

# COVID-19 Litigation Resource Guide

Updated July 8, 2020

In March and April, a series of state executive orders and judicial administrative orders directed the partial closure of courts across the country and the cancellation or postponement of various court proceedings. These orders were aimed at immediately halting nonessential court activity that could foster the spread of COVID-19. Since those initial orders were issued, several courts have taken steps to expand proceedings beyond essential matters and to implement virtual and other remote capabilities in an effort to progress litigation even while physical access to courthouses by and large remains limited.

These recent efforts signal a recognition by administrative and chief judges that litigants and their counsel may need to remain at home for several more weeks or months and that case-related business must proceed remotely to avoid a backlog of cases later this year. As the Chief Administrative Judge in New York recently observed, "if we can eliminate the current backlog of undecided matters, we will be in a far better position to absorb what promises to be a surge of new litigation once the court system returns to more normal operations." Just as most attorneys are now able to work effectively from the safety of their own homes, many judges and law clerks are becoming equipped to do the same.

Our COVID-19 Litigation Resource Guide summarizes the various steps that courts in and around New York City, Los Angeles, Chicago and Washington, D.C. are taking to expand remote operations in both essential and nonessential matters while local stay-at-home orders or social distancing measures remain in place. As new steps are being taken each week, we are monitoring these developments and will update this resource guide accordingly. This guide also sets forth options that remain available for litigants to progress their cases without court intervention and for parties to engage in alternative dispute resolution (ADR) by remote means.



## Recent Changes in Court Operations

Most initial judicial administrative orders limited the filing of new cases, as well as written submissions in pending cases, to "essential" or "emergency" matters. Matters deemed essential or emergency differed across jurisdictions, leading to a patchwork of judicial administration nationwide. By and large, jury trials, as well as most in-person oral arguments, hearings and conferences, were canceled or postponed indefinitely. More recent orders, however, have expanded the scope of matters that courts may entertain and have granted judges the discretion to determine what matters may be heard and to establish remote procedures and protocols.

Any delays in expanding court operations are likely a result of local courts' needing sufficient time to implement videoconference technology and other remote protocols and to ensure that court staff are properly trained in that regard. We expect to see operations continue to expand and courts to transition more fully to remote capabilities over the next several weeks. Jury trials in

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most courts, however, will likely continue to be infeasible while remote operations remain necessary. Litigants desiring to continue to trial without substantial delay may wish to consider agreeing to proceed by bench trial, where permitted.

## New York City

### State Court

New York has, for the most part, switched to a “virtual court” model and postponed in-person proceedings. By order dated March 16, all upcoming civil jury trials were postponed until further notice. On March 22, New York restricted the filing of new actions in its trial courts to essential matters, which primarily include Mental Hygiene Law applications, emergency applications in guardianship matters, temporary orders of protection, emergency applications related to the coronavirus, emergency Election Law Applications and “any other matter that the court deems essential.” The courts have offered little guidance as to what other matters might properly be considered essential, other than to note that this “catch-all provision will be interpreted narrowly as it is designed to address the very rare cases where individual facts necessitate an immediate hearing notwithstanding current public health concerns.”

On April 8, New York’s Chief Administrative Judge announced that, effective April 13, trial courts would begin deciding fully submitted motions and utilizing videoconference technology to conference pending cases and resolve ad hoc discovery disputes and other matters not requiring written submissions. Thus far, those new measures have been carried out primarily through temporary part rules issued by individual judges, and we expect that remote court proceedings will continue to be governed primarily by individual part rules moving forward.

New York trial courts started accepting new motions, responsive papers to previously filed motions and other written submissions in pending cases on May 4. The Chief Administrative Judge may designate additional documents appropriate for filing in pending cases. The trial courts have also launched an Electronic Document Delivery System (EDDS), which may be used to file documents in pending cases where electronic filing was previously

unavailable. The filing of new nonessential actions, however, remains limited.

Although courts in several upstate counties have resumed in-person operations and started accepting new civil actions for filing on May 18 and 20, court operations in the New York metropolitan area.

