

SUPERIOR COURT
COUNTY OF SAN BERNARDINO
247 West Third Street, Eleventh Floor
San Bernardino, CA 92415

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

IN RE:

SUSPENDING CIVIL JURY TRIALS

**GENERAL ORDER OF THE
PRESIDING JUDGE**

EMER ORDER 40

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of COVID-19. On March 13, 2020, former President Trump declared a national emergency in the United States due to COVID-19. Since declaring the state of emergency, State and County public health officials have issued guidelines and mandates targeted at limiting the spread of COVID-19.

The state received its first doses of COVID-19 vaccines in mid-December 2020 and the rate of COVID-19 infections and COVID-19-related deaths diminished in the spring and part of the summer months before increasing starting in July 2021. The Centers for Disease Control and Prevention (CDC) attributed the dramatic increase in COVID-19 infections and deaths to the Delta variant of COVID-19. The court has maintained enhanced sanitization of court facilities since April 2020, but on July 6, 2021, in accordance with Cal/OSHA'S emergency

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1 temporary standards, the court eliminated physical distancing and face covering requirements
2 for vaccinated persons. However, less than three weeks later, due to a rapid increase in
3 COVID-19 infections in San Bernardino County and among court staff, the court reinstated
4 mandatory face coverings for all persons while onsite at the court districts.

5 In November 2021, a new variant of COVID-19, Omicron, was identified in Botswana
6 and South Africa. This new variant, which the CDC has described as more resistant to existing
7 vaccines and significantly more transmissible than the Delta variant, was detected in the
8 United States in December 2021, and like last year, there has been a nationwide spike in
9 COVID-19 infections since Thanksgiving and Christmas, resulting in high transmission rates
10 and increased hospitalizations. State public health data related to COVID reveals that as of
11 January 4, 2022, the State has averaged 50,308 new cases during the past week, an increase
12 of 524% compared to two weeks ago. There has also been a 110.5% increase in the number
13 of COVID-related hospitalizations over the past two weeks. On December 13, 2021, the State
14 reinstated a mandate requiring masks to be worn in all indoor public settings, regardless of
15 vaccination status, from December 14, 2021, through January 15, 2022.

16 Approximately 55% of San Bernardino County's residents are fully vaccinated but the
17 vaccination rate has remained flat for the past several months. The County has experienced
18 several spikes in COVID-19 infections and COVID-19-related deaths since early July 2021 with
19 the most recent increase occurring right after Thanksgiving and continuing presently. As of
20 December 14, 2021, there were 371,323 confirmed COVID-19 cases and 5,982 deaths
21 attributable to COVID-19 in San Bernardino County. As of January 4, 2022, there are 400,972
22 confirmed COVID-19 cases in San Bernardino County representing a 9% increase in
23 confirmed COVID-19 cases over a three week time period.

24 The court is experiencing an adverse impact on the number of potential jurors willing to
25 appear for jury service and on the number of employees who are absent from work for reasons
26 associated with COVID-19. The court must still balance access to justice with protecting the
27 health and safety of the public, judicial officers, staff, vendors, Sheriff's department staff, and
28 inmates. This effort is made more complicated by the fact that the court is operating with fewer

1 staff and judicial officers due to COVID-related absences, judicial vacancies, and staffing
2 vacancies. Further, the court is experiencing substantial practical challenges associated with
3 scheduling and managing criminal jury trials and other criminal-related proceedings due to
4 extreme shortages of court reporters and Sheriff's deputies. The continuing escalation in the
5 number of COVID-19 cases in San Bernardino County continues to impact the court's ability to
6 provide adequate access to court services and proceedings while it contemporaneously
7 implements appropriate measures to protect the health and safety of judicial officers, court
8 staff, litigants, defendants, and members of the public. The court has found that it is presently
9 unsafe to conduct in-person proceedings that would require convening large groups of people,
10 including parties, judicial officers, court staff, law enforcement, attorneys, witnesses, jurors, the
11 public, and others.

