



February 17, 2021

Assembly Judiciary Committee
via email, grant.silva@asm.ca.gov

Senate Judiciary Committee
via email, sjud.fax@sen.ca.gov

RE: Comments on COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward

Dear Assembly and Senate Judiciary Committee Members and Staff,

Public Law Center (PLC) writes to provide input prior to the hearing on COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward in front of the Judiciary Committees of the Assembly and the Senate.

PLC is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Additionally, PLC provides legal assistance to community organizations.

During the pandemic, PLC attorneys and volunteers have experienced the courts in almost every different way possible: PLC staff have appeared in person for emergency hearings (domestic violence restraining orders and elder abuse restraining orders) and jury trials. PLC staff have also appeared virtually, by phone and by video, for settlement conferences, for case status or case management conferences, and for other hearings. PLC clients have appeared virtually for hearings, including bench trials. PLC staff have gone to clients' houses with appropriate PPE, a hot spot, a cell phone and a headset so that a client can attend a court hearing, and has set up a safe court appearance "station" in our office so that clients can appear virtually from our office if necessary.

PLC's clients have multiple challenges and fall into many of the most vulnerable populations, both in terms of contracting COVID, but also in terms of being denied access to justice by a court that is inaccessible. There are substantial concerns on both sides, and there may not always be a "right" answer to every problem. However, PLC does have some suggestions that we believe will assist the courts with better ensuring access to justice while also ensuring the safety of all involved.

Submission of Documents

To the extent possible, PLC has been assisting self-represented litigants with the electronic submission of documents, through various e-filing systems that allow for pro per filings. However, PLC can only assist those individuals who find us. We are aware of many other self-represented

litigants who do not have the ability to submit documents to the court electronically, and may have difficulty navigating the process of submitting hard copy documents. Ensuring that there is clear information outside the courthouse itself, including after-hours signage, and clerks who are able to answer questions during the court's open hours. PLC works closely with the court's self-help staff, and recognizes the immense challenges they are facing as well. To protect the self-help staff, as well as the rest of the court staff, this is an incredibly difficult situation to navigate.

If an insert could be included in case initiating documents when served, much like the ADR insert, that provides the information on how to both submit documents electronically and to submit documents in-person for those who need it. That insert should either be translated into Spanish and Vietnamese, or at least include a line that provides a phone number or some other way that allows access to the same information for those who do not speak English (other than through a computer).

At a minimum, ensuring that courts have uniform policies and procedures for submitting documents either in-person or via mail and ensuring that those policies and procedures are accessible for all is vital to ensuring access to justice.

Method of Appearances

For the most part, Orange County Superior Court has done a good job of only requiring in-person appearances when necessary during the pandemic. This has been particularly important for some of our most vulnerable older adult clients and clients with disabilities.

There are some clients, however, who are unable to appear remotely, and struggle significantly with technology access. Providing an alternative, whether an outdoor station monitored by court personnel, a collaboration with a local law library, if open, or a partnership with another agency or organization, would greatly improve access to the court for those without access to technology. Certainly, allowing for continuances more liberally in civil cases, particularly when the litigant has expressed an intent to appear but is struggling with accessing technology, would be a minimal first step.

Additionally, while understandable, requiring in-person attendance for emergency protective orders can also be a burden for clients. For single parents, childcare is not available, and the children are either not allowed in to the building, or, if they are, really should not be witnessing the hearing with their parent. Accommodating litigants, whether by rescheduling, allowing for a virtual appearance, or again, through some outdoor station outside the courthouse where the litigant and child can wait together, may be an option. Many childcare facilities have closed during the pandemic, costs are higher, and individuals, such as grandparents, who might normally be relied upon for childcare, may not be available because of their susceptibility to COVID.

In addition, for many of our clients with disabilities (of all types – sensory, developmental, physical, and mental), they have faced substantial struggles with all types of access, but particularly remote hearings. While it is understandable that everyone is under pressure, these clients have been berated, shamed, and generally disregarded when attempting to access their hearings. It could be that the court could enact temporary, emergency local rules to allow litigants to more quickly and easily request accommodations as needed. If the courts can put systems in place, or designate particular staff who are able to navigate the disability access issues, it would be incredibly helpful. Ensuring there is a

specific person or team of people attending to these challenges would allow best practices to be created and utilized in future situations.

