

Estimated Time: 10 minutes

1 **ERIC H. SCHWEITZER #179776**
2 **ANNIE L. DAVIDIAN #252644**
3 **SCHWEITZER & DAVIDIAN**
4 **A PROFESSIONAL CORPORATION**
5 620 DEWITT AVENUE, SUITE #102
6 CLOVIS, CALIFORNIA 93612
7 PHONE 559-322-1500
8 FAX 559-322-1551

9 ATTORNEYS FOR: **VINCENT RAFAEL CHAVEZ**

10
11
12 **SUPERIOR COURT OF CALIFORNIA,**
13 **COUNTY OF MADERA**

14 * * * * *

15 **PEOPLE OF THE STATE OF**
16 **CALIFORNIA,**

17 **Plaintiff,**

18 **vs.**

19 **VINCENT RAFAEL CHAVEZ,**

20 **Defendant.**

21 **Case No.:**

22 **BRIEF ON VARIOUS ISSUES RAISED**
23 **BY "ORDER RE; CONDUCTING**
24 **PRELIMINARY HEARING VIA**
25 **VIDEOCONFERENCE" AND MOTIONS**
26 **OF COUNSEL FOR JUSTIN COLLINS**
27 **AND COUNSEL FOR THE PEOPLE**

28 **DATE: April 9, 2019**
TIME: 9:30 a.m.
DEPT: 22

Hon. Michael Jurkovitch

1 **TO THE HONORABLE JUDGE OF THE ABOVE ENTITLED COURT, AND TO**
2 **THE DISTRICT ATTORNEY OF THE COUNTY OF MADERA AND TO COUNSEL FOR**
3 **JUSTIN COLLINS:**

4 **BRIEF ON THE APRIL 1 ORDER THAT WOULD, IF FOLLOWED**
5 **ALLOW A VIDEOCONFERENCED PRELIMINARY**
6 **HEARING WITHOUT CONSENT OF THE ACCUSED**

7 **"'Local rule' means every rule, regulation, order, policy,**
8 **form, or standard of general application adopted by a court to**
9 **govern practice or procedure in that court or by a judge of the**
10 **court to govern practice or procedure in that judge's courtroom."**

1 Cal. Rules of Court, rule 10.613 (Rule 10.613). Local rules may
2 not conflict with statutes and courts must comply with applicable
3 statutes when promulgating local rules. Kalivas v. Barry Controls
4 Corp. (1996) 49 Cal. App. 4th 1152, 1158. Superior Court Judges
5 of the State of California are not empowered to issue rules that
6 conflict with the constitution or laws. For instance, in Jensen
7 v. Superior Court (1984) 154 Cal. App. 3d 533, the court was not
8 allowed to forbid an attorney from wearing his turban without
9 first declaring the reason he wanted to wear it.

10 Any court orders must be consistent with due process
11 [Asbestos Claims Facility v. Berry & Berry (1990) 219 Cal. App.
12 3d 9, 24] and not “inconsistent with law” or conflicting with
13 any statewide statute, rule of law or Judicial Council rule.
14 Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 967;
15 Snyder v. Superior Court (2007) 157 Cal. App. 4th 1530,
16 1535-1536.

17 **This Court’s Order was based upon the stated assumption that**
18 **it is permitted under the Chief Justice’s March 23, 2020**
19 **Statewide Order. Perhaps the Court’s assumption was a fair one,**
20 **but it is nevertheless at odds with the latest statewide**
21 **Emergency Order issued April 6, 2020.**

22 **This Court’s Order appears to have been countermanded or**
23 **superseded by certain Emergency Rules (copy attached) issued by**
24 **the chief Justice and the Judicial Council on April 6, 2020.**

25 EMERGENCY RULE 3. USE OF TECHNOLOGY FOR REMOTE APPEARANCES.
26 See Subdivision (a)(2) which provides in relevant part: “In
27 **criminal proceedings, courts must receive the consent of the**
28 **defendant to conduct the proceeding remotely”.**

1 EMERGENCY RULE 5. PERSONAL APPEARANCE WAIVERS OF DEFENDANTS
2 DURING HEALTH EMERGENCY. See Subdivision (c), **Consent by the**
3 **defendant**. See, particularly Subdivision (c)(2):

4 For purposes of waiving time for a preliminary
5 hearing, consent also means a knowing, intelligent,
6 and voluntary waiver of the right to hold a
7 preliminary hearing within required time limits
8 specified either in Penal Code section 859b or
9 under emergency orders issued by the Chief Justice
10 and Chair of the Judicial Council.

