

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF MERCED

3
4 AMENDED GENERAL ORDER RE: IMPLEMENTATION OF EMERGENCY
5 RELIEF AUTHORIZED PURSUANT TO GOVERNMENT CODE SECTION
6 68115 BY CHAIR OF JUDICIAL COUNCIL

7 #2020-07 amended.

8 Effective March 17, 2020, this Court issued Standing Order 2020-04 entitled
9 Merced Superior Court Plan to Mitigate the Spread of the COVID-19.

10 On March 18, 2020, this Court issued its First General Order Re:
11 Implementation of Emergency Relief Authorized Pursuant to Government Code
12 Section 68115 by the Chair of Judicial Council. That order addressed statutory
13 deadlines that would otherwise expire during the period March 24, 2020 through
14 April 28, 2020.

15 On March 20, 2020, this Court issued its Second General Order Re:
16 Implementation of Emergency Relief Authorized Pursuant to Government Code
17 Section 68115. Among other things, that order provided that from March 23, 2020
18 to April 17, 2020, inclusive, all courtrooms will remain closed for judicial
19 business, except for twenty-three enumerated categories of time-sensitive, essential
20 functions.

21 On April 10, 2020, this Court issued its Third General Order Re:
22 Implementation of Emergency Relief Authorized Pursuant to Government Code
23 Section 68115. That order extended the prior orders to a period 90 days after the
24 Governor declares that the state of emergency related to the COVID-19 pandemic
25 is lifted or until amended or revoked by the Presiding Judge of the Merced, and
26 ordered that all hearings conducted with regard to the twenty-three enumerated
27 categories of time-sensitive, essential functions authorized by the Second General
28

1 Order will be conducted remotely according to the Guidelines provided in the
2 Order.

3 On April 13, 2020, this Court issued its Fourth General Order Re:
4 Implementation of Emergency Relief Authorized Pursuant to Government Code
5 Section 68115 by Chair of Judicial Council. That order extended the statutory
6 deadlines from the period March 24, 2020 through April 28, 2020 addressed in the
7 First General Order to May 12, 2020.

8 This General Order summarizes this Court's findings concerning the quality
9 and effectiveness of the remote hearings conducted since March 23, 2020. Since
10 March 23, 2020, the Merced Superior Court has conducted 43 remote Juvenile
11 Hearings, 488 remote Criminal Hearings, 80 remote Family Law Hearings, a total
12 of 611 remote hearings. The Presiding Judge has conducted a number of remote
13 hearings himself and has consulted with each of the other Merced Superior Court
14 Judges conducting remote hearings and this Court **HEREBY FINDS AND**
15 **ORDERS AS FOLLOWS:**

- 16 1. The 611 remote hearings provided by the Merced Superior Court since
17 March 23, 2020 are the fully functional equivalent of live in-court
18 hearings. While they do not proceed as quickly as live in-court hearings,
19 the sound quality and video picture quality is as good as or better than
20 available to a person participating in a live in-court hearing. In all
21 hearings conducted, the Judicial Officer has been able to understand the
22 testimony and fully evaluate the demeanor of each speaker, unless the
23 speaker appears by telephone.
- 24 2. Just as in a live hearing, there are times where a participant fails to speak
25 into their microphone and must be prompted to repeat what they said,
26 there are occasions where participants forget to unmute their connection
27 or do not speak clearly and must be prompted to repeat their statements.
28 While a connection has occasionally failed during a hearing, such failure

1 usually comes to the immediate attention of the courtroom clerk
2 controlling the video conference and the hearing is paused until a new
3 and satisfactory connection can be made.

- 4 3. When an interpreter is required, the hearing proceeds more slowly
5 because the interpreter must proceed with sequential rather than
6 simultaneous interpretation, but the quality of interpretation is as good or
7 better than the use of simultaneous interpretation during a live in-court
8 hearing.
- 9 4. When a participant and their attorney need to conduct a private
10 conversation, the court has developed several processes for
11 accommodating that need.
- 12 5. Remote hearings also preserve the right of the public to observe court
13 proceedings as certain non-confidential remote hearings are being
14 streamed by the Merced Superior Court to the public via YouTube.
- 15 6. The remote hearings have been so successful, that there have been
16 inquiries from justice partners, including criminal defense counsel and
17 civil counsel, requesting that the option to provide remote hearings in lieu
18 of in-court hearings continue after the state of emergency is over.
- 19 7. This court concludes that the 611 remote hearings conducted by the
20 Merced Superior Court since March 23, 2020 have fully accommodated
21 the rights of all the participating parties and constitute the fully functional
22 equivalent of live in-court hearings.
- 23 8. This court finds that the threat of contagion is such that live in-court
24 criminal hearings would jeopardize the health of the Deputy District
25 Attorney participating in the hearing, the district attorney's office, and its
26 ability to function in other matters; would jeopardize the health of the
27 Deputy Sheriffs or other law enforcement participating in the hearing, the
28 Sheriff's office or other law enforcement agencies participating in the

1 hearing, their staff, and their ability to function in other matters; would
2 jeopardize the health of defense counsel and the ability of defense
3 counsel's firm or the public defender to function in other matters; would
4 jeopardize the health of the defendant himself, and would jeopardize the
5 health of the court staff and its ability to function in other matters.

