



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-07

Title

Family Law: Emergency Rule Regarding
Effective Date to Modify Support in Response
to COVID-19 Pandemic

Action Requested

VOTING MEMBERS ONLY: Submit votes
by responding to the transmittal e-mail.

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, emergency rule 13

Please Respond By

April 19, 2020

Recommended by

Hon. Marsha G. Slough, Chair, Executive and
Planning Committee

Hon. David M. Rubin, Chair, Judicial Branch
Budget Committee and Litigation
Management Committee

Hon. Kyle S. Brodie, Chair, Technology
Committee

Hon. Marla O. Anderson, Chair, Legislation
Committee

Hon. Harry E. Hull, Jr., Chair, Rules
Committee

Date of Report

April 16, 2020

Contact

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Executive Summary

To allow parties to proceed with serving and filing requests to modify support in family law cases during the state of emergency related to the COVID-19 pandemic, without impacting public health and safety, the chairs of the Judicial Council's six internal committees recommend that the council adopt California Rules of Court, emergency rule 13. This rule will temporarily allow a court to make an order modifying support effective the date an unfiled request to modify support was mailed or otherwise served on the other party, with the moving party required to re-serve the opposing party after the request has been filed with the court.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective immediately, adopt California Rules of Court, emergency rule 13. The rule, which will apply only in family law cases, will:

- Allow a court to make an order modifying an order for child, spousal, partner, or family support effective as of the date the request is served by U.S. mail or other valid means of service on the other party or the local child support agency; and
- Require the party making the request to modify support to serve the request a second time, after it has been filed with the court and has a court date and time listed, unless the moving party is the local child support agency and the unfiled request already contains a valid court date.

The text of the new rule is attached at page 5.

Relevant Previous Council Action

On March 27, 2020, the Governor issued an executive order¹ giving the Judicial Council authority to take necessary action to respond to the COVID-19 pandemic, including by adopting emergency rules that would otherwise be inconsistent with statutes concerning civil or criminal practice or procedure. The Governor's order also suspended statutes to the extent they would be inconsistent with such emergency rules. Under that order, the council adopted emergency rules 1–11 on April 6, 2020.²

Analysis/Rationale

Background

The United States is currently the epicenter of a global COVID-19 pandemic. As of April 15, 2020, the Centers for Disease Control and Prevention reported there were more than 605,000 cases in this country, with over 24,000 deaths.³

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the COVID-19 pandemic.⁴ On March 20, 2020, Governor Newsom issued a statewide

¹ Executive Order N-38-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

² Judicial Council of Cal., Internal Com. Chairs Rep., *Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic* (Apr. 6, 2020), <https://jcc.legistar.com/LegislationDetail.aspx?ID=4412336&GUID=44550ADC-1A93-4FDC-97C9-17E1589CBB68>.

³ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Cases in U.S. (updated Apr. 15, 2020), www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

⁴ State of emergency proclamation, www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

shelter-in-place order⁵ with limited exceptions for emergency services. In addition, several counties have issued local shelter-in-place orders that are more restrictive than the statewide order issued by the Governor. Despite sustained efforts by all levels of government, COVID-19 continues to spread and is impacting nearly all sectors of California. As of April 15, 2020, the California Department of Public Health reported over 23,000 cases in the state, and 758 fatalities.⁶

Due to the COVID-19 pandemic and resulting shelter-in-place orders, a record number of workers have lost their jobs and filed for unemployment in the country and in California. In the past four weeks alone, “California has processed about 2.3 million unemployment insurance claims, which is more than the total number of claims filed in 2019.”⁷ Under current federal and state law, when a court enters an order modifying support, the earliest date the order may be made effective is as of the date the request was filed with the court or served on the other party.⁸ However, many parties are unable to file a request to modify support and preserve retroactivity of the modification date because it is not always clear how to do so during this pandemic in light of changes to court operations made to address public health and safety.

Proposal

Emergency rule 13 would provide the court with the authority to enter an order modifying support back to the date that the party seeking the modification mailed or otherwise validly served that request on the opposing party if that date is earlier than the date the request was filed with the court.⁹ Such a rule is needed to ensure that a party who has experienced the loss of a job or whose hours have been reduced as a result of the state of emergency related to the COVID-19 pandemic is able to request an order modifying support be made effective to a date as close as possible to their loss of income. Allowing for the service of an unfiled request is especially important during this state of emergency, as changes made to court operations to address public health and safety are making it more challenging for requests to be filed and processed by the courts.

⁵ Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁶ California Department of Public Health, “COVID-19 by the Numbers,” news release April 15, 2020, www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers.

⁷ Office of Governor Gavin Newsom, “Governor Newsom Announces Additional Unemployment Benefits for Workers Impacted by COVID-19, as Unemployment Claims Reach Record Levels,” news release April 9, 2020, www.gov.ca.gov/2020/04/09/governor-newsom-announces-additional-unemployment-benefits-for-workers-impacted-by-covid-19-as-unemployment-claims-reach-record-levels/.