11 And, we appreciate the Court being "sensitive" to the needs
12 of counsel to communicate. But, perhaps more importantly, see
13 also Subdivision (e)(2) which would indicate even *with a waiver*,
14 available technology ought to allow for private communications
15 between counsel and the accused. Any lawyer who would counsel a
16 waiver without demanding assurances of such technology in advance
17 would likely commit legal malpractice.

18 Where a defendant appears remotely, **counsel may not**
19 **be required to be personally present with the**
20 **defendant for any portion of the criminal**
21 **proceeding** provided that the audio and/or video
22 conferencing system or other technology allows for
23 private communication between the defendant and his
24 or her counsel. Any private communication is
25 confidential and privileged under Evidence Code
26 section 952.

27 As to this writer's perennial question regarding the
28 whereabouts of his client: Delays resulting from the Sheriff's
failure to transport the defendant do not justify any delay in
trial. Jackson v. superior Court (1991) 230 Cal.App.3d 1391;
People v. Hajaj (2010) 50 Cal.4th 1184, 1202-1203; People v. Hill
(1984) 37 Cal.3d 491; Blake v. Superior Court (1980) 108 Cal.App.
3d 244. There is no reason to believe a different rule applies to
preliminary hearings.

1 We respectfully believe that the Orders that were earlier
2 made by the Superior Court are in excess of discretion allowable
3 even prior to the advent of the April 6, 2020 Emergency Rules.
4 "The discretion of a trial judge is not a whimsical, uncontrolled
5 power, but a legal discretion, which is subject to the
6 limitations of legal principles governing the subject of its
7 action, and to reversal on appeal where no reasonable basis for
8 the action is shown." (9 Witkin, Cal. Procedure (5th ed. 2008)
9 Appeal, § 364, p. 420). This excess, if one occurred, is however
10 understandable, given the time that it took for the Judicial
11 Council to act definitively and the incredible pressure that this
12 Honorable Court must have been under.

13 We respectfully submit that in view of the Statewide
14 Emergency Order of April 6, 2020, the sound application of
15 judicial discretion would be to follow the Orders of the Chief
16 Justice rather than those of the Presiding Judge, when, as here,
17 they are in total conflict. Also, we respectfully ask this Court
18 to rescind its own April 1, 2020 Order.

19 Again, Defendant Chavez does not waive the right to
20 statutory preliminary hearing in public where he can effectively
21 and with the assistance of counsel confront and cross examine the
22 people's witnesses and also present any of his own evidence to
23 impeach as allowed by existing law.

24

25 **BRIEF ON THE MOTION FILED BY DEFENDANT COLLINS**

26 Penal Code §1050 is not as elastic as Counsel would have it.
27 Nor is the Sixth General Order of the Presiding Judge a good
28 reason to grant Counsel a continuance. Counsel must surely be

1 ready to proceed. Counsel's declaration does not say otherwise.
2 Counsel's Motion argues that COVID-19 is good cause. Counsel's
3 Motion does not say that social distancing and other measures
4 (masks, gloves, disinfectants available in the courtroom) cannot
5 be practiced in an open court for the relatively brief duration
6 of a preliminary hearing.

7 Good cause does not exist absent exceptional circumstances.
8 Batey v. Superior Court (1977) 71 Cal.App.3d 952; People v.
9 Johnson (1980) 26 Cal.3d 557. Not wanting to come to court at the
10 expense of an in-custody co-defendant's right to a speedy
11 preliminary hearing is based upon the same or lesser risk that
12 goes on due to a necessary trip to the market is not an
13 exceptional circumstance. After all, the Sixth General Order
14 seems to require social distancing by all court users andf that
15 anyone with symptoms stay away. Counsel has not averred that he
16 or his client have any symptoms.

17 The Court's Sixth General Order, as relied upon by Counsel,
18 is not controlling over the Constitution or over speedy
19 proceeding statutes like Penal Code Section 859b. Kalivas v.
20 Barry Controls Corp., *supra*, 49 Cal. App. 4th 1152, 1158; Jensen
21 v. Superior Court, *supra*, 154 Cal. App. 3d 533; Asbestos Claims
22 Facility v. Berry & Berry, *supra*, 219 Cal. App. 3d 9; Rutherford
23 v. Owens-Illinois, Inc. *supra*, 16 Cal.4th 953, 967; Snyder v.
24 Superior Court, *supra*, 157 Cal. App. 4th 1530, 1535-1536. Thus,
25 Counsel's \$1050 Declaration founders on the shoals of having no
26 legal merit.