12 Moreover, while the court accelerated its plans to implement technology to allow judicial
13 officers to conduct proceedings remotely, for legal and equitable reasons, it cannot mandate
14 remote appearances in every case. Specifically, the court cannot mandate remote
15 appearances in criminal jury trials because California Rules of Court (CRC) emergency rules 3
16 and 5 authorize remote proceedings only with the consent of the defendant. The court cannot
17 mandate remote appearances in civil jury trials due to logistical and social distancing concerns
18 that would arise with respect to jury selection and jury deliberations. There are also evidentiary
19 issues that prevent the court from imposing mandatory remote civil jury trials.

20 One of the most important principles of our constitutional democracy is the right of
21 persons accused of a crime to have a speedy trial. Preserving that right while protecting the
22 well-being of all participants in a trial during a pandemic involving a highly contagious
23 respiratory virus is an unprecedented challenge for trial courts. There are currently a significant
24 number of felony and misdemeanor cases for which the court must devote its resources in
25 order to meet Constitutional and statutory timelines. While Chief Justice Tani G. Cantil-
26 Sakauye has granted the court's requests for emergency orders extending time to conduct
27 criminal trials, the court is still experiencing substantial difficulty in marshalling the human

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1 resources and facility space needed to bring those matters to trial, particularly as new cases
2 are filed daily.

3 Therefore, pursuant to Penal Code section 1050, the court will give preference and
4 priority for available jurors and jury trials to criminal cases. Jury trials will be limited to those
5 cases requiring a disposition within specific periods of time. Those cases include all criminal
6 cases, unlawful detainer jury trials, civil cases with statutory preference under the California
7 Code of Civil Procedure sections 35-37, and civil cases approaching the 5-year deadline under
8 California Code of Civil Procedure sections 583.310 and 583.320.

9 Based on the foregoing, the court finds and concludes that conducting civil jury trials
10 could likely place prospective jurors, litigants, attorneys, and court personnel at unnecessary
11 risk and that risk outweighs the interests of the public and the parties in a trial. Additionally,
12 due to Constitutional and statutory time requirements, the court finds and concludes that in
13 most instances criminal trials have priority over civil trials. Therefore, the court finds good
14 cause to implement the authority granted to it under California Rule of Court, Rule 10.603;
15 case authority recognizing the court's broad powers to insure the orderly administration of
16 justice (see e.g., *Walker v Superior Court* (1991) 53 Cal.3d 257, 266-267); Chief Justice Tani
17 G. Cantil-Sakauye's March 30, 2020 and April 29, 2020 Statewide Orders; the Chief Justice's
18 August 13, 2020 Emergency Order; and Government Code Section 68115, and HEREBY
19 ORDERS AS FOLLOWS:

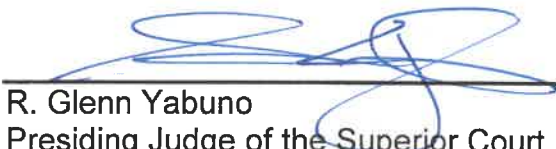
20 All civil jury trials are continued until further notice. The parties are asked to meet and
21 confer to pick a tentative trial date some time in 2022, and to submit a stipulation to the court.
22 If no stipulation is submitted, new trial dates will be selected at the current trial readiness
23 conference. The court will not set any civil jury trials to commence before February 22, 2022.

24 Pursuant to Penal Code section 1050, the court will give preference and priority for
25 available jurors and jury trials to criminal cases. Civil jury trials will be limited to those cases
26 requiring a disposition within specific periods of time. Those cases include all criminal cases,
27 unlawful detainer jury trials, civil cases with statutory preference under the California Code of
28 Civil Procedure sections 35-37, and civil cases approaching the 5-year deadline under

1 California Code of Civil Procedure sections 583.310 and 583.320. The court may conduct a
2 civil jury trial for cases that do not require disposition within a specific period of time at an
3 earlier date, upon a finding of good cause shown, or through the uses of remote technology,
4 when appropriate, and if feasible.

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6 THIS ORDER IS EFFECTIVE IMMEDIATELY.

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8 Dated: January 5, 2022

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13 R. Glenn Yabuno
14 Presiding Judge of the Superior Court
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