



Superior Court of California County of Riverside

Unlimited Civil Division Emergency Reorganization Order Frequently Asked Questions

Date: April 23, 2020

With the outbreak of the COVID-19 crisis and the resulting severe reduction in services of the Riverside Superior Court, and all other California trial courts, for a substantial period of time, the disruption to court business has been extensive. On April 22, 2020, the Presiding Judge of the Riverside Superior Court entered a Civil Division Emergency Reorganization Order as to all unlimited civil cases to set all cases in a posture that they can be effectively managed when the Court restores additional services. The objective of this Order is to functionally reset all unlimited civil cases to a status where trial has not been set and discovery is still open and to allow resumption of activity on these cases as quickly as possible within the confines of the unique environment we face.

This FAQ is informational only and does not have any legal effect.

Scope of the Order

1. Which cases is this Order applicable to?

A: This Order applies to all active unlimited civil cases that have not already gone to trial, except unlawful detainers. This includes complex cases and writs of mandate. This Order does not apply to limited civil cases, Probate cases, Family Law cases, or matters before the Appellate Panel.

3. If a case has proceeded to trial or judgment, does the order apply to it?

A: No, the Order focuses exclusively on unlimited civil cases that are still active and in a pretrial status.

4. What types of motions does this Order apply to?

A: All demurrers and pretrial motions are governed by this Order.

5. What about post-trial motions (new trial motions, motions for attorney's fees, etc.)?

A: These motions remain on calendar. See extended discussion below.

6. Are judgment debtor exams continued by this Order?

A: No, these may still go forward on the dates they are scheduled if the court has reopened for nonessential business by then. At present these are not considered to be essential business and are being continued by the Court on a case-by-case basis.

Defaults

7. Are defaults set aside?

A: No. Any defaults entered before March 17 remain in effect.

8. May I still take a default?

A: No. The court has extended the time to file responsive pleadings in unlimited civil cases to 30 calendar days after the State of Emergency ends.

9. Can defaults be taken in limited civil cases?

A: This Order only applies to unlimited civil cases. The court is still considering what steps to take with regard to limited civil cases.

10. If a request for entry of default was submitted after March 16, when the court closed, but before the court resumes usual services, is that request governed by this Order?

A: Yes. By several orders made by the Chief Justice pursuant to her authority under Government Code section 68115 (see <https://newsroom.courts.ca.gov/news/court-emergency-orders-6794321>) and the implementation orders of the Presiding Judge of this Court made on March 17, March 19, March 23, and April 3, all days from March 17 through April 24, inclusive, have been declared court holidays for the purpose of counting time under Code of Civil Procedure sections 12 and 12a. The court has been closed to all but essential business during these days and thus, as with any other document filed on any other court holiday, documents received during this period are not deemed filed until the court reopens. Since this order will take effect before the court reopens, all pending requests for entry of default will be governed by this Order and the time for the defendant to respond will be extended.

11. Can the portion of the order extending the time to file a responsive pleading under Code of Civil Procedure section 595 be made effective March 4, the date of the Governor's emergency declaration, nunc pro tunc?

A: No. The purpose of a nunc pro tunc order is to conform the court's records to accurately reflect the intention of the court at the time an order was made despite a clerical or non-judicial error. (See, e.g., *Ames v. Paley* (2001) 89 Cal.App.4th 668, 673.) Since the court did not intend on March 4 to enter such an order, it would not be a proper exercise of the nunc pro tunc power to make the order retroactive and apply it to defaults already filed. Such defaults may be subject to relief under Code of Civil Procedure section 473(b), however.

Discovery

12. Does this Order mean that discovery has reopened even if it had been cut off before March 17?

A: Yes. Parties are likely to want to conduct additional discovery given the expected delay in getting their case to trial. However, if you believe that discovery should not be allowed to go forward, you may file a motion for a protective order.

13. Why is the court reopening discovery on cases where the discovery cut-off date had passed before the COVID-19 crisis hit?

A: The expected delay between now and when a new trial date is likely to become available, in addition to the likelihood that events related to the State of Emergency may necessitate discovery into issues such as damages, suggests that most cases are going to require some additional discovery.

14. Wouldn't it be fairer and prevent the unnecessary expenditure of resources by parties if the court were to leave the discovery cut-off in place for cases where the cut-off passed before March 4, 2020, and requiring a party needing additional discovery to bring a motion to reopen discovery?

A: The expected delay before civil jury trials can resume is quite long and the court has already received numerous ex parte applications seeking to reopen discovery due to changing circumstances, including the need to change expert witnesses. Parties should discuss these issues on their own and attempt to resolve informally how much additional discovery should be allowed under the particular circumstances of each case, and each trial department can make such protective orders as are necessary to preserve the equities between the parties.