27 Even if 30 days (the presently authorized "outer limit")
28 were exceeded and the case had to be dismissed due to violation

1 of the time deadline, such a dismissal does not count under Penal
2 Code §1387. Furthermore, Proposition 115 expressly added §987.05
3 to the Penal Code in an effort to reduce the unavailability of
4 defense counsel at the examination. Counsel's Motion has no
5 merit. Defendant Chavez's Preliminary Hearing must go forward
6 with or without Defendant Collins.

7
8 **BRIEF ON THE PEOPLE'S CONTINGENT**
9 **MOTION UNDER PENAL CODE §1050.1**

10 The People argue that Penal Code §1050.1 mandates that good
11 cause for one is good cause for all. But, they omit to allege
12 good cause. And they are right to do so because, per the last
13 sentence of Penal Code §1050.1: "The court or magistrate shall
14 not cause jointly charged cases to be severed due to the
15 unavailability or unpreparedness of one or more defendants *unless*
16 *it appears to the court or magistrate that it will be impossible*
17 *for all defendants to be available and prepared within a*
18 *reasonable period of time."*

19 It is clear beyond peradventure that "serious health risks
20 (are) being posed to all members of our society by the
21 Coronavirus (COV-19)." (Declaration of Counsel for defednant
22 Collins) Counsel makes no showing that these risks are going to
23 lessen or to abate by May 20, 2020. May 20, 2020 is also within
24 the 60 day period that jury trials have been suspended by the
25 Chief Justice. Jury trials require jurors to assemble and to be
26 packed into most courtrooms shoulder to shoulder for the
27 selection process to effectively occur.

28 ///

1 If granted, Counsel's Motion will take the time for
2 Defendant Chavez's Preliminary Examination well beyond 30 court
3 days. Clearly, then, if the \$1050 Motion is granted, "it will be
4 impossible for all defendants to be available and prepared within
5 a reasonable period of time." The Court must then, should these
6 circumstances be found on the merits of Counsel's \$1050 Motion,
7 cause these jointly charged cases to be severed. The only
8 alternative is to run roughshod over in-custody defendant
9 Chavez's right to timely Due Process. That alternative is no
10 alternative at all because it is abhorrent to the rule of law.
11 Handi v. Rumsfeld (2004) 542 U.S. 507.

12
13 **CONCLUSION**

14 These are exceptional times. A certain amount of innovation
15 must take place in order to insure the accused has a right to
16 timely due process.¹

17 Not only can it be done. It must be done. If the Sheriff
18 fails to transport Mr. Chavez to Court again, this writer will
19 still want to know the reason why. If the Preliminary Hearing is
20 to be continued oneminute beyond statutory 10 days, again, per
21 the words of the Chief Justice, we are entitled to know the
22 reason why and we will not be overlooked.²

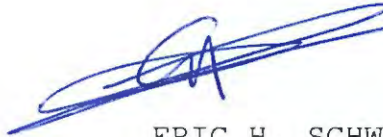
23
24 ¹ See:
25 <https://newsroom.courts.ca.gov/news/california-chief-justice-no-need-and-no-right-will-be-overlooked>

26
27 ² "[N]o need and no right will be overlooked".
28 In the words of the Chief Justice on April 6, 2020: "We are at this point truly with no guidance in history, law or precedent. To say that there is no playbook is a gross understatement of the

1 This case must move to a timely statutorily guaranteed
2 preliminary hearing *with all the trimmings* within justified and
3 permissible time limits or the accused must be released in accord
4 with the law.

5
6 Dated: April 7, 2020.

Respectfully submitted,
SCHWEITZER & DAVIDIAN,

7
8 

9 ERIC H. SCHWEITZER,
10 Attorney for Defendant,
11 VINCENT RAFAEL CHAVEZ.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____ situation."

Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

1
2 **Emergency rule 1. Unlawful detainers**

3
4 **(a) Application**

5
6 Notwithstanding any other law, including Code of Civil Procedure sections 1166,
7 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

8
9 **(b) Issuance of summons**

10
11 A court may not issue a summons on a complaint for unlawful detainer unless the
12 court finds, in its discretion and on the record, that the action is necessary to protect
13 public health and safety.

14
15 **(c) Entry of default**

16
17 A court may not enter a default or a default judgment for restitution in an unlawful
18 detainer action for failure of defendant to appear unless the court finds both of the
19 following:

20
21 (1) The action is necessary to protect public health and safety; and

22
23 (2) The defendant has not appeared in the action within the time provided by
24 law, including by any applicable executive order.

25
26 **(d) Time for trial**

27
28 If a defendant has appeared in the action, the court may not set a trial date earlier
29 than 60 days after a request for trial is made unless the court finds that an earlier
30 trial date is necessary to protect public health and safety. Any trial set in an
31 unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days
32 from the initial date of trial.