6 Similarly, live in-court civil hearings would jeopardize the health of all
7 participants, including counsel, parties, and witnesses, in such civil
8 hearings. This court incorporates by this reference, the April 8, 2020
9 letter from Sheriff Vern Warnke discouraging the transportation of
10 prisoners in lieu of remote hearings, and the April 22, 2020 Letter from
11 the Merced County Department of Public Health, discouraging the use of
12 live hearings, copies of which are attached hereto as Exhibits A and B.

- 13 9. This court finds that remote hearings do not impinge on the rights of any
14 party in any material way, while adequately protecting the health and
15 safety of all participants. This court finds that increases in safety
16 presented by remote hearings far outweighs any potential advantages in-
17 person hearings might have over remote hearings while the State of
18 Emergency remains in effect.

19 **THIS ORDER IS EFFECTIVE IMMEDIATELY.**

20
21 Dated: April 28, 2020

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23 
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Hon. Donald J. Proietti, Presiding Judge

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Merced County Sheriff's Office

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Undersheriff

Sheriff's Administration

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Date: April 8th, 2020
To: Presiding Judge Donald Proietti
From: Sheriff Vern Warnke
Re: Prisoner Transport for Court Hearings

I am authoring this letter to express my concerns over movement of inmates from our jail facilities to the court for judicial hearings at this time based on the COVID-19 pandemic. We are in unprecedented times and we are all trying to adopt the best practices while still accomplishing the mission. As the Sheriff of this County, it is my purpose to do everything in my purview to make public safety paramount. This rings true for not only the public and staff, but also for the inmates we house in our jail facilities. At present, the Merced County Sheriff's Office has no known cases of COVID-19 in our jail population. It is my hope to maintain this current record.

In the past week, my staff has worked in collaboration with the Merced County Superior Court to help facilitate the ability for court hearings to be heard remotely via video conferencing. I am aware there are two video conference systems at each jail facility (Main Jail and JLCC) for a total of four. I am told thus far this endeavor has been successful.

Our jail staff, vendors and anyone entering our jail facilities for legal visits are currently being screened with COVID-19 related questions. They are also required to have their temperature taken. We have also taken several other preventative steps to minimize exposure to our staff and inmates during the current pandemic.

Given the State of Emergency declared and the existing restricted movement of inmates to and from State of California facilities, I would request the Merced County Superior Court adopt the same guidelines. To date, we currently have 21 inmates in our custody that were either committed to the State Hospital or sentenced to State Prison. Based on current restrictions, those inmates will not be received by CDCR or the State Hospital until the State advises it is safe to do so and such restrictions are lifted.

By the Court adopting this restriction, it will halt potential COVID-19 exposure to our staff, our inmates, the public and employees outside the Sheriff's Office control who are not as stringently screened. Additionally, our PPE stockpile is limited and it is necessary to maintain what we have in the event exposure does occur.

We have also developed a protocol with our jail medical provider to set timetables for observation of new inmates. If for some reason this timetable were not met and we were required to transport an inmate to court expeditiously, there is a possibility of us unknowingly bringing a COVID-19 positive inmate into the Court.

I would offer my opinion that we continue to conduct court hearings remotely via video conference. I would hope the Merced County Justice Partners would join in these precautionary measures out of an extreme need for public safety. As we know, the COVID-19 virus is deadly. I cannot imagine potentially trading a life to have an in person court hearing when we clearly have an alternative option. We appreciate the partnership and consideration.



Rebecca Nanyonjo-Kemp, DrPH
Director

Kenneth Bird, MD, MPH
Health Officer



April 22, 2020

Attn: Honorable Donald J. Proietti
Presiding Superior Court Judge
Merced County

RE: In-Person Court Cases

Dear Judge Proietti,

The reason for this correspondence is to request re-evaluating the need of any in-person court proceedings until State and local Health Officer Orders have been amended or lifted. As you are aware, the State of California has enacted a shelter-in-place order significantly limiting mass gatherings and suspending services deemed non-essential. Merced County duly adopted a local health officer order on March 20, 2020 in alignment with the state-issued directive. Nationally and throughout the state of California, the number of reported cases of COVID-19, a virus that is highly infectious and preventable should appropriate preventative measures be in place, has resulted in 94 confirmed cases with three (3) deaths in this county alone.

The Merced County Department of Public Health is responsible for the health and well-being of all community residents. In-person court proceedings increases social mixing, which could cause an unnecessary health emergency and strain on emergency responders and hospital services. Such proceedings would also endanger the well-being of prosecuting attorneys, defense attorneys, and the defendants. As such, I strongly advise against continuing with in-person court cases of any type as this practice may lead to the development of further cases we are trying to prevent and control through preventative measures. Furthermore, I recommend this suspension stay in effect until further notice, or when the state advises that relaxed measures may resume.

The Department of Public Health continues to monitor and revise public approaches as the COVID-19 situation unfolds. Again, only essential services are permitted at this time. When it is considered safe to resume business - normal or modified - you will be notified.

Please know the welfare of our community members, no matter their current status, is of utmost importance. Should you have any questions, or need further assistance, please utilize us as a point of reference.

Sincerely,

Rebecca Nanyonjo-Kemp, DrPH
Director

Vicki Jones, MPA, REHS
Environmental Health Division Director

Jessica Montoya-Juarez, MS
Assistant Public Health Director

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