

# *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward*

## **An Informational Hearing of the Assembly and Senate Committees on Judiciary**

### **Background Paper**

By the Staff of the Assembly and Senate Committees on Judiciary

#### **I. Introduction**

As of January 31, 2021, the COVID-19 pandemic has infected over 3.2 million Californians and claimed almost 41,000 lives in the state.<sup>1</sup> The Governor declared a statewide State of Emergency in response to the pandemic on March 4, 2020. As the severity of the pandemic increased, the Governor issued an executive order on March 19, 2020, requiring all Californians to stay at home and all non-essential businesses and services to shut down in order to prevent the virus from spreading rampantly across the state.<sup>2</sup>

The COVID-19 pandemic has affected every aspect of life in California—including, and especially, California’s justice system. Although the courts were not subject to the Governor’s March 19<sup>th</sup> stay-at-home order, each level of the state court system had to quickly respond in early 2020, in order to protect court personnel and users, including judicial officers, court staff, litigants, attorneys, witnesses, law enforcement, jurors, the media, and visitors from exposure to the virus. The nature of the court system is social, and many court procedures and requirements involve some form of in-person contact, including in-person filing jury service, and court appearances. Many normal court functions require gatherings of the public that exceed public health recommendations—putting everyone in the justice system at high risk from “business as usual.” California’s courts therefore had to take action to prevent the courts from becoming transmission hotspots.

As this paper explains, the courts’ responses to the COVID-19 pandemic are a work in progress. Courts have taken a wide range of steps to balance the risks of COVID-19 with the interests of justice, and have had to continually adapt as the scientific understanding of COVID-19 develops. The Judicial Council has imposed certain emergency rules to streamline litigation during the pandemic, but the decentralized nature of California’s courts has largely left pandemic-related measures to the state’s 58 superior courts. The rules adopted by the superior courts are not uniform or consistent.<sup>3</sup> Although all courts require mask coverings to be worn inside court buildings (with varying levels of enforcement), some courts also require pre-health screenings, temperature checks, or self-certification, while other courts do not require any type of health

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<sup>1</sup> *Tracking Covid-19 in CA* (2021) California All, available at: <https://covid19.ca.gov/>

<sup>2</sup> Governor’s Exec. Order No. N-33-20 (March 19, 2020) available at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

<sup>3</sup> See California Courts Newsroom, Court Services and Operations (Feb. 3, 2021), available at <https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations>

screening. Additionally, some courts have continued to operate in-person clerk services while other court clerks provide service remotely by phone or email. Some courts are offering in-person self-help centers while other courts provide only remote services. While some courts allow electronic filing of cases and motions, other courts require in-person filing. Many courts have taken steps to protect the health and safety of court personnel and the public while seeking to maintain their operations, such as reducing court hours, temporarily closing courts, and allowing remote appearances.

Unfortunately, the very measures taken to keep court personnel, attorneys, and litigants safe have caused the justice system to slow down substantially. Due to their necessarily reduced operations, courts have accrued a significant backlog of both criminal and civil cases. As a result, some litigants have been unable to resolve their legal needs or even access the justice system during the COVID-19 pandemic. For many of these litigants, their cases arise from critical needs and interests, such as eviction, domestic violence, child custody disputes, health care, and debt collection. The competing values of safety and the efficient administration of justice have thus created tensions between and among justice partners. The goal of this hearing, as well as this background paper, is to explore how court administrators, judicial officers, attorneys, court staff, labor organizations, and the Legislature can work together to balance these competing interests and provide access to justice during a pandemic (and future crises) while still protecting public health and safety.

*Structure of this paper:* This paper first examines the impact of the COVID-19 pandemic on court users, specifically litigants represented by counsel in civil matters (such as personal injury, employment, eviction, and family law issues) and those who are low-income and unrepresented by counsel. The paper then delves into the effect of the pandemic on the courts and court personnel, including the steps taken by the Judicial Council and individual counties to keep courts open while protecting the rights of litigants and the health and safety of court staff and users. Finally, the paper explores innovative programs and best practices that are in use today, or could be adopted, in order to safely improve access to justice during the current pandemic and future state or local emergencies.

## **II. The Impact of the COVID-19 Pandemic on Court Users**

Prior to the COVID-19 pandemic, approximately 650,000<sup>4</sup> individual civil cases were filed in California courts each year, including matters ranging from corporate intellectual property disputes, divorces and other family matters, employment disputes, and lawsuits seeking recovery for physical injuries. While many of these matters do not make headlines, the outcome of the cases are vitally important for the thousands of Californians involved. Civil litigation can be emotionally, physically, and economically taxing. Furthermore, in cases involving physical injuries or employment issues, the timely resolution of civil litigation can mean the difference between providing for one's family and facing significant economic ruin. Recognizing the need for timely judgments, especially for certain classes of litigants, California law already provides

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<sup>4</sup> Ronald D. White, *What Happens When COVID Shuts Civil Courts*, Los Angeles Times (Sept. 11, 2020) available at: <https://www.latimes.com/business/story/2020-09-11/covid-shuts-courts-mediation-arbitration-boom>.

vulnerable litigants with the ability to fast-track their cases.<sup>5</sup> Accordingly, ensuring that Californians' legal claims can be processed through the civil justice system is critically important.

Some delays and trial backlogs in California courts were to be expected as a result of the pandemic. For example, it is virtually impossible to maintain social distance in a jury box. But the longer cases are delayed, the greater the damage is to the justice process. Furthermore, the courts are required to grant priority to criminal trials, as the constitutionally guaranteed right to a speedy criminal trial applies, even during the pandemic.<sup>6</sup> Accordingly, the civil litigation system has borne the brunt of COVID-19-related delays, resulting in significant backlogs of such cases in the courts.

Courts have adapted to the pandemic in a number of ways, including by allowing greater use of technology. For example, 38 courts now permit remote appearances in all case types: a dramatic increase from only one court permitting such appearances prior to the pandemic.<sup>7</sup>

Nevertheless, delays of civil litigation have been particularly burdensome for some of California's most at-risk litigants, including the elderly, lower income Californians, and those with terminal illnesses. First, although the courts have made laudable efforts to boost the use of technology to enable remote proceedings during the pandemic, many lower income litigants may not have access to the technology or the reliable internet connections necessary to participate in remote court proceedings. These litigants may therefore be forced to continue their cases until after the pandemic abates. Even for litigants who can participate in remote court proceedings, delays may cause significant impacts to the final outcome of a case. For example, should an elderly or terminally ill plaintiff die before a personal injury suit reaches a verdict, that plaintiff and their heirs would not be entitled to most non-economic damages, including pain and suffering damages.<sup>8</sup>

While the impact of trial delays on elderly plaintiffs is clearly an instance of justice delayed being justice denied, the COVID-19 related case backlogs have forced many other Californians to turn to alternative, and potentially less-than-ideal, means of seeking justice. As detailed by the Los Angeles Times, many desperate Californians facing trial delays are foregoing their day in court and seeking redress from alternative dispute resolution or mediation services.<sup>9</sup> As these Committees have long detailed, arbitration and mediation tend to favor better-funded litigants, do not always accurately follow the law, and are rarely reviewable by an appellate court.<sup>10</sup> Nonetheless, when facing potential economic insecurity as a result of a delayed trial, many Californians may deem arbitration or mediation a better recourse than awaiting a trial date. As noted by the Los Angeles Times, some alternative dispute resolution firms have seen business

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<sup>5</sup> Code of Civil Procedure Section 36.

<sup>6</sup> U.S. Const., 6th Amend.

<sup>7</sup> *Judicial Branch Pandemic Impacts*, *supra*, at 3.

<sup>8</sup> See *Williams v. The Pep Boys Manny Moe & Jack of California*, (2018) 27 Cal. App. 5th 225.

<sup>9</sup> White, *What Happens When COVID Shuts Civil Courts*, *supra*.

<sup>10</sup> See, e.g., Assem. Jud. Com., analysis of SB No. 707 (2019-20 Reg. Sess.) As Introduced May 20, 2019.

increase by upwards of 50 percent since the start of the pandemic,<sup>11</sup> a tragic sign that, in fact, more Californians are foregoing their day in court due to the COVID-19 related delays.

The following sections will provide a more in-depth look at how court closures and delays are impacting specific types of civil litigation and specific litigants.

### ***A. Personal Injury Victims, Employees, and Other Civil Litigants.***

While COVID-19 adversely impacts the time-sensitive nature of *all* civil litigation, tort victims with onerous medical bills and employees who have been unlawfully terminated may face special challenges when access to courts is delayed. In addition to the usual disputes that arise between employers and employees under “normal” circumstances, the pandemic has given rise to new kinds of disputes, including discriminatory layoffs or work reductions, disputes over COVID-related sick leave, and, not least of all, the health risks faced by workers who are still expected to show up at work.<sup>12</sup> According to some employment lawyers, the loss of a paycheck creates a greater sense of urgency for just compensation, which means that employees may be more likely to submit to mediation or arbitration (if they are not already required to do so by contract), or they may reluctantly accept a settlement offer that does not provide adequate compensation. According to employment lawyers quoted in the *Los Angeles Times*, aggrieved employees who are suddenly without income may decide that it is better to take a known amount of a settlement now, even if inadequate, rather than waiting two or more years for an unknown amount in the future. Of course, employees seeking justice have always faced this dilemma, but the longer delays for trial dates only exacerbate the pressure to settle or submit to arbitration – whether the settlement or method of arbitration is fair or not.<sup>13</sup>

Similarly, the financial stresses caused by the pandemic and delayed trial dates adversely affects plaintiffs seeking redress for injuries caused by the negligence of others. In addition to facing costly medical bills, injured plaintiffs may be unable to work. Although most personal injury cases are settled before going to trial, they nonetheless typically reach the stage of preliminary hearings and discovery before settlement. However, because medical facilities are overburdened with COVID-19 cases, an accident victim may need to wait longer to obtain treatments and diagnoses that are essential to determining the full scope of damages, which in turn forces delays in the early state of the case. When such preliminary law and motion activity is delayed, the setting of trial dates – to say nothing of the actual trial – is also delayed. The average time between filing and trial date was already more than one year before the pandemic. According to data provided to the Committees by the Judicial Council, the pandemic has only increased the time that passes from the initial filing to trial date: reducing the number of civil and criminal

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<sup>11</sup> White, *What Happens When COVID Shuts Civil Courts*, *supra*.

<sup>12</sup> Indeed, these concerns about the safety of the workplace extends, not least of all, to workers in the courts themselves. In January of this year, three workers in the Los Angeles County courts alone died of COVID-19. Since March of last year, 445 of 5,100 staff and judges who serve the Los Angeles county courts have tested positive for the coronavirus. Even with masking and social distancing measures, as well as not permitting persons to enter a court without an appointment, hallways often remain crowded; and judges sometimes allow attorneys and witnesses to speak or testify without a mask. (Matt Hamilton, *Workers in LA's courts are dying from Covid-19 as in-person trials, hearings continue* Los Angeles Times, February 5, 2021.)