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 amended or
38 repealed by the Judicial Council.

39
40
41

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

2
3 **Notwithstanding any other law, this rule applies to any action for foreclosure on a**
4 **mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil**
5 **Procedure, beginning at section 725a, including any action for a deficiency judgment, and**
6 **provides that, until 90 days after the Governor declares that the state of emergency**
7 **related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by**
8 **the Judicial Council:**

- 9
10 (1) **All such actions are stayed, and the court may take no action and issue no**
11 **decisions or judgments unless the court finds that action is required to further the**
12 **public health and safety.**
13
14 (2) **Any statute of limitations for filing such an action is tolled.**
15
16 (3) **The period for electing or exercising any rights under that chapter, including**
17 **exercising any right of redemption from a foreclosure sale or petitioning the court**
18 **in relation to such a right, is extended.**
19
20

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

22
23 **(a) Remote appearances**

24
25 **Notwithstanding any other law, in order to protect the health and safety of the public,**
26 **including court users, both in custody and out of custody defendants, witnesses, court**
27 **personnel, judicial officers, and others, courts must conduct judicial proceedings and**
28 **court operations as follows:**

- 29
30 (1) **Courts may require that judicial proceedings and court operations be**
31 **conducted remotely.**
32
33 (2) **In criminal proceedings, courts must receive the consent of the defendant to**
34 **conduct the proceeding remotely and otherwise comply with emergency rule**
35 **5. Notwithstanding Penal Code sections 865 and 977 or any other law, the**
36 **court may conduct any criminal proceeding remotely. As used in this rule,**
37 **“consent of the defendant” means that the consent of the defendant is**
38 **required only for the waiver of the defendant’s appearance as provided in**
39 **emergency rule 5. For good cause shown, the court may require any witness**
40 **to personally appear in a particular proceeding.**
41
42 (3) **Conducting proceedings remotely includes, but is not limited to, the use of**
43 **video, audio, and telephonic means for remote appearances; the electronic**

1 exchange and authentication of documentary evidence; e-filing and e-service;
2 the use of remote interpreting; and the use of remote reporting and electronic
3 recording to make the official record of an action or proceeding.
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 amended or
9 repealed by the Judicial Council.

10
11
12 **Emergency rule 4. Emergency Bail Schedule**

13
14 **(a) Purpose**

15
16 Notwithstanding any other law, this rule establishes a statewide Emergency Bail
17 Schedule, which is intended to promulgate uniformity in the handling of certain
18 offenses during the state of emergency related to the COVID-19 pandemic.

19
20 **(b) Mandatory application**

21
22 No later than 5 p.m. on April 13, 2020, each superior court must apply the
23 statewide Emergency Bail Schedule:

- 24
25 (1) To every accused person arrested and in pretrial custody.
26
27 (2) To every accused person held in pretrial custody.
28

29 **(c) Setting of bail and exceptions**

30
31 Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony
32 offenses must be set at \$0, with the exception of only the offenses listed below:
33

- 34 (1) A serious felony, as defined in Penal Code section 1192.7(c), or a violent
35 felony, as defined in Penal Code section 667.5(c);
36
37 (2) A felony violation of Penal Code section 69;
38
39 (3) A violation of Penal Code section 166(c)(1);
40
41 (4) A violation of Penal Code section 136.1 when punishment is imposed under
42 section 136.1(c);
43

- 1 (5) A violation of Penal Code section 262;
- 2
- 3 (6) A violation of Penal Code sections 243(e)(1) or 273.5;
- 4
- 5 (7) A violation of Penal Code section 273.6 if the detained person made threats
- 6 to kill or harm, has engaged in violence against, or has gone to the residence
- 7 or workplace of, the protected party;
- 8
- 9 (8) A violation of Penal Code section 422 where the offense is punished as a
- 10 felony;
- 11
- 12 (9) A violation of Penal Code section 646.9;
- 13
- 14 (10) A violation of an offense listed in Penal Code section 290(c);
- 15
- 16 (11) A violation of Vehicle Code sections 23152 or 23153;
- 17
- 18 (12) A felony violation of Penal Code section 463; and
- 19
- 20 (13) A violation of Penal Code section 29800.

21

22 **(d) Ability to deny bail**

23

24 Nothing in the Emergency Bail Schedule restricts the ability of the court to deny

25 bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.