**May 22 Update:** Effective May 25, New York is permitting new lawsuits to be filed electronically statewide, thereby reopening the courts to new “nonessential” matters for the first time since the slowdown in court operations due to the pandemic.

**June 4 Update:** Courts in several upstate counties have entered Phase 1 of their reopening plans, pursuant to which judges and staff have resumed in-person operations. Anyone entering courthouses in those counties must wear a face mask, and courtrooms and other areas will be marked appropriately to ensure social distancing. Phase 2 commenced in some upstate counties on June 3 and is expected to commence on others on June 5. Although, during Phase 2, non-essential matters will generally continue to be handled virtually, in-person appearances may be held at the court’s discretion. It is unclear when state courts in the New York metropolitan area will enter Phase 1 of reopening.

**June 11 Update:** As of June 10, New York City courts entered Phase 1 of reopening. Although judges and some staff have returned to courthouses in the city, court business will continue to be conducted primarily by remote means.

**June 17 Update:** As of June 11 and 12, courts in Nassau, Suffolk, Westchester and several other downstate counties outside of New York City entered Phase 2 of reopening. By June 19, courts in several upstate counties plan to enter Phase 3, which will include an expansion of matters that may be heard in person, including a limited number of bench trials in civil matters. New York has also permitted the filing of new actions by mail in courts that are not approved for NYSCEF e-filing.

**June 24 Update:** New York City courts plan to enter Phase 2 of reopening on June 24. Although the courts will see a “measured increase in courthouse activity” in Phase 2, the vast majority of non-essential matters will continue to be heard virtually. Effective June 20, eviction

proceedings were ordered to be filed by mail or through the NYSCEF e-filing system.

**July 8 Update:** On June 26, all state courts outside New York City entered Phase 3 of reopening. On July 1 and July 6, courts in several upstate counties entered Phase 4. During Phase 4, most matters will continue to be heard virtually, although in civil cases a limited number of bench trials, as well as court appearances where at least one party is unrepresented, will be permitted to proceed. On July 13, grand jury proceedings will resume in all courthouses outside New York City.

### Federal Court

Federal courthouses in the Southern and Eastern Districts of New York remain physically open, but with limited operations and access. In-person matters are largely restricted to applications for temporary restraining orders, injunctions, and other urgent civil and criminal matters.

Both courts are continuing to permit the filing of all new actions electronically through PACER. All jury trials have been delayed—until June 1 in the Southern District and June 15 in the Eastern—but the chief judges in both districts have authorized judges to continue with hearings, conferences, and bench trials at their discretion, and have encouraged the use of telephone or video conference technology in that regard. Individual judges are issuing their own rules regarding remote court proceedings. For example, several judges have prohibited paper filings or courtesy copies, directed that conferences be held by telephone and instructed parties to submit urgent matters via email.

**June 17 Update:** On June 15, the Chief Judge in the Eastern District issued an Administrative Order continuing all jury trials and grand jury selections scheduled before September 14 until further notice. The order also directed that compliance with trial-specific deadlines in all cases would be at the discretion of the assigned judges and encouraged judges “to conduct court proceedings by telephone or video conference where practicable” and “to adjourn matters or deadlines, or stay litigation, where in-person meetings, interviews, depositions, or travel would be necessary to prepare for any such proceedings.”

**June 24 Update:** On June 22, the Southern District issued its “2020 Phased Re-Entry Plan,” a copy of which can be accessed [here](#). The plan lays out strict protocols for

courthouse visitors, including submitting to temperature checks, answering screening questions, wearing face coverings and abiding by social distancing rules. During Phase I of the Plan, which is ongoing, the courthouses will be accessible for emergency matters only, while most judicial proceedings continue to be held remotely. No dates have been set for the commencement of Phases II, III and IV, but the Plan contemplates that the following measures will be taken during those phases:

- In Phase II, the courthouses will reopen to the public. Courtrooms will be made available for conferences, hearings and bench trials, but judges will be encouraged to continue using video and teleconferencing wherever possible.
- In Phase III, jury trials will gradually resume in larger designated courtrooms. Jury boxes will be enlarged and juror chairs will be separated with plexiglass dividers.
- In Phase IV, all functions suspended at the outset of the pandemic will be reinstated “albeit on a limited basis.” The Plan states that “some operations will continue to be performed remotely until we are sure that the pandemic is safely behind us.”