<sup>13</sup> White, *What Happens When COVID Shuts Civil Courts*, *supra*.

dispositions by more than 49% during the first ten months of the pandemic.<sup>14</sup> According to attorneys who practice personal injury law, without the pressure of an approaching trial date, the insurers who are typically responsible for paying damage awards may try to exploit the plaintiff's financial stresses and the uncertainty around obtaining a timely trial date by offering an unfairly low settlement.<sup>15</sup>

The added challenges faced by personal injury litigants due to the pandemic and court closures is not abstract or hypothetical. The Consumer Attorneys of California (CAOC) has provided the Committee with many specific examples of the kinds of problems that have arisen. To cite just one example, Julius Gilliam, a 76-year old plaintiff dying of cancer from asbestos exposure, filed suit in February of 2020. The plaintiff's age and medical condition entitled him to a trial preference guaranteed by law.<sup>16</sup> In such cases, existing law requires the court to set the trial within 120 days of granting a motion for a preference, which in this case meant setting the date for trial on June 21, 2020. However, because of COVID-related delays, the trial was first continued until August 14, 2020, and this date was subsequently vacated (by the court) without a new trial date. Mr. Gilliam filed an emergency writ with an appellate court, but by the time the court considered the case, Mr. Gilliam had died, and the writ was denied as moot. CAOC cites several other examples of plaintiffs whose cases were delayed because of the pandemic and who then died before trial.

In addition to the fact that deceased plaintiffs never have their day in court, the peculiarities of California law means that negligent defendants reap a financial windfall when a plaintiff passes away before trial. Specifically, section 377.34 of the Code of Civil Procedure specifies that the decedent's successor in interest – that is, the family of deceased plaintiff – is not entitled to recover any pain or suffering damages on behalf of the plaintiff.<sup>17</sup> In other words, a negligent defendant is liable for both actual damages (e.g. medical expenses, loss of income, etc.), as well as the injured party's pain and suffering, *if the plaintiff lives to judgment*. However, because California is one of the few states to declare that a victim's right to pain and suffering damages dies with them, the tort defendant reaps a benefit when the plaintiff dies before judgement. In most other states, the plaintiff could at least know that their pain and suffering damages would go to their loved ones should they die before the trial ends. Court delays only increase the chance that a plaintiff will die before the conclusion of their trial.

In sum, employees who are denied their workplace rights and tort victims harmed through no fault of their own often face pressures to settle their disputes because of their urgent need to obtain compensation, whether it is due to mounting medical bills, the loss of employment, or both. As a result, they feel greater pressure to accept a less than adequate settlement. These pressures are not new, of course, and are to some extent inherent in the legal system. However, by delaying hearings and trial dates, the pandemic has exacerbated these existing problems. While tort victims and aggrieved employees face challenges peculiar to their situations, they are by no means the only court users adversely affected by COVID-19-related court delays. As the

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<sup>14</sup> *Trial Court Budget: \$50 Million COVID-19 Backlog Funding*, Report to the Judicial Council, Item 21-21-016 (Jan. 12, 2021).

<sup>15</sup> *Impact of COVID-19 on Personal Injury Cases*, available at: <https://www.justia.com/covid-19/impact-of-covid-19-on-personal-injury-cases/>

<sup>16</sup> Code of Civil Procedure Section 36 permits an elderly or dying patient to file a motion for a preference which, when granted, requires the court to set the matter for trial not more than 120 days from the filing of the motion.

<sup>17</sup> Code of Civil Procedure Section 377.34.

remainder of this section makes clear, victims of domestic violence, family law litigants, and low-income litigants who depend on legal services also confront challenges made more urgent by the pandemic and associated delays in court proceedings.

### ***B. Family Law.***

In family law, where issues of domestic violence, child custody, child support, and spousal support can powerfully impact the daily lives of parents, children, and families, pandemic-caused court shutdowns and slowdowns have been particularly difficult. Domestic violence victims cannot afford to wait for restraining orders to protect themselves and their children. If an urgent change is needed in a child custody order, it must be done immediately, without leaving children hanging in emotional or physical danger. Likewise, timely resolution of support matters is critical for families' financial stability. Waiting months, or even longer, to modify an outdated support order after the supporting parent has lost her job "can cause extreme financial strain and sometimes homelessness."<sup>18</sup> Likewise, a stay-at-home parent or a custodial parent who loses their job cannot afford to wait months for child and spousal support.

The COVID-19 pandemic, and the ensuing economic collapse, created the need for urgent court intervention, but court shutdowns and reduced court operations made court intervention more difficult. The Judicial Council recognized the critical nature of some family law orders by issuing emergency orders to protect family law litigants, mostly in the early days of the pandemic when many courts across the state shut down most of their operations:

*Domestic violence restraining orders and included child custody orders.* One of the key family law emergency orders issued by the Judicial Council extends the time period for existing domestic violence and other protective orders; requires that courts provide a means of filing ex parte requests for protective orders even during court shutdowns, whether by physical location, drop box, or electronic means; and deems service on the respondent to be complete if the respondent appears at the hearing in which the court grants the restraining order.<sup>19</sup> These protective orders can include establishing a temporary custody and visitation order, or temporarily changing an existing custody and visitation order.<sup>20</sup> Thus, emergency domestic violence protective orders, including related child custody orders, should have been – and continue to be – available throughout the pandemic to protect families and children across the state.

*Child, spousal, and family support orders.* An order modifying or terminating a support order is now effective "as of the date the request and supporting papers are mailed or otherwise served on the other party."<sup>21</sup> This should help make needed changes to support orders – for example, if

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<sup>18</sup> Hearings by the State Bar of California, CalChamber, and the Commission on Access to Justice on California's Civil Justice Crisis, Transcript of Dec. 7, 2011 hearing, at 99 (testimony of Erika Valencia). Description of the hearings available (pp. 6-8) at: <https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/Final%20Court%20Info%20Hearing%20Background%20Paper.pdf>

<sup>19</sup> Cal. Rules of Court, Emergency Rule 8 (April 6, 2020).

<sup>20</sup> See Family Code Section 6323.

<sup>21</sup> Cal. Rules of Court, Emergency Rule 13 (April 20, 2020).

either party lost a job due to the pandemic – effective back to the earliest time possible, even if the courthouse was closed when the request for modification or termination of the order was filed, or the court did not hear the request until many months later. These emergency rules remain in effect today.

*Dependency court hearings.* Certain dependency court hearings, including removal hearings, were prioritized to protect children from abuse or neglect.<sup>22</sup>

*On the ground experience of family law attorneys.* Unfortunately, even with the above emergency rules in place, many family law hearings were delayed by COVID-19-related measures. At the start of the pandemic, courts simply closed down. As the courts started reopening, whether in person or, more frequently, by means of video technology, various delays and other issues have limited family law litigants’ access to the courts. Even though most family law litigants are unrepresented, family law attorneys throughout the state have provided the Committees with examples of difficulties they encountered due to the pandemic. These include:

- Not all courts were able to accommodate e-filing. In some courts, filings are required to be made at a drop box *inside* the court, but courthouses and lobbies were closed. This periodically makes filing requests for orders, even temporary restraining orders to protect domestic violence victims and their children, very difficult. Having e-filing as an option across the state would be much more efficient for litigants.
- Some courts heard only emergency orders for multiple months, forcing families with “non-emergency” situations to wait for justice. This has also created an enormous backlog of family law cases that exists to this day, including custody and support cases. As an example of the delays caused by COVID-19, a child custody move away hearing in Riverside County has been delayed for well over a year, leaving the family in limbo.
- It has been especially difficult for family court services to interview parents and children remotely, a necessary step before a contested custody case can be considered by the judge.
- Courts have allowed judges to use different video technology, which has made appearances for attorneys before multiple judges difficult and confusing. Some judges reportedly have not allowed testimony through these various technologies, alleging that it is too difficult for the court to hear the witnesses, greatly limiting the utility of remote hearings.
- Some courts have required “wet” signatures on court filings, making it impossible to e-file documents.
- Some courts have continued in-person hearings, which risks exposing everyone to COVID-19 and not necessarily reducing delays, since court hearings must be postponed

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<sup>22</sup> Cal. Rules of Court, Emergency Rule 6 (April 6, 2020).

when litigants or attorneys contract COVID-19, or are forced to quarantine after exposure.

These are just the difficulties encountered by family law attorneys. The COVID-19-created court challenges have been even more severe for unrepresented litigants who have difficulty navigating the system in the best of times; given that the Judicial Council estimates that up to 90 percent of family law cases involve unrepresented litigants, the added difficulties during the pandemic are a major concern.<sup>23</sup> An attorney at the Legal Aid Foundation of Los Angeles, Julianna Lee, noted that the “pandemic has really reinforced this two tiered system of justice.”<sup>24</sup> “Everything takes longer and is more complicated during the pandemic. In normal times, a domestic abuse survivor might stop by Legal Aid’s in-court office, where a staffer can fill out an application and apply for a restraining order in a matter of hours. Now, the process can take a day or longer.”<sup>25</sup>

On a more positive note, family law attorneys have also found that some changes necessitated by the COVID-19 pandemic have actually increased access to justice. These include:

- Zoom or other video-based technology has increased access to justice for those who no longer have to miss work and travel to court to make an appearance.
- Increased e-filing has made it easier for some litigants (and all attorneys) to file court documents. As discussed elsewhere in this paper, however, some unrepresented litigants will not have access to the internet. To accommodate these litigants, drop boxes or filing windows should continue to be available.
- The internet has provided easier access to court filings in some courts.
- Remote hearings have provided easier access to court exhibits in some courts.

### ***C. Low-income Litigants.***

Like family law litigants, low-income litigants seeking to address other important issues in the courts, have faced significant challenges accessing the justice system during the past year. Even before the COVID-19 pandemic, California faced a statewide access-to-justice crisis, with 85 percent of low-income Californians receiving inadequate or no legal assistance.<sup>26</sup> Low-income Californians need legal services: 60 percent deal with at least one civil legal issue annually, while 23 percent navigate six or more.<sup>27</sup> Yet despite the pressing need for legal services, just one

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<sup>23</sup> Budget Change Proposal 0250-114-BCP-2018-GB; Judge Mark Juhas, *A Judge’s View on the Benefits of Unbundling*, California Bar Journal (July 2015). Note that this figure is an estimate since the Judicial Council does not track cases with unrepresented litigants.

<sup>24</sup> Robert Lewis, *Justice delayed: Courts overwhelmed by pandemic backlog*, CalMatters (Jan. 19, 2021).

<sup>25</sup> *Ibid.*

<sup>26</sup> Rocío Avalos et al., 2019 California Justice Gap Study, State Bar of California (2020), Exec. Summary, available at <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-ExecutiveSummary.pdf>.

<sup>27</sup> See Civil Legal Aid 101, U.S. Department of Justice, <https://www.justice.gov/atj/civil-legal-aid-101>.



civil legal aid attorney is available to assist every 5,500 low-income Californians who qualify for their services.<sup>28</sup>

Most civil legal problems never make it to court for resolution. On a national level, over 70 percent of low-income Americans had a civil legal problem, such as a family law or housing issue, in 2016; fully 70 percent of those surveyed said the problem significantly impacted their lives.<sup>29</sup> However, most of them never sought legal help for their problems,<sup>30</sup> and those who sought help only had their legal needs fully addressed about a third of the time.<sup>31</sup> Fully 86 percent of low-income Americans “receive inadequate or no professional legal help” for their civil legal problems.<sup>32</sup> Those figures are reflective of the situation in California, where approximately 85 percent of Californians with civil legal problems receive no or inadequate legal help.<sup>33</sup>

In the midst of this ongoing crisis, the COVID-19 pandemic has rendered access to justice even more difficult. COVID-19 produced a massive public health crisis inextricably linked to an economic crisis. Lawyers play an important role in both crises: seeking to ensure a level playing field by enforcing rights and providing redress for legal wrongs caused by or exacerbated by the pandemic. COVID-19 presents a particularly challenging and urgent public health and economic landscape for legal aid lawyers and their clients. Daily challenges and legal problems that are part of daily life for low-income Californians—such as unsafe workplace conditions, housing instability, and denial of public benefits—have dramatically worsened because of the COVID-19 pandemic.