26

27 **(e) Application of countywide bail schedule**

28

- 29 (1) The current countywide bail schedule of each superior court must remain in
- 30 effect for all offenses listed in exceptions (1) through (13) of the Emergency
- 31 Bail Schedule, including any count-specific conduct enhancements and any
- 32 status enhancements.
- 33
- 34 (2) Each superior court retains the authority to reduce the amount of bail listed in
- 35 the court’s current countywide bail schedule for offenses in exceptions (1)
- 36 through (13), or for any offenses not in conflict with the Emergency Bail
- 37 Schedule.
- 38
- 39
- 40
- 41
- 42

1 **(f) Bail for violations of post-conviction supervision**

- 2
- 3 **(1) Under the statewide Emergency Bail Schedule, bail for all violations of**
4 **misdemeanor probation, whether the arrest is with or without a bench**
5 **warrant, must be set at \$0.**
- 6
- 7 **(2) Bail for all violations of felony probation, parole, post-release community**
8 **supervision, or mandatory supervision, must be set in accord with the**
9 **statewide Emergency Bail Schedule, or for the bail amount in the court’s**
10 **countywide schedule of bail for charges of conviction listed in exceptions (1)**
11 **through (13), including any enhancements.**

12

13 **(g) Sunset of rule**

14

15 **This rule will remain in effect until 90 days after the Governor declares that the**
16 **state of emergency related to the COVID-19 pandemic is lifted, or until amended or**
17 **repealed by the Judicial Council.**

18

19

20 **Emergency rule 5. Personal appearance waivers of defendants during health**
21 **emergency**

22

23 **(a) Application**

24

25 **Notwithstanding any other law, including Penal Code sections 865 and 977, this**
26 **rule applies to all criminal proceedings except cases alleging murder with special**
27 **circumstances and cases in which the defendant is currently incarcerated in state**
28 **prison, as governed by Penal Code section 977.2.**

29

30 **(b) Types of personal appearance waivers**

- 31
- 32 **(1) With the consent of the defendant, the court must allow a defendant to waive**
33 **his or her personal appearance and to appear remotely, either through video**
34 **or telephonic appearance, when the technology is available.**
- 35
- 36 **(2) With the consent of the defendant, the court must allow a defendant to waive**
37 **his or her appearance and permit counsel to appear on his or her behalf. The**
38 **court must accept a defendant’s waiver of appearance or personal appearance**
39 **when:**
- 40
- 41 **(A) Counsel for the defendant makes an on the record oral representation**
42 **that counsel has fully discussed the waiver and its implications with the**

1 defendant and the defendant has authorized counsel to proceed as
2 counsel represents to the court;

3
4 (B) Electronic communication from the defendant as confirmed by
5 defendant's counsel; or

6
7 (C) Any other means that ensures the validity of the defendant's waiver.
8

9 **(c) Consent by the defendant**

10
11 (1) For purposes of arraignment and entry of a not guilty plea, consent means a
12 knowing, intelligent, and voluntary waiver of the right to appear personally in
13 court. Counsel for the defendant must state on the record at each applicable
14 hearing that counsel is proceeding with the defendant's consent.

15
16 (2) For purposes of waiving time for a preliminary hearing, consent also means a
17 knowing, intelligent, and voluntary waiver of the right to hold a preliminary
18 hearing within required time limits specified either in Penal Code section
19 859b or under emergency orders issued by the Chief Justice and Chair of the
20 Judicial Council.

21
22 (3) The court must accept defense counsel's representation that the defendant
23 understands and agrees with waiving any right to appear unless the court has
24 specific concerns in a particular matter about the validity of the waiver.

25
26 **(d) Appearance through counsel**

27
28 (1) When counsel appears on behalf of a defendant, courts must allow counsel to
29 do any of the following:

30
31 (A) Waive reading and advisement of rights for arraignment.

32
33 (B) Enter a plea of not guilty.

34
35 (C) Waive time for the preliminary hearing.

36
37 (2) For appearances by counsel, including where the defendant is either
38 appearing remotely or has waived his or her appearance and or counsel is
39 appearing by remote access, counsel must confirm to the court at each
40 hearing that the appearance by counsel is made with the consent of the
41 defendant.
42

1 **(e) Conduct of remote hearings**

- 2
- 3 (1) With the defendant's consent, a defendant may appear remotely for any
- 4 pretrial criminal proceeding.
- 5
- 6 (2) Where a defendant appears remotely, counsel may not be required to be
- 7 personally present with the defendant for any portion of the criminal
- 8 proceeding provided that the audio and/or video conferencing system or other
- 9 technology allows for private communication between the defendant and his
- 10 or her counsel. Any private communication is confidential and privileged
- 11 under Evidence Code section 952.
- 12

13 **(f) Sunset of rule**

14

15 This rule will remain in effect until 90 days after the Governor declares that the

16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or

17 repealed by the Judicial Council.