**July 8 Update:** On July 6, the Southern District entered Phase II of its Phased Re-Entry Plan.

## Los Angeles and Orange County

### State Court

Los Angeles and Orange County Superior Courts have been closed to the public since mid-March, except for essential time-sensitive matters and matters pertaining to the health, safety and security of the community. The Los Angeles Superior Court has defined essential time-sensitive matters to include temporary restraining orders, ex parte proceedings, certain probate and criminal matters, emergency writs challenging COVID-19 emergency measures and writs of habeas corpus challenging medical quarantines. Meanwhile, the Orange County Superior Court has defined “time-sensitive matters, or matters pertaining to the health and safety of the community,” to include temporary restraining orders, emergency gun violence restraining orders, law enforcement emergency requests, emergency requests to stay a lockout date and emergency civil temporary injunctions.

As of April 6, all state courts in California were required to conduct judicial proceedings remotely, through the use of video, audio and telephonic means. At present and unless otherwise amended, these rules will remain in effect until 90 days after Gov. Gavin Newsom declares that the state of emergency has been lifted.

As of May 13, the Los Angeles Superior Court has ordered all nonessential matters originally scheduled through June 10 postponed, but has directed that courthouses will reopen on June 22 and that nonessential matters will be rescheduled for after that date. The court plans to roll out "virtual jury service" in the near future, though it is not clear at present what that will entail.

In Orange County, meanwhile, all civil trials, hearings and proceedings were postponed for at least 60 days, as of March 23, with the exception of time-sensitive matters, such as restraining orders, and urgent dependency, probate and family matters. Current guidance suggests that postponed civil trials will be rescheduled approximately 25 weeks from the original scheduled trial date, although courts in the county may conduct trials prior to then upon a finding of "good cause shown" or through the use of remote technology, when appropriate. In the meantime, urgent civil matters may still be conducted telephonically.

**June 4 Update:** The Los Angeles Superior Court Clerk's Office will reopen on June 15, but counsel will need to make appointments in advance for all in-person services. Anyone entering courthouses in the county will be required to wear a face mask. The Orange County Superior Court is slowly reopening its operations but centralizing matters at specific locations. For example, from June 15 through the end of the year, in-person hearings concerning small claims matters will be heard at the Civil Complex Center in Santa Ana. Civil hearings and proceedings will resume the week of June 15, but in-person appearances will remain limited, and hearings in complex civil matters will be held remotely until further notice.

**June 11 Update:** Several courthouses in Los Angeles Superior Court (the Governor George Deukmejian, Hollywood, Inglewood, Inglewood Juvenile, Stanley Mosk and Pasadena Courthouses) reopened on June 5 and, according to the court's website, "will continue to provide essential, time-sensitive and emergency services only."

The court is expanding its remote courtroom appearance technology through its "LACourtConnect" service. The service will be made available for Civil Mandatory Settlement Conferences on June 15 and will expand to other civil matters over the next several months. In Orange County, several courthouses reopened for limited services on May 26, and the Superior Court launched an online scheduling tool on May 29 that allows members of the public to schedule in-person appointments. As of June 3, criminal jury trials and jury selection resumed in some cases with social distancing measures in place.

**June 17 Update:** Beginning June 22, the Los Angeles Superior Court plans to start expanding in-person court operations while complying with social distancing guidelines. The court is still, however, encouraging parties and counsel to "make use of technology for remote appearances." All non-jury trials and civil jury trials scheduled through July 9 have been continued until further notice.

**July 8 Update:** As of June 30, the Orange County Superior Court erected pop-up "triage" tents staffed with court personnel outside the Central Justice Center in Santa Ana to assist members of the public with general questions, scheduled in-person hearings and other approved in-person matters.

