

# Appendix A

## TERMS AND DEFINITIONS

**Airborne transmission**—Occurs when a pathogen is suspended in the air in inhalable-sized particles that remain infectious and are subsequently inhaled through the nose and mouth. Some airborne pathogens (e.g. TB) can travel considerable distances before finding a new host, while others are less likely to remain viable as long.

**Antiviral medications**—Medications presumed to be effective against potential pandemic influenza virus strains. These antiviral medications include the neuraminidase inhibitors oseltamivir (Tamiflu) and zanamivir (Relenza).

**Asymptomatic**—Exhibiting or producing no symptoms of disease.

**Blood borne**—A disease or pathogen carried by blood.

**Bubonic**—A contagious, often fatal epidemic disease caused by the bacterium *Yersinia pestis*, transmitted from person to person or by the bite of fleas from an infected host, especially a rat, and characterized by chills, fever, vomiting, diarrhea, and swelling of the lymph nodes.

**Communicable**—Transmissible between persons or species.

**Contact transmission**—Occurs when an infected and contagious person has physical contact with an uninfected person.

**Droplet transmission**—Occurs when a pathogen is suspended in aerosolized droplets or mist expelled when the infected person coughs or sneezes. These tiny droplets can travel for 3 to 6 feet and be inhaled by other persons, or can be unknowingly deposited on mucous membranes around the eyes or mouth of uninfected persons.

**Epidemic**—A pronounced clustering of cases of disease in humans within a short time and in a defined region; more generally, a disease whose frequency of occurrence is in excess of the expected frequency in a human population during a given time interval.

**Epizootic**—A pronounced clustering of cases of disease in animals within a short time and in a defined region; more generally, a disease whose frequency of occurrence is in excess of the expected frequency in an animal population during a given time interval.

**Incubation period**—The time between acquiring the infection and becoming ill.

**Isolation**—Separation of infected individuals from those who are not infected.

**Pandemic**—A worldwide epidemic that occurs when a new or novel strain of influenza virus or other pathogen emerges in which humans have little or no immunity, and develops the ability to infect and be passed between humans.

**Pathogen**—An agent that causes disease, especially a living microorganism such as a bacterium or virus.

**Pathogenicity**—Refers to the condition or quality of being pathogenic, or the measure of severity of the disease caused.

**Plague**—A highly fatal infectious disease that is caused by the bacterium *Yersinia pestis*, is transmitted primarily by the bite of rodent fleas, and occurs in bubonic, pneumonic, and septicemic forms.

**Pneumonic**—Relating to, affected by, or similar to pneumonia.

**Quarantine**—Separation of individuals who have been exposed to an infection but are not yet ill from others who have not been exposed to the transmissible infection.

**Variola virus**—A virus of the genus *Orthopoxvirus*, which causes smallpox. Also called *smallpox virus*.

**Vector-borne transmission**—Indirect transmission of an infectious agent that occurs when a vector bites or touches a person.

**Virulence**—Refers to the disease-evoking capability of a pathogen.

**Virus shedding**—Excretion of virus from the infected host by any route.

# Appendix B

## HEALTH OFFICERS BY COUNTY (AND CITY)

As of September 1, 2006—For an updated list of public health officers, please visit [www.dhs.ca.gov/cclho/](http://www.dhs.ca.gov/cclho/).

### **Alameda County**

Anthony Iton, M.D., J.D., M.P.H.  
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### **Alpine County**

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Markleeville, CA 96120  
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Fax: 530-694-2770  
RHarvey@hhs.alpinecountyca.com

### **Amador County**

Robert C. Hartmann, M.D.  
1003 Broadway, Suite 203  
Jackson, CA 95642  
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Fax: 209-223-1562  
hofficer@co.amador.ca.us

### **Berkeley City**

Linda Rudolph, M.D., M.P.H.  
1947 Center Street, 2nd Floor  
Berkeley, CA 94704  
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Fax: 510-981-5345  
lrudolph@ci.berkeley.ca.us

### **Butte County**

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### **Calaveras County**

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### **Colusa County**

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### **Contra Costa County**

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**Glenn County**

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**Humboldt County**

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**Imperial County**

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**Kings County**

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**Lake County**

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**Lassen County**

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**Marin County**

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**Mariposa County**

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**Merced County**

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**Modoc County**

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**Mono County**

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**Orange County**

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**Pasadena City**

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**Placer County**

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# Appendix C

## REQUESTING JUDICIAL EMERGENCY ORDERS

For the most current procedures, see <http://serranus.courtinfo.ca.gov/programs/ogc/other.htm>.



## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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# MEMORANDUM

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**Date**

September 18, 2006

**To**

Presiding Judges of the Superior Courts  
Executive Officers of the Superior Courts

**From**

Mary M. Roberts, General Counsel *MMR*  
Robin Seeley, Attorney *RJS*  
Office of the General Counsel

**Subject**

Updated Procedures for Requesting Judicial  
Emergency Orders (Gov. Code, § 68115)

**Action Requested**

Discard all copies of earlier memoranda on  
this topic and replace with this one.

**Deadline**

N/A

**Contact****San Francisco Office**

Robin Seeley  
415-865-7710 phone  
415-865-7664 fax  
robin.seeley@jud.ca.gov

**Bay Area/Northern Coastal Regional  
Office**

Charles Perkins  
415-865-8938 phone  
415-865-7664 fax  
charles.perkins@jud.ca.gov

**Southern Regional Office**

Jasmin Levander  
818-558-3054 phone  
818-558-3112 fax  
jasmin.levander@jud.ca.gov

**Northern/Central Regional Office**

Peter Krause  
916-263-7320 phone  
916-263-1966 fax  
peter.krause@jud.ca.gov

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This memorandum updates and replaces previous memoranda describing how to request a judicial emergency order for your court from the Chief Justice in his role as Chair of the Judicial Council. This update provides new contact information for attorneys in the Office of the General Counsel who are available to assist courts with emergency order requests. This memorandum, and any future updates to it, will be posted on Serranus.

### **Contacts for Emergency Orders**

**Contact Robin Seeley, Office of the General Counsel, as the general contact person. Her telephone number is 415-865-7710.** If Ms. Seeley is unavailable, please contact Charles Perkins at the BANCRO office at 415-865-8938. If neither Ms. Seeley nor Mr. Perkins is available, please call the Office of the General Counsel's main division line at 415-865-7446, specify that you are calling to request an emergency order, and ask to speak with the Attorney of the Week (our on-call attorney). **(If these land lines are not in service, call 415-297-9370. If none of the lines is functioning, call 800-660-8144 for further information.)**

**If you would prefer to use your regional office for legal services, or if you cannot reach anyone in the San Francisco office, please contact the designated attorney for your local regional office:**

#### **Bay Area/Northern Coastal Regional Office (BANCRO)**

Charles Perkins  
415-865-8938 phone  
415-865-7664 fax  
charles.perkins@jud.ca.gov

#### **Southern Regional Office (SRO)**

Jasmin Levander  
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#### **Northern/Central Regional Office (NCRO)**

Peter Krause  
916-263-7320 phone  
916-263-1966 fax  
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### **Authority for Emergency Orders From the Chair of the Judicial Council**

Government Code section 68115 authorizes the Chair of the Judicial Council (the Chief Justice) to issue judicial emergency orders when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to court buildings, makes it necessary to do so, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of the courts.<sup>1</sup> Most requests for emergency

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<sup>1</sup> A copy of Government Code section 68115, current as of the date of this memorandum, is attached for your convenience. Nevertheless, we advise that you consult the most current version of the code before requesting an emergency order.

orders are received from courts that face a large influx of criminal cases resulting from mass arrests, or from courts affected by earthquakes, floods, serious fires, or other circumstances that threaten or result in the full or partial destruction of the courthouse.

In an emergency order, the Chief Justice as Chair of the Judicial Council can authorize the court to do one or more of the following, depending on the circumstances of the emergency:

- Hold sessions anywhere within the county;
- Transfer civil cases pending in the court to a court in an adjacent county;
- Declare a holiday for purposes of computing time under certain statutes;
- Extend the duration of a temporary restraining order;
- Extend the time period for the holding of a preliminary examination;
- Extend the time period within which a criminal trial must be held.

If the President or the Governor has declared a state of emergency, the emergency order can also include authorization for the court to:

- Extend the time period within which a defendant charged with a felony offense must be taken before a magistrate;
- Extend the time period within which a minor must be given a detention hearing;
- Extend the time period within which an adjudication on a juvenile court petition must be held.

### **Procedures for Courts to Follow in Requesting Emergency Orders**

To request a judicial emergency order from the Chief Justice as Chair of the Judicial Council, please follow the procedures outlined below.

1. Call one of the attorney contacts listed above.
2. When you are ready to request an emergency order, please submit a written request for the order.<sup>2</sup> All requests for emergency orders under Government Code section 68115 must be in writing and must state the following:
  - a. The specific facts constituting an emergency under section 68115;
  - b. The specific subdivisions of section 68115 that the court wishes to invoke;<sup>3</sup>
  - c. Any unusual circumstances affecting judicial workload, including vacations, illnesses, and disqualifications; and
  - d. The anticipated duration of the emergency, with supporting facts. Please note that emergency orders are issued for the shortest period of time necessary and in some

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<sup>2</sup> If circumstances prevent the court from using a fax machine to transmit the request, the pertinent information may be conveyed by telephone. However, a written request should be faxed to the AOC as soon as feasible.