18

19

20 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

21

22 **(a) Application**

23

24 This rule applies to all juvenile dependency proceedings filed or pending until the

25 state of emergency related to the COVID-19 pandemic is lifted.

26

27 **(b) Essential hearings and orders**

28

29 The following matters should be prioritized in accordance with existing statutory

30 time requirements.

31

- 32 (1) Protective custody warrants filed under Welfare and Institutions Code section
- 33 340.
- 34
- 35 (2) Detention hearings under Welfare and Institutions Code section 319. The
- 36 court is required to determine if it is contrary to the child's welfare to remain
- 37 with the parent, whether reasonable efforts were made to prevent removal,
- 38 and whether to vest the placing agency with temporary placement and care.
- 39
- 40 (3) Psychotropic medication applications.
- 41
- 42 (4) Emergency medical requests.
- 43

- 1 (5) A petition for reentry of a nonminor dependent.
2
3 (6) Welfare and Institutions Code section 388 petitions that require an immediate
4 response based on the health and safety of the child, which should be
5 reviewed for a prima facie showing of change of circumstances sufficient to
6 grant the petition or to set a hearing. The court may extend the final ruling on
7 the petition beyond 30 days.
8

9 **(c) Foster care hearings and continuances during the state of emergency**

- 10
11 (1) A court may hold any proceeding under this rule via remote technology
12 consistent with rule 5.531 and emergency rule 3.
13
14 (2) At the beginning of any hearing at which one or more participants appears
15 remotely, the court must admonish all the participants that the proceeding is
16 confidential and of the possible sanctions for violating confidentiality.
17
18 (3) The child welfare agency is responsible for notice of remote hearings unless
19 other arrangements have been made with counsel for parents and children.
20 Notice is required for all parties and may include notice by telephone or other
21 electronic means. The notice must also include instructions on how to
22 participate in the court hearing remotely.
23
24 (4) Court reports
25
26 (A) Attorneys for parents and children must accept service of the court
27 report electronically.
28
29 (B) The child welfare agency must ensure that the parent and the child
30 receive a copy of the court report on time.
31
32 (C) If a parent or child cannot receive the report electronically, the child
33 welfare agency must deliver a hard copy of the report to the parent and
34 the child on time.
35
36 (5) Nothing in this subdivision prohibits the court from making statutorily
37 required findings and orders, by minute order only and without a court
38 reporter, by accepting written stipulations from counsel when appearances
39 are waived if the stipulations are confirmed on the applicable Judicial
40 Council forms or equivalent local court forms.
41
42 (6) If a court hearing cannot occur either in the courthouse or remotely, the
43 hearing may be continued up to 60 days, except as otherwise specified.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(A) A dispositional hearing under Welfare and Institutions Code section 360 should not be continued more than 6 months after the detention hearing without review of the child’s circumstances. In determining exceptional circumstances that justify holding the dispositional hearing more than 6 months after the child was taken into protective custody, the impact of the state of emergency related to the COVID-19 pandemic must be considered.

i. If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.

ii. The court may continue the matter for a full hearing on all dispositional findings and orders.

(B) A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child’s federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must review the case to determine if the agency has made reasonable efforts to return the child home or arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during

1 times of crisis. Visitation may only be suspended if a detriment finding is
2 made in a particular case based on the facts unique to that case. A detriment
3 finding must not be based solely on the existence of the impact of the state of
4 emergency related to the COVID-19 pandemic or related public health
5 directives.

6
7 (A) The attorney for the child or parent may ask the juvenile court to
8 review the change in manner of visitation. The child or parent has the
9 burden of showing that the change is not in the best interest of the child
10 or is not based on current public health directives.

11
12 (B) A request for the court to review the change in visitation during this
13 time period must be made within 14 court days of the change. In
14 reviewing the change in visitation, the court should take into
15 consideration the factors in (c)(7).

16
17 **(d) 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 amended or
21 repealed by the Judicial Council.

22
23 **Advisory Committee Comment**

24
25 When courts are unable to hold regular proceedings because of an emergency that has resulted in
26 an order as authorized under Government Code section 68115, federal timelines do not stop.
27 Circumstances may arise where reunification services to the parent, including visitation, may not
28 occur or be provided. The court must consider the circumstances of the emergency when deciding
29 whether to extend or terminate reunification services and whether services were reasonable given
30 the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR
31 § 1356.21 (b) – (d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title
32 IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2
33 (www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=92)); Letter dated March 27, 2020, from Jerry Milner, Associate Commissioner, Children’s
34 Bureau, Administration for Children and Families, U.S. Department of Health and Human
35 Services.)

