



March 22, 2020

TO: GOVERNOR NEWSOM

FR: CONSUMER ATTORNEYS OF CALIFORNIA  
CALIFORNIA DEFENSE COUNSEL

RE: **COVID-19 Executive Order Preserving Legal Rights Needed**

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As we face the COVID-19 crisis, an immediate Emergency Order is needed to (1) ensure all Californians' rights are preserved and (2) allow litigation to continue remotely by utilizing technology. As of March 19<sup>th</sup>, 20 states have already issued emergency orders to extend the statute of limitations and other legal deadlines. Consumers and businesses alike are facing closed courtrooms or courts opened only at extremely limited capacities, with inconsistencies across counties and courtrooms leading to uncertainty in the judicial process. Statewide action by the Governor is required to provide uniformity, quell the significant legal concerns this pandemic has caused, and ensure Californians' access to justice.

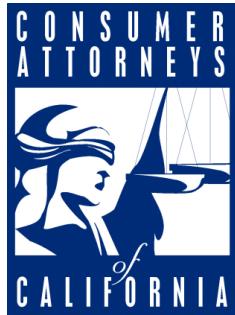
The recommended actions that can be taken by the Governor during this state of emergency pursuant to Government Code § 8571 are:

1. **Statute of limitations and other legal deadlines:** Tolling is needed to ensure rights are preserved during the State of Emergency as court closures limit or prohibit the filing of actions.
2. **Remote depositions:** A statutory waiver is needed on a temporary basis to allow all parties to proceed with their depositions remotely to comply with the social distancing safety precautions.
3. **Electronic service between represented parties:** Service by mail and other physical means is impractical if not impossible during this time. Electronic service on opposing counsel must be permitted without stipulation while businesses and law offices are closed under the shelter in place orders.

We have explored other avenues for action but have come up short. The Judicial Council and Chief Justice have limited statutory authority and cannot act to protect legal rights and allow for litigation to continue electronically during this pandemic. Similarly, we hope emergency legislation will eventually address these issues but the situation is dire and must be addressed immediately to preserve the basic functioning of the legal system.

Technology can allow legal matters to continue while still ensuring the safety of Californians. For these reasons, we respectfully request an Emergency Order to maintain access to justice during this pandemic.

*For further details, please see attached memo.*



C A L I F O R N I A  
D E F E N S E  
C O U N S E L

March 22, 2020

TO: Office of the Governor, California  
FR: Saveena Takhar, Legislative Counsel, CAOC  
RE: **COVID-19 Executive Order Preserving Legal Rights Needed**

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### **PROPOSED LANGUAGE FOR STATEWIDE EMERGENCY ORDERS**

1. The filing deadlines for all civil actions, the period for giving notice of all civil actions, and all other deadlines applicable to any and all civil actions, including but not limited to post trial motions, regardless of forum, whether in pursuit or defense of the cause, and whether determined by statute of limitations, statute of repose, savings statute, notice provision, statute, common law, administrative rule or regulation, are hereby tolled from March 4, 2020 until thirty (30) calendar days after the Governor's COVID-19 State of Emergency is lifted or upon declaration of the Chief Justice, whichever comes first. This is intended to be broadly interpreted. Nothing in this executive order preempts executive orders relating to evictions or unlawful detainers.
2. A deponent, whether a party or nonparty, is not required to be present in person with the deposition officer at the time of the deposition, in all civil cases venued in California. A person may take a deposition by telephone or other remote electronic means, provided that (1) notice is served with the notice of deposition or the subpoena, and (2) the person requesting the remote deposition makes all arrangements for other participants in an equivalent manner. Each participant must bear their own expenses. Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided written notice of such appearance is served by personal delivery, e-mail, or fax at least five (5) calendar days before the deposition. This executive order suspends California Code of Civil Procedure § 2025.310 and California Rules of Court, Rule 3.1010, and shall be in effect from March 4, 2020 until thirty (30) calendar days after the Governor's COVID-19 State of Emergency is lifted or upon declaration of the Chief Justice, whichever comes first. This is intended to be broadly interpreted.
3. Notwithstanding Section 1010.6, electronic service shall be permitted without stipulation. This order shall be in effect from March 4, 2020 until thirty (30) calendar days after the Governor's COVID-19 State of Emergency is lifted or upon declaration of the Chief Justice, whichever comes first. This is intended to be broadly interpreted.

#### **(1) STATUTE OF LIMITATIONS EXTENSION**

##### **I. Judicial Council – Limited Authority**

The Judicial Council's limited authority will not be sufficient to toll all legal deadlines and statutes of limitation due to the lack of consistency in how courts are reacting to the COVID-19 crisis.

