

FILED  
Superior Court Of California  
County Of Los Angeles

JUN 24 2020

Sherri R. Carter, Executive Officer/Clerk  
By Claudia Esquivel, Deputy


APPELLATE DIVISION OF THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES


Petitioner,	)	No. BS 175678
	)	
v.	)	Central Trial Court
	)	
THE SUPERIOR COURT OF THE	)	No. 20STUD02967
STATE OF CALIFORNIA FOR THE	)	
COUNTY OF LOS ANGELES,	)	
	)	
Respondent,	)	<b>ORDER</b>
	)	
	)	
Real Party in Interest.	)	

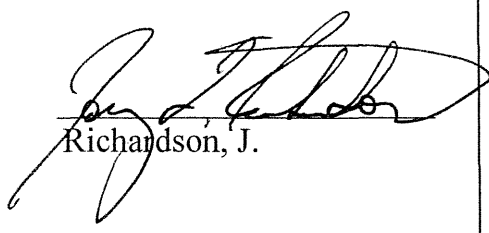
On April 27, 2020, petitioner l an unlawful detainer action against  
real party in interest grounded on nonpayment of rent, and submitted a  
summons for service with the clerk of respondent Los Angeles County Superior Court. Based  
on the Judicial Council of California's emergency order temporarily barring courts from issuing  
summons on unlawful detainer complaints unless the underlying action is needed to protect  
public health and safety, the clerk refused to issue the summons. On May 21, 2020, respondent  
entered an order denying petitioner's request to require the clerk to issue the summons  
notwithstanding the emergency order, and petitioner on June 16, 2020, filed the instant petition  
asking us to grant a writ of mandate.

1 Ultimately, the suspension of the inconsistent provision is pursuant to the order of the  
2 Governor, not the Judicial Council.

3 Petitioner also maintains the temporary suspension of the requirement that a clerk issue a  
4 summons upon the filing of a complaint violates his constitutional right to due process of law.  
5 Under the Fourteenth Amendment of the United States Constitution, “due process requires, at a  
6 minimum, that absent a countervailing state interest of overriding significance, persons forced  
7 to settle their claims of right and duty through the judicial process must be given a meaningful  
8 opportunity to be heard.” (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377.) Guarding against  
9 infection from COVID-19, by stopping the initiation of new unlawful detainer cases that are not  
10 required to protect public health and safety, definitely qualifies as a “countervailing state  
11 interest of overriding significance.” “[I]n every well-ordered society charged with the duty of  
12 conserving the safety of its members the rights of the individual in respect of [their] liberty may  
13 at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by  
14 reasonable regulations, as the safety of the general public may demand.” (*Jacobson v.*  
15 *Massachusetts* (1907) 197 U.S. 11, 29.) The present pandemic justified suspending petitioner’s  
16 right to obtain a summons and proceed with real party in interest’s eviction. No due process  
17 violation has occurred.

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19   
20 Ricciardulli, J.

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22 Kumar, Acting P. J.

23   
24 Richardson, J.  
25  
26  
27  
28

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/24/20

DEPT. APPLT

HONORABLE Alex Ricciardulli  
Sanjay Kumar  
HONORABLE Tony L. Richardson

JUDGE C. Esquivel

DEPUTY CLERK

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

None

Deputy Sheriff

None

Reporter

BS175678

TC#20STUD02967

Plaintiff  
Counsel

VS PETITIONER

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF LA.,  
AND RESPONDENT

Defendant  
Counsel

I

RPI

## NATURE OF PROCEEDINGS:

ORDER;

This court issues an order this date that on April 27, 2020, petitioner filed an unlawful detainer action against real party in interest grounded on nonpayment of rent, and submitted a summons for service with the clerk of respondent Los Angeles County Superior Court. Based on the Judicial Council of California's emergency order temporarily barring courts from issuing summons of unlawful detainer complaints unless the underlying action is needed to protect public health and safety, the clerk refused to issue the summons. On May 21, 2020, respondent entered an order denying petitioner's request to require the clerk to issue the summons notwithstanding the emergency order, and petitioner on June 16, 2020, filed the instant petition asking us to grant a writ of mandate.

The petition is denied.

As the issues involved are legal ones, not involving disputed facts, we exercise de novo review.  
(Jimenez v. County of Los Angeles (2005) 130 Cal.App 4th 133, 140.)