1 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

2
3 **(a) Application**

4
5 This rule applies to all proceedings in which a petition has been filed under Welfare
6 and Institutions Code section 602 in which a hearing would be statutorily required
7 during the state of emergency related to the COVID-19 pandemic.

8
9 **(b) Juvenile delinquency hearings and orders during the state of emergency**

10
11 (1) A hearing on a petition for a child who is in custody under Welfare and
12 Institutions Code section 632 or 636 must be held within the statutory
13 timeframes as modified by an order of the court authorized by Government
14 Code section 68115. The court must determine if it is contrary to the welfare
15 of the child to remain in the home, whether reasonable services to prevent
16 removal occurred, and whether to place temporary placement with the
17 probation agency if the court will be keeping the child detained and out of the
18 home.

19
20 (2) If a child is detained in custody and an in-person appearance is not feasible
21 due to the state of emergency, courts must make reasonable efforts to hold
22 any statutorily required hearing for that case via remote appearance within
23 the required statutory time frame and as modified by an order of the court
24 authorized under Government Code section 68115 for that proceeding. If a
25 remote proceeding is not a feasible option for such a case during the state of
26 emergency, the court may continue the case as provided in (d) for the
27 minimum period of time necessary to hold the proceedings.

28
29 (3) Without regard to the custodial status of the child, the following hearings
30 should be prioritized during the state of emergency related to the COVID-19
31 pandemic:

32
33 (A) Psychotropic medication applications.

34
35 (B) All emergency medical requests.

36
37 (C) A petition for reentry of a nonminor dependent.

38
39 (D) A hearing on any request for a warrant for a child.

40
41 (E) A probable cause determination for a child who has been detained but
42 has not had a detention hearing within the statutory time limits.

43

1 (4) Notwithstanding any other law, and except as described in (5), during the
2 state of emergency related to the COVID-19 pandemic, the court may
3 continue for good cause any hearing for a child not detained in custody who
4 is subject to its juvenile delinquency jurisdiction until a date after the state of
5 emergency has been lifted considering the priority for continued hearings in
6 (d).

7
8 (5) For children placed in foster care under probation supervision, a judicial
9 determination of reasonable efforts must be made within 12 months of the
10 date the child enters foster care to maintain a child's federal title IV-E
11 availability. If a permanency hearing is continued beyond the 12-month date,
12 the court must nevertheless hold a review to determine if the agency has
13 made reasonable efforts to return the child home or place the child
14 permanently. This finding can be made without prejudice and may be
15 reconsidered at a full hearing.

16
17 **(c) Proceedings with remote appearances during the state of emergency.**

18
19 (1) A court may hold any proceeding under this rule via remote technology
20 consistent with rule 5.531 and emergency rule 3.

21
22 (2) At the beginning of any hearing conducted with one or more participants
23 appearing remotely, the court must admonish all the participants that the
24 proceeding is confidential and of the possible sanctions for violating
25 confidentiality.

26
27 (3) The court is responsible for giving notice of remote hearings, except for
28 notice to a victim, which is the responsibility of the prosecuting attorney or
29 the probation department. Notice is required for all parties and may include
30 notice by telephone or other electronic means. The notice must also include
31 instructions on how to participate in the hearing remotely.

32
33 (4) During the state of emergency, the court has broad discretion to take evidence
34 in the manner most compatible with the remote hearing process, including
35 but not limited to taking testimony by written declaration. If counsel for a
36 child or the prosecuting attorney objects to the court's evidentiary
37 procedures, that is a basis for issuing a continuance under (d).

38
39 **(d) Continuances of hearings during the state of emergency.**

40
41 Notwithstanding any other law, the court may for good cause continue any hearing
42 other than a detention hearing for a child who is detained in custody. In making this
43 determination, the court must consider the custody status of the child, whether there

1 are evidentiary issues that are contested, and, if so, the ability for those issues to be
2 fairly contested via a remote proceeding.

3
4 **(e) Extension of time limits under Welfare and Institutions Code section 709**

5
6 In any case in which a child has been found incompetent under Welfare and
7 Institutions Code section 709 and that child is eligible for remediation services or
8 has been found to require secure detention, any time limits imposed by section 709
9 for provision of services or for secure detention are tolled for the period of the state
10 of emergency if the court finds that remediation services could not be provided
11 because of the state of emergency.

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

14
15 This rule will remain in effect until 90 days after the Governor declares that the
16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
17 repealed by the Judicial Council.