The Presiding Judge has the authority to request the Chair of the Judicial Council to declare that dates the courts are closed as a result of the COVID-19 pandemic shall be deemed a holiday for purposes of filing time for papers with the court under Code of Civil Procedure §12 and 12a. (Government Code § 68115(a)(4))

California's courts are responding to the COVID-19 pandemic with varying degrees of closures. Some counties are closing their courts entirely and others are limiting dockets, using technology, or postponing hearings and trials. This is cause for concern under Code of Civil Procedure §12. Section 12b's definition of a "holiday" is as follows, "'If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.'" Under this current law definition the county superior court would have to be closed in order for the closure to constitute a holiday that tolls the statute of limitations. Therefore, under this statutory option not all statutes of limitations would be tolled.

## II. Other State Extensions

- a. **Louisiana:** All legal deadlines are suspended until at least April 13<sup>12</sup>
- b. **Maryland:** All filing deadlines are extended two weeks<sup>3</sup>
- c. **Tennessee:** Deadlines including statutes of limitations, orders of protection and temporary injunctions that are set to expire between March 13 and March 31 are extended through April 6<sup>4</sup>

"Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire between March 13 and March 31, 2020 are hereby extended through April 6, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period between March 13 and April 6, 2020 are hereby extended through April 6, 2020. See Tenn. Code Ann. § 28-1-116 (2017). Deadlines, statutes of limitations, and statutes of repose that are not set to expire between March 13 and April 6, 2020 are not extended or tolled by this order. Orders of protection and temporary injunctions that would otherwise expire between March 13 and March 31, 2020 are hereby extended until April 6, 2020."

- d. **Texas:** All deadlines including the statute of limitations are suspended through May 1<sup>56</sup>

"All courts in Texas may extend the statute of limitations in any civil case for a stated period no later than 30 days after the Governor's state of disaster has been lifted"<sup>7</sup>

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<sup>1</sup> <https://gov.louisiana.gov/assets/ExecutiveOrders/JBE-EO-30.pdf>

<sup>2</sup> [https://www.lasc.org/press\\_room/press\\_releases/2020/2020-04.asp](https://www.lasc.org/press_room/press_releases/2020/2020-04.asp), <https://gov.louisiana.gov/index.cfm/newsroom/category/11>

<sup>3</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>4</sup> <https://www.tncourts.gov/press/2020/03/13/tennessee-supreme-court-issues-order-keeping-courts-open-limiting-person-court>

<sup>5</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>6</sup> <https://s3.amazonaws.com/membercentralcdn/sitedocuments/dba/dba/0707/1641707.pdf?AWSAccessKeyId=AKIAHKD6NT2OL2HNPMQ&Expires=1584483685&Signature=Ag16Dl62tyooRpjzF4tYyEUuSnU%3D&response-content-disposition=inline%3B%20filename%3D%22NDTX%2Epdf%22%3B%20filename%2A%3DUTF%2D8%27%27NDTX%252Epdf>

<sup>7</sup> <https://www.txcourts.gov/media/1446056/209042.pdf>

- e. **Illinois:** All civil case deadlines are extended by 21 days<sup>8</sup>
- f. **Michigan:** 30 days after the State of Michigan's COVID-19 ban on public gatherings is lifted (\*Note: This language is being requested by the Michigan Association of Justice)

The filing deadline for all civil causes of action, and/or the mailing period for giving notice of all civil causes of action, and all other deadlines applicable to any and all civil causes of action, regardless of forum, whether in pursuit or defense of the cause, and whether determined by statute of limitations, statute of repose, savings statute, notice provision, statute, common law, administrative rule or regulation, are hereby tolled from March 16, 2020 until thirty (30) days after the State of Michigan's COVID-19 ban on public gatherings is lifted. This is intended to be broadly interpreted.

