The Chief Justice's Order Suspending Jury Trials was Lawful and the Right Call

Overview

On March 23, Chief Justice Cantil-Sakauye issued a statewide order suspending all civil and criminal jury trials for 60 days to curb the spread of the COVID-19 virus. That order was necessary and proper. As head of the state Judicial Council, the Chief Justice holds the ultimate power to suspend court operations during a crisis. That authority flows from the judiciary's inherent power of self-preservation, the constitutional provisions governing court administration, and statutes giving the Chief Justice the power to suspend trials when an epidemic strikes. Suspending all jury trials for 60 days is a difficult decision in response to an extreme and rare scenario. The order protects the best interests of the judiciary, parties, and public at large.

California's Chief Justice has express statutory authority for this order

The order is a lawful exercise of statutory authority. The California Supreme Court has noted that the Judicial Council's authority "is not unlimited, of course, and the council may not adopt rules that are inconsistent with the governing statutes."[1]
But this order does not rely on the Judicial Council's general rulemaking authority. There is specific statutory authority for exactly this action: Government Code section 68115 authorizes the Chief Justice in her capacity as the Judicial Council chair to suspend jury trials in response to an "epidemic" or any other "substantial risk to the health and welfare of court personnel or the public."[2]

The coronavirus fits that criteria: Governor Newsom declared a state of emergency in California on March 4; the World Health Organization declared COVID-19 a global pandemic on March 11; and President Trump declared a national emergency on March 13. With new infections increasing daily in California, suspending jury trials is a powerful means to reduce public interaction in the courts and help prevent more infections. With the exact issue at hand (an "epidemic") expressly listed in the authorizing statute, the legislature plainly contemplated the courts would need to respond to a viral outbreak. This order does so.

The state constitution supports the order

The order is a lawful exercise of the Chief Justice's power as chair of the state's Judicial Council. The state high court has long held the "authority to make rules of practice which have the force of positive law."[3] That power is currently enshrined in Article VI, section 6 of the state constitution, which empowers the Judicial Council to "adopt rules for court administration."[4]

The plain language of Article VI, section 6 supports the Chief Justice's authority to issue the order. The plain meaning of "administration" includes the "the performance of executive duties." Executive, in turn, means "a directing or controlling office of an organization." This is an order from an executive performing the duty to administer the state's courts, directing courts to take contagion prevention measures, and controlling judicial branch assets by requiring contagion prevention measures.

The legislative history of the amendment supports the conclusion that, as the judiciary's chief executive the Chief Justice, has broad administrative power

over California's courts. In their ballot argument in favor of this provision (adopted in 1926 as a legislatively-referred initiative), Senators Johnson and Inman explained its purpose was to organize the state courts like a "business" and empower the Chief Justice to "act as chairman . . . as the real [and] nominal head of the judiciary."[5]
Empowering the Chief Justice to act, the senators reasoned, would make the judiciary less disjointed and make it more accountable to the public. The senators concluded, "this amendment will aid greatly in simplifying and improving the administration of justice."

Under that formulation, this order falls within the Chief Justice's power as the head of the judicial branch. Allowing each of California's 58 counties to fashion its own response to the virus would lead to the same disharmony that the 1926 amendment sought to resolve. And the administration of justice requires jury trials to be temporarily suspended because the alternative would risk catastrophic infections. The order is well within the power to administer the courts.

The judiciary's
inherent power of self-preservation supports the order

The order
was a lawful exercise of the judiciary's inherent power of self-preservation. Because the state constitution created courts of a general government with no limitations on their power, California's
courts have inherent powers to effectively perform their functions.[6]
Even absent explicit constitutional or legislative authorization for a court to exercise a power (like contempt or disbarment), that power is inherent in the function of a constitutionally-created court by virtue of the judiciary's status as one of the three branches of government.[7]

This inherent authority includes "the power of
self-preservation" and the power to remove all obstructions to the successful and convenient operation of the state's courts.[8] As head of the state judicial branch and the Judicial Council, the Chief Justice is empowered to act to protect the courts from a pandemic. It is well-established that courts have "fundamental

inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them."[9] And courts may exercise reasonable control over all pending proceedings to ensure the orderly administration of justice.[10] A viral outbreak is a mortal threat to the orderly administration of justice, and the Chief Justice has inherent authority as head of the state judicial branch to order measures that control dockets statewide to preserve lives on the bench and in the public.

