

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP20-01

Title

Civil Practice and Procedure: Tolling of Statutes of Limitations in Response to COVID-19 Pandemic

Action Requested

Review and submit comments by noon on Friday, May 8, 2020

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, emergency rule 9

Proposed Effective Date

Immediately upon approval by Judicial Council

Proposed 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

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Executive Summary and Origin

To protect parties who have a civil cause of action that accrued before or during the state of emergency related to the COVID-19 pandemic, the Judicial Council adopted California Rules of Court, emergency rule 9, which tolled statutes of limitations on civil causes of action for the duration of the state of emergency and 90 days thereafter. The chairs of the Judicial Council's six internal committees now propose that the council amend emergency rule 9 to shorten the time for tolling statutes of limitations for all civil causes of action and to clarify that the tolling applies also to statutes of repose.¹

¹ Previous emergency rules have not been circulated for public comment due to the urgency of adopting those rules. The chairs of the Judicial Council's internal committees determined that circulation of this proposed amendment for public comment was warranted and practicable. However, given the urgent nature of the amendment, the time for circulation of the proposed amendment must of necessity be extremely brief.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

Background

As stated more fully in the April 4, 2020, report to the Judicial Council proposing emergency rules 1–11,² the United States is the epicenter of a global pandemic caused by the COVID-19 virus. As of May 4, the U.S. Centers for Disease Control and Prevention reported there were more than 1.1 million cases in this country, with over 67,000 deaths.

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the COVID-19 pandemic.³ On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order⁴ 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 affecting nearly all sectors of California. As of May 3, 2020, California’s Department of Public Health reported almost 55,000 cases in the state and more than 2,250 deaths.⁵

On March 27, 2020, the Governor issued an order⁶ giving the Judicial Council 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 procedure. The Governor’s order also suspended statutes to the extent that they would be inconsistent with such emergency rules. Under that order, the council adopted emergency rules 1–11 on April 6, 2020. Among these rules, the Judicial Council adopted emergency rule 9, which tolls all statutes of limitations for civil causes of action until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

The Proposal

The chairs of the Judicial Council’s six internal committees recommend that the Judicial Council immediately amend emergency rule 9 of the California Rules of Court to:

- Toll from April 6, 2020, until October 1, 2020, the statutes of limitations and repose for civil causes of action that exceed 180 days; and

² Judicial Council of Cal., Internal Com. Chairs Rep., *Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic* (Apr. 4, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDDF-426E-446C-8879-39B03DE418B3>.

³ State of emergency proclamation, www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

⁴ Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁵ Cal. Dept. of Public Health, “COVID-19 by the Numbers,” news release May 4, 2020, www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers.

⁶ Executive Order N-38-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

- Toll from April 6, 2020, until June 15, 2020, the statutes of limitations and repose for civil causes of action that are 180 days or less.

The proposed amendments modify the tolling period

When the council initially adopted emergency rule 9, the rule provided for tolling the statutes of limitations on all civil causes of action from April 6, 2020, (the date the rule was adopted) until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted. Tolling stops or suspends the running of time in statutes of limitations; when the tolling period ends, the time to bring an action will begin to run again. The rule is necessary to allow parties and attorneys time to investigate, gather information and evidence, and determine whether to file an action. During the pendency of the shelter-in-place order, the ability to do so is restricted. The rule tolled statutes of limitations not only for the period in which the state of emergency is in place, but also for an additional 90 days, in recognition that both litigants and the courts will need some time after shelter-in-place regulations are lifted to resume their work.

At the time the rule was adopted, the tolling period was pegged to the end of the state of emergency (plus 90 days) because it was uncertain at what point in time courts would be able to reopen and parties could begin to connect with each other once again. It now appears that, while the formal state of emergency period may last for many months, the Governor has announced plans to begin lifting the statewide shelter-in-place order, albeit in phases, over the coming months.⁷ In light of this, the chairs of the internal committees of the Judicial Council are recommending that a date certain be placed on the tolling period for civil causes of action.⁸

Tolling period for causes of action with statutes of limitations of 180 days or less

Although many statutes of limitations run for a year or more,⁹ statutes of limitations on some causes of action can be for a much shorter time. For example, the time for filing certain initial pleadings under the California Environmental Quality Act is 30, 35, or 180 days (Pub. Resources Code, § 21167); 60 days for claims under the California Coastal Act (Pub. Resources Code, § 30802) and validation actions (Code Civ. Proc., § 860); and 90 days for cases challenging governmental actions for which a shorter statute of limitations has not been set. Under the current version of emergency rule 9, the time in which to bring such actions could be tripled beyond the statutory time, even after the state of emergency has been lifted. A long tolling is inconsistent with the short limitation periods in statute and the Legislature's intent that such causes of action be brought expeditiously. Although the impact of the COVID-19 pandemic may

⁷ Office of Governor Gavin Newsom, "Governor Newsom Provides Update on California's Progress Toward Stage 2 Reopening," news release May 4, 2020, www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/.