*Housing.* Across the state, an estimated 42 percent of renter households at all income levels are unable to pay rent and are at risk of eviction.<sup>34</sup> For those with incomes below \$50,000, 61 percent are at risk of eviction.<sup>35</sup> In addition, overcrowded housing exacerbates California’s interconnected housing and public health crises. COVID-19 severely impacts neighborhoods with overcrowded housing.<sup>36</sup> Statewide, around six million Californians live in overcrowded homes—a significantly higher proportion than elsewhere in the nation—rendering Californians in these communities unable to social distance or self-isolate, threatening the health of entire

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<sup>28</sup> California Access to Justice Commission, Rural Access Committee, *California’s Attorney Deserts, Social Determinants of Health and COVID-19* (September 2020), at 1, fn 4, citing Legal Aid Association of California.

<sup>29</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans (The Justice Gap)* (2017), p. 7.

<sup>30</sup> *Ibid.*

<sup>31</sup> Legal Services Corporation, *The Justice Gap*, *supra*, at 13.

<sup>32</sup> Legal Services Corporation, *The Justice Gap*, *supra*, at 30.

<sup>33</sup> *California Justice Gap Study*, *supra*, at 7.

<sup>34</sup> Stout, Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction (July 29, 2020 survey), Chart 1, available at:

<https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>

<sup>35</sup> Stout, *supra*, at Chart 1.

<sup>36</sup> California Access to Justice Commission, Rural Access Committee, *California’s Attorney Deserts, Social Determinants of Health, and COVID-19*, *supra*, at p. 7.

households.<sup>37</sup> Two-thirds of overcrowded housing units include essential workers, raising infection risks for entire families and households.<sup>38</sup>

*Employment Security.* Various segments of low-wage employment, including in the agricultural, retail, and restaurant industries, are severely impacted by the COVID-19 pandemic. For example, mass layoffs of agricultural workers have been reported in various locations across the country.<sup>39</sup> The layoffs have been explained by the need to meet social distancing guidelines, adjust to lower product demand, and respond to positive test results. Likewise, more than 520,000 U.S. service workers have lost their jobs in the past 11 months as the COVID-19 pandemic has ravaged the hospitality, travel, and retail industries.<sup>40</sup>

*Workplace safety.* Low-wage workers are especially vulnerable to COVID-19 exposure on the job. They are much less likely to work at home, and therefore much more likely than higher-income and white collar workers to contract the virus at work. Moreover, remote work is not an option for them, and the nature of the work—such as close-quartered working conditions and a lack of bathroom and handwashing facilities—increases the likelihood of exposure. Many of these low-wage workers, including agricultural workers, are classified as “critical infrastructure workers,” but their safety at work (and their families’ safety at home) paradoxically does not seem to be critical. The Centers for Disease Control and Prevention’s guidance for employers allows critical infrastructure workers who have had contact with individuals with COVID-19 to continue to work as long as they are asymptomatic, which may put other essential workers (and their families) at increased risk of exposure.<sup>41</sup>

*Spotlight on Unlawful Detainer/Eviction Proceedings in California During the Pandemic.* On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which suspended statutory provisions that arguably impaired local governments’ ability to enact eviction moratoria. On March 27, 2020, Governor Newsom issued Executive Order N-37-20, which provided tenants who met specified criteria an additional sixty calendar days to answer an unlawful detainer lawsuit. This second Order also forbade county sheriffs from evicting tenants who met these criteria. Both Executive Orders expired on May 31, 2020.

On April 6, 2020, the Judicial Council adopted Emergency Rule No. 1, which effectively halted unlawful detainer proceedings in the superior courts, except for cases in which a court found, on the record, that the eviction was necessary to protect public health and safety. As originally adopted, Emergency Rule No. 1 would have expired 90 days after the Governor lifted the

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<sup>37</sup> California Access to Justice Commission, Rural Access Committee, *California’s Attorney Deserts, Social Determinants of Health, and COVID-19*, *supra*, at p. 7.

<sup>38</sup> *Ibid.*

<sup>39</sup> National Center for Farmworker Health, *COVID-19 in Rural America: Impact on Farms & Agricultural Workers* (Feb. 1, 2021), available at <http://www.ncfh.org/msaws-and-covid-19.html>.

<sup>40</sup> Washington Post, “*Shocked, disheartened, devastated*”: Restaurant and hotel workers reel as layoffs soar again (Jan. 13, 2021), available at <https://www.washingtonpost.com/business/2021/01/13/restaurant-hospitality-unemployment/>.

<sup>41</sup> *COVID-19 in Rural America: Impact on Farms & Agricultural Workers*, NATIONAL CENTER FOR FARMWORKER HEALTH, p. 5; available at: [http://www.ncfh.org/uploads/3/8/6/8/38685499/msaws\\_and\\_covid-19\\_fact\\_sheet\\_7.28.2020.pdf](http://www.ncfh.org/uploads/3/8/6/8/38685499/msaws_and_covid-19_fact_sheet_7.28.2020.pdf)

COVID-19 state of emergency. The Judicial Council later amended Emergency Rule No. 1 so that it expired on September 1, 2020.

On August 31, 2020, the Legislature passed, and the Governor signed, AB 3088 (Chiu), a complex piece of legislation meant to limit evictions. At its core, AB 3088 (i) prohibited unlawful detainer actions based on a tenant's failure to pay rent between March 1, 2020 and January 31, 2021, so long as the tenant demonstrated COVID-19 related financial hardship, while (ii) requiring the tenant to pay, no later than January 31, 2021, 25% of the rent they failed to pay between September 1, 2020 and January 31, 2021. AB 3088 does not impair a landlord's ability to evict a tenant for reasons other than nonpayment, such as nuisance or waste. AB 3088 also largely preempted local governments' ability to enact eviction moratoria while the statewide moratorium is in effect.

On September 4, 2020, the U.S. Centers for Disease Control and Prevention issued an order aimed at limiting residential evictions in order to mitigate the spread of COVID-19. In order to avail themselves of the order's protections, tenants must provide their landlords with a specified declaration, signed under penalty of perjury, regarding their inability to pay rent. The CDC order has twice been extended; it is now in effect until March 31, 2021.<sup>42</sup>

On January 28, 2021, the Legislature passed, and the Governor signed, SB 91 (Budget), which extends various deadlines under AB 3088 until July 1, 2021. SB 91 also establishes a framework for the State of California to use federal funds to compensate landlords for unpaid rent due to COVID.

*Financial assistance.* According to the Public Policy Institute of California, California is home to more than two million undocumented immigrants, who make up nearly ten percent of all workers in the state.<sup>43</sup> Undocumented immigrant workers are not eligible for federally-funded programs meant to alleviate the financial effects of the pandemic, including unemployment benefits and stimulus funds. For example, undocumented immigrant farmworkers without documentation of legal presence in the United States—approximately half of those working in the Central Valley—do not have access to the Coronavirus Aid, Relief, and Economic Security (CARES) Act unemployment benefits, or federal stimulus checks.<sup>44</sup> U.S. citizen spouses married to persons who are undocumented are also ineligible for such assistance programs, a cruel policy that impacts many households with mixed immigration status.<sup>45</sup>

California provided one-time state-funded disaster relief assistance, administered by immigrant-serving nonprofit organizations, to undocumented immigrant adults who are ineligible for other forms of assistance, including assistance under the CARES Act and pandemic unemployment

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<sup>42</sup> See Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>.

<sup>43</sup> Public Policy Institute of California, *Undocumented Immigrants in California* (March 2017); <https://www.ppic.org/publication/undocumented-immigrants-in-california/>

<sup>44</sup> Monica Campbell, *Farmworkers are getting coronavirus. They face retaliation for demanding safe conditions*, Public Radio International (July 29, 2020), available at: <https://www.pri.org/stories/2020-07-29/sick-covid-19-farmworkers-face-retaliation-demanding-safe-conditions>.

<sup>45</sup> National Center for Farmworker Health, *COVID-19 in Rural America: Impact on Farms & Agricultural Workers*, *supra*, at 5.

benefits, because of their immigration status. This state funding--\$500 in direct assistance, with a maximum of \$1,000 in assistance per household--is expected to reach about 150,000 undocumented adult immigrants.

#### ***D. Legal Service Providers in California.***

Over 100 nonprofit organizations in California, commonly known as “legal services” or “legal aid” organizations, provide free civil legal assistance to low-income individuals. These organizations all have income eligibility limitations, which generally require that clients have income below 125 percent of the federal poverty line.<sup>46</sup> The legal aid provided may vary in nature, and can include direct services to clients, impact litigation on behalf of client populations, and the provision of legal expertise in a particular area of law to other legal services organizations. Most legal aid groups also partner with, and rely heavily on, pro bono legal assistance from the private bar.

Since 1965, as part of President Johnson’s War on Poverty, the federal government has provided funding for local legal aid nonprofits throughout the country, now through the Legal Services Corporation (LSC). The level of services available at LSC-funded programs varies greatly on a county-by-county basis. Some counties have fully-staffed offices with multiple attorneys, paralegals, and clerical personnel; other counties may have a single attorney and a secretary. Still others, particularly in rural areas, may only receive visits from an attorney on a periodic basis. LSC-funded nonprofits are also limited in what services they can provide and to whom they are allowed to provide legal services. They may not, for example, bring class action lawsuits or participate in the legislative process, regardless of whether they use LSC or non-LSC funding to do so, and generally may not serve undocumented immigrants. These organizations provide the backbone of the system that provides civil access to justice for low-income Californians across the state.

*How Legal Services Providers Have Reacted and Innovated in Response to COVID-19.* Like many other businesses and services affected by the pandemic, legal service providers have changed the way they operate during the COVID-19 pandemic. They have formed new organizations and partnerships. A number of California legal services organizations and partners are collaborating (under one name, Disaster Legal Assistance Collaborative or DLAC) to coordinate efforts in responding to the Covid-19 crisis. DLAC provides educational resources and announcements from a number of legal service providers about a variety of topics—including benefits, consumer, immigration, disabilities--on its website.<sup>47</sup> In Los Angeles, Mayor Eric Garcetti and City Attorney Mike Feuer have assembled a coalition of law firms, bar associations and attorneys who will enhance their existing pro bono commitments to legal aid organizations to provide COVID-19-related legal services, including helping vulnerable tenants, domestic violence victims and low income individuals with employment, consumer debt, and bankruptcy matters.<sup>48</sup> LA Represents also partnered with Bet Tzedek Legal Services to build a new support system for small businesses devastated by the COVID-19 pandemic. Many LA

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<sup>46</sup> Business & Professions Code Section 6213 (d).

<sup>47</sup> DLAC, *Coronavirus (COVID-19)*, available at <https://disasterlegalservicesca.org/covid-19/>.

