6, 2020 and April 17, 2020, the Judicial Council did so. The Emergency Rules of Court affect a wide variety of cases and related procedural matters and deadlines, including unlawful detainer and foreclosure actions, criminal procedure, family law proceedings, restraining orders, civil statutes of limitation, and service of documents. This article focuses on the statewide rules that will have a significant impact on civil litigation, and which complement the myriad measures taken by the superior courts.

#### UNLAWFUL DETAINERS AND FORECLOSURE ACTIONS

**Emergency Rule 1** effectively bars initiating or continuing to prosecute unlawful detainer actions unless the eviction is "necessary to protect public safety and health."

In mid-March, local governments and the Governor limited residential evictions. Doing so served the dual purpose of ensuring people could shelter in place and providing relief to tenants suffering financial hardships. Local and state orders temporarily halted residential evictions for tenants who could demonstrate an inability to pay rent due to income loss caused by COVID-19. (*See, e.g.,* City and County of San Francisco Supplemental Mayoral Proclamation (March 13, 2020); City of Los Angeles Emergency Public Order (March 15, 2020).)

At the same time, superior courts began severely reducing their activities and courthouse staffing levels, making litigating an unlawful detainer difficult if not impossible. The San Diego Superior Court, for example, limited its unlawful detainer-related activity to emergency *ex parte* lockout proceedings. (San Diego Superior Court News Release (March 16, 2020).) San Francisco and Los Angeles superior courts issued orders extending the time for a tenant served with an unlawful detainer complaint to file a response, a measure also included in the Governor's order. (Los Angeles Superior Court Order (March 17, 2020); San Francisco Superior Court Order (March 19, 2020).)

Emergency Rule 1 goes further than the local and state eviction moratoria, which only protect tenants directly affected by COVID-19. The rule prohibits courts from issuing summonses, holding trials, and entering defaults in unlawful detainer actions, unless doing is "necessary to protect public health and safety." It eliminates the procedural entrance and exit to unlawful detainer court actions—the summons, which constitutionally starts the lawsuit; and the trial or default, which results in the eviction order. The rule applies to all unlawful detainer actions, including commercial evictions; unlike the county-specific superior court measures, it operates statewide.

Emergency Rule 1's prohibitions create an exception for any eviction "necessary to protect public safety and health." The Judicial Council has recognized the increased need to

protect victims of domestic violence. (Report to the Judicial Council re: Emergency Rules of Court (April 4, 2020).)

**Emergency Rule 2** operates similarly to Rule 1 but in the foreclosure context. All foreclosure actions are stayed, unless court intervention is required for public health and safety reasons.

Emergency Rules 1 and 2 will expire 90 days after the Governor declares the state of emergency lifted, or the rule is repealed by the Judicial Council.

### TOLLING OF STATUTES OF LIMITATIONS

**Emergency Rule 9** tolls the statute of limitations for all civil causes of action from April 6, 2020 until 90 days after the state of emergency is lifted. This provision will likely have a significant impact on civil litigation and liability.

Emergency Rule 9 will substantially lengthen some statutes of limitation. To give just two examples, a challenge under the California Environmental Quality Act (CEQA) must be brought within 30 days of an agency's filing of a Notice of Determination (Pub. Res. Code § 21167) to create certainty in the development process. Because the state of emergency is expected to continue for many months, and could even continue for years, this rule could result in CEQA lawsuits brought months, or even years, after a project is approved. This uncertainty may make it difficult for projects to obtain financing. The League of California Cities, and others, have asked the Judicial Council to amend the rule so that CEQA statutes of limitation are not extended a full 90 days after the state of emergency is terminated. Further, a plaintiff suing for personal injuries must typically file the lawsuit within two years of the date of the injury. Even if the state of emergency extends only into June, Emergency Rule 9 could add five months to the personal injury limitations period.

