



Andrew B. Downs
San Francisco,
Shareholder

Direct Dial: 415.352.2716
Fax: 415.352.2701
Email Attorney



Laura C. Caldera
Portland, Shareholder

Direct Dial: 503.499.4602
Fax: 503.295.0915
Email Attorney



Michael A. Guadagno
Seattle, Shareholder

Direct Dial: 206.521.6433
Fax: 206.386.5130
Email Attorney

Does Time Stand Still?

By Andrew B. Downs, Laura C. Caldera, Michael A. Guadagno

The Procedural Implications of COVID-19 in Washington, Oregon, and California

The judiciary tends to lag behind the rest of society when it comes to business practices. Many state courts have not yet adopted electronic filing. Personal appearances and in-person meetings with opposing counsel are still required by many courts. And in some jurisdictions, snail-mail service of documents continues to be the norm.

COVID-19 has upended all of that. It's too soon to tell whether post-pandemic the courts will return to the 1980's, or whether the pandemic will lead to long-term changes in court operations. In the meantime, however, the courts are attempting to cope, some more than others.

Below we summarize the current status of those orders as of the time of publication. *This information is subject to change and we have included hyperlinks to court sites where it will be helpful.*

Washington

On March 27, the Washington State Supreme Court continued all civil jury trials throughout the state until after April 24, along with all non-emergency civil matters except those matters that can be conducted appropriately by telephone or video. Certain counties, particularly in higher population densities, have issued more restrictive measures.

In King County (Seattle and immediate environs), all civil trials are stricken until after June 8. All civil motions are to be heard without oral argument unless requested by the judge or the parties. Where oral argument is permitted, it must be conducted by telephone, video, or other electronic means. Deadlines for filing motions are extended from six days to nine days prior to the noting date; the deadline to respond is extended from two days to four days; and the deadline to reply is extended from one day to two days. All motions for default, default judgment, entry of judgment, and order to pay on writs of garnishment will be denied while public health advisories are in effect.

In Pierce County (Tacoma), all civil jury trials are suspended until at least April 27. Unlike King County, *bench* trials may occur with agreement of all parties and the permission of the Judicial Department. All attorneys, parties, and witnesses must appear remotely via phone or video. Motions will be decided without oral argument, unless telephonic argument is requested.

In Snohomish County (Everett, north of Seattle), all civil jury trials are suspended until at least June 1. Trials currently scheduled before June 1 must be "confirmed" and will receive a new trial date after August 31; trials not properly "confirmed" will be stricken. Bench trials will be continued until after April 24. Civil motions will be decided without oral argument unless the judicial officer requests telephonic argument. Telephonic argument will be via CourtCall.

In Spokane County, all trials, discovery, and case scheduling order deadlines are stayed "pending further order." The parties, however, are permitted to submit a CR 2A agreement to the contrary, subject to court approval.

In the federal courts, the Western District (Seattle and Tacoma) courthouses remain closed to the public. All civil trials set to occur before June 1 are continued pending further order, as are



civil hearings unless otherwise scheduled by the presiding judge, and most hearings will be held telephonically. Motions that can be decided on the papers will continue to be considered.

The Eastern District (Spokane, Yakima, and Richland) has vacated all hearings in civil cases scheduled for in-court appearances through April 14. Civil hearings set for telephonic appearance by all parties or hearings set without oral argument remain unaffected.

Oregon

In Oregon, litigants can electronically file court documents in Oregon's circuit courts and the Oregon Tax Court. So, filings can continue even if the courthouses close temporarily.

