

SHINING LAW FIRM

MEMORANDUM

TO: FILE

FROM: Carolin Shining, Shining Law Firm

DATE: June 9, 2020

RE: Notes from Federal Bar Association Presentation of Judges Michael Fitzgerald and Chief Judge Cormac Carney

The following are my personal notes from today's presentation by the Federal Bar Association on the status of the Central District of California. Judge Michael Fitzgerald hosted the meeting, introducing new Chief Judge Cormac J. Carney. **THESE NOTES ARE MY OWN AND MAY OR MAY NOT BE FULLY ACCURATE. PLEASE CHECK WITH YOUR INDIVIDUAL JUDGES TO CHECK ON THEIR ACCURACY OR CONTINUED ACCURACY. THESE NOTES RELATE ONLY TO THE PROCEDURAL ISSUES AND DO NOT PURPORT TO RELATE TO ANY OTHER ISSUES DISCUSSED, LIKE POLITICS, ETC.**

I. OVERVIEW OF PHASES

The court is currently in Phase 1, and on track for Phase 2 on June 22, 2020. Here is an overview of the Phases:¹

- a. Phase 1 (return of certain staff to the courthouses to prepare for limited in-court hearings) will be implemented no earlier than June 1, 2020;
- b. Phase 2 (reopening courthouses for limited in-court hearings) will be implemented three weeks after Phase 1 and no earlier than June 22, 2020;
- c. Phase 3 (resumption of jury trials) will be implemented at a date to be determined; and,
- d. Phase 4 (normal operation (to be determined)).

II. PHASE 1 ISSUES:

- a. MOTION PRACTICE. Courtesy copy requirements are suspended until Phase 4 (normal operations). A judge may specifically order otherwise if he/she wishes.

¹See General Order 20-08, amended: <http://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>

- b. Will there be trial continuances based on a failure to have the ability to do remote depositions? Discovery is within the province of a magistrate but the judge handles continuances. Judge Carney noted that there are civil cases that have been pending a long time in his courtroom and judges may be tougher in those cases...again however, the magistrate judge will make a decision on where or how discovery and depositions take place. If it impacts cut-off dates and trial dates, it will involve the trial date and judge will decide if these reasons are acceptable.
- c. Trial scheduling/status/settings right now: Some judges do these, some do not. For Chief Judge Carney, his personal practices have not changed. Criminal trials are still being given preference. He has experience in Santa Ana and here. He notes that having four or five judges picking a jury on the same day is very rare anyway. Judge Carney likes to have these hearings eight days before trial and deal with pre-trial motions then. He has had them earlier in complex. When jury trials are resumed, the pre-trial conferences will be earlier.

Judge Fitzgerald sets these three weeks out, and these are either kicked or second hearings happen. Many years ago, he would have a hearing one year before trials. Now he pays attention to what lawyers ask for – most ask for something a year out or a year from the initial conference. Lawyers now are suggesting that discovery is just going to take longer and suggesting trials farther out. He feels that lawyers have a good gauge and is not merely simply setting things out 2 years for COVID or not setting things at all.

III. COURT OPERATIONS PHASE 2:

HEARINGS: In-courtroom hearings starting on June 22; can be (1) telephonic (quick things like trial continuances); (2) video hearings possible or (3) in person.

Judge Fitzgerald would like to have more hearings in general, but make them telephonic. If all the parties want to have an in-person hearing, he will consider it but need to make sure timing is right. He believes that phase 2 is to start chipping away at criminal hearings and sentencings. Defendants may want video hearings because it means that they won't need to be quarantined to and from Metropolitan jail.

The presenters believed that civil hearings are going to be more rare as they “cut into” a spot for a criminal matter. The default will be telephonic. Of course, you can't have an evidentiary hearing over the telephone (can't judge the credibility of a witness over the phone (!) so that may be a real hearing after June 22. Judge Fitzgerald noted lightly that he does not want to become the "COVID" police -- ie, inquire into personal matters re: asking people if they are susceptible to COVID. [i.e. he does not want to press or inquire into such private matters as it pertains to why someone wants a phone or video or in-person hearing].

Judge Carney has had some video hearings, sometimes they work, sometimes they don't and the fall back is telephonic. He noted that hacking and invasions of privacy with regard to technology are very important. They are working on more secure platforms. He would prefer again in-person hearings as much as possible.

OTHER ISSUES:

1. May have bench trials in Phase 2, depends on variable factors like witnesses, etc.
2. Jury trials may have to wait until Phase 3
3. Enhanced screening to get in: This costs 500k per month to take temperatures and do screening; GSA has agreed to pay for this
4. No more than 2 people in elevator -- security will monitor
5. Restrooms -- security or people will rely on their integrity to keep social distancing
6. Courtrooms who want it will get plexiglass
7. No more 'cattle calls' for arraignment date or hearing dates -- all will be staggered to avoid long lines
8. "When" there are jury trials, there will be some lines --
9. Some judges do not want jurors, witnesses and clients to wear masks. Other judges want everyone to wear masks as a matter of social duty and safety. This will be up to the individual judge. Sheriffs will wear masks. Facial coverings required outside of courtrooms.
10. What about families watching trials? Will the public be allowed to enter if they are wearing masks? The ultimate answer is that it will be up to each judge. The leadership will strongly recommend that social distancing will be recommended even inside the courtroom. You will be using all the space if a jury trial. There will not be enough room for members of the public. They will be allowing via video feed for members of the public from other rooms. In fraud cases, where there are hundreds/thousands of victims and they have a right to be heard, this will have to be coordinated and scheduled so that they and the press can watch in another room (jury assembly room).

IV. COURT OPERATIONS: PHASE 3 (which is like Gov. Newsome's Phase 4, i.e. close to normal)

Jury trials: When jury summons go out, how much time to jurors get for return dates? When will summons' go out? This takes six weeks. No summons have gone out during this time period. If a judge decides that they need to do one quickly, they have the capability to do this quickly. This is a tough decision for the Chief Judge as he has to proceed by consensus. They are working with it. The six-week time period is what he would prefer but there may be exceptions. He hopes to know by the "end of this month."

Groups of judges are going through and creating "categories of issues" – Judge Fitzgerald is aware of at least 125 (1) are being collected by judicial committees in order to get a successful jury trials. The short answer is that they still do not know when jury trials will take place. It will depend. Summons need to go out, jurors must be convinced that this is a safe place (with plexiglass, masks), who gives the juror a mask? Will breaks need to be very long? How will

they eat lunches? Will they be able to use vacant courtrooms if the jury deliberation rooms are too small? The list is endless.

“Constitutionally, we need to focus on the criminal matters, but practically, the fewer judges needed for civil cases is more manageable.”

V. FINAL NOTES

Judge Carney noted that everything is going to take more time. They will re-open but normal operations will not be anytime soon.

Judge Fitzpatrick noted that he sympathized with people who are working in difficult times such as trying to home school children or care for elderly family members.