<sup>3</sup> Subdivisions (f), (i), and (j) may be invoked only when a state of emergency has been proclaimed by the President of the United States or by the Governor pursuant to Government Code section 8625.

circumstances may not exceed 30 days.<sup>4</sup> In these circumstances, if the emergency conditions exist past the effective dates of the order, the court must submit a written request for an extension of the order and must state the number of additional days sought.

For your convenience, we have attached a form that you can use to request an emergency order. You may submit your request on a copy of this form, or you may use the form as a drafting guide for preparing your request. This form may also be supplemented by additional material if necessary.

The form lists all the types of relief available through an emergency order under the subdivisions of section 68115. Please request only the specific type of relief that is necessary for your court's particular emergency situation.

Please fax your written request for an emergency order to the Chief Justice as Chair of the Judicial Council, in care of the attorney at the OGC who has been assisting you in preparing the request.

3. At the earliest possible time, and no later than the date on which the request is submitted to the Chief Justice as Chair of the Judicial Council, the requesting court must notify the public defender, the district attorney, and any other interested local entities, such as the city attorney or the alternate public defender, of the request for an emergency order. Those parties should receive copies of the written request for an emergency order by fax or messenger and should be advised to notify the attorney in the AOC's Office of the General Counsel immediately of any opposition or questions regarding the request.

If time is a critical factor, please send by fax to the attorney who has been assisting you copies of the notices sent to the public defender, the district attorney, and others and include the telephone numbers of those agencies so that the attorney may contact them if it becomes necessary.

4. If the request for an emergency order is granted, the presiding judge of the requesting court will be notified immediately by telephone, and a copy of the signed order will be faxed and mailed to the court. The court should prepare an implementation order that incorporates the terms of the order signed by the Chief Justice as Chair of the Judicial Council.<sup>5</sup> The court should notify all interested parties of the issuance of the emergency order and its terms.
5. While the order is in effect, please report any material change in the conditions described in the request for an emergency order to the attorney who has been assisting you at the Office of the General Counsel.

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<sup>4</sup> Emergency orders that allow the court to implement the procedures set forth in subdivisions (f), (i), and (j), which require emergency proclamation by the President of the United States or by the Governor, are effective for 30 days unless the order is extended by a new request and a new order. (Gov. Code, § 68115(f), (i), (j).)

<sup>5</sup> Please see attached sample implementation order.

Presiding Judges of the Superior Courts  
Executive Officers of the Superior Courts  
September 18, 2006  
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Please feel free to contact Robin Seeley at 415-865-7710 if you have any questions about this procedure. Thank you.

Attachments

RS/cf

cc: Hon. Ronald M. George, Chief Justice of California and Chair of the Judicial Council  
Mr. William C. Vickrey, Administrative Director of the Courts  
Mr. Ronald G. Overholt, Chief Deputy Director  
AOC Regional Administrative Directors  
AOC Division Directors  
Mr. Malcolm Franklin, Senior Manager, AOC Emergency Response and Security

TO: Hon. Ronald M. George, Chair of the Judicial Council  
c/o Office of the General Counsel  
Administrative Office of the Courts  
Fax: 415-865-7664

FROM:

*Name/Title:* \_\_\_\_\_  
*Court Branch:* \_\_\_\_\_  
*County:* \_\_\_\_\_  
*Telephone:* \_\_\_\_\_  
*Fax:* \_\_\_\_\_  
*E-mail:* \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code:

\_\_\_ The court may hold sessions anywhere in the county, including in correctional and juvenile detention facilities, from \_\_\_\_\_ (*insert date*) to \_\_\_\_\_ (*insert date*). (Gov. Code, § 68115(a).)

\_\_\_ With the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial, the court may transfer civil cases pending trial in the court to a court having jurisdiction of the subject matter in an adjacent county from \_\_\_\_\_ (*insert date*) to \_\_\_\_\_ (*insert date*). (Gov. Code, § 68115(b).)

\_\_\_ The court may declare \_\_\_\_\_ (*insert date or dates*) to be deemed a holiday for purposes of computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a (Gov. Code, § 68115(c).)

\_\_\_ The court may declare \_\_\_\_\_ (*insert date or dates*) to be deemed a holiday for purposes of computing the time under Penal Code section 825 or Welfare and Institutions Code sections 313, 315, 631, 632, 637, or 657 (*circle all those that apply*).<sup>1</sup> (Gov. Code, § 68115(d).)

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<sup>1</sup> If the President or the Governor has declared a state of emergency, select the reference to Welfare and Institutions Code section 631. The other code sections do not need to be selected because they will be covered under the extensions of time granted pursuant to Government Code section 68115(f), (i), and (j). However, Penal Code section 825 may also be selected if there is a need to extend the time within which a misdemeanor defendant must be taken before the magistrate.