- g. **Minnesota:** All trial-specific deadlines are postponed through April 27<sup>th</sup><sup>9</sup>.
- h. **Massachusetts:** All SOL tolled through April 21 unless otherwise set by individual courts/judges<sup>10 11</sup>
- i. **Maine:** Adds 49 calendar days to any unexpired deadlines.<sup>1213</sup>
- j. **Alabama:** All deadlines set to expire from March 16-April 16 are extended to April 20<sup>14</sup>
- k. **Georgia:** Suspends filing deadlines until 11:59 on April 13<sup>15</sup>
- l. **Kansas:** Statutes of limitations and deadlines are suspended until further notice from the Chief Justice<sup>16</sup>
- m. **Iowa:** SOL tolled from March 17 - May 4 (for commencing in district court)<sup>17</sup>
- n. **Indiana:** Courts are still open, order encourages individual court to file to toll deadlines if needed<sup>18</sup>
- o. **New Hampshire:** Deadlines (including statutes of limitations) set to expire between March 16 and April 6 are extended to April 7<sup>19</sup>
- p. **Oklahoma:** All deadlines are extended for 30 days<sup>20</sup>

<sup>8</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>9</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>10</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>11</sup> <https://www.mass.gov/news/supreme-judicial-court-issues-order-restricting-court-appearances-to-emergency-matters>

<sup>12</sup> <https://www.courts.maine.gov/covid19/order-march13.shtml>, <https://www.courts.maine.gov/covid19/emergency-order-extending-deadline.pdf>

<sup>13</sup> <https://www.courts.maine.gov/covid19/emergency-order-appeals.pdf>

<sup>14</sup> <http://judicial.alabama.gov/docs/COV-19%20order%20FINAL.pdf>

<sup>15</sup> <https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf>,

<https://www.gasupreme.us/suspends-filing-deadlines/>

<sup>16</sup> <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020PR16.pdf?ext=.pdf>

<sup>17</sup> [https://www.iowacourts.gov/static/media/cms/document20200318061832\\_CC5A01DE7085C.pdf](https://www.iowacourts.gov/static/media/cms/document20200318061832_CC5A01DE7085C.pdf)

<sup>18</sup> <https://www.in.gov/judiciary/files/order-other-2020-20S-CB-123.pdf>

<sup>19</sup> <https://www.courts.state.nh.us/supreme/orders/3-16-20-order.pdf>

<sup>20</sup> <https://www.oscn.net/images/news/SCAD-2020-24.pdf>

- q. **Pennsylvania:** Any pleadings or legal papers which must be filed btw March 19-April 3 shall be deemed properly filed if filed by April 6<sup>21</sup>
- r. **Rhode Island:** All court-imposed filing deadlines are extended by 30 days<sup>22</sup>
- s. **Virginia:** All deadlines are tolled or extended for 21 days<sup>23</sup>
- t. **Puerto Rico:** All deadlines set from March 16 through April 9 are extended until April 10<sup>24</sup>

## (2) **REMOTE DEPOSITIONS**

### I. **Rationale**

In light of the COVID-19 crisis and social distancing an order must be adopted requiring parties to utilize remote and technological resources to conduct depositions. Attorneys are facing egregious actions such as the threat of sanctions when refusing to conduct an in person deposition and instead offering to proceed remotely.

Without the ability to conduct completely remote depositions, no depositions will be able to occur in the State of California because the statute requires the deposition officer to be in the presence of the deponent. Importantly, the proposed order does not create new methods of conducting depositions. It instead temporarily utilizes methods already routinely used by the legal community by alleviating the restrictions placed on remote attendances.

### II. **Other State Action**

- a. **Texas:** Allows for remote hearings, depositions, or other proceedings

Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;<sup>25</sup>

## (3) **ELECTRONIC SERVICE OF DOCUMENTS BETWEEN REPRESENTED PARTIES**

### I. **Rationale**

During this emergency it is essential for the Governor to issue an emergency order, pursuant to Gov. Code § 8571, to permit e-service between represented parties without the need for a stipulation. The effects of COVID-19, including Court shutdowns and docket limitations, have caused confusion and disagreement over how to proceed with civil litigation. The variable reactions—from pushing forward without change, on the one hand, to completely halting operations, on the other hand—must be

<sup>21</sup> <http://www.pacourts.us/assets/files/page-1305/file-8634.pdf>

<sup>22</sup> <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-04.pdf>

<sup>23</sup> [http://www.courts.state.va.us/2020\\_0316\\_scv\\_order\\_declaration\\_of\\_judicial\\_emergency.pdf](http://www.courts.state.va.us/2020_0316_scv_order_declaration_of_judicial_emergency.pdf)

<sup>24</sup> <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

<sup>25</sup> <https://www.txcourts.gov/media/1446056/209042.pdf>

addressed. Without swift action, there will be catastrophic effects on Californians trying to pursue their legal rights as their cases are unnecessarily stalled when they could be electronic.

The proposed language above ensures that parties and counsel to civil litigation can continue on outside of court, while also respecting the need for social distancing and limited personal contact. Importantly, the proposed language does not create new methods of service. It instead temporarily utilizes methods already routinely used by the legal community by alleviating the restrictions placed on e-service.