### **Federal Court**

All courthouses in the Central District of California are closed to the public, except for limited in-person hearings being conducted in criminal matters. As of March 23, the court postponed all civil hearings except for emergency time-sensitive matters, such as requests for temporary restraining orders and preliminary injunctions. As of April 13, the court has permitted hearings on emergency civil matters telephonically and by videoconference. Telephonic and videoconference appearances in nonemergency civil matters may also proceed at the presiding judge's discretion. All filing deadlines appear to remain in place unless otherwise ordered.

**June 11 Update:** Limited court staff have started returning to courthouses in the Central District as part of Phase 1 of a three-phase reopening plan. The court is expected to enter Phase 2 "no earlier than June 22," during which limited in-court hearings will take place in criminal and civil matters. In the meantime, hearings will continue to proceed by video or telephonic conference. Jury trials will

resume during Phase 3, the start date for which has not yet been announced.

**July 8 Update:** On June 26, the Central District extended its authorization for judges to conduct most criminal matters remotely for another 90 days.

## Chicago

### State Court

The Cook County Circuit Court is accepting all filings in both pending and new matters. On May 1, the Chief Judge of the Cook County Circuit Court issued an administrative order continuing all matters in all districts and divisions for a period of at least 30 days from their then-scheduled dates. Judges are available in each district and division to hear oral argument on emergency matters only, as determined by the presiding judges. Emergency matters in civil cases may be heard and conducted either in person or via telephone or videoconference.

More specific rules are being issued at the district and division levels. For example, on May 5, the Chancery Division issued an administrative order continuing all General Chancery matters through May 31. Parties are also being directed to notice all newly filed nonemergency motions for a date after May 31. The Chancery Division is conducting oral argument via videoconference and telephone in emergency matters only, defined as matters involving “a sudden and unforeseen circumstance that may cause injury, loss of life, or damage to property that requires an urgent response and remedial action.”

**June 4 Update:** Effective May 28, all matters in all Districts and Divisions have been rescheduled and continued for a period of 30 days, but not later than August 5. In addition, all judges and court employees, except those needed for essential court operations, will continue working remotely and conducting business telephonically or by videoconference. The Chancery Division in particular has imposed a moratorium on final judgments of eviction and foreclosure until July 19, although other contested motions may continue to be litigated and decided.

**June 11 Update:** On June 4, the Supreme Court of Illinois issued an order aimed at ensuring the integrity of virtual depositions in state court cases. The order provides, among other things, that deponents can be questioned

about the identities of anyone else in the room with them and that deponents’ counsel should instruct them not to communicate with anyone other than the examining attorney or court reporter and not to consult any written, printed or electronic material (other than exhibits) during the deposition.

**July 8 Update:** On July 6, the Cook County Circuit Court resumed all matters other than jury trials in all Districts and Divisions. The court will continue to conduct those matters by videoconference or telephonically to the extent possible.

### Federal Court

As with most other federal district courts, the Northern District of Illinois is continuing to accept all filings electronically, and its courthouses remain open, subject to limitations on visitors. The court has issued several orders postponing in-person matters and extending other case deadlines. The court directed that all bench trials, civil hearings and in-person settlement conferences scheduled for prior to May 29 would be rescheduled for after June 1, and that all civil jury trials scheduled to commence by June 26 would be rescheduled for after June 29. The court has also extended all deadlines—“whether set by the court or by the Rules of Civil Procedure or Local Rules” (subject to certain exceptions, such as deadlines for post-trial motions, motions for relief from a final judgment and notices of appeal)—for a total of 77 days. Judges have been accorded the discretion to vary from this extension.

To ensure that cases otherwise proceed, the court has ordered parties “in any civil case where no docket entry or order has been posted by the assigned judge since March 16” to submit joint status reports by May 18 addressing, among other things, the status of discovery, unresolved motions and settlement efforts.

**June 4 Update:** The court has permitted hearings, bench trials and settlement conferences in civil cases to be scheduled and conducted remotely by the presiding judge. In-person hearings remain limited to urgent matters that cannot be conducted remotely. All civil jury trials have been postponed to after August 3, but no other deadlines in civil cases have been extended. As with many other courts, all visitors will be required to wear face masks.

**June 17 Update:** The Northern District has entered its next phase of resuming limited courthouse activity, in which judges have been granted access to their courtrooms on a part-time basis for use in “necessary in-person matters.” The court is continuing, however, to encourage reliance on written rulings and remote telephone or video hearings in lieu of court appearances where feasible.