Finally, when the court is requiring or allowing virtual appearances, the method used should be accessible to all. Courts should not require a service like CourtCall, which has a fee associated with it. The other platforms, Zoom, WebEx, BlueJeans, etc., all have the ability for litigants to access the services at no charge. Requiring litigants to access a paid service like CourtCall, even with the possibility of a fee waiver, is a significant barrier to access for low-income and self-represented clients.

For example, we have seen substantial problems with clients being able to timely submit fee waiver information to CourtCall, resulting in missed hearings and default judgments. We have clients who are making their first appearance later in the case, without a fee waiver already on file, leading to confusion about whether the submission of a fee waiver will constitute an appearance in the case, when the litigant is otherwise specially appearing and challenging the validity of service. In addition, to have a fee properly submitted and ruled upon with sufficient time for the litigant to then receive the order and transmit it to the provider, is adding an additional burden to an already confused and distraught litigant.

Court Hearings

In at least some cases, civil court judges have continued to hold Case Status or Case Management Conferences (CSC/CMCs) in-person, primarily to set trial dates. PLC believes that there is certainly no reason to hold these CSC/CMCs in-person. It has resulted in having up to 30 people in a civil courtroom at a time, while Orange County was in a purple tier, which seems incredibly risky.

At a minimum, the CSC/CMC hearings should not be in-person. An even better solution would be to either (1) allow the parties to submit information to the court and allow the judicial officer to then set a trial date and other cutoffs, or (2) allow the judicial officer to submit a proposed trial date and other cutoffs, allowing the parties adequate time to object. In either of these cases, the CSC/CMC hearings could be taken off calendar, thereby greatly reducing the number of in-person or remote hearings needed.

Interpretation

During the pandemic, PLC staff have been told by judges that interpreters will not be provided for a client who does not speak English fluently. Clients who requested an interpreter have been pushed to the end of an emergency protective order calendar because there is only one interpreter in the courthouse. We have had clients appearing via telephone request an interpreter, have one provided over the phone, but then the interpreter only interprets what the clients and the judge say, not what the opposing counsel says. We believe that providing competent and adequate interpretation services when requested is a fundamental service for all litigants, but particularly those who are low-income and self-represented.

We recognize the risks that come with providing in-person interpretation for an in-court hearing. At one hearing, the interpreter and the client were able to use headsets and still maintain a safe distance from each other. We encourage the court to utilize this technology for all interpreters, to ensure the safety of both the clients and the interpreters. We encourage the courts to provide training to the

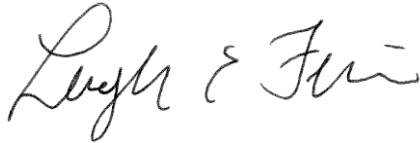
judicial officers on how to effectively provide interpretation while remote. It will require more pauses and more patience, as simultaneous interpretation over the phone or over video is not feasible. However, it is extremely important that litigants be afforded the ability to comprehend what all parties in the courtroom are saying, and adequately respond to statements by opposing counsel.

Timeliness of Orders

PLC staff and clients have experienced substantial delays in issuing orders in all cases, but particularly in family law cases. Orders to post and similar procedural orders have also taken six to seven weeks from submission to receipt. We are not being critical of the court staff: we recognize that the court is operating with less than normal staff, and we are not asking court staff to put their own lives at risk any more than they already have to. However, we do think that communication from the court, and possibly a revision of some procedures may make sense in order to ensure that, if there are delays, clients are not unduly prejudiced as a result of the COVID-related court delay.

PLC staff are happy to provide more details about any of the above comments, and appreciates the Judiciary Committees taking an interest in these issues. We believe that our low-income, self-represented clients are at the most risk during the pandemic, and that the answer to protect court staff, litigants, and attorneys is not to create additional barriers to access justice. We look forward to the hearing, and to sharing our experiences.

Sincerely,
PUBLIC LAW CENTER



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