

3/26/20

A Message to the Family Law Bar:

Counsel:

Over the last two weeks, we have been faced with a historic and unprecedented challenge to virtually every aspect of our lives. Never in our history has there ever been a systemic challenge of this magnitude. Complicating this situation is the reluctance by many to appreciate the gravity of this challenge. This is not unusual. Such was the case in many of our Nation's prior crises; it took a gut-wrenching blow to convince many Americans of what was coming in 1861, 1917, 1929, and 1941. I say that not to criticize or challenge an optimistic view; or a view that interprets the current crisis as not that bad. I point this out as an overall explanation of why your Court is doing what it is doing.

We, as members of the Court's leadership, have an obligation to the public, to our staffs, and to the Bar. It is the view of the Chief Justice, as it is Judge Nakamura's view, and mine, that the evidence, the statistics, and our duties as referenced above require us to treat the current situation as extremely serious; and to act accordingly. That is why you have seen the types of Orders issued by the Chief Justice and Judge Nakamura over the last week and a half. These Orders are designed to protect you, your clients, the public, and the Court staff from what we consider to be a dangerous and pervasive epidemic; while still providing needed services for emergency situations.

That is not to trivialize or minimize the need for Court services in other matters. It is simply to prioritize, based upon available resources, what we are able to do with what we have. It is therefore not a question of our choosing to only file this, and choosing not to file that. This is not a question of choice. It is a question of ability. Because of the Governor's Order and the Chief's directive to deal only with emergent matters, most of our Court employees are at home, sheltering in place. In Family Law, we have a bare minimum staff sufficient to process DV TRO's and emergency RFO's involving serious risks to a child.

I know that many of you are asking "Why can't we file this. Or that. After all, isn't it all electronic anyway?" Let me explain. When you send in something electronically it goes into a "que" until it is retrieved and then "filed". So before it is "filed", it is "received". You, or your attorney service, gets notice of that receipt. Once the document is "filed", the matter must be reviewed for procedural defects, set for hearing, routed to a Courtroom, etc. Those tasks require a Court Processing Clerk. Besides doing those things, ordinarily, Court Processing Clerks also process Judgments (2336, Defaults, Stipulated Judgments, Summary Dissolutions, etc.), answer calls, staff filing windows, and a host of other tasks. Ordinarily, we have about 117 Staff members for Family Law, including all of the Courtroom Clerks and Courtroom Assistants.

While we obviously are not doing most of what is set forth above, we are filing DV TRO and emergency Ex Parte requests, receiving and filing Stips to Private Judges, staffing our Court call-in hotline for questions regarding the use of our Guide & File System and how the public can file TRO requests; we are getting out the continuance/trailing notices along with the Minute Orders and the TRO extensions. We have 35 people total to do all of this, which includes the above-mentioned continuance/trailing notices, Minute Orders, and extended TRO's for 23 Family Law Departments.

So we are operating with a 70% reduction of Staff.

Additionally, to the extent that it becomes necessary, we may lose some of that Staff to the needs of the Court in other areas, such as Criminal, because of their Staff shortages and statutory issues. In this critical time, there are no “Family Law Clerks”; there are only “Court Clerks”.

To top that off, there will be no misdemeanor arraignments in Criminal. So an alleged DV perpetrator will either be OR’d, post bail, or have no DV Misdemeanor filing by the DA. A Criminal Protective Order (CPO) is issued at the time of Arraignment. No Arraignment, no CPO. All Law Enforcement agencies in the County will be advised, appropriately, that alleged victims should seek a DV TRO in Family Law in those cases, since a Family Law TRO will be the only means of protection for those victims. This will increase our volume on DV TRO requests, probably commencing next week.

So this is why we cannot “file” your Petitions, Motions, etc. But we can “receive” them, which would give you the ability to show that the subject document was submitted for filing on a particular day, even though it was not filed. Feel free to take advantage of this option.

You should also be aware that in light of the Order suspending all “face to face” supervised visitation, and replacing that with telephonic/skype/videoconferencing instead, FACES has established a Skype/Videoconference system for supervised visitation remotely via videoconferencing. Additionally, they can do therapy/reunification therapy via that same system, remotely. They have some availability for this. Mary O’Connor of FACES has asked that we get this info out to you.

I know that you need to be able to explain to your clients why they can’t get their Hearing or their Order or their documents filed. Feel free to show them this Message. And tell them that we, as the folks who are in the business of resolving disputes, want to be able to hear their matters as badly as they want to present them to us. This ever-changing situation is as uncertain for us as it is for them and you.

You may already be aware that there has been a positive test result in the County Jail. That has resulted in quarantine procedures by the Sheriff.

While I know that there are cries/demands that the Court opens up again, our Court leadership must decide whether the risk of the infection spreading is outweighed by our need to return to our normal routine. If we reopen too soon, thereby putting people in close proximity to each other on a daily basis, in direct contravention of what the science is telling us, then the risk is that, ultimately, the entire Court is shut down and NO business is done. This would be an existential threat to our democracy. This could become martial law.

By continuing to operate and address only the most urgent of needs, and thus keep the public, the Bar, and our Court Staff from having to congregate in close proximity to each other, we maintain the viability of the Judiciary and the Judicial Branch.

I know that other Court systems are not taking the steps that we in Orange County have taken. We cannot speak for the leadership of those Courts. But for the reasons that I have set forth hereinabove, it is our belief that protecting people is the only way that we can protect our Judicial System.

We will continue to keep you apprized as developments occur. I will continue to maintain contact with Dan Monarch to post the latest developments on the Bar ListServe.

I hope that this Message clarifies/answers some of your concerns. I will attempt to respond to other concerns as they arise; and I want to thank the entire Family Law Bar for their patience and understanding during this crisis.

Please stay safe and sheltered. Please protect yourselves and your families. We don't want to lose any of you.

Sincerely,

Lon Hurwitz  
Supervising Judge, Family Law Division  
Orange County Superior Court