<sup>48</sup> LA Represents, *COVID-19: Keeping Los Angeles Safe*, available at <https://corona-virus.la/LARepresents>.

Represents pro bono attorneys will provide assistance to the small businesses least likely to have access to effective legal services as they confront new workplace regulations, renegotiate commercial leases, apply for government relief programs, and navigate compliance with emergency health and safety orders.<sup>49</sup>

Legal service providers have changed the way they serve their clients, providing more remote services and more self-help resources available on their websites. Legal Services of Northern California (LSNC), for example, has “closed all of its local offices to walk-in clients to protect our clients, applicants for services, and our employees from the possible spread of COVID-19.”<sup>50</sup> It provides online resources for clients about COVID-19-specific issues, such as rights for renters affected by the pandemic and information about federal, state, and local laws that may offer protection and financial programs that may offer assistance for those adversely affected by the pandemic.<sup>51</sup> At the same time, LSNC utilizes an online legal health check-up tool in collaboration with community partners, including medical professionals, as part of a legal-medical partnership.<sup>52</sup> The tool “allows the community partner to complete a series of questions, facilitating a warm handoff of a client who may be facing a legal issue.”<sup>53</sup>

### ***E. Resources for Unrepresented Litigants.***

Far too frequently, the inability of a person with urgent legal problems to hire legal counsel results in an inability to access justice through the courts. California has been a pioneer in providing court-based assistance to unrepresented litigants so they can navigate the complex and confusing court process. As unrepresented litigants have increased in California – as discussed above, up to 90 percent of family law cases involve unrepresented litigants and, similarly, nearly 90 percent of tenants who file an answer in their eviction proceedings appear without attorneys<sup>54</sup> – so has court-based support to help these litigants, though the increase has not kept pace with the ever-growing need.

*Family Law Facilitators.* California law requires each superior court to have a family law facilitator, staffed by at least one experienced family law attorney, to help unrepresented family law litigants.<sup>55</sup> Family law facilitators were initially intended to help in child support cases and made eligible to receive federal child support funding to provide services in those cases. In addition, they may also provide other family law services and assistance, including drafting stipulations (if the parties agree), reviewing filings and advising the judge about them, assisting the clerk in maintaining records, preparing formal court orders, and serving as a special master.<sup>56</sup>

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<sup>49</sup> LA Represents, *COVID-19: Keeping Los Angeles Safe*, available at <https://corona-virus.la/LARepresents>.

<sup>50</sup> Legal Services of Northern California, *Coronavirus COVID-19 Update*, available at <https://lsnc.net/coronavirus-covid-19>.

<sup>51</sup> Legal Services of Northern California, *Coronavirus COVID-19 Update*, *supra*.

<sup>52</sup> California Access to Justice Commission, *California’s Attorney Deserts, Social Determinants of Health, and COVID-19*, *supra*, at p. 3.

<sup>53</sup> *Ibid.*

<sup>54</sup> Budget Change Proposal 0250-114-BCP-2018-GB. Note that this figure is an estimate since the Judicial Council does not track cases with unrepresented litigants.

<sup>55</sup> Family Code Section 10002.

<sup>56</sup> Family Code Section 10005.

State law specifically provides that the facilitator does not represent any party and that no attorney-client relationship exists between the facilitator, their staff, and the family law litigant.<sup>57</sup>

*Self-Help Centers.* Building on the family law facilitator program, court-based self-help centers, which began as pilot projects in 2001, are now available across the state with an annual budget of \$30.3 million. Self-help centers generally offer services in family law (family law facilitators are largely part of the self-help centers), including dissolution, parentage, child custody, child support, and domestic violence; guardianships and conservatorships; probate; and general civil law, with no income limitation for users. The centers provide a variety of assistance to the public, which can include group workshops, such as divorce workshops, assistance completing forms, one-on-one assistance, mediation assistance, and referrals. Almost all self-help centers also provide services to non-English speakers. The centers are staffed by at least one attorney and legal assistants who work under the supervision of the attorney. While the self-help centers provide legal assistance, they do not provide legal advice to the parties and do not have an attorney-client relationship with litigants.

According to the Judicial Council, recent increases in self-help funding have resulted in hiring more attorney, non-attorney, and bilingual staff; the opening of new self-help centers and increased hours of service in existing centers; and the expanding of services for, among others issues, landlord-tenant, consumer debt, and guardianship cases.<sup>58</sup>

*Adaptions Necessitated by COVID-19.* Like the rest of the courts, when the COVID-19 pandemic initially struck California, self-help centers significantly scaled back operations and moved to telephonic and online support. Thirty-three self-help centers (57 percent statewide) remained at least partially open, mostly via remote services, some centers closed for extended periods, and others never closed.<sup>59</sup> Statistics comparing April 2019 and April 2020 show the drop off: In April 2019, self-help centers served litigants through “extended encounters,” one-on-one meetings lasting longer than five minutes, a total of 42,549 times, compared with just 10,031 times in April 2020, *a decrease of over 75 percent from the previous year.*<sup>60</sup> But self-help centers started regaining their footing shortly, as data from August 2019 and 2020 show: In August 2019, self-help centers served litigants through 44,494 extended encounters, compared with 34,810 extended encounters in August 2020, *a decrease of 41 percent from the previous year.*<sup>61</sup> And, as to be expected, most of these encounters moved from in-person to remote. In 2019, almost all extended encounters occurred in-person – 96 percent in April 2019 and 90 percent in August 2019 – dropping to just 27 percent in April 2020 and 25 percent in August 2020.<sup>62</sup>

The reduction in self-help services, both overall and, particularly in-person, occurred at the same time that the need for legal assistance jumped. The Judicial Council found that during the first

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<sup>57</sup> Family Code Section 10013.

<sup>58</sup> *Impact of Self-Help Center Expansion in California Courts: Report to the Legislature*, Judicial Council of Cal. (Jan. 2021), at 2.

<sup>59</sup> *Id.* at 139-40.

<sup>60</sup> *Impact of Self-Help Center Expansion in California Courts: Report to the Legislature*, *supra*, at 140.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

wave of the pandemic, from March 15 to June 30, 2020, requests to self-help centers for services jumped 59 percent for domestic violence issues, 57 percent for child custody issues, 35 percent for child support issues and 33 percent for divorce issues.<sup>63</sup>

To address the growing requests for services during the pandemic and the limitations on in-person access, self-help centers swiftly increased remote access options. While just over half of self-help centers offered telephonic assistance before the pandemic, almost every center (96 percent) now offers telephonic assistance.<sup>64</sup> Additional remote services now include:

- Online sessions with litigants – 23 centers now offer, as compared with six before the pandemic;
- Co-browsing documents online – 21 centers now offer, as compared with six before the pandemic;
- Online mediation – 14 centers now offer, as compared with none before the pandemic; and
- Live chat – 10 centers now offer, as compared with two before the pandemic<sup>65</sup>

While these increases in remote services have been essential in the pandemic and should continue to increase access to legal help for many unrepresented litigants even after the pandemic ends, they risk leaving behind those litigants who do not have access to, or sufficient expertise in, the required technology, as well as those who are not proficient in English.

### **III. The Impact of the Pandemic on the Courts and Court Personnel**

#### ***A. California's Court Structure.***

California's court system serves California's population of over 39 million people, which accounts for over 12 percent of the population of the United States.<sup>66</sup> California's court system is comprised of 58 superior courts based in California's 58 counties, intermediate Courts of Appeal, and the California Supreme Court.<sup>67</sup> The courts are housed in over 500 buildings throughout the state, and the courts employ just shy of 2,000 judicial officers and over 17,000 judicial-branch employees.<sup>68</sup> In fiscal year 2018-19, the judicial branch's budget, excluding infrastructure, was approximately \$3.8 billion—about two percent of the state's budget.<sup>69</sup> In the same period, the court system processed about 5.9 million newly filed cases.<sup>70</sup>

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<sup>63</sup> *Impact of Self-Help Center Expansion in California Courts: Report to the Legislature, supra*, at 140. 141.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Id.* at 144.

<sup>66</sup> Judicial Council of Cal., Ann. Report (2020), at 1.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

The structure of California's courts is set forth in the State's Constitution. Each county must have a superior court with at least one judge.<sup>71</sup> Appeals of right are taken to one of the State's Courts of Appeal, which are divided into divisions with jurisdiction over multiple counties.<sup>72</sup> The Supreme Court, the State's highest court, is comprised of six justices and one Chief Justice.<sup>73</sup> The Constitution also establishes the Judicial Council, which adopts statewide rules for court administration, practice, and procedure.<sup>74</sup> Each county's superior court has broad authority to adopt its own local rules and practices, as long as they do not conflict with the Judicial Council's rules.<sup>75</sup>

The relative autonomy of each county's superior court is reflected in Government Code section 68115 (section 68115), which establishes what steps may be taken in case of a public emergency (including an epidemic).<sup>76</sup> At the time the COVID-19 pandemic hit California, section 68115 permitted the presiding judge of a county court to request, and the Chairperson of the Judicial Council to authorize, various emergency measures necessary to continue court operations and preserve access to justice during a public emergency.<sup>77</sup> Section 68115 did not expressly permit the Chairperson of the Judicial Council to issue such orders without a request from a presiding judge, though the constitutional rulemaking authority granted to the Judicial Council permitted the Judicial Council to make such orders as necessary for the administration of justice.<sup>78</sup>

### ***B. Court Responses to COVID-19.***

On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California in response to the growing COVID-19 pandemic.<sup>79</sup> The COVID-19 pandemic and related closures of indoor public spaces impacted the ability of California courts, like many other aspects of society, to conduct their business. Presiding judges in counties across the state began to request authority from Chief Justice Tani G. Cantil-Sakauye, as Chairperson of the Judicial Council, to implement the relief provided for in section 68115. According to the California Courts website, the Chief Justice began approving orders on March 13, 2020, which enabled steps such as extending timelines and declaring days during which court access was limited to be court holidays for the computation of time.<sup>80</sup> Over the following two months, over 100 requests were made and granted for various relief in individual courts.<sup>81</sup> Chief Justice Cantil-Sakauye also

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<sup>71</sup> Cal. Const. Art. VI, Section 4.

<sup>72</sup> *Id.*, Section 3.

<sup>73</sup> *Id.*, Section 2.

<sup>74</sup> *Id.*, Section 6.

<sup>75</sup> Gov. Code, Section 68070.

<sup>76</sup> Gov. Code, Section 68115 (a).

<sup>77</sup> Former Government Code, Section 68115(a), as amended by SB 1208 (Committee on Judiciary) Chap. 208, Stats. 2018, Section 1.

<sup>78</sup> Cal. Const. Art. VI, Section 6.

<sup>79</sup> Office of Governor Gavin Newsom, *Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19* (Mar. 4, 2020), available at: <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>.

<sup>80</sup> See generally California Courts Newsroom, *Court Emergency Orders*, available at: <https://newsroom.courts.ca.gov/covid-19-news-center/court-emergency-orders> (listing superior court emergency orders by date).

