

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR20-32

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**Title**

Appellate Procedure: Emergency Orders to Toll and Extend Time

**Action Requested**

Review and submit comments by June 9, 2020

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 8.66

**Proposed Effective Date**

Rule is effective April 4, 2020, and is circulating for comment post-amendment

**Proposed by**

Hon. Marsha G. Slough, Chair, Executive and Planning Committee  
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee  
Hon. Kyle S. Brodie, Chair, Judicial Council Technology Committee  
Hon. Marla O. Anderson, Chair, Legislation Committee  
Hon. Harry E. Hull, Jr., Chair, Rules Committee

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### Executive Summary and Origin

To assist the appellate courts in continuing to operate during the COVID-19 pandemic, the Judicial Council recently amended rule 8.66 of the California Rules of Court, the appellate rule governing extensions of time because of a public emergency, to provide for tolling in addition to extending time. The amendments also allow the Chair of the Judicial Council to order tolling or extensions of time for up to 30 days rather than 14 days, and clarify and simplify various provisions of the rule.

The rule was amended prior to circulation because of the courts' urgent need for these changes to take effect immediately. The chairs of the Judicial Council's six internal committees are now circulating the rule and seeking comments following amendment of the rule. The internal committee chairs will recommend further amendments, based on the comments, if appropriate.

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 It is circulated for comment purposes only.*

## **The Proposal**

The COVID-19 pandemic is having unprecedented impacts on courts throughout the state, including the appellate courts. Since the middle of March 2020, under former rule 8.66 and as authorized by the Chair of the Judicial Council, all six Courts of Appeal and the Supreme Court have issued orders extending for 30 days the time periods specified in the appellate rules. In implementing these orders, however, the courts became aware of shortcomings in the rule. In particular, the orders authorized by the former rule provided for extensions of time, but not for tolling. Tolling stops or suspends the running of time; when the tolling period ends, the time starts running again. By contrast, extending time adds days to the end of a time period. Tolling gives courts flexibility and can be easier to apply.

In addition to adding tolling, the amendments to subdivision (a) added a “public health crisis” as a type of public emergency that could necessitate an order under the rule, lengthened the time in (a)(1) that the Chair may order tolling or an extension from 14 days to 30 days to be consistent with the amount of time in (a)(2) that the Chair may authorize a court to toll or extend time, and simplified language in (a)(1) and (a)(2).

The amendments to subdivision (b) added language regarding tolling, required in (b)(1) that the length of any tolling or extension ordered by the Chair under (a)(1) must be specified in the order, and made minor wording changes in (b)(1) and (b)(2).

The amendments to subdivision (c) updated the language from *extending* the orders under the rule to *renewing* the orders, and added provisions that the Chair may renew an order with or without a request, an order may be renewed prior to its expiration, and orders under both (a)(1) and (a)(2) may be renewed for up to 30 days per renewal. In addition, the former rule appeared to authorize only one extension of an order. The amendments clarified that an order may be renewed more than once, “for additional periods not to exceed 30 days per renewal.” As in subdivision (a), the amendments removed the distinction between the length of time the Chair may extend an order (14 days) and the length of time the Chair may authorize the court to extend time (30 days), to provide for renewal for up to 30 days for both types.

Finally, the amendments added two new advisory committee comments regarding tolling. The first explains the concept of tolling and provides a case citation. The second clarifies that the tolling and extension of time authorized under this rule apply to all rules of court that govern finality in the Supreme Court and the Courts of Appeal.

## **Alternatives Considered**

The internal committee chairs considered taking no action, but rejected this alternative in light of the public emergency confronting the courts and litigants.

The internal committee chairs also considered listing the specific rules governing finality in the second new advisory committee comment, rather than referring to them collectively. The

committee rejected this option because a list could be, or could become, incomplete. In addition, rule numbers may change, and updating cross-references can be cumbersome.

### **Fiscal and Operational Impacts**

It is anticipated that the proposal will facilitate appellate court operations by expanding the types of relief that can be ordered, clarifying that additional periods of relief, if necessary, are authorized, and making other changes to improve the working of the rule. Operational impacts will include the time to inform judicial officers and court staff regarding the amendments, and could include changes to case management systems. It is unclear what fiscal impact the proposal may have on the appellate courts.

### **Attachments and Links**

1. Cal. Rules of Court, rule 8.66, at pages 4–5

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 1. General Provisions

6  
7 Article 4. Applications and Motions; Extending and Shortening Time

8  
9  
10 Rule 8.66. ~~Extending~~ Tolling or extending time because of public emergency

11  
12 (a) Emergency tolling or extensions of time

13  
14 If made necessary by the occurrence or danger of an earthquake, fire, public health  
15 crisis, or other public emergency, or by the destruction of or danger to a building  
16 housing a reviewing court, the Chair of the Judicial Council, notwithstanding any  
17 other rule in this title, may:

- 18  
19 (1) ~~Extend Toll for up to 30 days or extend by no more than 14 additional 30~~  
20 ~~days the time to do any act required or permitted under any time periods~~  
21 specified by these rules; or  
22  
23 (2) Authorize specified courts to toll for up to 30 days or extend by no more than  
24 30 additional days the time to do any act required or permitted under any  
25 time periods specified by these rules.

26  
27 (b) Applicability of order

- 28  
29 (1) An order under (a)(1) must specify the length of the tolling or extension and  
30 whether it the order applies throughout the state, only to specified courts, or  
31 only to courts or attorneys in specified geographic areas, or applies in some  
32 other manner.  
33  
34 (2) An order ~~of the Chair of the Judicial Council~~ under (a)(2) must specify the  
35 length of the authorized tolling or extension.

36  
37 (c) ~~Additional extensions~~ Renewed orders

38  
39 If made necessary by the nature or extent of the public emergency, with or without  
40 a request, the Chair of the Judicial Council may ~~extend or~~ renew an order issued  
41 under ~~(a)~~ this rule prior to its expiration. An order may be renewed for an  
42 additional periods of: not to exceed 30 days per renewal.