18
19 **Advisory Committee Comment**

20
21 This emergency rule is being adopted in part to ensure that detention hearings for
22 juveniles in delinquency court must be held in a timely manner to ensure that no child is
23 detained who does not need to be detained to protect the child or the community. The
24 statutory scheme for juveniles who come under the jurisdiction of the delinquency court
25 is focused on the rehabilitation of the child and thus makes detention of a child the
26 exceptional practice, rather than the rule. Juvenile courts are able to use their broad
27 discretion under current law to release detained juveniles to protect the health of those
28 juveniles and the health and safety of the others in detention during the current state of
29 emergency related to the COVID-19 pandemic.

30
31
32 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

33
34 **(a) Application**

35
36 Notwithstanding any other law, this rule applies to any emergency protective order,
37 temporary restraining order, or criminal protective order that was requested, issued,
38 or set to expire during the state of emergency related to the COVID-19 pandemic.
39 This includes requests and orders issued under Family Code sections 6250 or 6300,
40 Code of Civil Procedure sections 527.6 , 527.8, or 527.85, Penal Code sections
41 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304,
42 362.4, or 15657.03, and including any of the foregoing orders issued in connection
43 with an order for modification of a custody or visitation order issued pursuant to a

1 dissolution, legal separation, nullity, or parentage proceeding under Family Code
2 section 6221.

3
4 **(b) Duration of orders**

5
6 (1) Any emergency protective order made under Family Code section 6250 that
7 is issued or set to expire during the state of emergency, must remain in effect
8 for up to 30 days from the date of issuance.

9
10 (2) Any temporary restraining order or gun violence emergency protective order,
11 issued or set to expire during the state of emergency related to the COVID-19
12 pandemic, must be continued for a period of time that the court determines is
13 sufficient to allow for a hearing on the long-term order to occur, for up to 90
14 days.

15
16 (3) Any criminal protective order, subject to this rule, set to expire during the
17 state of emergency, must be automatically extended for a period of 90 days,
18 or until the matter can be heard, whichever occurs first.

19
20 (4) Any restraining order or protective order after hearing that is set to expire
21 during the state of emergency related to the COVID-19 pandemic must be
22 automatically extended for up to 90 days from the date of expiration to enable
23 a protected party to seek a renewal of the restraining order.

24
25 **(c) Ex parte requests**

26
27 (1) Courts must provide a means for the filing of ex parte requests for temporary
28 restraining orders. Courts may do so by providing a physical location, drop
29 box, or, if feasible, through electronic means.

30
31 (2) Any ex parte request may be filed using an electronic signature by a party or
32 a party's attorney.

33
34 **(d) Service of Orders**

35
36 If a respondent appears at a hearing by video, audio, or telephonically, and the
37 court grants an order, in whole or in part, no further service is required upon the
38 respondent for enforcement of the order, provided that the court follows the
39 requirements of Family Code section 6384.

40
41
42

1 **(e) Entry of orders into California Law Enforcement Telecommunications System**

2
3
4 Any orders issued by a court modifying the duration or expiration date of orders
5 subject to this rule, must be transmitted to the Department of Justice through the
6 California Law Enforcement Telecommunications System (CLETS), as provided in
7 Family Code section 6380, without regard to whether they are issued on Judicial
8 Council forms, or in another format during the state of emergency.
9

10
11 **Emergency rule 9. Toll the statutes of limitations for civil causes of action**

12
13 Notwithstanding any other law, the statutes of limitation for civil causes of action are
14 tolled from April 6, 2020, until 90 days after the Governor declares that the state of
15 emergency related to the COVID-19 pandemic is lifted.
16

17
18 **Emergency rule 10. Extensions of time in which to bring a civil action to trial**

19
20 **(a) Extension of five years in which to bring a civil action to trial**

21
22 Notwithstanding any other law, including Code of Civil Procedure section 583.310,
23 for all civil actions filed on or before April 6, 2020, the time in which to bring the
24 action to trial is extended by six months for a total time of five years and six
25 months.
26

27 **(b) Extension of three years in which to bring a new trial**

28
29 Notwithstanding any other law, including Code of Civil Procedure section 583.320,
30 for all civil actions filed on or before April 6, 2020, if a new trial is granted in the
31 action, the three years provided in section 583.320 in which the action must again
32 be brought to trial is extended by six months for a total time of three years and six
33 months. Nothing in this subdivision requires that an action must again be brought
34 to trial before expiration of the time prescribed in (a).
35

36
37 **Emergency rule 11. Depositions through remote electronic means**

38
39 **(a) Deponents appearing remotely**

40
41 Notwithstanding any other law, including Code of Civil Procedure section
42 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at

1 their election or the election of the deposing party, is not required to be present
2 with the deposition officer at the time of the deposition.

3
4 **(b) Sunset of rule**

5
6 This rule will remain in effect until 90 days after the Governor declares that the
7 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
8 repealed by the Judicial Council.