Given the coronavirus infection rate and the logistics of empaneling a jury, temporarily suspending jury trials is a necessary preservative act. As the order noted, there are already more than 1,700 confirmed cases of COVID-19 in California, and infections are expected to increase unless people physically disperse. But social distancing is nearly impossible during jury selection, which requires dozens of citizens to pack into a single courtroom. Prospective jurors face even closer quarters in the venire. Administering justice will become impossible if the state's judges and court personnel are sidelined by COVID-19 exposure or infection.[11] "Courts are not powerless to formulate rules of procedure where justice demands it."[12] A rule limiting public contact preserves the state's ability to keep the courts open in a limited capacity now, and to return to full operations with healthy judges when the contagion abates.

Public policy supports the order

Public policy favors the order. As Justice Lewis Powell observed, courthouses are ordinarily "a meeting ground, cultural hub, and social gathering place."[13] But during a pandemic, courthouses are a hotbed for infection. Limiting public interaction is necessary to preserve the health and safety of potential jurors, court staff, litigants, and the public. County-level solutions — if they existed at all — were proving ineffective. Inconsistent local decisions among the 58 Superior Courts would have created the same patchwork of directives currently

visible across the 50 states, creating predictably similar opportunities for infections to spread.

The order contains critical features that preserve local court autonomy. It allows local courts to take additional necessary measures to respond to the pandemic without the usual bureaucratic rulemaking limits. And it permits courts to make case-specific determinations to proceed with trials (despite the order) for "good cause," and encourages courts to use remote technology to mitigate the possibility of exposure.

When this crisis is over the courts will reopen and resolve any harms claimed to result from the delay. By suspending jury trials temporarily, the Chief Justice has preserved the courts' ability to handle the array of other court filings, motions, and other requests for relief that do not require a jury for resolution. Telephonic appearances for any required hearings are still possible. An order like this is a painful but necessary measure to keep California's courts operating during the crisis, preserve rights in the meantime, and keep the bench stocked with judges to sort out the resulting legal issues.

Conclusion

Reducing those judicial branch operations that require large gatherings of people in a single location is the only correct course during an epidemic, and the judicial authority for this order (and others like it) is plain. This decision surely required struggling with compelling yet competing imperatives: swiftly administering justice versus saving lives. This is a Chief Justice showing decisive leadership during a uniquely challenging time for the courts, and we believe she struck the right balance for California.

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[1] In re Abbigail A. (2016) 1 Cal.5th 83, 92.

[2] Gov. Code § 68115(a)(1) – (12).

[3] Brooks v. Union Trust & Realty Co. (1905) 146 Cal. 134, 138 (per curiam).

[4] Cal. Const., art. VI, §6(d); People v. Mendez (1999) 19 Cal.4th 1084, 1094.

[5] "Ballot summaries and arguments are accepted sources from which to ascertain the voters' intent and understanding of initiative measures." In re Lance W. (1985) 37 Cal.3d 873, 888 n.8.

[6] Cal. Const., art. VI, §1 ("The judicial power of this State is vested in the Supreme Court . . ."); Superior Court v. Cty. of Mendocino (1996) 13 Cal.4th 45, 57; Hustedt v. Workers' Comp. Appeals Bd. (1981) 30 Cal.3d 32, 336; Brydonjack v. State Bar (1929) 208 Cal. 439, 442 (state courts are set up by state constitution without any special limitations; courts therefore have all the inherent and implied powers necessary to effectively function); David A. Carrillo and Danny Y. Chou, California Constitutional Law: Separation of Powers (2011) 45 USF.L.Rev. 655, 672–73.

[7] Superior Court v. County of Mendocino (1996) 13 Cal.4th 45, 57.

[8] Millholen v. Riley (1930) 211 Cal. 29, 33–34.

[9] In re Reno (2012) 55 Cal.4th 428, 522.

[10] Rutherford v. Owens–Illinois, Inc. (1997) 16 Cal.4th 953, 967.

[11] Maura Dolan, Cutbacks in California Court System Produce Long Lines, Short Tempers, Los Angeles

Times May 10, 2014.

[12] Rutherford v. Owens–Illinois, Inc. (1997) 16 Cal.4th 953, 967.

[13] Powell, Lewis F., Jr., foreword to Virginia's Historic Courthouses (John O. and Margaret T. Peters, authors). University Press of Virginia, Hong Kong, 1995.