



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-05

Title

Civil Practice and Procedure: Emergency
Electronic Service Rule in Response to the
COVID-19 Pandemic

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, emergency rule 12

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

Action Requested

VOTING MEMBERS ONLY: Submit votes
by responding to the transmittal email.

Please Respond By

April 16, 2020, at 3:00 p.m.

Date of Report

April 14, 2020

Contact

Anne M. Ronan, Legal Services
415-865-8933
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Executive Summary

To allow parties to proceed with civil 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 12. This rule will temporarily mandate electronic service of nonjurisdictional notices and documents between represented parties in general civil actions, and in proceedings under the Family and Probate Codes.

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 12. The rule, which will apply only in general civil cases and proceedings under the Family and Probate Codes, will:

- Mandate that a represented party accept electronic service of all notices and documents that may be served by mail, express mail, overnight delivery, or facsimile.
- Mandate that a represented party, after being informed of this rule and on the request of any party, electronically serve all notices and documents that may be served by mail, express mail, overnight delivery, or facsimile.
- Permit electronic service on a self-represented party if that party provides written consent.
- Sunset 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or when amended or repealed by the council.

The text of the new rule is attached at pages 6–7.

Relevant Previous Council Action

The council adopted its initial rule regarding electronic service in 2003 and has amended it several times over the years since then, including renumbering it as rule 2.251. That rule currently implements the provision in Code of Civil Procedure section 1010.6, which provides for electronic service of documents in civil matters either with the affirmative agreement of the parties or by order of the court under certain circumstances.

On March 27, 2020, the Governor issued an order¹ giving the Judicial Council of California authority to take necessary action to respond to this crisis, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil practice or procedures. 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.

Analysis/Rationale

Background

As stated more fully in the April 4, 2020 report to the Judicial Council proposing emergency rules 1–11, the United States is the epicenter of a global pandemic caused by the COVID-19 virus. As of April 13, the U.S. Centers for Disease Control and Prevention reported there were more than 550,000 cases in this country, with almost 22,00 deaths.

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

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the threat of COVID-19.² On March 20, 2020, Governor Newsom issued a statewide shelter in place order³ with limited exceptions for emergency services. Adults over the age of 65 and persons of any age who have serious underlying medical conditions are at higher risk and required to stay home. 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 rapidly and is impacting nearly all sectors of California. As of April 11, 2020, California's Department of Public Health reported almost 22,000 cases in the state and 651 deaths.⁴

Proposal

Emergency rule 12 is intended to complement any existing local rules or orders providing for electronic service between parties, and to expand the requirements for such service to cover all represented parties in general civil cases⁵ and family law and probate matters. In such matters, once jurisdictional documents have been served (generally by personal service), most notices and documents may be served by mail, express mail, overnight delivery, or facsimile transmission. (See, e.g., Code Civ. Proc., §§ 1006 and 1013; Prob. Code, § 1215.) While electronic service is permitted, parties must affirmatively consent to such delivery unless a court has ordered it. (Code Civ. Proc., § 1010.6(b); Prob. Code, § 1215(c).) Attorneys have reported that during this pandemic, some parties refuse to agree to electronic service and insist on serving and being served by mail.

In light of the stay at home orders currently in place, this places many attorneys in a difficult position. To receive documents sent or delivered to a lawyer's address of record in the case, i.e., the office address, someone must leave home and travel to the law office or postal address to pick up the documents and arrange for them to be delivered to the appropriate attorney. This means attorneys must choose to either travel and increase the risks to their own and the public health, or stay at home as mandated and place their client's rights at risk. Similarly, serving documents by mail may involve trips to the office (to make the necessary copies of papers and

² State of emergency proclamation: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

³ Executive Order N-33-20: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁴ Figures from Cal. Dept. of Public Health, at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers>.

⁵ Cal. Rules of Court, rule 1.6 defines general civil cases. The ones not covered by this rule include small claims proceedings, unlawful detainer proceedings, and petitions to prevent civil harassment, elder abuse, and workplace violence; election contest petitions; and petitions for relief from late claims. This rule does not cover these cases for a variety of reasons. Petitions for restraining orders are primarily brought by self-represented litigants, and defendants in unlawful detainer cases are also primarily self-represented. In addition, unlawful detainers are covered by emergency rule 1 through this period and will be limited in number. Counsel in such cases may still agree to accept electronic service as appropriate. For juvenile cases, some electronic service of notice is already provided for in emergency rule 7.

attachments) and potentially the post office (to mail them). Electronic service eliminates the need for such travel.