<sup>81</sup> *Ibid.*



issued guidance to courts encouraging them to take specific actions intended to reduce the spread of the virus.<sup>82</sup>

In orders approved by the Chief Justice, individual county courts responded to the immediate pandemic threat in a range of ways. Some courts suspended all business, except for certain emergency and *ex parte* requests and petitions, for periods of a few days to a few weeks in order to give the courts and court staff time to take COVID-19 safety precautions.<sup>83</sup> In many cases, those courts ended up extending those closures for much longer than originally planned, not reopening until late April or May of 2020.<sup>84</sup> Other county courts imposed limiting measures without fully suspending regular (i.e., nonemergency) matters.<sup>85</sup> Consistent with the Judicial Council's guidelines, all courts—even the ones not fully suspending matters or closing courthouses—had to continue or suspend large numbers of hearings and other proceedings. On a statewide basis, nearly all civil matters were frozen in the middle of March. The State also saw a massive drop in new case filings between March and May in all areas of law, including civil, family law, and probate matters.<sup>86</sup>

Self-help centers were also closed in an effort to stop the spread of COVID-19. While many courts were able to resume assisting litigants—at least on a remote basis—within a week of closure, the statewide average closure was 2.4 weeks.<sup>87</sup>

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<sup>82</sup> See, e.g., California Courts Newsroom, *California Chief Justice Issues Guidance to Expedite Court Emergency Orders* (Mar. 16, 2020) <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-guidance-expedite-court-emergency-orders>; California Courts Newsroom, *California Chief Justice Issues Second Advisory on Emergency Relief Measures* (Mar. 20, 2020), available at: <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-emergency-relief-measures>.

<sup>83</sup> See, e.g., Superior Court of California, County of Alameda, Press Release (Mar. 17, 2020) available at: [http://alameda.courts.ca.gov/Resources/Documents/Alameda%20Court%20Closure%20Press%20Release%202020-03-17\(2\).pdf](http://alameda.courts.ca.gov/Resources/Documents/Alameda%20Court%20Closure%20Press%20Release%202020-03-17(2).pdf) (suspending most business in Alameda Superior Court from March 17-April 7, 2020); Superior Court of California, County of Amador, *Novel Coronavirus—Court Updates and Information* (updated Apr. 2, 2020), available at: [http://amadorcourt.org/newsRelease/COVID-19\\_3.18.2020.pdf](http://amadorcourt.org/newsRelease/COVID-19_3.18.2020.pdf) (suspending most business in Amador Superior Court as of March 23, 2020); Superior Court of California, Los Angeles County, *Presiding Judge Kevin C. Brazile Will Close all Non-Essential Operations in Nation's Largest Trial Court for 3 Days and Extend Time and Filing Deadlines in Cases Pursuant to an Emergency Authorization from the Chief Justice* (Mar. 16, 2020) available at: <http://www.lacourt.org/newsmedia/uploads/14202033011105720NRPJCLOSESNON-ESSENTIALOPSFORTHREEDAYS.pdf> (closing Los Angeles Superior Court courthouses for three court days); Superior Court of California, County of San Diego, News Release, *San Diego Superior Court Updates COVID-19 Response Information* (Mar. 19, 2020) available at: <http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/COVID-19INFO/2020-03-19%20COVID-19%20SDSC%20SERVICES%20UPDATE.PDF> (suspending most business in San Diego Superior Court from March 17-April 3, 2020).

<sup>84</sup> See, e.g., Superior Court of California, County of Contra Costa, *Urgent Release: Court Reopening* (May 13, 2020) available at: <http://cc-courts.org/general/docs/PressRelease-COVID19-05-13-20.pdf> (announcing court reopening on May 26, 2020); Superior Court of California, County of Riverside, *Riverside Superior Court Extends Closure Date* (May 14, 2020) available at: <https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/NewsReleases/COVID-19-Release-Closure-Extension-05-14-2020.pdf> (extending court closure until May 29, 2020).

<sup>85</sup> See, e.g., Superior Court of California, County of Lassen, General Order 2020-01 (Mar. 17, 2020) available at: <http://www.lassencourt.ca.gov/forms/General%20Order%202020-01.pdf>.

<sup>86</sup> *Judicial Branch Pandemic Impacts*, Judicial Council of Cal. (Jan. 2021) at pp. 9-17.

<sup>87</sup> *Judicial Branch Pandemic Impacts*, Judicial Council of Cal. (Jan. 2021) at p. 4.

On March 23, 2020, as the pandemic crisis worsened, Chief Justice Cantil-Sakauye issued a statewide order with several provisions intended to minimize the spread of COVID-19 in the courts.<sup>88</sup> Under the order:

- All jury trials were suspended and continued for 60 days from the date of the order. Courts could conduct such trials at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
- The time period provided in Penal Code section 1382 for the holding of a criminal trial was extended for 60 days from the date of the order. Courts could conduct such trials at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
- The time period provided in Code of Civil Procedure sections 583.310 and 583.320 for the holding of a civil trial was extended for 60 days from the date of the order. Courts could conduct such trials at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
- All superior courts were authorized under rule 10.613(i) of the California Rules of Court to adopt any proposed rules or rule amendment intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for 45 days of public comment. A court adopting any such rule change was required to provide a copy to Judicial Council staff and post notice of the change prominently on the court's website, along with the effective date of the new or amended rule. Additionally, the court was required to immediately distribute the new or amended rule as set forth in rule 10.613(g)(2). To prevent unfair surprise, no litigant's substantive rights could be prejudiced for failing to comply with the requirements of a new or amended rule until at least 20 days after the rule change had been distributed.<sup>89</sup>

On March 27, 2020, Governor Newsom signed an executive order “to enhance the authority of California’s Judicial Branch to take emergency action in the face of the COVID-19 crisis.”<sup>90</sup> Citing the authority vested in him by the California Constitution and Government Code sections 8567, 8571, and 8627, the Governor suspended any limitation, imposed or implied, by any law, including section 68115, on the “subject matter the Chairperson of the Judicial Council may

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<sup>88</sup> California Courts Newsroom, *Judicial Council of California Statewide Order By Hon. Tani G. Cantil-Sakauye, Chief Justice Of California And Chair Of The Judicial Council* (March 23, 2020), available at: <https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials>.

<sup>89</sup> Statewide Order (Cantil-Sakauye, C.J.) (Mar. 23, 2020), available at: <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2020-09/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-23-2020.pdf>.

<sup>90</sup> Office of Governor Gavin Newsom, *Governor Newsom Issues Executive Order on Judicial Council Emergency Authority* (Mar. 27, 2020), available at: <https://www.gov.ca.gov/2020/03/27/governor-newsom-issues-executive-order-on-judicial-council-emergency-authority/>.

address via emergency order or statewide rule issued pursuant to section 68115.”<sup>91</sup> The order’s stated intention was to “remove any impediment that would otherwise prevent the Chairperson from authorizing, by emergency order or statewide rule, any court to take any action she deems necessary to maintain the safe and orderly operation of that court.”<sup>92</sup> The Governor also suspended any such limitations on the Chief Justice’s authority to issue, amend, or suspend any court rules in response to the COVID-19 pandemic.<sup>93</sup>

Following that order, the Chief Justice issued another order on March 30, 2020, authorizing the extension of various time periods in criminal proceedings; extending the 5-year deadline for bringing a civil case to trial; clarifying the start date of the previously imposed 60-day continuance for all trials; and “suspend[ing] any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses.”<sup>94</sup>

On April 6, 2020, the Judicial Council adopted 11 statewide emergency rules.<sup>95</sup> The orders provided for alternative timelines and procedures for a wide range of matters, including: staying unlawful detainer and judicial foreclosure actions;<sup>96</sup> setting \$0 bail for specified charges;<sup>97</sup> and extending temporary restraining and protective orders set to expire.<sup>98</sup> The emergency rules also included several provisions intended to allow civil actions to keep moving forward during the COVID-19 crisis, including allowing courts to require remote proceedings;<sup>99</sup> tolling statutes of limitations in civil causes of action;<sup>100</sup> extending the five-year period in which a civil case must be brought to trial by six months;<sup>101</sup> and permitting the parties to conduct depositions by remote means without court authorization.<sup>102</sup> Shortly thereafter, the Judicial Council adopted an

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<sup>91</sup> Governor Gavin Newsom, *Executive Order N-38-20* (Mar. 27, 2020), available at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf>.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> California Courts Newsroom, *Judicial Council of California Statewide Order By Hon. Tani G. Cantil-Sakauye, Chief Justice Of California And Chair Of The Judicial Council* (Mar. 30, 2020), available at: <https://newsroom.courts.ca.gov/news/chief-justice-issues-order-implementing-temporary-court-emergency-measures>.

<sup>95</sup> California Courts Newsroom, *Judicial Council Adopts New Rules to Lower Jail Population, Suspend Evictions and Foreclosures* (Apr. 5, 2020), available at: <https://newsroom.courts.ca.gov/news/judicial-council-adopts-new-rules-lower-jail-population-suspend-evictions-and-foreclosures>.

<sup>96</sup> Cal. Rules of Court, Appendix I, Emergency Rules 1 & 2.

<sup>97</sup> Cal. Rules of Court, Appendix I, Emergency Rule 4 [repealed Jun. 20, 2020].

<sup>98</sup> Cal. Rules of Court, Appendix I, Emergency Rule 8.

<sup>99</sup> Cal. Rules of Court, Appendix I, Emergency Rule 3. Emergency Rule 3 requires courts to receive the defendant’s consent to remote proceedings in criminal matters, but not in civil matters.

<sup>100</sup> Cal. Rules of Court, Appendix I, Emergency Rule 9. The rule originally tolled all civil statutes of limitation for the duration of the COVID-19 emergency plus 90 days; it was subsequently revised to toll statutes of limitation and repose longer than 180 days until October 1, 2020, and statutes of limitations and repose of 180 days or fewer until August 3, 2020. (See California Courts Newsroom, *Judicial Council Revises Emergency Rule on Statutes of Limitations in Civil Cases* (May 29, 2020), available at: <https://newsroom.courts.ca.gov/news/judicial-council-revises-emergency-rule-statutes-limitations-civil-cases>.)

<sup>101</sup> Cal. Rules of Court, Appendix I, Emergency Rule 10.

<sup>102</sup> Cal. Rules of Court, Appendix I, Emergency Rule 11 [repealed Nov. 13, 2020].

emergency rule requiring electronic service by attorneys, if requested by the other party.<sup>103</sup> The emergency rules also addressed family law and juvenile proceedings, as discussed above in Part (II)(B) of this paper.

With the Judicial Council’s emergency orders and a better understanding of what steps could be taken to lessen the spread of COVID-19, courts began reopening with various COVID-19 safety measures. These measures included:

- Restricting courthouse access to judicial officers, courthouse staff, and attorneys, parties, and witnesses with matters in the courthouse;<sup>104</sup>
- Requiring all persons who enter courthouses to wear face coverings;<sup>105</sup>
- Requiring all persons entering the courthouse to undergo temperature screenings;<sup>106</sup>
- Installing plexiglass and/or other physical barriers where physical distancing is not possible;<sup>107</sup>
- Increased cleanings;<sup>108</sup>
- Conducting proceedings remotely, either telephonically or using video programs;<sup>109</sup>
- Offering remote self-help assistance.<sup>110</sup>

As the pandemic wore on, courts had to adjust to the pandemic—and the added burdens that came with it—as the “new normal.” In July, the Judicial Council allocated \$25 million of emergency funds (of \$50 million total allocated to the courts) on a pro-rata basis based on the courts’ workloads.<sup>111</sup> Unfortunately, because the budget also imposed \$168.7 million in cuts to court operations, each of the state’s county courts ended up with less funding than they had before the pandemic hit—even as courts had to dedicate between five and ten percent of their workforce to addressing new pandemic safety measures.<sup>112</sup>

In August, the Legislature passed three pieces of legislation that addressed topics covered by the Judicial Council’s emergency rules, providing clarity to litigants and courts. SB 1146 codified

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<sup>103</sup> Cal. Rules of Court, Appendix I, Emergency Rule 12 [repealed Nov. 13, 2020].

