

YUKEVICH | CAVANAUGH

CALIFORNIA COURT UPDATE

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Introduction Message From Our Managing Partner

As you all remember, courts and businesses started closing down as a result of the pandemic in mid-March. There are 58 counties in California, with a superior court in each county – in addition to the 4 federal court districts - well over 100 different courthouses in California that host jury trials.

Since this crisis began, courts have been trying to figure out exactly how jury trials can happen in a world of quarantines, social distancing, and personal protective equipment.

Most California courts have not restarted civil jury trials, at least beyond a few test cases. In a recent hearing reported by defense counsel, a San Diego County judge said they do not believe civil trial will take place until July 2021 at the earliest. Last week, 800 jurors were summoned to the San Diego courthouse for a criminal trial, and only 41 people showed up. Just getting jurors in the courthouse and making them feel safe continues to be a problem.

From our research, it appears that *fewer* than 10 counties in California have announced that they have restarted jury trials while complying with the current COVID-19 safety guidelines. For example, Lake County in northern California ordered prospective jurors to report for socially distanced jury selection at a 10,000 square foot former ice skating rink at the county fairgrounds.

But for the most part, federal and state courts in California have yet to resume jury trials, and those jury trials that are being scheduled are more likely to be criminal rather than civil.

But how many civil jury trials have *actually* been held in California since courts started to re-open? Details are hard to come by. Imperial County in southern California announced that the first jury trial since the pandemic began started the week of September 21 but gave scant information.

Of the jury trials that have taken place, several have been in Alameda County in the Bay Area. Recently, the Alameda County court held a civil jury trial by Zoom in an asbestos case that resulted in a seven-figure plaintiffs' verdict. This case, called *Wilgenbusch vs. American Biltrite*, highlights some of the unique problems both courts and counsel are experiencing in trying to conduct jury trials under what has become the new normal.

In the *Wilgenbusch* case, the defendant sought a mistrial based on irregularities related to the court's use of Zoom. The defendant claimed that the plaintiff spoke with two jurors over Zoom while the judge and counsel were in a separate Zoom "room." According to the motion for mistrial, the plaintiff was heard speaking with two jurors about how he set up a virtual Zoom background on his computer. The defendant argued that the plaintiff "intentionally and subtly created juror empathy" through the conversation. At the end of the day the court denied the motion for mistrial, ruling the defendant had not shown it was deprived of a fair trial. The court also denied repeated requests by the defendant that the proceedings be recorded to avoid further irregularities.

This week, in San Bernardino County, the court is working out how to hold a major civil jury trial under the current COVID-19 restrictions. The trial will involve not just the jurors, judge, and court staff, but also five different parties, their counsel, and technical specialists. The court is proposing to hold this trial in the Old San Bernardino Courthouse, which has larger courtrooms available. However, one of the proposals is that 20 jurors and alternates will be seated, socially distanced, in the courtroom audience, which raises issues of where to seat the party representatives, as well as whether counsel's laptop screens and other activities at the counsel tables will be visible to the jurors sitting in the gallery. Court staff are looking for ways to rearrange the courtroom to avoid this. Plexiglass barriers are being installed for the judge and the witness stand, but not for counsel or jurors. If the issues with the current courtroom cannot be resolved, the court is considering leasing space at a community college in which to hold the trial. The trial is estimated to take 6 to 8 weeks. It remains to be seen if the trial can be successfully completed under these conditions.

Unfortunately, at this time there is no way to tell if and when the current closures in places like Los Angeles County will end, and if and when the courts will return to business as usual. Just as litigators such as myself have learned to adapt to new technologies when taking depositions and attending mediations, some courts are trying to move forward with jury trials as much they can, given current safety guidelines and available technology. It's clear to me that remote jury trials using Zoom, WebEx and other platforms are going to be with us for a while. Remote jury trials raise important questions not only about the safety of the judges, lawyers, staff, and jurors involved, but also about fundamental fairness. We are continuing to monitor developments and will continue to give webcasts on this topic in the days and weeks to come.

At Yukevich | Cavanaugh, we have successfully undertaken comprehensive measures to ensure our business continues to provide the unparalleled level of service, stability, and professionalism that our clients, colleagues, and community especially need during these unprecedented times.

The following website which has updated information on the status of all California state courts with links to all the courts' websites and COVID-19 orders:

<https://support.onelegal.com/california-court-updates-covid-19>.

Please contact me if you have a question about the status of any case, anywhere.

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California Superior Courts: Major Southern California Counties

Many courts have issued revised COVID-19 orders. Some of the highlights of these orders include the following:

- Los Angeles County continues to put off most civil trials until January 2021.
- Orange County has restarted certain types of civil trials and implemented revised jury selection protocols.
- A budget shortfall is affecting hours of operation for Riverside County courthouses.

LOS ANGELES COUNTY

The **Los Angeles County Superior Court** announced on October 9, 2020 that it will continue to delay almost all civil trials until January 2021, stating that its courthouses are not currently configured to promote social distancing. However, trials involving preference cases that comply with social distancing protocols were to resume on October 5.

