

Trusts & Estates Cases in the COVID-19 Era – An Update on the Courts

Legal Alert
April 28, 2020

It's not just bars, restaurants and hair salons, but federal and state courthouses along the West Coast and the rest of the United States have also shuttered or partially closed due to the stay-at-home orders. Only essential functions are continuing, such as in-custody criminal arraignments and sentencing hearings, civil ex parte requests on emergency matters, temporary conservatorship and guardianship hearings. Some courts are allowing telephonic hearings and in certain family law courtrooms, proceedings are being conducted via video conferencing platform Zoom. Clerks' offices are generally closed although more counties are allowing e-filing.

The effect of the different COVID-19 approaches from the courts can be confusing with a wide range of reopening dates, a variety of methods for rescheduling hearings and trials and an assortment of rules on such important questions, including how and which deadlines are extended and even who and how notice will be provided for new court dates. Courts are reaching out to experienced attorneys willing to serve as pro-tem judges to help with the anticipated backlog.

The good news is that virtually every court has a website with a specific link to its COVID-19 orders (though some of those orders can be confusing and require careful reading to determine the impact on a particular case). Private mediation sessions, however, seem able to proceed as part of the Zoom phenomenon.

The impact on the trust and estate litigation world resembles the overall results for most civil disputes. Probate courts are generally available for emergency hearings with the burden on the moving party to establish the emergency, but trials and hearings have been continued, some with new dates and others indefinitely.

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Estate planning, understandably, has seen a surge in interest due to the pandemic causing clients to confront their mortality. Meeting with clients and executing documents is still possible with a series of new approaches, social distancing, masks and gloves and with at least 43 states as of mid-April, including Washington, allowing remote online notarizations. Oregon does not permit remote online notarization, and California's Secretary of State, while recognizing there may be a necessity, pointed out recently that an acknowledgment in another state that allows such remote online notarization is sufficient under the California Civil Code.

If you are involved in a trust or estate dispute or feel it is time to revisit your estate plan, in today's world it is easy enough to call, email or text an attorney.

For additional resources on how to navigate the business disruptions caused by COVID-19, please visit our [COVID-19 Resource Center](#) and reach out to the Foster Garvey team with any questions.