15. I had a deadline to bring a motion to compel further responses, has that passed?

A: All court days from March 17 through April 24 have been declared court holidays for the purposes of computing time and any document received during this time will be deemed filed on the next court day; if the motion to compel further responses was timely served, the delay in filing will not affect the court's ability to hear it.

16. What about motions to compel further responses that had been filed, but have now been taken off-calendar and have to be refiled—won't the deadline have passed for them, too?

A: As discussed in more detail below, hearing dates are being taken off calendar but the motions remain pending before the court. For the purposes of Code of Civil Procedure section 1005.5 the date the motion was first filed or received but not filed remains the date the motion was made. The parties are being directed to resubmit their briefing and reserve new hearing dates through the court's automated system in order to most effectively get new dates for all pending matters. The timeliness of the motion will not be affected by the court's order directing the parties to resubmit their briefing.

17. Can the court put a hold on all civil litigation, including for discovery purposes?

A: The Order does not stay discovery. Parties remain free to file motions for protective orders if their individual circumstances warrant putting a hold on discovery. These decisions will be made on a case-by-case basis. The court's objective by this Order is to restart all civil litigation where it is possible for the parties to move forward.

18. Do I have to meet and confer before refiling my motion to compel further responses?

A: Yes. Given the extensive delay and the likelihood of changed circumstances, the court is directing the parties in all cases where a motion has a meet and confer requirement to meet and confer again to ensure that the motion remains necessary and that the issues are still material and cannot be informally resolved by the parties.

A.D.R.

19. How are settlement conferences, mediation dates, etc. being handled?

A: Mandatory settlement conference dates have been set aside. They will be rescheduled at the Trial Setting Conference. Dates for completion of court-ordered mediation and judicial arbitration have been continued for 180 days. Some mediators are conducting remote mediations. Voluntary settlement conferences remain scheduled and are not being vacated.

20. Can the court schedule a Mediation Week or some other Mediation Program to facilitate settlement?

A: A committee composed of civil judicial officers and court staff has been established to make mediation opportunities available this fall in a manner that is similar to the Settlement Days conducted by this Court in 2019.

Law & Motion

21. Why are demurrers and pretrial motions being vacated?

A: Only motion hearing dates are being vacated; the motions themselves remain pending before the court and are considered to have been made on the date the notice of motion was first filed or received but not filed. Code of Civil Procedure section 1005.5. The court is directing the parties to reserve new hearing dates through the automated reservation system and to resubmit their documents in accordance with the new hearing date.

22. What about post-trial motions like motions for a new trial or motions for attorney's fees?

A: These are not being vacated by the Order. Each department will be handling these on a case-by-case basis.

23. Will post-trial motions (like a motion to tax costs) go forward in May? How will the dates for oppositions and replies be calculated?

A: Each department will be deciding when these motions go forward on a case-by-case basis. The court is aware that motions for new trial, in particular, have strict deadlines that may necessitate action during this period.

24. What constitutes a post-trial motion?

A: Motions to tax costs, motions for attorney's fees, motions for a new trial or for judgment notwithstanding the verdict—anything that arises after a verdict has been rendered or a judgment entered.

25. Are filing fees going to have to be paid again?

A: Filing fees for all hearings vacated by this Order will be refunded, and a new filing fee will have to be paid when the motion is rescheduled.

26. Should we meet and confer over the motion or the new hearing dates?

A: Meeting and conferring after this Order takes effect and before a new hearing date is reserved is required for motions that already have a statutory meet and confer requirement and is strongly recommended for all other motions.

27. How much time do we have to request a new hearing date?

A: The moving party has until July 31, 2020 to reserve a new hearing date. There is no limitation on the actual date reserved, but the statutorily-required notice of the new hearing date must be given or otherwise excused.

28. If there is a time during which the courts did not or will not accept for filing of any of the motions described, shouldn't the court extend the time to file beyond the date the courts are accepting filings again, at least by several days, considering the time between as a court holiday or an impossibility of filing during the interim?

A: The court is giving parties until July 31, 2020 to reserve a new hearing date, and strongly encouraging them to discuss the issues with the opposing party and not to rush to reserve the first available hearing date.

29. When will motions be heard?

A: We expect to have hearing dates available beginning on June 1, 2020.

30. What days are considered court holidays, and how does this affect the timeline for filing motions and oppositions?

A: The reservation system will be opened up in time such that, if all intervening court days remain countable as court days, a motion resubmitted to the court when the reservation system opens on May 7 would be timely if heard on June 1. However, the Chief Justice can declare days to be holidays for the purpose of counting days under Code of Civil Procedure sections 12 and 12a, and if days in May are declared additional court holidays, a party may not be able to give timely notice for a hearing set on June 1.