<sup>104</sup> See, e.g., Superior Court of California, County of Los Angeles, *Presiding Judge Kevin C. Brazile: Only Authorized Persons Allowed to Enter Any Superior Court of Los Angeles County Courthouse* (Mar. 23, 2020), available at: [http://www.lacourt.org/newsmedia/uploads/142020330113514GO\\_March232020\\_FINAL.pdf](http://www.lacourt.org/newsmedia/uploads/142020330113514GO_March232020_FINAL.pdf).

<sup>105</sup> See, e.g., Superior Court of California, County of Shasta, *Administrative Order 23-2020* (Jul. 15, 2020), available at: <http://www.shastacourts.com/pdfs/covid19-23-2020.pdf>.

<sup>106</sup> *Ibid.*

<sup>107</sup> See, e.g., Superior Court of California, County of Kern, *COVID-19 Safety Plan* (Dec. 4, 2020), available at: [https://www.kern.courts.ca.gov/documents/covid\\_19\\_safety\\_plan](https://www.kern.courts.ca.gov/documents/covid_19_safety_plan).

<sup>108</sup> See Superior Court of California, County of Siskiyou, *Public Notice re Coronavirus (COVID-19)* (Mar. 17, 2020), available at: <http://www.siskiyou.courts.ca.gov/files/PublicNotice-Coronavirus.pdf>.

<sup>109</sup> See Superior Court of California, County of Marin, *Remote Access Procedures for All Matters Effective June 1, 2020* (Jun. 1, 2020), available at: <https://www.marincourt.org/data/hpnews/312.pdf>.

<sup>110</sup> *Judicial Branch Pandemic Impacts, supra*, at 4.

<sup>111</sup> Dizeo, *California Court Administrator Grapples With Crippling Covid Cuts*, Courthouse News Service (Jul. 24, 2020), available at: <https://www.courthousenews.com/california-court-administrator-grapples-with-crippling-covid-cuts/>.

<sup>112</sup> *California Court Administrator Grapples With Crippling Covid Cuts, supra.*; *Judicial Branch Pandemic Impacts, supra*, at 5.

the use of electronic service by and on represented parties, and the use of remote depositions.<sup>113</sup> AB 3088 froze evictions and implemented a comprehensive program to provide relief to tenants, homeowners, and landlords.<sup>114</sup> And AB 3366 streamlined the operation of Section 68115 when the underlying emergency or extraordinary circumstance affects more than one county, clarifying that the Chief Justice is empowered to authorize the courts to take necessary action *sua sponte*.<sup>115</sup> The Judicial Council accordingly amended or repealed the emergency rules covered by the newly passed legislation.<sup>116</sup> The Judicial Council also rescinded the \$0 bail schedule in June, though many counties adopted their own reduced bail schedules.<sup>117</sup>

At the end of 2020, the Chief Justice launched a program to accelerate the resolution of criminal cases that were delayed due to the pandemic.<sup>118</sup> Chief Justice Cantil-Sakauye also issued an advisory to the superior and appellate courts, noting the disparities between courts' capacities, resources, and remote capabilities; and explaining that, in light of those disparities, statewide case-processing orders would likely impede courts' ability to continue providing access to justice under their unique circumstances.<sup>119</sup> Instead, the Chief Justice would continue to consider individual courts' requests for emergency orders based on local conditions.<sup>120</sup> And on January 22, 2021, the Judicial Council approved a plan to distribute the remaining \$25 million in emergency funding to help trial courts address delays caused by the pandemic.<sup>121</sup> The funds will be allocated based on the courts' COVID-19-induced backlogs, as determined by each court's workload not completed since the start of the pandemic as compared to the same period in 2019.<sup>122</sup>

### ***C. Eleven Months In: The Courts Today.***

Despite measures taken by the Legislature, Judicial Council, and individual courts, COVID-19 has unquestionably wrought havoc on the courts' ability to process cases. The Judicial Council has found that every single county has processed fewer cases since the start of the pandemic than

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<sup>113</sup> SB 1146 (Umberg) Chap. 112, Stats. 2020.

<sup>114</sup> AB 3088 (Chiu) Chap. 37, Stats. 2020.

<sup>115</sup> AB 3366 (Assembly Committee on Judiciary) Chap. 76, Stats. 2020.

<sup>116</sup> See Cal. Rules of Court, Appendix I, Emergency Rules 1-2 [amended Aug. 13, 2020], 11 & 12 [repealed Nov. 13, 2020].

<sup>117</sup> See California Courts Newsroom, *Judicial Council, Chief Justice End Some Emergency Measures as California and Courts Expand Reopening* (Jun. 10, 2020), available at: <https://newsroom.courts.ca.gov/news/judicial-council-chief-justice-end-some-emergency-measures-california-and-courts-expand>; see California Courts Newsroom, *Counties with COVID-19 Emergency Bail Schedules*, available at: <https://newsroom.courts.ca.gov/covid-19-news-center/counties-covid-19-emergency-bail-schedules> (at least 34 counties have emergency bail schedules).

<sup>118</sup> California Courts Newsroom, *California Chief Justice Launches Program to Fast Track Backlogged Criminal Cases* (Dec. 22, 2020), available at: <https://newsroom.courts.ca.gov/news/california-chief-justice-launches-program-fast-track-backlogged-criminal-cases>.

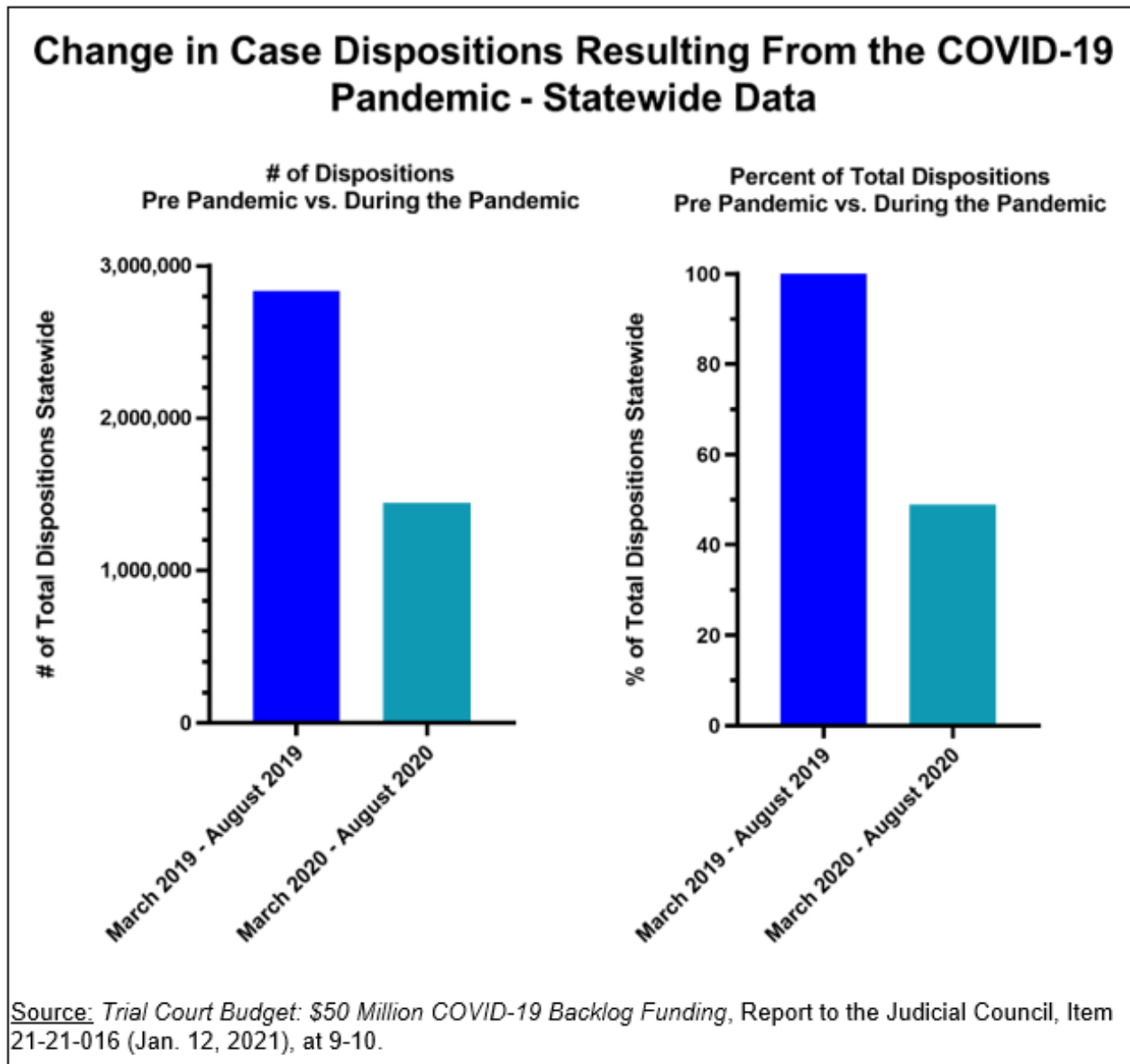
<sup>119</sup> California Courts Newsroom, *California Chief Justice Issues Advisory to Courts Amid COVID-19 Surge* (Dec. 7, 2020), available at: <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-advisory-courts-amid-covid-19-surge>.

<sup>120</sup> *Ibid.*

<sup>121</sup> California Courts Newsroom, *Judicial Council Allocates \$25 Million to Address Case Delays Due to COVID-19* (Jan. 22, 2021), available at: <https://newsroom.courts.ca.gov/news/judicial-council-allocates-25-million-address-case-delays-due-covid-19>.

<sup>122</sup> *Ibid.*

in the prior period, resulting in a statewide reduction of 49.1 percent.<sup>123</sup> Several courts processed fewer than half of the cases they processed prior to the pandemic.<sup>124</sup> New case filings also remain below their pre-pandemic averages.<sup>125</sup>



<sup>123</sup> Report to the Judicial Council, *Trial Court Budget: \$50 Million COVID-19 Backlog Funding* (Jan. 12, 2021) Attachment A, available at: <https://jcc.legistar.com/View.ashx?M=F&ID=9054988&GUID=54812C82-983E-4812-848C-2F4FD9F6F97A>.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Judicial Branch Pandemic Impacts, supra*, at 9-17. Some areas of law have seen a more significant reduction in filings than others, with unlawful detainer filings remaining drastically lower than average in light of the statewide moratorium on evictions for failure to pay rent as a result of pandemic-related hardship. (*Id.* at 12.)