\_\_\_ The court may extend the duration of any temporary restraining order that would otherwise expire because the emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered. (Gov. Code, § 68115(e).) This request applies only to cases where the restraining order is set to expire between \_\_\_\_\_ (*insert date*) and \_\_\_\_\_ (*insert date*).

\_\_\_ The court may extend the time period provided in section 859b of the Penal Code for the holding of a preliminary examination from 10 days to not more than (*insert number not to exceed 15*) \_\_\_\_\_ days. (Gov. Code, § 68115(g).) This request applies only to cases where the examination is set to take place from \_\_\_\_\_ (*insert date*) to \_\_\_\_\_ (*insert date*).

\_\_\_ The court may extend the time period provided in section 1382 of the Penal Code within which the trial must be held by not more than (*insert number not to exceed 30*) \_\_\_\_\_ days. (Gov. Code, § 68115(h).) This request applies only to cases where the trial is set to take place from \_\_\_\_\_ (*insert date*) to \_\_\_\_\_ (*insert date*).

***(Do not select any of the three following options unless the President or the Governor has declared a state of emergency.)***

\_\_\_ The court may extend the time period provided in section 825 of the Penal Code within which a defendant charged with a felony offense must be taken before a magistrate from 48 hours to not more than (*insert number not to exceed 7*) \_\_\_\_\_ days. (Gov. Code, § 68115(f).) The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency. This request does not apply to any defendant taken into custody after \_\_\_\_\_ (*insert date*).

\_\_\_ The court may extend the time period provided in sections 313, 315, 632, and 637 of the Welfare and Institutions Code within which a minor who has been charged with a felony must be given a detention hearing to not more than (*insert number not to exceed 7*) \_\_\_\_\_ days. (Gov. Code, § 68115(i).) The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency. This request does not apply to any minor taken into custody after \_\_\_\_\_ (*insert date*).

\_\_\_ The court may extend the time period provided in sections 334 and 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition where the minor has been charged with a felony must be held by not more than (*insert number not to exceed 15*) \_\_\_\_\_ days. (Gov. Code, § 68115(j).) This shall not apply to any minor for whom the time period provided in sections 334 and 657 begins to run after \_\_\_\_\_ (*insert date*).



The circumstances necessitating this emergency order are as follows:  
*(Please insert description of emergency circumstance.)*

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*(Please insert a description of the service or facilities that have been adversely affected as well as the anticipated duration of any suspension of court operations or court building closure.)*

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The public defender, the district attorney, and other interested local entities have been notified of this request for emergency order. Copies of this written request have been sent to these parties, and they have been advised to immediately notify the Administrative Office of the Courts' Office of the General Counsel of any opposition or questions regarding the request.

*(Please insert the names and telephone numbers of the district attorney, the public defender, and other parties affected by the order.)*

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Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

# Appendix D

## PLANNING CHECKLIST

Continuity of Operations			
Completed	In Progress	Not Started	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Locate and review continuity of operations plans (COOP)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ensure that mission-critical functions are identified in the COOP
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identify key processes and functions that pose significant risk for infection
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Create a plan to mitigate risks to employees in high-exposure positions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Create a skills inventory
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Begin employee cross-training and skill development

Planning			
Completed	In Progress	Not Started	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Form a Pandemic Influenza Coordinating Committee, if possible
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Communicate the court's planning efforts with other entities that support the court's operations (sheriffs, local bar associations, and other criminal justice partners)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Establish contact with the local public health officer
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Review internal and external communications plans
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Form a communication plan specific to epidemic response
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Begin efforts to educate staff and court stakeholders on pandemic influenza
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Consider hosting employee training on safety during an epidemic
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Notify facility maintenance staff of preventive measures that can be taken to reduce the risk of infection

**Planning (cont.)**

<b>Completed</b>	<b>In Progress</b>	<b>Not Started</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Determine capabilities in responding to jury shortages
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Explore alternative means of work performance and communication
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identify key IT processes and procedures as they relate to mission-critical functions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Cross-train IT staff to assume responsibility for mission-critical functions

# Appendix E

## SAMPLE EDUCATIONAL FLYER

COURT NAME &  
LOGO

# Pandemic Influenza

### Court Response:

Each court will have a plan in place prior to the outset of a pandemic. A strategy to help courts plan for the threat has been developed and court officials are tailoring these plans to individual court needs.

The health and safety of everyone inside our court facilities is of the highest importance in all planning efforts.

### Additional Information:

If you have any questions on specific branch-wide planning or preparedness efforts, please contact Jennifer Buzick at (415) 865-8048.

For general pandemic influenza information, please visit:  
[pandemicflu.gov](http://pandemicflu.gov).

