COVID-19 COURT UPDATE – EMERGENCY RULES OF COURT AND COURT ORDERS
By Darryl J. Horowitt

With all the changes being forced on us by COVID-19, the Courts are trying to keep up. Fortunately, Governor Newsom has given the Judicial Council the ability to make emergency rules so the courts can make changes needed for the individual courts. To that end, on April 6, 2020, the Judicial Council issued new emergency orders that affect civil cases.

The new emergency rules ("ER") that affect civil matters, effective as of April 6, 2020, include:

1. ER 1: Changes the rules for unlawful detainer actions as follows:
    -   Prohibits unlawful detainer actions from being commenced unless necessary to protect public health and safety;
    -   Prohibits a default or default judgment from being entered unless necessary to protect public health and safety and the defendant has failed to file a timely response;
    -   Sets the time for a trial for no earlier than 60 days from the date set, unless an earlier date is needed to protect public health and safety;
    -   Limits the effect of the rule until 90 days after the Governor declares the COVID-19 emergency lifted;
2. ER 2: Suspends proceedings relating to judicial foreclosures absent a finding that the foreclosure is necessary to protect public health and safety and tolls the statute of limitations for the filing of such an action or redemption of real property after a prior foreclosure sale;
3. ER 3: Permits the use of remote appearances in courts using video or audio, including in criminal proceedings until 90 days after the Governor declares the COVID-19 emergency lifted;
4. ER 8: Extends the duration of a temporary restraining ("TRO") or protective order that might have otherwise expired during the state of emergency caused by the COVID-19 pandemic by up to 90 days before a renewal of the injunctive relief is sought; requires court to provide the means for the submission of ex parte requests for TROs either physically at the courts or electronically; and eliminates the need for personal service of an order on the responding party if that party appears the hearing by video, audio or telephonically and the court issues the order during that hearing;
5. ER 9: California has mandatory time periods within which civil actions must be filed, known as statutes of limitations. ER 9 tolls the statute of limitations from April 6th through 90 days after the Governor declares the COVID-19 emergency lifted;
6. ER 10: California has mandatory time periods within which a civil trial must be commenced – the court has discretion to dismiss a case if no action is taken to prosecute the case 3 years after it is filed and must dismiss if trial is not held 5 years after being filed. ER 10 extends the time in which to bring a case to trial (three and five year statutes) by

six (6) months for a total time of either 3 years and 6 months or 5 years and 6 months, depending on which time period applies; and,

7. <u>ER 11</u>: Current law permits a video deposition only where the parties agree in advance. ER 11 permits a video deposition at the election of the party requesting the deposition. The rule, however, expires 90 days after the Governor declares the COVID-19 emergency lifted.

    For a copy of the rules, see https://assets.documentcloud.org/documents/6826551/20-141-Emergency-Rules-Complete-Rule-Set-as.pdf

Following the direction of the Judicial Council, Fresno County Superior Court issued an order, effective April 6 through May 1, that provides as follows:

1. Courtrooms will remain closed to all judicial business except:
    - Temporary restraining orders ("TRO");
    - Ex parte proceedings, including injunctions;
    - Emergency probate proceedings for temporary conservatorships and guardianships;
2. All matters set between April 6 and May 1 will be reset for a later date;
3. The time period between April 6 and May 1 will be deemed a "court holiday", meaning that any dates to file or respond to a pleading, will not be due until after May 1 (the expiration of the court holiday) if COVID-19 prevents the filings from being made (i.e., the court is not staffing the clerk's office or refuses to accept filings due to COVID-19);
4. If a TRO would expire between April 1 and May 1 is extended by no more than 30 days; and,
5. The time period for a trial to be completed is extended by 60 days from the last date on which the statutory period would have otherwise expired. Thus, if the five year statute of limitations to bring a case to trial might have otherwise expired during the time in which the court's emergency orders are in effect, the time is extended – though the court can hold the trial earlier if it finds good cause or the trial can be used through remote technology.   (For   the   Fresno   Court   order,   see http://www.fresno.courts.ca.gov/_pdfs/pjOrders/Order%20of%20the%20Presiding%20Judge%20re%20Implementation%20of%20Emergency%20Relief%20Authorized%20Pursuant%20to%20GC%2068115.pdf)

As the courts issue more directives that affect you and your business, we will provide updates. If you have any questions in the meantime, please contact the author at (559) 248-4820, ext. 111 or dhorowitt@ch-law.com.

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