The pandemic has further affected every aspect of day-to-day court administration: courts report that COVID-19 has caused a moderate to severe impact on telephone wait times, the time to set hearings, trial settings, and case dispositions.<sup>126</sup> Hearings in civil cases have been continued at a 55 percent higher rate than before the pandemic, and many courts have suspended jury trials indefinitely—or recommenced jury trials, only to stop again during this winter’s COVID-19 surge.<sup>127</sup>

In the wake of the virus’s pervasiveness, remote proceedings remain commonplace. Over 50 county courts offer some form of remote proceedings, and 39 counties offer remote hearings for all case types.<sup>128</sup> Some courts have also expanded distanced interactions with jurors, such as remote voir dire.<sup>129</sup> Yet remote proceedings are not a panacea; many litigants, especially self-represented parties, do not have access to the technology necessary to participate in a remote hearing, or may not be able to participate as meaningfully as they would at an in-person proceeding.<sup>130</sup> For example, in cases involving interpreters, the inability for the interpreter to be physically present with the participant who needs translation services, and the lack of a space for the interpreter to engage one-on-one with the participant, may decrease trust and result in a less effective engagement with the court. Witnesses might also be less comfortable in a remote setting, affecting the quality of testimony.

Yet the risks of in-person proceedings remain acute, and sometimes tragic. In the Los Angeles Superior Court, which continues to hold in-person hearings and jury trials (in addition to remote hearings), at least 445 of the court’s 5,100 staff and judicial officers have tested positive for the virus—close to ten percent of the court’s workforce.<sup>131</sup> In January, two interpreters and another court employee passed away from COVID-19.<sup>132</sup> And in February, public interest groups filed a lawsuit to halt in-person traffic and eviction proceedings in light of the safety risks posed by

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<sup>126</sup> *Judicial Branch Pandemic Impacts*, *supra*, at 6.

<sup>127</sup> Report to the Judicial Council, *Trial Court Budget: \$50 Million COVID-19 Backlog Funding* (Jan. 12, 2021) Attachment A, *supra*; Dinzeo, *California Judicial Council Distributes Pandemic Funds for Court Backlog*, Courthouse News Service (Jan. 22, 2021) available at: <https://www.courthousenews.com/california-judicial-council-disburses-pandemic-funds-for-court-backlogs/>; California Courts Newsroom, *Court Services and Operations*, available at: <https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations> (listing courts not conducting jury trials); *see, e.g.*, Superior Court of California, County of Riverside, *Suspension of Jury Trials* (Dec. 7, 2020), available at: [https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/NewsReleases/COVID-19\\_Suspend-Jury-Trials.pdf](https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/NewsReleases/COVID-19_Suspend-Jury-Trials.pdf) (Riverside Superior Court suspended all future jury trials in light of Governor Newsom’s December 3, 2020, regional stay-at-home order).

<sup>128</sup> California Courts Newsroom, *Court Services and Operations*, available at: <https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations>; *Judicial Branch Pandemic Impacts*, *supra*, at 3.

<sup>129</sup> *Judicial Branch Pandemic Impacts*, *supra*, at 3.

<sup>130</sup> See Queally & Hamilton, *Lawsuit seeks to limit in-person L.A. County civil trials because of COVID-19 risk*, Los Angeles Times (Feb. 9, 2020), available at <https://www.latimes.com/california/story/2021-02-09/lawsuit-seeks-to-stop-l-a-courts-from-holding-some-civil-trials-due-to-covid-concerns> (hereafter *Lawsuit seeks to limit in-person L.A. County civil trials because of COVID-19 risk*) (attorney explaining that Los Angeles Superior Court’s “remote access platforms have proved extremely difficult to use for older clients, as well as those who speak poor English or struggle with internet literacy, leaving many of her most at-risk clients stuck choosing between their health or the likelihood that they will lose their case unless they appear in person”).

<sup>131</sup> Hamilton, *Worker’s in L.A.’s courts are dying of COVID-19 as in-person hearings, trials continue*, *supra*.

<sup>132</sup> *Ibid.*; *Lawsuit seeks to limit in-person L.A. County civil trials because of COVID-19 risk*, *supra*.

those proceedings.<sup>133</sup> At the same time, the nature of legal proceedings—where so much depends on credibility—puts judicial officers and litigants in a difficult position with respect to safety precautions that might interfere with a witness’s testimony or a jury’s credibility determination (such as masks). In the battle between safety and justice, the pandemic presents no perfect options.

The pandemic also continues to affect the availability of self-help services, as discussed in more detail above in Part (II)(E) of this paper. At least 50 counties offer remote self-help services for unrepresented litigants.<sup>134</sup> For many litigants, the increased availability of remote self-help service has been a boon, allowing them to engage with self-help volunteers in more flexible ways, such as over email.<sup>135</sup> For litigants without reliable access to the internet or other remote technology, however, the lack of in-person services will preclude them from receiving assistance. Overall, the number of self-help encounters remains below the pre-pandemic rate,<sup>136</sup> though it is unknown what percentage of the drop is the result of fewer in-person services, and what is the result of the overall litigation backlog.

As the first anniversary of the COVID-19 state of emergency approaches, the pandemic is far from over. Although COVID-19 vaccines have been approved, the slow rate of vaccination is preventing a near-term return to normal. In particular, the risk of COVID-19 transmission from in-person proceedings will likely remain high for the next several months because judicial officers and court staff are not currently eligible for vaccinations under the state’s vaccination plan.<sup>137</sup> Moreover, even after the courts can return to normal operations, the backlog of cases slowed down by the pandemic will continue to compete with newer cases for valuable time and resources. The backlog caused by the delay of litigation is daunting. For example, when the San Diego County Superior Court resumed trials, the court conceded that it had a backlog of 2,700 cases waiting to be placed on a trial docket.<sup>138</sup> Similarly courts in Ventura County noted increasing delays amid a 50 percent reduction in workload efficiency for court staff.<sup>139</sup> In November 2020, 859 civil cases in Ventura County had yet to be placed on the court’s docket, up from 83 backlogged cases in 2019.<sup>140</sup>

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<sup>133</sup> *Lawsuit seeks to limit in-person L.A. County civil trials because of COVID-19 risk, supra.*

<sup>134</sup> *Judicial Branch Pandemic Impacts, supra*, at 3.

<sup>135</sup> Judicial Council of California, *Impact of Self-Help Center Expansion in California Courts* (Jan. 2021), available at: <https://www.courts.ca.gov/documents/lr-2021-self-help-centers-funding-analysis-BA-2018-gov-code-9795.pdf>, at pp. 87-102.

<sup>136</sup> *Judicial Branch Pandemic Impacts, supra*, at 3.

<sup>137</sup> See California’s Vaccination Plan, available at: <https://covid19.ca.gov/vaccines/#California's-vaccination-plan>; see, e.g., Superior Court of California, County of Los Angeles, Press Release, *Presiding Judge Eric C. Taylor Asks LADPH For Help To Reprioritize Vaccination For Court Employees, Judicial Officers and Justice Partners* (Jan. 26, 2021), available at: <http://www.lacourt.org/newsmedia/uploads/142021126842921NRLADPHVACCINEREQUEST.pdf>.

<sup>138</sup> Alexis Rivas, *As Case Backlog Piles Up, San Diego Superior Court Set To Resume Trials*, NBC 7 San Diego (Sept. 2, 2020) available at: <https://www.nbcsandiego.com/news/investigations/as-case-backlog-piles-up-san-diego-superior-court-set-to-resume-trials/2398009/>

<sup>139</sup> Megan Diskin, *COVID-19 Shutdowns Cut Ventura County Court’s Workload by Half, Data Shows*, Ventura County Star (Jan. 30, 2021) available at: <https://www.vcstar.com/story/news/2021/01/30/data-reveals-local-courts-backlog-due-covid-19-shutdowns/3833656001/>.

<sup>140</sup> *Ibid.*



#### IV. Conclusion

Although vaccinations are in progress, there is still a long way to go before life in general, and court operations in particular, return to normal in California. The backlog of civil cases created by COVID-19 could persist for years to come. While the courts have worked hard under extreme constraints to ease the burden of the pandemic, additional action is needed. Furthermore, implementing procedures to enable courts to act flexibly in response to this crisis will help to ensure that the courts are more ready for the next one, whenever it may be.

*Considerations for how to help the courts prepare for this, and future, crises should include:*

- **Equity:** Procedures for continuing court operations in a time of crisis must preserve the accessibility of the courts for *all* litigants.
- **Safety:** Judicial officers and court staff should not have to put their lives at risk to go to work, nor should litigants have to decide between justice and safety. Courts should prioritize the most important and pressing matters.
- **Remote proceedings:** Courts have had varying levels of success with remote proceedings during the pandemic. Given the availability and quality of video conferencing programs, remote proceedings are likely an essential component of the courts' emergency procedures going forward. At the same time, steps must be taken to provide alternatives for litigants who do not have the necessary access to the technology necessary to participate equally in remote proceedings.
- **Limitations of technology:** Remote proceedings work better in some types of proceedings than in others. The ease and expedience of remote proceedings must be balanced against the potential harm to parties, witnesses, and other participants who, for a variety of reasons, will not be able to engage as thoroughly in a remote proceeding as they would in person. The choice of technology should consider cost to users; accessibility to users without computers (perhaps by cell phone); accessibility to users with disabilities; ability to accommodate self-represented litigants and witnesses who are not English speakers; ability for users to present documentary evidence or use visual aids, including by telephone or Smartphone; ability of the court to provide confidentiality where necessary, as well as public access (or a recording available to the public) as a general rule; and the ability of the technology to generate an official public record.
- **Public and media access:** Except in extreme circumstances, legal proceedings should be open to the public and to the media. In circumstances where remote proceedings are used, and/or distancing concerns require limiting the number of spectators in the courtroom, courts should take steps to ensure that the public and media retain access to those proceedings.
- **Budgetary realities:** Steps to preserve access to the courts in the pandemic have been costly, as is upgrading courtroom technology. Furthermore, dealing with the backlog of civil matters may require additional funding from the state. If court emergency operations are not properly funded, courts will have to move funding from other vital services, likely slowing down access to justice in other ways.

*Some practices that have proven effective for some courts and litigants in this emergency and could be worth adopting as best practices for the duration of the pandemic and in the future, include the following:*

### **Collaborative Partnerships**

- Encourage partnerships to provide legal services in locations where low-income individuals obtain other vital services. For example, “medical-legal partnerships” involve the provision of legal services at the points where low-income individuals are seeking medical care. This model can also be adapted to other partnerships with providers of direct services, such as domestic violence shelters and nonprofit organizations that provide food, adult education, job training, housing, and temporary shelter.
- Encourage local government partnerships with legal service providers and the private bar, similar to LA Represents, a coalition of law firms, bar associations and attorneys who enhance their existing pro bono commitments to legal aid organizations to provide COVID-19-related legal services. The partnerships, like LA Represents, could also provide a support system for small businesses devastated by the COVID-19 pandemic.

### **Increased Use of Technology**

- Consider streamlining technology platforms or utilizing a single technology platform statewide for remote proceedings, for enhanced efficiency, compatibility, and uniformity. For example, all courts in the state could utilize a single technology platform for all of their remote proceedings.
- Consider expanding the use of voice-only remote access. Technology that allows the option of voice-only participation and that can be accessed via a toll-free telephone number would minimize the digital divide. Where the fairness of a proceeding might be affected by differences in the mode of access, the court might determine through questioning before a hearing whether to conduct the proceeding for all participants via voice only, if that is the only mode of access available to one of the parties.
- Expand the availability of remote self-help services. As distancing rules and circumstances permit, Self-Help centers may offer information and assistance regarding places where self-represented litigants can use computer equipment to participate in remote court proceedings. Such remote access would be useful even after the pandemic ends, but courts should still offer in-person services to ensure that everyone has access to the services.