Trials and in-person court appearances, however, will be impacted. Oregon's Supreme Court issued an Order on March 16, 2020 enacting Level 3 restrictions on the operations of Oregon's state courts through March 27, 2020. On March 27, 2020, the Supreme Court issued an Amended Order regarding the Court's Level 3 restrictions. With limited exceptions relating to essential proceedings (criminal, protective order, family law, quarantine cases, etc.) the Amended Order forbids Oregon state courts from conducting any civil trials, hearings, or other proceedings scheduled to begin earlier than June 1, 2020, and forbids the scheduling of any trial or other proceedings to begin before June 1, 2020. Notwithstanding the general prohibition on court proceedings in civil cases, the Amended Order permits each court's presiding judge the discretion to schedule particular trials, hearings, or proceedings "upon a determination, after consulting with the parties and other affected persons, that it should occur in that time frame, that it can be conducted by remote means or that sufficient social distancing can be maintained if conducted in person, and that the court can order other reasonable precautions to protect the health of the participants, including victims, interpreters, and court staff." The Oregon Supreme Court is also seeking legislative authority to extend certain statutory deadlines, including statutes of limitations.

On March 16, 2020, the U.S. District Court for Oregon issued an order continuing all civil and criminal jury selections and trials, and all grand jury proceedings scheduled to begin before April 26, 2020, until further order. Likewise, all hearings scheduled to occur before April 26, 2020 have been continued until further order unless the parties can agree to conduct the hearing telephonically. On March 17, 2020, the Oregon District Court supplemented its Order to state that the Courts will remain operational, but will not be open to the public. All filings must be made through the Court's ECF system.

California

California has four separate federal judicial districts and 58 county Superior Courts, and there is little uniformity among them.

Trial Continuances in State Court

The State Courts (the Superior Courts) have suspended all jury trials through May 22 (the Friday before Memorial Day) and have continued all yet to commence jury trials through May 22. In 53 out of the 58 counties, with the approval of the Chief Justice of the California Supreme Court, the courts have issued orders declaring a specified number of days (typically 10 to 15 days) starting on or about March 16 to be holidays for purposes of calculating time. Code of Civil Procedure §§ 12 and 12a collectively provide that if the last day to perform an act required by law within a specified period of time is a holiday, that period is extended to the next day that is not a holiday. Section 12a contains broad language making it applicable to "all other



provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation." It applies to statutes of limitation. *DeLeon v. Bay Area Rapid Transit*, 33 Cal.3d 456, 461 (1983). In five relatively small counties, Alpine, Lassen, Modoc, Mono, and San Benito, State Chief Justice emergency orders have not been issued affecting limitations periods, so in those counties, the old rules and deadlines still apply. Generally, in those counties, hearings that are not continued will be conducted via telephone or video conference. Most of the remaining counties have continued all hearings until at least early April.

Electronic Activities

The Governor has issued an Executive Order giving the Chief Justice of the California Supreme Court the right to suspend the effect of certain statutes for the duration of the pandemic, including those limiting the courts' authority to permit a deponent to appear by telephone, and those limiting the courts' authority to order parties to accept electronic service during the course of a lawsuit. The California Judicial Council (which is the overall administrative governing body for the state courts) has directed the various Superior Courts to make use of technology when possible to conduct judicial proceedings including for remote proceedings, e-filing and electronic service, and the electronic exchange and authentication of documents. Generally, as of the morning of March 30, 2020, the individual courts have not yet implemented these changes.

The California Federal Courts

The federal courts don't have the power to declare holidays to extend limitation periods.

The Northern District of California (which covers the Bay Area and the coast from Monterey County to the Oregon border), has vacated all trial dates before May 1, 2020 and all civil motions will be decided on the papers unless the judge believes a hearing is necessary. Only the San Francisco courthouse is open; the Oakland, San Jose and McKinleyville Courthouses are closed.

The Eastern (the Central Valley and Sierras, sitting in Sacramento and Fresno) District has continued all jury trials set between now and May 1, 2020. Individual judges may continue to hold hearings, including by telephone or video.

The Southern District (San Diego and Imperial Counties) has continued all jury trials set before April 16, 2020. Again telephone and video conferencing will be allowed for hearings.

The Central District (Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, and San Luis Obispo Counties) has continued all jury trials until April 13. Civil hearings are not proceeding except for emergency time-sensitive matters. Individual judges retain the right to conduct hearings by telephone.

The COVID-19 situation is rapidly evolving, so this information is subject to change and we recommend you contact your Bullivant attorney for up-to-date information.