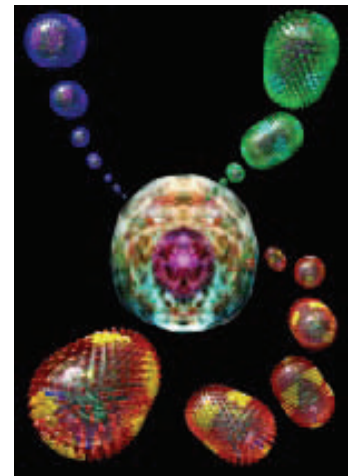
### What Is Pandemic Influenza?

A pandemic is a global disease outbreak. An influenza pandemic occurs when a new influenza virus emerges for which there is little or no immunity in the human population, begins to cause serious illness and then spreads easily person-to-person worldwide.

Avian influenza, or the H5N1 virus, is currently infecting bird populations in Asia, Africa, and Europe and health officials are concerned it will become the next pandemic influenza strain.

A pandemic could significantly impact court operations for up to 18 months. The impact may include:

- Limited infrastructure, utilities, and services due to isolation, quarantine, illness, or death of necessary staff to keep operations running;
- Isolation or quarantine of judges, attorneys, court staff, and the public with limited face-to-face interaction;
- A significant number of judges, attorneys, and court staff may not be available due to illness or death; and
- A significant increase in emergency matters and case filings due to issues associated with quarantines and isolation.



H5N1 Virus

### Prevent Influenza—Practice Good Health Habits

The best way to avoid getting or spreading the flu is to practice good health habits, including:

- Staying home and away from others as much as possible if you feel sick;
- Washing your hands frequently with soap and water; and
- Covering coughs and sneezes with tissues and immediately washing your hands afterwards.

# Appendix F

## ADDITIONAL RESOURCES

For further information, court personnel and staff are encouraged to contact their court executive officer, who can coordinate with local county health officials.

For further information on specific diseases, visit the following Web sites:

### **Pandemic Influenza**

*[www.pandemicflu.gov](http://www.pandemicflu.gov)*  
*[www.cdc.gov/flu/pandemic](http://www.cdc.gov/flu/pandemic)*  
*[www.dhs.ca.gov/ps/dcdc/dcdcindex.htm](http://www.dhs.ca.gov/ps/dcdc/dcdcindex.htm)*  
*[www.fluwikie.com](http://www.fluwikie.com)*

### **Plague**

*[www.cdc.gov/ncidod/dybid/plague](http://www.cdc.gov/ncidod/dybid/plague)*  
*[www.bt.cdc.gov/agent/plague](http://www.bt.cdc.gov/agent/plague)*

### **SARS**

*[www.cdc.gov/ncidod/sars](http://www.cdc.gov/ncidod/sars)*  
*[www.who.int/csr/sars/en](http://www.who.int/csr/sars/en)*

### **Smallpox**

*[www.bt.cdc.gov/agent/smallpox](http://www.bt.cdc.gov/agent/smallpox)*  
*[www.hhs.gov/smallpox](http://www.hhs.gov/smallpox)*

# Appendix G

## LEGAL OPINIONS ADDRESSING ISSUES OF COURT ADMINISTRATION THAT MAY ARISE IN THE EVENT OF AN EPIDEMIC

Appendix G will be updated periodically, as additional legal guidance becomes available from the Office of the General Counsel.



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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## MEMORANDUM

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<b>Date</b> September 8, 2006	<b>Action Requested</b> For your information
<b>To</b> All Superior Courts, for inclusion in Appendix G to “Epidemics and the California Courts”	<b>Deadline</b> N/A
<b>From</b> Mary M. Roberts, General Counsel Chad Finke, Supervising Attorney <i>CF</i> Rebecca M. Cenicerros, Attorney	<b>Contact</b> Rebecca M. Cenicerros 916-263-2290 phone 916-263-1329 fax rebecca.cenicerros@jud.ca.gov
<b>Subject</b> Authority of Health Officials to Close Court Facilities and Quarantine Court Personnel	

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This memorandum is a supplement to the publication “Epidemics and the California Courts,” which was prepared by the Administrative Office of the Courts’ Emergency Response and Security unit (“ERS”) and distributed to all courts in September 2006. The Office of the General Counsel will periodically supplement that publication with memoranda addressing matters of court administration that may arise in the event of an epidemic or pandemic.

### Question Presented

In the event of an epidemic or pandemic<sup>1</sup> (for example, avian flu disease), do local or state public health officials have the authority to close court facilities, or to quarantine or isolate court personnel?

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<sup>1</sup> Generally speaking, the term *epidemic* refers to a limited geographic spread of a contagion, i.e., an outbreak limited to a particular county or metropolitan area, while *pandemic* refers to a statewide (or larger) outbreak. For

### **Short Answer**

Most likely yes, subject to certain constitutional protections. The authority of state and local health authorities to take measures to prevent the spread of contagious disease is established by statute, and is grounded in the constitutional police power to protect public health. No authority specifically exempts the courts from the reach of this authority.