On March 27, 2020 the Governor issued Executive Order No. N-38-20, giving the Judicial Council,

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Deputy Sheriff

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Plaintiff

Counsel

Defendant

Counsel

## NATURE OF PROCEEDINGS:

and the Chief Justice as Chair of the Judicial Council, authority to take necessary action to respond to the deadly COVID-19 pandemic. Noting that Government Code section 68115 gave the Judicial Council power to issue orders in case of an emergency so long as the orders are not inconsistent with statutes, the Governor ordered that, if the Judicial Council's emergency rules were inconsistent with any civil or criminal procedure statute, the impacted statutes were suspended. Pursuant to that order, the council adopted emergency rules on April 6, 2020. Emergency rule 1, inter alia, prevents courts from issuing summons in unlawful detainer actions other than to protect health and safety.

Government Code section 8571 provides, in relevant part, "During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency.... where the Governor determines and declare that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency."

Code of Civil Procedure Section 1166, subdivision (e), provides, with respect to unlawful detainer actions, "Upon filing the complaint, a summons shall

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Plaintiff

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Defendant

Counsel

## NATURE OF PROCEEDINGS:

be issued thereon." Petitioner argues this provision is outside the purview of Government Code section 8571, because it is not a "regulatory statute" or a "statute prescribing the procedure for conduct of state business." We find the statute falls within the latter category. The law specifies that, after accepting a filing fee for a complaint, the clerk must issue a summons. (See Code Civ. Proc., 412.10.) The issuance of a summons is a state business, a service provided by the government for a fee so that litigants may prosecute civil actions. Thus, Code of Civil Procedure section 1166, subdivision (e), qualifies as a "State prescribing the procedure for conduct of state business" which can be suspended under Government Code section 8571.

Petitioner complains that Governor, in authorizing the suspension of Code of Civil Procedure section 1166, subdivision (e), violated the separation of powers clause of the California Constitution by exercising legislative powers, and also violated separation of powers by delegating to the judiciary the authority to decide which statutes should be suspended. The separation of powers doctrine is expressed in section 3 of article III of the California Constitution, which provides: "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."

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But, the separation-of-powers doctrine "does not command 'a hermetic sealing off of the three branches of Government' [Citation.]" (Obrien v. Jones (2000) 23 Cal. 4th 40, 48.) The Legislature saw fit, in enacting Government Code section 8571, to allow the Governor in extraordinary situations involving dire emergencies, to suspend statutes. The Governor was not given the power to enact substantive legislation, and the sharing of legislative powers in Government Code section 8571 did not violate the constitution. The Governor has not delegated his Government Code section 8571 authority to the Judicial Council. Rather, the Governor retained, and has chosen to exercise, his discretion to suspend a statutory provision if, as provided in Executive Order No. N-38-20, (1) the Judicial Council adopts a rule "necessary to maintain the safe and orderly operation of [the] court" in response to the COVID-19 pandemic, and (2) that rule is inconsistent with the provision. Untimely, the suspension of the inconsistent provision is pursuant to the order of the Governor, not the Judicial Council.

Petitioner also maintains the temporary suspension of the requirement that a clerk issue a summons upon the filing of a complaint violates his constitutional right to due process of the law. Under the Fourteenth Amendment of the United States Constitution, "due process requires, at a minimum,

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that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (Boddie v. Connecticut (1971) 401 U.S. 371, 377.) Guarding against infection from COVID-19 by stopping the initiation of new unlawful detainer cases that are not required to protect public health and safety, definitely qualifies as a "Countervailing state interest of overriding significance." "[I]n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of [their] liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." (Jacobson v. Massachusetts (1907) 197 U.S. 11, 29.) The present pandemic justified suspending petitioner's right to obtain a summons and proceed with real party in interest's eviction. No due process violation has occurred.

A copy of this minute order and the order of this court is transmitted as follows:

CLERK'S CERTIFICATE OF MAILING

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Defendant

Counsel

## NATURE OF PROCEEDINGS:

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order and Court's order Dated June 24, 2020 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid in accordance with standard court practices.

Dated: June 24, 2020

Sherri R. Carter, Executive Officer/Clerk

By: \_\_\_\_\_

Claudia Esquivel

Hon. Gail Killefer  
Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012



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None

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None

Reporter

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TC#20STUD02967

Plaintiff

Counsel

Defendant

Counsel

## NATURE OF PROCEEDINGS:

Dennis P. Block  
Dennis P. Block & Associates  
5437 Laurel Canyon Blvd. Second Floor  
Valley Village, CA 91607