

# Daily Journal

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## The death of civil justice

*Micha Star Liberty, CAOC president*

The coronavirus crises has devastated many and impacted most in California. We've lost love ones, we've been unhomed, we've been laid off, and we've missed out on many of life's milestones. These are real and significant losses in our individual lives.

What has cleaved the foundations of our society, however, is the utter destruction of our civil justice system. By so many measures, our civil courts are dead in the water, right now, in the first months of a health crisis that sadly promises to stretch on for many more moons. The most tragic thing about seeing the implosion of one of the three branches of government is that it was completely preventable and totally foreseeable.

With courthouses shuttered all over the state and the scant number of remaining operational court rooms reserved for criminal cases, the gears of civil justice are unceremoniously grinding to a halt in the absence of a coherent statewide contingency plan for the mass shutdown.

Currently, it's extraordinarily difficult to hold even the most perfunctory of civil hearings, whether in a courtroom or remotely by electronic means. California may be the silicon state that birthed countless dot-com businesses and e-commerce industries, but our disparate network of 58 largely autonomous county courts have failed to allow civil proceedings online. The state's governing Judicial Council has worked around the edges, approving electronic filing of civil cases and encouraging remote video depositions, but so far it has failed to insist that county courts adopt 21st century web-based technology as a workaround for closed courtroom doors. And, the citizens who need this branch of government to adjudicate their civil rights suffer unnecessarily from the lack of recourse.

So here's our new COVID-19 reality: You can easily conduct a Zoom cocktail party with 20 of your closest friends, but forget getting California courts to remotely handle a civil case hearing via internet video. Forget obtaining much needed financial recovery for your injures, especially now that you've been laid off and lost your insurance. Forget getting to trial before you're forced to file for bankruptcy. Forget getting a much needed court order before you die from a terminal ailment caused by corporate greed.

California is the world's fifth-largest economy. How did we get here? And can we even course correct to revive our civil courts?

The roots date back as far as 1849, with the first California constitution giving the state's far-flung counties autonomy that included operation of the local courthouse. Establishment of the California Judicial Council in 1926 infused a sense of statewide cohesion, and subsequent constitutional amendments over the decades adjusted the workings, but day-to-day governance

still largely was left to each local legal fiefdom. With the assault of COVID-19, that judicial independence has produced a hodgepodge of unclear and confusing responses, with each county adopting a different set of rules and regulations while stiff arming the idea of shifting civil proceedings online.

Responding to complaints about the resulting chaos, Gov. Gavin Newsom stepped up with an executive order on March 27 investing Chief Justice Tani Cantil-Sakauye and the Judicial Council with expanded powers during the pandemic to adopt policies that would yank the system off life support and push it toward the road to recovery.

In the two months since, the chief and council have acted on requests by stakeholders such as Consumer Attorneys of California and the California Defense Counsel, but have shied away from granting persistent requests to establish a uniform standard for online remote hearings during this time of emergency.

Even when courthouses eventually reopen for business, a process likely to be painstaking and gradual given the highly contagious characteristics of the coronavirus, our constitutional underpinnings give priority to the criminal courts. Meanwhile, the covid-spawned \$54-billion state budget deficit prompted Newsom to propose slashing trial court funding. With dwindling funding and second-class status, the civil courts are once again at risk of being left behind, potentially for good, with justice languishing as trials are put off for years. The resulting mountainous backlog of cases will give new meaning to the old axiom that justice delayed is justice denied.

For my entire career I have represented victims of sexual abuse and assault -- many of them children and many other special needs. These are plaintiffs whose lives are forever impacted by the abuse they suffered. They have limited resources, both financial and emotional. They need accessible courts because they need help, and they need money damages awarded to get it. I can literally look down my case roster and see clients' lives that will be ruined by continued court closures. Some turn to drug and alcohol dependency again to cope. Some are unable to afford their psychotropic medication and become totally destabilized. Some suffer such emotional wounds that they fall at risk to self-harm. The problem is devastating for most.

There is a potential fix, however. The state Legislature needs to take over. Lawmakers need to step up with legislation requiring the Judicial Council to craft and adopt with uncharacteristic haste an emergency plan for situations that close the courthouse doors. A key component must be requiring a shift to utilizing available online communication resources to hold hearings if not whole trials. And it needs to happen soon.

Ironically, the same state budget blueprint Newsom recently unveiled that proposes deep cuts to the trial courts includes a \$25 million line item to modernize court services, including utilizing video technology to allow remote participation in hearings.

It is not rocket science. In Wisconsin and other states with severe winter weather that make court appearances impossible, justice continues remotely. As a matter of fact, the head administrator for the courts in Wisconsin saw the impact of this pandemic coming and without missing a beat ordered hundreds of Zoom licenses, did trainings, and was up and running remotely in three weeks, with hearings posted on YouTube so public access was not impacted. Even the staid chambers of the U.S. Supreme Court, with its oyez-oyez-oyez traditions, recently heard their docket via an audio conference call, and attorneys phoning in to argue their case.

California should be no different. Our civil courts are known as a cornerstone of democracy, but more directly they're a place where society peacefully settles disputes between participants large and small, from the humblest of underdog plaintiffs to corporate giants wrangling over intellectual property.

Even during a pandemic, our need to address civil rights violations and peacefully settle legal differences through the civil justice system isn't going away. Neither should our courts.

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