Nonetheless, it is likely that the authority of health officials to impose such measures on the courts is not unfettered, but rather is limited by the constitutional doctrine of separation of powers. Therefore, if a specific measure imposed by a health official would materially impair core judicial functions, i.e., the ability to interpret and apply the law and to decide cases, then that measure would run the risk of being held unconstitutional.

Further, the closure of court facilities, even for short periods, raises the possibility that key deadlines in criminal and civil matters might not be met. Statutory authority affords trial courts various options for ensuring that performance of essential court functions continues, even during courthouse closures. Advance planning and coordination between courts and other public officials are strongly recommended, and should help ensure that courts are able to fulfill their constitutional duties notwithstanding any disruption that an epidemic might cause.

### **Discussion**

#### **A. Public health officials most likely have the authority, in general, to order court facilities closed, or to quarantine or isolate court personnel, if necessary to protect public health.**

The Communicable Disease Prevention and Control Act (Health & Saf. Code, § 120100 et seq.) vests authority to prevent the transmission of communicable disease in “health officers,” defined as county, city, and district health officers, as well as city and district health boards.<sup>2</sup> This broad statutory grant of power is found in section 120175, which provides:

Each health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.

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purposes of this memorandum, we use the term *epidemic* unless specifically indicated otherwise, although the guidance offered is intended to apply to both epidemics and pandemics.

<sup>2</sup> All references are to the Health and Safety Code, unless otherwise specified.



(Accord Cal. Code Regs., tit. 17, § 2501(a).) Health officers also have the statutory and regulatory authority to require isolation or quarantine of persons.<sup>3</sup> (Health & Saf. Code, §§ 120130(c), 120210(a), 120215(a), 120220, 121365(g); Cal. Code Regs., tit. 17, §§ 2516, 2518, 2520.) Health officers may also quarantine persons or places for the purpose of enforcing regulations adopted by the State Department of Health Services (DHS). (Health & Saf. Code, § 120585.)

Health officers are further authorized to close public areas, where a menace to the public health or safety is created by “calamity” or “other disaster.” (Pen. Code, § 409(a) [“If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section”].)

DHS likewise has broad statutory authority to prevent the spread of contagious disease. Section 120140 provides:

Upon being informed by a health officer of any contagious, infectious, or communicable disease the department may take measures as are necessary to ascertain the nature of the disease and prevent its spread. To that end, the department may, if it considers it proper, take possession or control of the body of any living person, or the corpse of any deceased person.

DHS is specifically empowered to “quarantine, isolate, inspect, and disinfect persons . . . houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is necessary to protect or preserve the public health.” (Health & Saf. Code, § 120145.) (Accord Health & Saf. Code, §§ 120130(b), 120135.)<sup>4</sup>

Authority to control and prevent communicable disease is derived from the constitutional police powers of the state, county, or city. (Cal. Const., art XI, § 7 [“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws”].) See also *Ex Parte Johnston* (1919) 40 Cal.App. 242, 244:

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<sup>3</sup> Quarantine is the separation and restriction of movement of persons who, although not yet ill, either have been, or may have been, exposed to an infectious agent; isolation is the separation of infected persons from other persons. (Cal. Code Regs., tit. 17, §§ 2515 and 2520.)

<sup>4</sup> The power to quarantine is not unlimited. Because it is an extreme measure, constituting interference with personal liberty, quarantine may only be imposed if “reasonable grounds” exist to believe that a quarantined person is infected with a contagious disease. (*Ex parte Martin* (1948) 83 Cal.App.2d 164, 167; *Ex parte Dillon* (1919) 44 Cal.App. 239, 243.)

The adoption of measures for the protection of the public health is universally conceded to be a valid exercise of the police power of the state, as to which the Legislature is necessarily vested with large discretion, not only in determining what are contagious and infectious diseases, but also in adopting means for preventing the spread thereof.

(Accord *Love v. Superior Court* (1990) 226 Cal.App.3d 736, 740 [“[C]ontrol of communicable disease is a valid exercise of the state’s police power”]; *In re Halko* (1966) 246 Cal.App.2d 553, 556–557 [upholding statute authorizing quarantine of individuals infected with tuberculosis as a constitutional exercise of the state’s duty to promote and protect the health of the public]; *Ex Parte Arata* (1921) 52 Cal.App. 380, 382 [health authorities have power to quarantine persons who they have reasonable cause to believe are afflicted with infectious or contagious diseases]; and *Application of Travers* (1920) 48 Cal.App. 764, 766–767 [“[T]he safety of the community depends upon the proper enforcement of health and quarantine regulations”].)