The rule might also generate uncertainty in litigation. Some federal causes of action borrow the limitations periods of analogous state causes of action. (*Wilson v. Garcia* (1985) 471 U.S. 261.) A claim for a constitutional violation brought under 42 U.S.C § 1983, for instance, must be filed in California within

two years, the limitations period for personal injury actions in the state. (*Owens v. Okure* (1989) 488 U.S. 235.) Federal courts will likely grapple with the interplay between the borrowed statutes of limitation and California's emergency tolling.

For a limited number of cases, Emergency Rule 9 will compound an existing confusion of calculating the statute of limitations. As superior courts began paring down their operations, they deemed varying days "holidays" per Code of Civil Procedure sections 12 and 12a. Under those statutes, if the last day to file a complaint is a holiday—defined as any day the court is not open—the plaintiff need not file until the next non-holiday day. During an emergency, courts are permitted to designate days as holidays and superior courts across the state chose time periods of varying lengths—anywhere from three to over twenty days—as court holidays. Furthermore, as counties extended their various shelter-in-place orders as the pandemic progressed, the superior courts modified their designated holidays periods to correspond with such extensions. As a result, for the limited set of cases with statutes of limitations that ran during the period of mid-March until April 6, 2020, the deadline for filing apparently will vary by county.

For example, contrast San Diego and Los Angeles superior courts. San Diego Superior Court deemed March 17, 2020 through April 30, 2020 (inclusive) as court holidays, whereas Los Angeles only designated March 17, 18, and 19 as holidays. A claim that expired on March 25, 2020 could be filed in San Diego at the end of the emergency tolling period, but would be barred in Los Angeles. While this hypothetical scenario might seem unlikely, emergency tolling disputes are not unprecedented. In *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91, for instance, the plaintiff alleged that the Los Angeles Superior Courts were closed due to the Northridge Earthquake on the last day for filing the complaint. The Court of Appeal found that closure of the court constituted a "holiday" and allowed tolling of the running of the statute of limitation.

Those plaintiffs with claims expiring between the middle of March and April 6, 2020 will have to piece together the various superior court orders designating court holidays. While they would have to do so even

if Rule 9 were not enacted, the fact that this calculation is going to be performed several months after the courts have issued the orders will compound the confusion.

The Emergency Rules of Court generally sunset either 90 days after the emergency is lifted or when repealed or amended by the Judicial Council. (Cf., Emergency Rules 1(e), 2, 3(b), 3(g), 4(g), 5(f), 6(d), 11(b).) The text of Rule 9, however, excludes the latter provision. This may suggest that the Judicial Council intends to leave the tolling provision in place even if other emergency rules are relaxed or repealed.

In addition to tolling the statute of limitations, the Judicial Council also extended the time in which civil trials must be held. Normally, an action must be brought to trial five years from the date of commencement and any new trial must subsequently be brought within three years. (Code Civ. Proc. §§ 583.310, 583.320.) Emergency Rule 10 enlarges those time frames by six months. The extension is only available to actions filed on or before April 6, 2020.

#### **MANDATORY ELECTRONIC SERVICE**

The Judicial Council promulgated an additional twelfth Emergency Rule of Court on April 17, 2020, establishing a procedure by which parties may unilaterally elect to serve and receive documents electronically. Under **Emergency Rule 12**, a party

may serve documents electronically after confirming by telephone or email the appropriate electronic service addresses for counsel. In addition, parties may require that other parties serve them electronically. When a party is making the request, it must send a copy of Rule 12.

Electronic service is not required for small claims proceedings, unlawful detainer proceedings, and petitions to prevent civil harassment, elder abuse, and workplace violence. It is limited to parties represented by counsel. Pro se litigants must consent to electronic service.

#### **TEMPORARY RESTRAINING ORDERS**

**Emergency Rule 8** puts into place measures to ensure that individuals needing protection have valid and enforceable orders during court closures. The Judicial Council recognizes that vulnerable individuals, including victims of domestic violence, may be more at risk while the state is ordered to shelter in place. Emergency Rule 8 ensures that individuals and officers of the law will be able to obtain restraining orders during the state of emergency and permits courts to extend an existing order's duration.

For more information, please contact Rye Murphy, Dolores Dalton, Celia Lee, James Diamond, or any other Goldfarb & Lipman attorney.

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