



May 15, 2020

TO: Martin Hoshino, Administrative Director, Judicial Council  
Hon. Marsha G. Slough, Associate Justice, Court of Appeal  
FR: Consumer Attorneys of California  
California Defense Counsel  
California Chapters of the American Board of Trial Advocates  
RE: **The Civil System Must Function, During and Post Crisis**

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We write to both urge action and express our gratitude to the Judicial Council. The emergency rules and circulating order were issued to provide guidance to courts and counsel during these turbulent times. However, we are concerned about access to justice for thousands of civil cases. Courts all over the state are taking dramatically different approaches to conducting civil proceedings during the shelter-in-place. Further, as the backlog builds court leaders are contemplating the possibility of pushing civil cases to the back of the line, possibly until 2021 or later. Our California courts must find a way to (1) operate during the crisis and (2) ensure justice for civil litigants does not come to a complete halt.

#### I. Shelter-in-Place Court Operations

A disparity amongst courts regarding continued work during this crisis is harmful to individuals seeking justice, who now more than ever need their civil cases resolved. Minimum standards should be established to ensure (1) filings are accepted and (2) hearings are being conducted on a remote basis.

On March 28<sup>th</sup> the Judicial Council voted to direct the superior courts to “make use of available technology, when possible, to conduct judicial proceedings and court operations remotely...” Despite early recommendation to use technology to work on cases, not all courts have taken advantage of technology to keep cases moving forward. More specific orders are needed to require courts to operate at some minimum level. If courts cannot accept filings, the first steps toward justice are blocked. If remote hearings cannot occur, cases are unacceptably delayed.

#### II. Outlook for Civil Cases Post-COVID

A statewide approach is needed to ensure minimum levels of justice for civil cases are met. Pushing civil cases to the side in order to work solely on the criminal backlog is not a fair solution. Some level of service must be in place for civil cases. That level can be based on the size of the court, but a minimum is necessary to ensure Californians can still seek redress in our court system.

In our prior letter regarding trials, we proposed that all scheduled trial dates during the emergency and shortly thereafter be continued 75 calendar days. Second, a statewide priority order should be established for civil cases: (1) statutory preference cases, (2) trials in progress

but not completed because of the emergency, and (3) cases scheduled for trial during the emergency. This uniform approach is needed to ensure trials affected by this period receive a new date. If that date later needs to be extended further, courts can make that determination, but it is critical to have a clear statewide baseline.

As the courts re-open, a reasonable number of civil courtrooms must re-open too. While we understand the constitutional preference for criminal cases, civil litigants who may have lost their jobs and facing other hardships must not be abandoned. We are concerned that the judicial branch could revert to the experience during the Great Recession, when civil fees increased very substantially while fewer and fewer court resources were dedicated to the civil side of the system. We hope to continue working collaboratively on solutions to ensure access to justice both during and after this crisis.

cc: Senator Hannah-Beth Jackson, Chair, Senate Judiciary Committee  
Assembly Member Mark Stone, Chair Assembly Judiciary Committee