The Office of the General Counsel is aware of no case law, statute, or regulation exempting the judicial branch from the authority of health officers and DHS to protect public health. Likewise, it appears that no authority has directly addressed the legality of quarantine, isolation, or closure in connection with court personnel or facilities. Thus, in the absence of any authority to the contrary, it is highly likely that, in general, health officers and DHS have the authority to order court facilities closed, and to quarantine or isolate court personnel.

**B. The ability of health officials to affect court facilities or personnel is likely limited by the doctrine of the separation of powers, which would prohibit a health official from taking any action that would defeat or materially impair the performance of core judicial functions.**

Notwithstanding the above conclusion, it is possible that efforts by health authorities to quarantine or isolate court personnel, or to close court facilities, could implicate the separation of powers doctrine. That is, such measures, if implemented, could potentially interfere with the independence of the judicial branch, as detailed below.

The doctrine of separation of powers as between the three branches of state government is embodied in article III, section 3, of the California Constitution:

The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

As applied to the judiciary, that doctrine means that neither the legislative nor the executive branch may defeat or materially impair the exercise of judicial functions. (*Brydonjack v. State Bar* (1929) 208 Cal. 439, 444.) Fundamental judicial functions are to declare the law and

determine controversies between parties, i.e., to decide disputes. (*Marin Water & Power Co. v. Railroad Commission of California* (1916) 171 Cal. 706, 711.) Courts possess “all the inherent and implied powers necessary to properly and effectively function as a separate department in the scheme of our state government.” (*Brydonjack, supra*, 208 Cal. at p. 442.) One of the basic implied powers of the judicial branch is to establish schedules providing when the courts will be open to the public. (*Superior Court of Mendocino County v. County of Mendocino* (1996) 13 Cal.4th 45, 58 [“*Mendocino*”].)

The *Mendocino* decision offers guidance on the issue here. In that case, the Supreme Court considered whether a statute permitting counties to designate furlough days, on which the superior courts would be closed and court employees would not be paid, violated the separation of powers doctrine. Rejecting both the proposition that the statute was facially invalid and the argument that the statute interfered with the courts’ inherent power to set their schedules, the Supreme Court reasoned:

[T]he Legislature’s power to designate legal holidays or other nonjudicial days on which courts generally will be closed does not inevitably threaten the integrity or independence of the judicial process. The circumstance that a court will be closed on a particular day is unlikely to affect the resolution of a particular controversy or prevent a court from proceeding in accordance with its own view of the governing legal principles. . . [T]he Legislature’s authority to designate days on which courts shall be closed does not intrude upon the judge’s decision making process or the independence of the judicial role.

(*Id.* at p. 61.)

Under the rationale of the *Mendocino* decision, the question whether quarantine or isolation of court personnel or closure of a court facility would violate the separation of powers doctrine depends on whether such measures materially interfere with the core functions of the judiciary, i.e., whether they would affect judicial pronouncements of the law or the outcome of any proceeding.

It is, of course, difficult to draw conclusions about the validity of health measures under the separation of powers doctrine in the abstract; thus, in the event of an epidemic, the validity of any particular health authority measure would need to be evaluated on a case-by-case basis. For example, quarantine or isolation of court personnel, if imposed for only a limited period, or if directed at only a few individuals, could possibly be held not to undermine judicial decision making or to affect the outcome of any particular case or hearing. And in some instances, even the closure of an entire courthouse may not hinder the court’s overall ability to perform its core judicial functions, assuming that the closure is brief in duration, and that alternate court facilities are available.

Conversely, if DHS or a health officer imposed lengthy isolation or quarantines on *all* court personnel who worked at a particular courthouse, or closed a court's *sole* facility, even if for only a short period, those actions conceivably could, in the words of the Supreme Court, have "a serious debilitating effect upon the court's ability to fulfill its constitutional functions." (*Id.* at p. 60.)

In sum, the question whether a quarantine, isolation, or building closure implemented by health officials violates the doctrine of separation of powers cannot be answered in general terms that would apply in all circumstances. Rather, the specifics of the measure or measures taken in any given situation must be considered. Depending on the extent of the measure or measures taken and the severity of their impact on the court's ability to accomplish its core judicial functions, those measures could be held to violate the separation of powers doctrine. Because different courts have different resources available to them, as well as varying workloads, measures that are merely inconvenient in one court could materially impair core court functions in another. Thus, the constitutionality of any particular closure, quarantine, or isolation would need to be evaluated on a case-by-case basis.