⁸ This is consistent with the temporary nature of the emergency rules. The Judicial Council will continue to review the applicability of each of these rules as the state's response to the pandemic changes and court operations resume, including adjustment of the sunset of individual rules.

⁹ See, e.g., Code Civ. Proc., §§ 335.1 (two years on injury to persons), 337 (four years on written obligations), and 339 (two years on oral obligations).

warrant tolling during the time when courts are unable to accept filings, it does not require it beyond that period. The proposed amendments would, as of June 15, 2020, end the tolling period for causes of action with statutes of limitations of 180 days or less.¹⁰

Tolling period for causes of action with statutes of limitations of more than 180 days

For those limitations that statute sets at more than 180 days, the amendments would continue the tolling period until October 1, 2020.¹¹ While the matters with shorter statutes of limitations are generally challenges to governmental actions and based solely on the administrative record, the matters with longer statutes of limitations require investigations and information gathering—actions difficult to complete swiftly, if at all, in the current chaotic business environment. For this reason, a longer tolling period is proposed for those causes of action. The proposal would result in a tolling period of almost six months for these matters. If circumstances change in the coming months, the council can amend the rule further as appropriate.

The proposed amendments clarify the scope of the rule

The proposed amendments also add specific references to “statutes of repose.” This change is to clarify that the rule applies to all statutory limitation periods for a civil cause of action, even those limitation periods that run regardless of the accrual or discovery of an injury.¹² Examples include the statutes of repose for construction defects in Code of Civil Procedure sections 337.1 and 337.15. Statutes of repose typically cannot be equitably tolled,¹³ which makes it all the more important that they be tolled by operation of law in this unprecedented crisis, to protect the rights of litigants who are unable to investigate or file actions as a result of the state of emergency related to the COVID-19 pandemic.

In addition, because the proposed amended rule is intended to apply broadly to toll any statutory limitation on the filing of a pleading asserting a civil cause of action,¹⁴ an advisory committee comment has been added at the end of the rule to confirm this point. The rule refers to civil causes of action, which include special proceedings.¹⁵ The rule also applies to limitations on

¹⁰ Proposed Cal. Rules of Court, emergency rule 9(b).

¹¹ Proposed Cal. Rules of Court, emergency rule 9(a).

¹² “[W]hile a statute of limitations normally sets the time within which proceedings must be commenced once a cause of action accrues, [a] statute of repose limits the time within which an action may be brought and is not related to accrual. Indeed, ‘the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a special event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.’” [Citation.] A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded. [Citation.]” (*McCann v. Foster Wheeler LLC* (2010) 48 Cal.4th 68, 78–79, fn. 2, quoting *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.)

¹³ *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 369–383.

¹⁴ The rule does not apply to time limits on the submission of claims to government entities, such as those under Government Code section 911.2.

¹⁵ “The word ‘action’ as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.” (Code Civ. Proc., § 363; see also *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1186.)

filing of causes of action found in statutes other than the Code of Civil Procedure, including the limitations on causes of action found in, for example, the Family Code, Probate Code, and Public Resources Code.

Alternatives Considered

The chairs of the internal committees considered not amending emergency rule 9 but concluded that the tolling period for causes of action, especially for those with short statutes of limitations, needed to be made shorter and more definite.

Fiscal and Operational Impacts

This rule addresses the deadlines for parties to file actions and should not have a fiscal impact on the courts.

Attachments and Links

1. Cal. Rules of Court, emergency rule 9, at page 6

Emergency rule 9 of the California Rules of Court would be amended, effective immediately, to read:

1 **Emergency rule 9. Tolling statutes of limitations for civil causes of action**

2
3 **(a) Tolling statutes of limitations over 180 days**

4
5 Notwithstanding any other law, the statutes of limitations and repose for civil
6 causes of action that exceed 180 days are tolled from April 6, 2020, until ~~90 days~~
7 ~~after the Governor declares that the state of emergency related to the COVID-19~~
8 ~~pandemic is lifted~~ October 1, 2020.

9
10 **(b) Tolling statutes of limitations of 180 days or less**

11
12 Notwithstanding any other law, the statutes of limitations and repose for civil
13 causes of action that are 180 days or less are tolled from April 6, 2020, until June
14 15, 2020.

15
16 **Advisory Committee Comment**

17
18 Emergency rule 9 is intended to apply broadly to toll any statutory limitation on the filing of a
19 pleading asserting a civil cause of action. The term “civil causes of action” includes special
20 proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of the
21 Time of Commencing Civil Actions), is construed “as including a special proceeding of a civil
22 nature”]; special proceedings of a civil nature include all proceedings in title 3 of the code,
23 including mandamus actions under §§ 1085, 1088.5, and 1094.5—all the types of petitions for
24 writ made for California Environmental Quality Act (CEQA) and land use challenges]; see also
25 Pub. Resources Code, § 21167(a)–(e) [setting limitations periods for civil “action[s]” under
26 CEQA].)

27
28 The rule also applies to limitations on filing of causes of action found in statutes other than those
29 in the Code of Civil Procedure, including the limitations on causes of action found in, for
30 example, the Family Code and Probate Code.