⁸ 42 U.S.C. § 666(9)(C); Fam. Code, §§ 3591, 3603, 3653, and 4333.

⁹ Emergency rule 13 is consistent with federal law and will ensure that judicial officers hearing governmental and non-governmental support matters will have the broadest array of options for setting the effective date for a modification.

Providing courts with the discretion to make a modification retroactive to the service date when that is earlier than the filing date will ensure that the other party will be placed on notice that their support amount may be reduced effective with the date of service, allowing them to plan accordingly. The rule thereby balances the needs of a party who may have experienced job loss and seeks to modify a support order against the needs for public safety and notice to the other party.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. This crisis has caused millions of residents to lose their jobs while at the same time closing the courts where they could seek financial relief, such as a modification of a support order. Ordinarily such orders can only be made retroactive to the date the request was filed. Given the length of time the pandemic may impact the state, parties with support orders must be able to protect their rights as recommended in this proposal.

Comments

This proposal has not been circulated for comment due to the speed with which the COVID-19 pandemic has spread and the urgent need to allow parties the tools required to allow them to continue with their cases and protect their rights while considering the health and safety of parties, court staff, and the public.

Alternatives considered

The chairs of the Judicial Council's six internal committees considered taking no action. Over the past month, however, individual courts have been struggling to address the impact of the COVID-19 pandemic, and it is critical that courts have the authority to make accurate support orders that can be made effective with consistency across the state without regard to each court's ability to process court filings during the state of emergency. Given the severity of the crisis, the chairs of the council's six internal committees concluded that this recommendation was necessary to allow parties to preserve their rights to modify a support order, while not putting court staff or the public at risk.

Fiscal and Operational Impacts

Because this rule applies to mail service by the parties and does not require courts to accept any additional filings, it should not have any fiscal or operational impacts on courts.

Attachments and Links

1. Cal. Rules of Court, emergency rule 13, at page 5
2. Voting instructions, at page 6
3. Vote and signature pages, at pages 7–8

Emergency rule 13 of the California Rules of Court is adopted, immediately, to read:

1 **Emergency rule 13. Effective date for requests to modify support**

2
3 **(a) Application**

4
5 Notwithstanding any other law, including Family Code sections 3591, 3603, 3653,
6 and 4333, this rule applies to all requests to modify or terminate child, spousal,
7 partner, or family support. For the purpose of this rule, “request” refers to *Request*
8 *for Order* (form FL-300), *Notice of Motion (Governmental)* (form FL-680), or
9 other moving papers requesting a modification of support.

10
11 **(b) Effective date of modification**

12
13 Except as provided in Family Code section 3653(b), an order modifying or
14 terminating a support order may be made effective as of the date the request and
15 supporting papers are mailed or otherwise served on the other party, or other
16 party’s attorney when permitted. Nothing in this rule restricts the court’s discretion
17 to order a later effective date.

18
19 **(c) Service of filed request**

20
21 If the request and supporting papers that were served have not yet been filed with
22 the court, the moving party must also serve a copy of the request and supporting
23 papers after they have been filed with the court on the other party, or other party’s
24 attorney when permitted. If the moving party is the local child support agency and
25 the unfiled request already has a valid court date and time listed, then subsequent
26 service of the request is not required.

27
28 **(d) Court discretion**

29
30 Nothing in this rule is meant to limit court discretion or to alter rule 5.92 or 5.260
31 regarding which moving papers are required to request a modification of support.

32
33 **(e) Sunset of rule**

34
35 This rule will remain in effect until 90 days after the Governor declares that the
36 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
37 repealed by the Judicial Council.

Instructions for Review and Action by Circulating Order

Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **12:00 p.m., Sunday, April 19th**
- If you are unable to reply by **April 19th** please do so as soon as possible thereafter.

Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages**

Effective immediately, the Judicial Council adopts California Rules of Court, emergency rule 13.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Richard Bloom

_____/s/
C. Todd Bottke

_____/s/
Stacy Boulware Eurie

_____/s/
Kyle S. Brodie

_____/s/
Ming W. Chin

_____/s/
Jonathan B. Conklin

_____/s/
Samuel K. Feng

_____/s/
Brad R. Hill

_____/s/
Rachel W. Hill

_____/s/
Harold W. Hopp

_____/s/
Harry E. Hull, Jr.

_____/s/
Hannah-Beth Jackson

My vote is as follows:

Approve Disapprove Abstain

_____/s/
Patrick M. Kelly

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

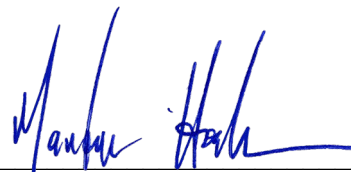
_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Eric C. Taylor

Date: 4/19/2020

Attest:



Administrative Director and
Secretary of the Judicial Council