

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF MERCED
3

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

7 #2020-07

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
26 Superior Court, and ordered that all hearings conducted with regard to the twenty-
27 three enumerated categories of time-sensitive, essential functions authorized by the
28

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

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

15 THIS ORDER IS EFFECTIVE IMMEDIATELY.

16
17 Dated: April 23, 2020

18
19 Donald J. Proietti
20 Hon. Donald J. Proietti, Presiding Judge