## Washington, D.C.

### State Court

In Washington, D.C., the Superior Court is continuing to accept the filing of new actions and certain submissions in pending actions. Although initially only emergency matters were being forwarded to judges for review and telephonic argument, the court indicated on May 14 that the Civil Division would expand the types of cases in which it would conduct telephonic hearings. Judges are also continuing to issue decisions on pending motions and other matters that can be decided without a hearing. Although several jury trials “in progress” continued to proceed as scheduled, the court has postponed upcoming civil trials and other “nonpriority” matters that were scheduled prior to June 19.

**June 24 Update:** The court is currently operating 24 courtrooms remotely and is expected to expand remote operations to 57 courtrooms by the end of July 2020. The Civil Division is conducting remote evidentiary hearings and bench trials in some cases but has continued to postpone jury trials until further notice. The court has also continued to postpone “nonpriority” matters that were scheduled prior to August 14.

### Federal Court

The U.S. District Court for the District of Columbia remains open with limited operations to support essential functions to ensure public safety, health and welfare. Electronic filings are still being accepted for all matters. The court has postponed all jury trials that were scheduled to commence prior to June 11. It also has postponed all nonjury proceedings, including bench trials, hearings, settlement conferences and other court appearances, that were scheduled for prior to June 1, unless the presiding judge orders that the matter proceed by telephone or videoconference.

## Discovery Proceedings

Even in cases that do not qualify as essential or emergency, or where proceedings that ordinarily would require in-person appearances have been postponed or canceled, litigants may be able to proceed with discovery matters.

By and large, courts have encouraged counsel to work together to proceed with discovery where feasible and to agree on alternate arrangements where the pandemic has hampered progress. For example, on May 1, the Chief Judge of the Cook County Circuit Court confirmed that in all civil matters, discovery should continue as scheduled, except for oral depositions, which parties are being encouraged to adjourn by stipulation. In New York, similarly, state court judges are starting to schedule remote conferences in nonessential cases with the aim of moving pending cases toward resolution. The Chief Administrative Judge in New York has made clear, however, that where parties or their counsel are unable to meet discovery deadlines “for reasons related to the coronavirus health emergency,” they should use best efforts to postpone discovery by agreement.

Where parties are able to agree on methods for proceeding with discovery during this period, several options are available. For example, third-party vendors are offering video deposition services through Zoom, Webex and other videoconference platforms. These platforms allow for the deponent, counsel and party representatives to be visible to one another throughout the deposition and facilitate the introduction of exhibits using screen-sharing functionality or through secure virtual “exhibit rooms” that are hosted by the vendor and that keep exhibits private until marked by the examining attorney.

Where parties are unable to reach agreement on remote discovery procedures or postponement of discovery deadlines, however, judicial intervention in all but the most time-sensitive matters may need to wait, depending on the court.

# Alternative Dispute Resolution Mechanisms

## Mediation

For both ongoing litigation and pre-litigation matters, limited court access and operations may present a unique opportunity to resolve disputes through mediation, depending on case complexity, comfort level and cost considerations. Both court-administered mediation programs and private associations such as JAMS and the American Arbitration Association (AAA) have taken steps to train neutrals in conducting mediations using videoconference software.

Platforms such as Zoom and Webex can effectively simulate a multiroom mediation session by allowing mediators or their case managers to create several virtual breakout rooms in which mediators may communicate with each party and their counsel separately. Mediators also have the ability to create separate breakout rooms to address counsel only, as may be necessary. As with video depositions, the platforms allow for documents to be exchanged with screen-sharing functionality.

Although procedures differ somewhat for mediation programs in federal courts, most of those programs are offering some form of remote mediation. For example, the Southern District of New York's program tasks mediators and the parties with arranging for videoconference sessions. In the Central District of California, mediators have been granted the authority "to excuse a party, a party's representative, or an attorney from in-person attendance at a mediation," and to conduct sessions by videoconference or telephone under the court's ADR program.