31. If the parties had stipulated to continue a hearing on a motion, and that stipulation had been approved by the court, is it exempt from this Order?

A: No, the hearing date will still be vacated by this Order. If that hearing date is still available, you may be able to reserve the same date through the automated reservation system.

32. What about pending stipulations for new hearing dates?

A: These will be rejected.

33. What if I call my stipulation to continue the hearing dates something else, like a "declaration" or "pleading" or "agreement"?

A: Anything that has the legal effect of a stipulation between the parties to adjust motion (or trial) dates is a stipulation, regardless of what it is titled, and will be rejected as such.

34. What is the effect of this Order, and the various orders of the Chief Justice declaring days to be court holidays, on the deadlines for filing motions related to discovery?

A: For any demurrer or motion, the date the motion was first filed will be the date it was filed for the purposes of Code of Civil Procedure section 1005.5. While intervening days have been declared court holidays for the purposes of counting days under Code of Civil Procedure sections 12 and 12a, "while sections 12, 12a, and 13 of the Code of Civil Procedure . . . serve to extend one day the time within which or upon which an act may be done when the last day therefor falls on a Sunday or holiday, said sections are without application and do not extend the time for an act that must be performed 'not less' than or 'not later' than a given number of days before a designated time." (*Steele v. Bartlett* (1941) 18 Cal.2d 573, 574.) This would apply to some post-trial motions as well as some discovery motions (e.g. Code of Civil Procedure section 2030.300(c), see also *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 320). For these motions the notice of motion may still be submitted via eSubmit without a reservation during this interim period, and then motion should then be resubmitted when a reservation is made.

35. How many motions and demurrers will each department schedule? How many per day, per week, per month?

A: Existing caps will remain in place for now, but may be increased to meet demand in the future.

36. Does the Order extend deadlines to file motions (i.e. discovery, summary judgment motions)?

A: The deadline pursuant to Code of Civil Procedure section 437c(a)(3) will be based on the new trial date when it is set. For discovery motions, see discussion above.

37. Do summary judgment motions also need to be refiled? Should I be filing the exhibits all over again?

A: Yes, to both questions.

38. Do I have to resubmit a motion if it has already been argued and taken under submission?

A: No, the will rule on any motions that have been orally argued and taken under submission.

39. My motion was heard and the court ordered further briefing. Do I still have to re-file my motion under these circumstances?

A: Yes. Since there are over 1,600 pending motions and only a few where this situation has occurred, it is operationally inefficient to devote limited staff to identifying the few cases where this situation has occurred.

40. Rather than withdrawing all pending motions and requiring them to be refiled and rebriefed, and then using an ex parte protective order procedure to prevent the refiling of briefs already submitted, why not simply vacate all currently scheduled hearings and give the moving parties the opportunity to re-notice them through the court's online reservation system within a set period of time, with the understanding that no additional papers can be filed on fully-briefed matters?

A: While the court considered other alternatives, the approach selected meets the needs of civil litigants while also being operationally efficient. Parties have always been able to request leave to present new or additional arguments, and trial departments will have the authority to consider arguments presented in the new briefing that hadn't been presented in the original motion according to the same standard. To the extent the existing briefing has simplified, narrowed, or clarified the issues, parties are free to adjust their briefing accordingly.

41. Can't the Court simply continue fully briefed motions, perhaps allowing each party a short (5-page) supplemental brief in which it can present matters directly relevant to the pending motion that relate to the COVID-19 health crisis and could not have been presented in prior briefing?

A: While the court considered other alternatives, it is more efficient operationally to handle all pretrial motions the same way, whether or not they have been fully briefed. "Fully briefed" motions are a very small number of motions, those which had a reply brief already filed before March 17, 2020, and the court simply does not have staff to review over 1,600 pending motions to identify the few that are fully briefed. Additionally, the parties may stipulate that each will be required to resubmit identical briefs.

42. Can motions previously set, particularly MSJs, be given priority?

A: Parties needing a preference may seek a hearing date through an ex parte application, but the court has no way of identifying, at the time a reservation is made, which motions should be entitled to priority..

43. Doesn't requiring parties to refile their motions allow them to gain a tactical advantage when they have already seen the opposition, by revising the moving papers to reframe the issues?

A: While the court hopes that the parties will use the prior round of briefing as an opportunity to narrow and sharpen their arguments, we recognize that counsel may try to use the knowledge gained from the briefing.

44. Will the trial court consider the failure to include in a resubmitted document any evidence or argument presented in the original as an abandonment of that argument or a concession that the evidence is irrelevant?

