



Chambers of
KIRK H. NAKAMURA
PRESIDING JUDGE

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701

Superior Court of California County of Orange

Superior Court of California County of Orange AMENDED ADMINISTRATIVE ORDER NO. 20/09

PREFACE:

With the challenges presented by COVID-19, the court is faced with an unprecedented situation of balancing the rights of residents of Orange County to justice against the Emergency Orders of the President, Governor and the Orange County Department of Health outlining precautionary steps to minimize the danger of transmission of the virus.

Despite criticism from the Orange County District Attorney and Public Defender, who, along with other justice partners, have always been consulted with the court's plans, the court will continue to provide justice consistent with the conditions that exist and the recommendations of Chief Justice Tani Cantil-Sakauye.

The court is grateful for the Chief Justice's guidance in clarifying the scope of Governor Newsom's order of March 19, 2020, and for setting priorities and recommendations for operating the court during this challenging time.

Governor Newsom's Order of March 19, 2020 Does Not Close the Courts

The Chief Justice sought and received clarification from Governor Newsom that the Governor's Order does not close the courts. The courts are—and continue to be—an essential service.

Implementation of Chief Justice Tani-Cantil Sakauye's Recommendations

The court intends to implement the recommendations of the Chief Justice insofar as is practicable under the current circumstances. These are:

CRIMINAL PROCEDURES

1. Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses – for all misdemeanors except for those listed in Penal Code section

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1270.1 and for lower-level felonies. This will result in fewer individuals in county jails thus alleviating some of the pressures for arraignments within 48 hours and preliminary hearings within 10 days.

The court will be meeting with justice partners with a proposal to revise the Court's bail schedule. Insofar as these responsibilities have been previously delegated to the Court's Bail Review Committee, such responsibilities are hereby revoked until further notice.

2. In setting an adult or juvenile defendant's conditions of custody, including the length, eligibility for alternative sentencing, and surrender date, the court should consider defendant's existing health conditions, and any conditions existing at defendant's anticipated place of confinement that could affect the defendant's health, the health of other detainees, or the health of personnel staffing the anticipated place of confinement.

As to adult defendants, Judge Cheri Pham, Acting Supervising Judge of the Criminal Panel is communicating with her panel to effectuate this recommendation as applicable. As to juvenile justice youth, Presiding Juvenile Judge Joanne Motoike met with juvenile justice partners in effectuating this recommendation and will continue to do so on a regular basis.

3. With the assistance of justice partners, identify those persons currently in county jail or juvenile hall custody who have less than 60 days remaining on their jail sentence for the purpose of modifying their sentences to permit early release of such persons with or without supervision or to community-based organizations for treatment.

As to adult defendants, the court will be meeting with its justice partners to effectuate this recommendation. The District Attorney will be given 48 hours' notice before release. As to in-custody juvenile justice youth, Presiding Juvenile Judge Joanne Motoike has already met with its justice partners and identified youth with commitments of 45 days or less for release, and is assessing youth who now have commitments of 60 days or less for possible release.

4. With the assistance of justice partners, calendar hearings for youth returning to court supervision from Department of Juvenile Justice following parole consideration for a Welfare & Institutions Code, §1766 hearing.

During the court closure, the juvenile court will continue to calendar and hold hearings for these youth/former youth.

5. With the assistance of justice partners, determine the nature of supervision violations that will warrant "flash incarceration," for the purpose of drastically reducing or eliminating the use of such an intermediate sanction during the current health crisis.

Acting Supervising Judge of the Criminal Panel Cheri Pham has contacted the Deputy Chief Probation Officer Sue DeLacy and was advised that effective last Thursday, March 19, 2020, Probation has ceased all "flash incarcerations" and will only place holds on individuals with new law violations that present a risk to the community.

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6. Prioritize arraignments and preliminary hearings for in-custody defendants, and the issuance of restraining orders.

Acting Supervising Judge of the Criminal Panel Cheri Pham has been directed to follow these recommendations emphasizing the need to keep personal appearances at a minimum and use telephone and video appearances as well as video live streaming to comply with the court's Sixth Amendment responsibility for public hearings to minimize exposure to all involved in these hearings. (See item 8, infra.) A plan must be developed for implementation in phases by hearing types so that they are not dependent upon each other and can be scaled back quickly if the circumstances warrant. Judge Richard King has worked diligently to identify those preliminary hearings that must proceed in order to prevent release of potentially dangerous defendants under Penal Code section 859(b) and Government Code section 68115, which provides for limited time extensions for these hearings. His working group consisting of himself, Judge Cheri Pham, Judge Maria Hernandez and Judge Karen Robinson has done an exceptional job in identifying and organizing these preliminary hearings.