As noted, rule 12 would apply in proceedings under the Probate Code and Family Code, and general civil cases, and would apply to all such matters unless a court orders otherwise or a local rule or order requiring electronic service in those cases is already in effect.⁶ It would require that any represented party in such matters accept electronic service of documents that could otherwise be served by mail, express mail, overnight delivery, or fax, without needing to consent to such service.⁷ It would also require represented parties in such matters to serve others electronically, if the other party provides notice of this rule and asks that such service be used.⁸ The time frames involved as to when the electronic service is considered complete and the extension of time, if any, provided following such service would be the same as statutorily provided for electronic service upon consent.⁹

While the provisions requiring the receipt or use of electronic service apply only to represented parties, such service could be used with self-represented parties also if they consent to it in writing.¹⁰

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. California attorneys, however, provide critical services that affect the rights of many Californians, including some of the most vulnerable. Given the length of time the pandemic may impact the state, attorneys must be able to continue to provide their needed services.

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 provide parties the tools required to allow them to continue with their cases and protect their rights while considering the health and safety of parties, counsel, and the public.

Alternatives considered

The council could take no action. Over the past month, however, attorneys have reported that they are struggling to deal with the impact of COVID-19. Given the severity of the crisis, the chairs of the Judicial Council's six internal committees concluded that recommended rule 12 is necessary to help give attorneys a way to proceed with their cases while considering the public health and safety.

⁶ Proposed rule 12(a).

⁷ Proposed rule 12(b)(1).

⁸ Proposed rule 12(b)(2).

⁹ Proposed rule 12(d).

¹⁰ Proposed rule 12(c).

The internal chairs note that emergency rule 3 allows the alternative of each court ordering electronic service by parties appearing before it. The chairs intend proposed rule 12 to complement that rule. This statewide requirement for electronic service on represented parties in general civil actions and proceedings under the Probate Code will eliminate the need for individual courts to consider issuing such orders in those proceedings at a time when they are, appropriately, focused on how the COVID-19 pandemic is impacting court operations.

Fiscal and Operational Impacts

Because this rule applies to service by and among parties only, it should not have any fiscal or operational impacts on courts.

Attachments and Links

1. Cal. Rules of Court, emergency rule 12, at pages 6–7
2. Voting instructions, at page 8
3. Vote and signature pages, at pages 9–10

1 **Emergency rule 12. Electronic service**

2
3 **(a) Application**

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5 (1) Notwithstanding any other law, including Code of Civil Procedure section
6 1010.6, Probate Code section 1215, and rule 2.251, this rule applies in all
7 general civil cases and proceedings under the Family and Probate Codes,
8 unless a court orders otherwise.

9
10 (2) Notwithstanding (1), the rule does not apply in cases where parties are
11 already required by court order or local rule to provide or accept notices and
12 documents by electronic service, and is not intended to prohibit electronic
13 service in cases not addressed by this rule.

14
15 **(b) Required electronic service**

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17 (1) A party represented by counsel, who has appeared in an action or proceeding,
18 must accept electronic service of a notice or document that may be served by
19 mail, express mail, overnight delivery, or facsimile transmission. Before first
20 serving a represented party electronically, the serving party must confirm by
21 telephone or email the appropriate electronic service address for counsel
22 being served.

23
24 (2) A party represented by counsel must, upon the request of any party who has
25 appeared in an action or proceeding and who provides an electronic service
26 address and a copy of this rule, electronically serve the requesting party with
27 any notice or document that may be served by mail, express mail, overnight
28 delivery, or facsimile transmission.

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30 **(c) Permissive electronic service**

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32 Electronic service on a self-represented party is permitted only with consent of that
33 party, confirmed in writing. The written consent to accept electronic service may be
34 exchanged electronically.

35
36 **(d) Time**

37
38 (1) In general civil cases and proceedings under the Family Code, the provisions
39 of Code of Civil Procedure section 1010.6(a)(4) and (5) apply to electronic
40 service under this rule.

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42 (2) In proceedings under the Probate Code, the provisions of Probate Code
43 section 1215(c)(2) apply to electronic service under this rule.

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(e) Confidential documents

Confidential or sealed records electronically served must be served through encrypted methods to ensure that the documents are not improperly disclosed.

(f) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or 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 **3:00 p.m., Thursday, April 16, 2020**
- If you are unable to reply by **April 16, 2020** 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 12.

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.

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

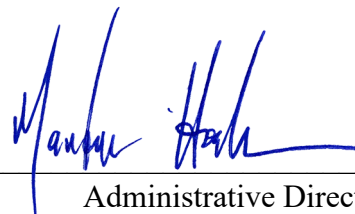
_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Eric C. Taylor

Date: 4/17/2020

Attest:



Administrative Director and
Secretary of the Judicial Council