A: The Court will not be comparing the new moving and opposing papers to the papers filed in support of or in opposition to the original motion. Instead, the Court will consider only those arguments raised in the renewed motion, opposition, and reply. Points not supported by argument or authorities in the resubmitted brief need not be addressed by the trial court in its ruling on the motion.

45. Can the parties advance a fully briefed motion for summary judgment?

A: Yes. If both parties stipulate, the parties may reserve an earlier date on a summary judgment motion without needing an additional 75 calendar days' notice. Otherwise the court will be applying the statutory time required for notice from the reservation and resubmission of the moving papers to elapse before the hearing date.

46. How will the ongoing closures impact the requirement that the court have a mandatory hearing on motions for new trial within the statutory and jurisdictional time frame of 75 days from the Notice of Entry of Judgment?

A: Post-trial motions have been exempted from this Order particularly because of this issue.

47. Will court staff be able to get the moving, opposing and reply papers in front of the judge in a timely manner, given the backlog of electronic filing?

A: Yes. Because the court will be rejecting a substantial portion of documents submitted after March 16 and delay receiving new documents until it is safe to bring employees back to the courthouse, we believe that, when the reservation system opens up and documents are refiled, they can be brought to the judge in a sufficiently timely manner to allow for a ruling on the new hearing date.

48. How are the timelines for filing a writ challenging a ruling on a motion for summary judgment under Code of Civil Procedure section 437c(m)(1) affected by this order?

A: The time for filing a writ petition is governed by statute and may only be extended "for one additional period not to exceed 10 days." The court remains available to hear ex parte applications to extend this time.

Complex Cases / Petitions for Extraordinary Relief

49. Why not argue petitions for writ of mandate (or other extraordinary relief) on the merits over CourtCall or other such means instead of continuing them?

A: The court is focused on essential and limited emergency matters, and is phasing in other types of proceedings. In addition, the availability of counsel and/or the judge is not certain at this time.

50. How will previously approved briefing schedules for writs of mandate be affected? Will deadlines for briefs for writs of mandate (including deadlines approved by the court) also be extended for the duration of the Order?

A: A new status conference has been set in all of these cases, at which time the parties may discuss alterations to the briefing schedule with the trial department.

51. Will all hearing dates for writs of mandate also be extended?

A: Existing hearing dates for petitions for writs of mandate will be vacated replaced with status conferences on the same date. If that date is prior to the date the Court reopens, a new date will be set and notice given.

52. Does this apply to writs of mandate filed before the Appellate Panel of the Superior Court?

A: No. Since the Appellate Panel only hears writs for misdemeanor or limited civil cases, this Order does not apply to any cases before it.

Trials

53. I had a trial date. What sort of date can I expect for my trial now?

A: The short answer is that we don't know. Riverside County Public Health orders will provide guidance as to when the court can fully reopen. The COVID-19 emergency has closed down all trial functions of the court, and when we resume holding trials the civil departments are likely to have to hear criminal cases in the short term. Civil cases with a right to a trial preference will be accommodated to the extent possible but the overall delay will be significant.

54. Shouldn't the court just set a new trial date rather than requiring the parties to appear for a trial setting conference?

A: "[T]he dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (Cal. Rules of Court, rule 3.1332(a).) In order to ensure that the trial dates are certain, the Court will need to be informed by health officials that it is safe to permit trials in a courtroom, and of the availability of counsel, litigants, and witnesses, none of which are determinable at this time.

55. Can the parties submit a stipulation agreeing to a new trial date?

A: No, the trial date is going to have to be set at the Trial Setting Conference to ensure that the Court can accommodate the requested trial date.

56. After the trial is converted to a TSC, what happens if the Court is still closed on the new TSC date?

A: These will be continued by the trial department from chambers on its own motion.

Miscellaneous Questions

57. Will this Order be served in each individual case?

A: No, this order is being made and deemed filed in each case, but will not be served by mail on the parties.

58. What is the court still open for?

A: The court is closed to all but emergency and essential functions. For civil cases, the Court will consider and rule on ex parte applications that meet the standards outlined in Rule of Court 3.1202(c) in the current emergency.

59. Can I get case-specific information from the courtroom clerk?

A: No, because only limited court staff are working during this closure period. You can check the status of your case online.

60. Is there any effort by the Courts to coordinate how matters will be handled statewide or will we be faced with different procedures for different counties, especially with respect to civil motion practice?

A: The Governor has, by executive order N-38-20, given the Judicial Council the authority to adopt new rules of court to govern court procedures, even if those rules contradict state law. Counsel should be taking steps to remain advised of any new emergency rules. As of the date of this order, no new statewide rules have been implemented regarding civil motion practice, except for Emergency Rule 12, mandating that counsel accept electronic service.