7. Prioritize juvenile dependency detention hearings to ensure they are held within the time required by state and federal law.

Under the leadership of Presiding Judge Joanne Motoike, the juvenile court continues to have these hearings on a limited basis. Judge Motoike has been directed to minimize the in-person appearances of counsel and parties by using video appearances as authorized by law.

8. For routine or non-critical criminal matters, allow liberal use of telephonic or video appearance by counsel and the defendant, and appearance by counsel by use of waivers authorized by Penal Code, § 977. Written waivers without being obtained in open court have been approved if the waiver is in substantial compliance with language specified in section 977, subdivision (b)(1). (People v. Edwards (1991) 54 Cal.3d 787, 811; People v. Robertson (1989) 48 Cal.3d 18, 62.)

Acting Supervising Judge of the Criminal Panel Cheri Pham has been directed to follow these recommendations including the use of written waivers for appearances authorized by Penal Code section 977. Information and Technology Chief Brett Howard has been so directed to provide support.

CIVIL PROCEDURES

1. Suspend all civil trials, hearings, and proceedings for at least 60 days, with the exception of time-sensitive matters, such as restraining orders and urgent dependency, probate, and family matters. Consider whether an emergency order may be needed to address cases reaching 5-year deadlines under Code of Civil Procedure section 583.310.

All such hearings have been suspended by Administrative Order Nos. 20/06 (Civil) No. 20/07 (Probate) and No. 20/08 (Family Law). (Attached) On March 23, 2020 the Chief Justice ordered that the time period provided in Code of Civil Procedure sections 583.310 and 583.320 for the holding of a civil trial is extended for a period of sixty (60) days from the date of this order. (See below.)

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2. When possible, provide that any urgent matters may be done telephonically, under the general policy encouraging use of telephonic appearances in Code of Civil Procedure section 367.5(a) and California Rule of Court, rule 3.670.

Civil Panel Supervising Judge James DiCesare, Probate Panel Supervising Judge Gerald Johnston and Family Law Supervising Judge Lon Hurwitz are directed to comply with this recommendation to the fullest extent practicable.

CHIEF JUSTICE'S ORDER OF MARCH 23, 2020

On March 23, 2020 the Chief Justice ordered that:

1. All jury trials are suspended and continued for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.

2. The time period provided in Penal Code section 1382 for the holding of a criminal trial is extended for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.

3. The time period provided in Code of Civil Procedure sections 583.310 and 583.320 for the holding of a civil trial is extended for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.

4. All superior courts are authorized under rule 10.613(i) of the California Rules of Court to adopt any proposed rules or rule amendment that is intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for 45 days of public comment. A court adopting any such rule change must provide a copy to Judicial Council staff and post notice of the change prominently on the court's website, along with the effective date of the new or amended rule. Additionally, the court must immediately distribute the new or amended rule as set forth in rule 10.613(g)(2). No litigant's substantive rights shall be prejudiced for failing to comply with the requirements of a new or amended rule until at least 20 days after the rule change has been distributed.

The court will comply with this order.

Judge Maria Hernandez is appointed to be the COVID 19 Judge responsible for disseminating information about the impact of the virus on our courts. We have received many questions from members of the local Bar and will be endeavoring to provide information on protocols that are developed in response. This information will be provided to OCBA leadership for further distribution. The questions are voluminous and ask for your patience in awaiting responses. We ask that questions be submitted to OCBA leadership to relay to Judge Hernandez.

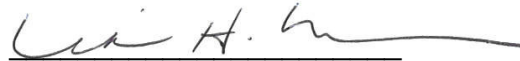
March 24, 2020

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The assistance of Assistant Presiding Judge Erick L. Larsh in handling the Judicial Officers' personnel problems is gratefully appreciated.

The court acknowledges the fine work of our judges and administrative staff for their Herculean efforts in dealing with this crisis.

IT IS SO ORDERED this 24th day of March 2020, at Santa Ana California.



Kirk H. Nakamura
Presiding Judge