**C. In the event of an epidemic, the courts have numerous options available to them, including cooperation and coordination with health officials, to ensure performance of core judicial functions.**

As discussed in "Epidemics and the California Courts," the closure of court facilities for even very short periods raises issues concerning the expiration, during such closures, of certain deadlines and the running of limitations periods. For example, criminal defendants are entitled, under statutory and constitutional law, to the speedy trial of criminal charges against them. (U.S. Const., art. VI; Cal. Const., art. I, § 15; Pen. Code, §§ 1049.5, 1382(a)(2) and (a)(3).) Persons who are arrested and held in custody must be arraigned no more than 48 hours after arrest (Pen. Code, § 825), and criminal charges are subject to varying statutes of limitations. (See, e.g., Pen. Code, §§ 799–805.5.) Civil litigants, likewise, must file actions within specified times (See, e.g., Code Civ. Proc., §§ 335.1–349.4.) Once filed, numerous deadlines for service of process, trial, and the like are imposed in both civil and criminal matters.

The courts have options available to them to ensure that performance of key judicial functions is not disrupted. If a courthouse is closed, the judicial functions normally performed at that facility can be conducted at another court facility, including facilities outside the county. (Gov. Code, § 69740(a) ["[E]ach trial court shall determine the number *and location* of sessions of the court . . . "](Emphasis added); Gov. Code, §§ 68115(a) and (b) [in specified cases of emergency, the Chair of the Judicial Council is empowered to authorize courts to hold sessions anywhere in the county or to transfer certain civil cases to another county];<sup>5</sup> Gov. Code, § 69740(b) [court

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<sup>5</sup> See also section 4.3 and Appendix C of "Epidemics and the California Courts," which detail the procedures under which a court may request an emergency order pursuant to Government Code section 68115.

sessions can be held outside the county, with the agreement of the presiding judges of the courts]. Court sessions can also be held in buildings other than traditional courthouses. (Gov. Code, § 69740(a) [“Nothing in this section precludes a session from being held in a building other than a courthouse”].)

Courts also have significant flexibility in rearranging and ordering cases, so as to ensure that the most urgent matters receive immediate attention. Presiding judges have authority to redistribute the business of the court among judges and to prescribe the order of the business of the courts. (Gov. Code, § 69508(a); Cal. Rules of Court 6.603(b)(1)(B); Gov. Code, § 24261 [judges of the superior court empowered to establish “rules, and hours for the dispatch of official business”]; *Anderson v. Phillips* (1975) 13 Cal.3d 733, 737 [presiding judge’s assignment of the business of the court among judges is “wholly discretionary”].)

To maximize accessibility and accommodate shifting workloads, one or more departments of a superior court may remain open and in session “on a judicial holiday or at any hours of the day or night, or both, as the judges of the court prescribe.” (Code Civ. Proc., § 134(c).) To the extent that collective bargaining issues are raised by imposition of alternative hours of operation, the courts are authorized, in cases of emergency, to implement urgent measures immediately, and to meet and confer with employee organizations after the fact. (Gov. Code, § 71634.1(b).)

Furthermore, in the event of a courthouse closure, a court may request the Chief Justice to issue an emergency order declaring days on which a court facility is closed to be judicial holidays, thereby extending certain civil and criminal limitations periods and filing deadlines. (Gov. Code, § 68115(c) and (d).) A court may also request an emergency order extending the deadlines for certain key criminal proceedings, e.g., the holding of a preliminary examination and the day by which trial must be held. (Gov. Code, §§ 68115(g) and (h).)<sup>6</sup>

This list of options that a court might employ to conduct essential court business in the event of a court closure due to an epidemic is not exhaustive. Nor will every option discussed be available or appropriate in every circumstance. As with the question of the constitutionality of court closures by health officials, this determination cannot be made in the abstract; rather, the appropriateness of, and legal authority for, any particular action must ultimately be determined in light of the specific circumstances of a particular court closure.

## **Conclusion and Recommendation**

In general, health authorities have statutory and constitutional authority to protect public health by taking measures that prevent the spread of contagious disease. As applied to the courts, this authority is limited by the constitutional doctrine of separation of powers. If, in a given circumstance, a health measure such as quarantine, isolation, or facility closure materially

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<sup>6</sup> Again, see section 4.3 and Appendix C of “Epidemics and the California Courts.”

impairs the ability of a court to preside over and decide cases, a reviewing court could declare that measure invalid. In the interim, however, courts have numerous options that may be utilized to allow the timely conduct of core judicial business to proceed in the event of an epidemic.

Given the importance of maintaining essential court functions during an epidemic, and to avoid any potential conflict over the scope of health measures that may be taken in such times, it is recommended, as discussed in “Epidemics and the California Courts,” that courts begin working with appropriate public health authorities now—before the outbreak and spread of an epidemic—to ensure that those authorities are aware of the courts’ core judicial functions, and which resources must remain available to enable the courts to carry out those functions. If courts and their respective health authorities can reach understanding on such issues now, disputes will not need to be adjudicated during an epidemic, when time will be of the essence and resources will likely be reduced.

MMR/CF/RC/kc