### **User-Friendly Scheduling and Notice of Remote Proceedings**

- Consider adapting scheduling practices in light of constraints on in-person appearances and the need to appear remotely. For example, if a court traditionally docket multiple hearings at the same time, that court might need to switch to individual scheduling with time-certain proceedings in order to provide more certainty and transparency to litigants. This will provide litigants who have other responsibilities, such as providing childcare or healthcare

support for parents, with a discrete time to call-in to participate and not spend an undue amount of time waiting on a proceeding.

- Consider providing extra notice of hearings: Court staff could email all attorneys or self-represented litigants several days in advance to ensure all parties have hearing and login information as well as to offer to assist with troubleshooting issues and answer any questions. Where a party does not have access to a computer but does have a telephone, any notice should include a call-in number and access code. Courts could also consider providing notice by sending text message reminders. Adopting such user-friendly practices could help ensure that litigants are aware of when and how their hearings will occur and what is expected of them at the hearings.
- Clarify hearing notices: Where applicable, a hearing notice should clearly state that the hearing will take place via a video-conferencing platform (including a description of the platform and how to access it) and that the recipient should not go to the courthouse. For court users with limited English proficiency, the notice should also provide translated versions (or a way for the litigant to request translation), along with an explanation of how to access an interpreter if needed via an online system.
- Make daily dockets available online. Online dockets should clearly indicate which hearings are to be held virtually, along with instructions about how to access those hearings. Public notice should be consistent with the ways for providing open hearings generally, where applicable; if the mode of access is contemporaneous observation of the video and audio feed, the notice should provide sufficient information for the public to do so.
- Use plain language in notices and video conference instructions—i.e., avoiding legalese and technical terms—in order to help litigants understand what is required of them and the consequences of not meeting those requirements. Court users should be admonished that they should do everything in their power to comply and participate, but courts may want to consider developing a non-punitive system for dealing with unintentional misunderstandings by litigants regarding when and how their participation is required.

### **Streamlined Procedures for Filing Documents**

- Consider providing at least the following two options for filing court documents: electronic filing and a drop box that is accessible for dropping court filings even if the courthouse is closed.
- Consider not requiring “wet signatures” on electronic filing in courts where this is still the practice.

### **Special Considerations for Family Law**

- Ensure that each court has adequate judges to timely handle the backlog of family law cases, given the critical nature of many of these cases.

- Consider eliminating use of recommending family court services in contested child custody cases if meetings can occur only virtually, and instead provide only true mediation services until in-person meetings can safely resume.

### **Steps for Dealing with the Backlog of Civil Cases**

- Consider using remote hearing technology for mandatory settlement conferences and preliminary pretrial conferences in civil cases (perhaps conducted by experienced attorneys acting as pro tem settlement judges). Conducting such proceedings remotely could help to reduce backlogs or, at least, provide information for use in setting scheduling priorities for later in-person proceedings.
- Consider whether certain categories of matters can be restarted sooner using remote hearing technology, reducing the backlog when courthouses reopen.
- Develop statewide guidance for prioritizing urgent cases (civil cases and otherwise), including those for terminally ill or elderly plaintiffs.
- Ensure that the courts are adequately funded to address the backlog. Such measures could include one-time budget funds for courts to rent larger venues for complex cases with high public interest.
- Increase financial support for legal services programs to help address the increased civil legal needs of low-income Californians in the midst of the pandemic and economic collapse.

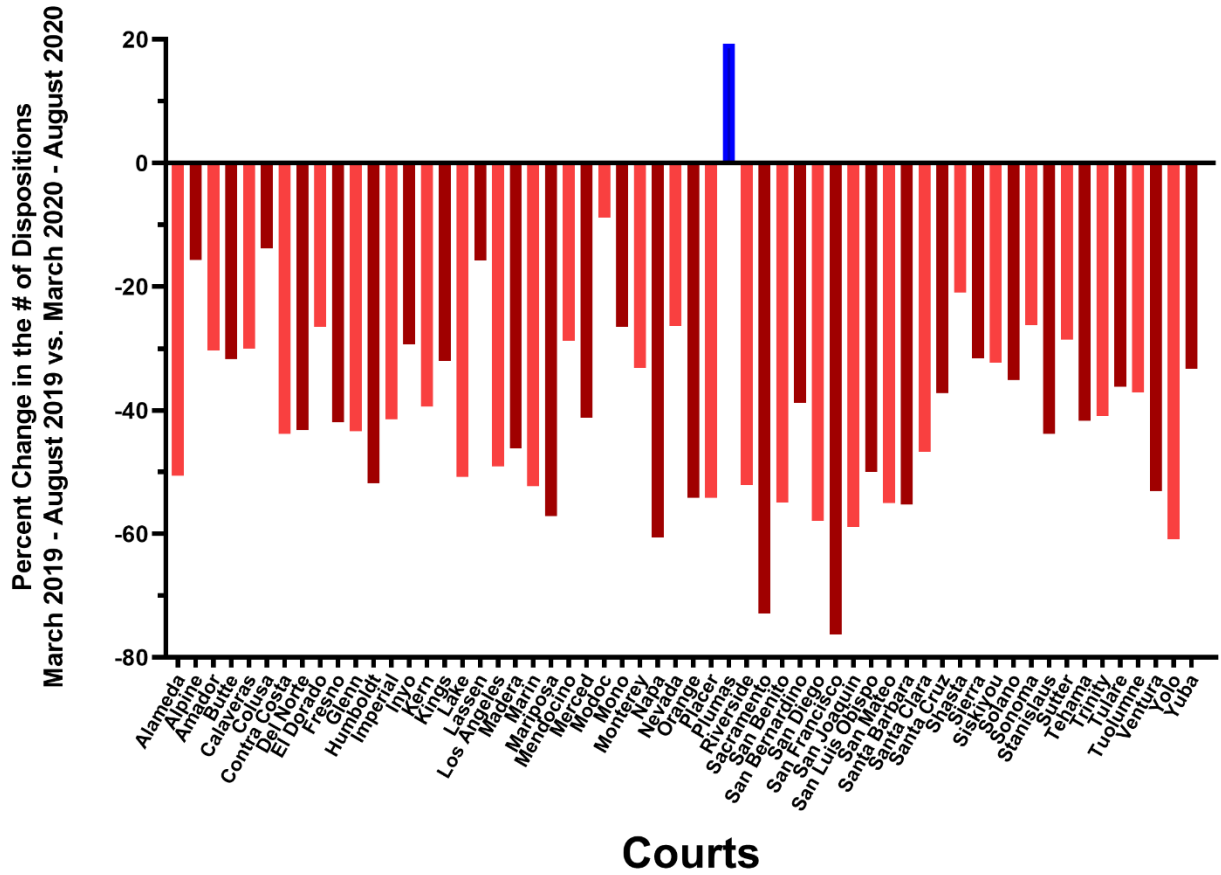
### **Ensuring the Safety of Court Personnel and Court Users**

- Develop/revise/improve uniform statewide guidance for COVID-19 safety measures in courtrooms as the science on COVID-19 improves.
- Develop/revise/improve uniform statewide COVID-19 contact tracing and notification protocols for court staff, contractors, and users who are exposed to a known case of COVID-19.
- Provide a minimum of 14 days paid leave for all court staff and contractors who are forced to quarantine as a result of an exposure to COVID-19.
- Increase remote appearances for traffic court.
- Consider implementing a Judicial Council website for court staff/users to anonymously file complaints/instances of court's failing to comply with COVID-19 safety procedures.

V. Appendix

## Change in Case Dispositions Resulting From the COVID-19 Pandemic

County-Specific Percent Change in the # of Dispositions  
Pre Pandemic vs. During the Pandemic



Source: Trial Court Budget: \$50 Million COVID-19 Backlog Funding, Report to the Judicial Council, Item 21-21-016 (Jan. 12, 2021), at 9-10.

Court	# of Dispositions March 2019 through August 2019	# of Dispositions March 2020 through August 2020	% Change in Dispositions
Alameda	115,671	57,095	-50.60%
Alpine	594	501	-15.70%
Amador	3,032	2,114	-30.30%
Butte	15,414	10,534	-31.70%
Calaveras	2,573	1,801	-30.00%
Colusa	2,515	2,168	-13.80%
Contra Costa	57,547	32,360	-43.80%
Del Norte	7,721	4,385	-43.20%
El Dorado	6,754	4,962	-26.50%
Fresno	85,176	49,477	-41.90%
Glenn	2,578	1,459	-43.40%
Humboldt	11,612	5,593	-51.80%
Imperial	25,066	14,692	-41.40%
Inyo	4,805	3,396	-29.30%
Kern	82,115	49,755	-39.40%
Kings	12,120	8,244	-32.00%
Lake	6,406	3,153	-50.80%
Lassen	3,356	2,827	-15.80%
Los Angeles	785,487	399,992	-49.10%
Madera	14,256	7,672	-46.20%
Marin	23,186	11,064	-52.30%
Mariposa	1,759	755	-57.10%
Mendocino	9,957	7,099	-28.70%
Merced	23,170	13,625	-41.20%
Modoc	1,036	945	-8.80%
Mono	3,954	2,908	-26.50%
Monterey	29,733	19,890	-33.10%
Napa	10,114	3,980	-60.60%
Nevada	7,101	5,223	-26.40%
Orange	221,790	101,623	-54.20%
Placer	15,587	7,132	-54.20%
Plumas	1,592	1,899	19.30%
Riverside	164,679	78,811	-52.10%
Sacramento	104,864	28,430	-72.90%
San Benito	3,228	1,456	-54.90%
San Bernardino	161,339	98,803	-38.80%
San Diego	175,958	74,069	-57.90%
San Francisco	57,347	13,580	-76.30%
San Joaquin	48,577	19,961	-58.90%
San Luis Obispo	23,855	11,924	-50.00%
San Mateo	70,482	31,689	-55.00%
Santa Barbara	36,049	16,113	-55.30%
Santa Clara	85,513	45,566	-46.70%
Santa Cruz	18,932	11,883	-37.20%
Shasta	19,736	15,621	-20.90%
Sierra	288	197	-31.60%
Siskiyou	5,791	3,920	-32.30%
Solano	31,307	20,310	-35.10%
Sonoma	44,633	32,944	-26.20%
Stanislaus	32,565	18,295	-43.80%
Sutter	8,624	6,156	-28.60%
Tehama	6,977	4,067	-41.70%
Trinity	1,515	896	-40.90%
Tulare	34,037	21,720	-36.20%
Tuolumne	4,731	2,978	-37.10%
Ventura	80,910	37,964	-53.10%
Yolo	15,711	6,141	-60.90%
Yuba	4,392	2,928	-33.30%
<b>Total Statewide</b>	<b>2,835,816</b>	<b>1,444,746</b>	<b>-49.10%</b>

Source: Trial Court Budget: \$50 Million COVID-19 Backlog Funding, Report to the Judicial Council, Item 21-21-016 (Jan. 12, 2021), at 9-10.