As we previously advised, criminal trials have restarted in L.A. County. On October 9, criminal trials were given priority access to jurors over civil trials, in order to satisfy defendants' constitutional rights to a speedy trial. There are over 7,000 pending criminal trials in LA County.

ORANGE COUNTY

Orange County restarted civil trials on September 1, 2020. Cases to be tried will be selected based on the following criteria:

- Statutory preference cases that were not yet scheduled for trial
- Age of the case
- Estimated length of trial
- Number of parties
- 5-year statutory requirement

- Stipulation by parties to fewer than 12 jurors
- Whether the trial is an expedited jury trial
- Other relevant case-specific factors

Orange County also conducts bench trials by WebEx remote video. All parties, counsel, and their respective witnesses will appear remotely. On September 30, Orange County announced that jury selection will proceed pursuant to the following procedures:

- Civil jury panels will include 40 prospective jurors per panel
- Jury selection might occur in a different courtroom than where the jury trial will be conducted
- Where space allows, voir dire of all jurors will be done in one courtroom
- When space limitations require, voir dire may be done in rounds (*e.g.* in 2 groups of 20 jurors each)
 - In some courtrooms, voir dire of the first group will be broadcast live to the second group in a separate location, allowing both groups to see and hear all voir dire questioning
- Jury selection will otherwise proceed pursuant to statute, rule, and individual department procedure
- During trial, jurors will be seated throughout the jury box and gallery to maintain social distancing

RIVERSIDE COUNTY

Riverside County has restarted limited in-person hearings. The court anticipates moving forward with trials sometime in the last quarter of 2020, but no specific date has been announced. Except for limited emergency matters, Riverside County continues to require filings to be submitted via its online filing system.

On October 6, Riverside County announced that due to a \$12 million Covid-19 related budget shortfall, it will close all courthouses the third Friday of every month. Upcoming closure dates are:

- October 16
- November 20
- December 18
- January 15, 2021

Certain courts will be open for emergency matters and statutorily required proceedings.

SAN BERNARDINO COUNTY

San Bernardino County continues with its order that most jury trials are continued until 2021. San Bernardino has limited jury trials to the following:

- Criminal cases
- Unlawful detainer jury trials
- Civil cases with statutory preference under the Code of Civil Procedure
- Civil cases approaching the 5-year deadline under the Code of Civil Procedure
- Upon a showing of good cause, a civil jury trial for cases that do not require disposition within a specific period of time at an earlier date
- A civil jury trial through the use of remote technology

SAN DIEGO COUNTY

San Diego County continues to move forward with its September 9, 2020 order regarding the restart of trials. Jurors were summoned for a criminal trial starting October 13, 2020, and then a second criminal trial starting October 19. On October 26, San Diego reports that it will ramp up to two criminal trials per week.

Because of the backlog of criminal trials, all available courtrooms in San Diego County will be dedicated to in-custody criminal trials only. An exception may be made where a judge finds good cause to commence trial on any case, civil or criminal.

California Federal Courts

CENTRAL DISTRICT OF CALIFORNIA

The Central District of California continues to put a hold on jury trials and most in-person civil hearings, under its Reopening Plan adopted on August 6, 2020. In-person hearings regarding emergency civil matters in the Southern Division of the Central District were recently restarted. Non-emergency hearings will continue to be held via videoconference or telephone.

SOUTHERN DISTRICT OF CALIFORNIA

The Southern District of California announced on September 29, 2020 that due to the ongoing Covid-19 crisis, it has extended its order of June 10, 2020 implementing social distancing and safety guidelines in its courthouses. The Southern District continues with its restart of civil trials and criminal trials involving out of custody defendants, with priority given to criminal cases.

One jury selection per day may be scheduled Monday through Thursday of each week. To facilitate social distancing, only one trial may take place each week on a single floor of the courthouse.

The Southern District has also restarted in-person misdemeanor bench trials, with the required COVID-19 health and safety protocols in effect, to the extent applicable.

NORTHERN DISTRICT OF CALIFORNIA

The Northern District of California continues to move forward with its recent restart of civil trials. Jury trials and bench trials may proceed in accordance with the Court's safety protocols. Each judge has the discretion to either hold a hearing or decide a civil matter on the papers. Hearings are currently held via telephone or videoconference.

Criminal jury trials may proceed in accordance with the logistical considerations necessitated by the Court's safety protocols.

EASTERN DISTRICT OF CALIFORNIA

The Eastern District of California's COVID-19 order issued on May 13, 2020 remains in effect. No civil or criminal trials will go forward, as no jurors will be called for jury duty until further notice. All civil matters will continued to be decided on the papers; but if the judge believes a hearing is necessary, it will be conducted by telephone or video conference. This applies to motion hearings, case management conferences, pretrial conferences, settlement conferences, and ADR proceedings.