## Arbitration

Arbitration also may be an appealing option for filing claims that would ordinarily be filed in state court but that may not be filed due to prohibitions on new nonessential or nonemergency matters. There are currently no barriers to commencing arbitration with either JAMS or AAA, both of which are accepting electronic filing of demands for arbitration and counterclaims. Although JAMS formerly required arbitration to be commenced by in-person or mail-in paper filings, the organization has suspended

that requirement. Both organizations have postponed in-person arbitration hearings, but are offering to conduct remote hearings in the event all parties agree to proceed remotely. JAMS, in particular, has identified Zoom as the preferred videoconference platform, but has also offered to accommodate parties that prefer to use Skype, GoToMeeting, Webex or LoopUp.

## Statutes of Limitations

Notwithstanding these various options for advancing pending litigation or resolving disputes through ADR, parties considering whether to commence legal action may decide that they would rather wait until the health crisis subsides. Those parties may find relief in recently issued state executive orders, many of which have tolled statutes of limitations during the pandemic. These orders vary by state—and, in some cases, by county. We summarize here recently implemented tolling orders in our key markets, and encourage you to contact us with questions you may have on the tolling of any applicable statutes of limitations in these or other jurisdictions.

### New York

On March 20, Gov. Andrew Cuomo issued Executive Order No. 202.8, directing that "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, . . . or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from [March 20, 2020] until April 19, 2020." The governor's subsequent Executive Order No. 202.28 extended that tolling period until June 6, 2020. Some observers have noted that these orders have the effect of stopping the clock on all pending statutes of limitations regardless of expiration date, while others have opined that the orders apply only to periods set to expire during the pendency of the orders.

**June 11 Update:** On June 6, Gov. Cuomo issued Executive Order No. 202.38 extending the tolling period for statutes of limitations through July 6.

**July 8 Update:** On July 7, Gov. Cuomo issued Executive order No. 202.48 extending the tolling period for statutes of limitations through August 5.

## California

Initially, California handled tolling at the local level, with the state's Superior Courts issuing separate orders addressing when and how the time for filing new actions in those courts would be extended. The Los Angeles and Orange County Superior Courts, for example, designated certain dates as "holidays" under California Code of Civil Procedure Secs. 12 and 12a. By this method, if a statute of limitations was set to expire on any of these filing holidays, the period would be automatically extended to the next day that is not designated a filing holiday. The Los Angeles Superior Court initially designated March 17 through March 19, 2020, as filing holidays and later extended the holiday period to encompass the period from April 17 through June 10, 2020. Orange County Superior Court, meanwhile, designated March 17 through May 22, 2020, as filing holidays.

Recently, the California Judicial Council enacted Emergency Rule 9, tolling the statute of limitations for all civil actions under California state law from April 6, 2020, until 90 days after Gov. Newsom lifts the current state of emergency. It is not entirely clear whether this emergency tolling rule is cumulative of or fully replaces the prior extensions implemented through local filing holidays.

**June 11 Update:** On May 26, the Orange County Superior Court designated May 26 through June 19, 2020, as filing holidays.

**June 17 Update:** The Los Angeles Superior Court has designated June 11 through July 9, 2020, as filing holidays.

## Illinois

Illinois appears not to have taken steps to toll any applicable statutes of limitations as a result of COVID-19. While state and federal courts in Illinois have issued orders rescheduling hearings and trials and extending various deadlines, those orders are silent as to tolling.

## Washington, D.C.

In Washington, D.C., all statutes of limitations that were set to expire between March 18 and May 15, 2020, were tolled for the duration of that period. On May 15, the Superior Court extended the tolling of all statutes of limitations "during the period of emergency," unless otherwise ordered by the court. At present, it is not clear how long that tolling period will last.

**June 24 Update:** The Superior Court has further tolled all statutes of limitations set to expire before June 19 "during the period of the current emergency."

## COVID-19 Resource Center

For information on the business impacts of COVID-19, please visit our [COVID-19 Resource Center](#), which we continue to update as the situation evolves. If you have questions about COVID-19's impact on your business, please reach out to your Loeb relationship partner or email us directly at [COVID19@loeb.com](mailto:COVID19@loeb.com).

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