

# Five Key Takeaways from the New Emergency Judicial Procedures in the Eastern District of California

**Minding Your Business Blog** on February 20, 2020

Federal court judges in California are facing a crisis caused by [expanding caseloads](#) coupled with [increasing vacancies in judicial seats](#) that remain unfilled. United States District Court Judge Dale A. Drozd of the Eastern District of California recently took matters into his own hands. After three other judges in the Eastern District assumed Senior status or inactive Senior status in the course of two months, Judge Drozd took over Judge Lawrence J. O'Neill's criminal docket and a [portion](#) of Judge O'Neill's civil docket in addition to his own. The combined docket amounts to roughly 1,050 civil actions and 625 criminal defendants. To address the ongoing "judicial emergency," Judge Drozd issued a civil [Standing Order](#) implementing new "temporary procedures" in early February. (Judge Drozd also issued a criminal standing order, which is not the subject of this post.) In the Standing Order, Judge Drozd prefaced the changes by explaining the track record of the Eastern District as one of the top 10 districts in the country in cases terminated per judgeship for over 20 years. He also noted that the population in the Eastern District has more than tripled since 1978, but the number of judicial seats remains the same. For now, the Standing Order only applies to the cases over which Judge Drozd presides, though the problems it seeks to address are suffered by all judges in the District (and beyond).

Below are five key takeaways for civil litigants and lawyers practicing in the Eastern District of California:

## **1. No Oral Argument.**

All motions filed before Judge Drozd will be deemed submitted on the record and briefs pursuant to Local Rule 230(g). Though many [attorneys and judges debate the importance of oral argument](#), some attorneys and their clients may view this as the loss of a critical opportunity to persuade the court in a close case

## **2. Severely Delayed or No Jury Trials.**

No new trial dates will be scheduled in civil cases over which Judge Drozd presides. Though there are currently trials scheduled through the end of 2021, Judge Drozd noted that it is unlikely those cases will be able to proceed to trial on the currently scheduled date. Moreover, Judge Drozd warned litigants that the trial dates “will be subject to vacatur with little to no advance notice.” Though Judge Drozd permits parties to file a motion seeking the setting of a trial date in “truly extraordinary circumstances,” he further warned that he may still be unable to accommodate such civil trials in light of the court’s criminal caseload. Therefore, attorneys who have civil trials set for the next two years may want to alert their clients regarding the possibility of an unanticipated vacated trial date.

### **3. Heavier Reliance on Magistrate Judges.**

In addition to the motions already assigned to magistrate judges by operation of [Local Rule 302\(c\)](#), such as discovery motions, Judge Drozd ordered that all motions (i) seeking the appointment of a guardian *ad litem*, (ii) for class certification and decertification pursuant to Federal Rules of Civil Procedure Rule 23, (iii) seeking preliminary or final approval of collective or class action settlements, and (iv) to approve minors’ compromises shall be noticed for hearing before the assigned magistrate judge. Furthermore, Judge Drozd indicated that he will likely refer other motions to the magistrate judges for issuance of findings and recommendations.

Judge Drozd also reminded litigants that they have the option to consent to magistrate judge jurisdiction for civil trials and noted that trials set before a magistrate judge have a “strong likelihood” of commencing on the date scheduled.

### **4. Evolving Procedures and Scheduling Orders.**

Scheduling orders issued in civil cases will include only final pretrial conference dates rather than trial dates, though Judge Drozd noted that the conference dates may also be vacated and rescheduled depending on the court’s ability to rule on any filed dispositive motions. Importantly, Judge Drozd stated that the court will amend the Standing Order “as necessary” because he anticipates that there will be “unforeseen consequences” caused by the emergency procedures. Therefore, attorneys should periodically review the Eastern District website for updates and changes to the Standing Order.

## 5. Uncertainty for Litigants and ADR Considerations.

In light of the foregoing changes, attorneys and their clients are left with great uncertainty regarding the timing of motion resolution, when (and if) cases will be set for trial, and even procedural rules going forward. The emergency procedures could add years to already protracted litigation. Consequently, if speedy resolution of a dispute is important to a litigant, they may want to consider proposing mediation or arbitration as a path to resolution that avoids the increased unpredictability of litigation in the Eastern District. Alternatively, litigants may want to seriously consider consenting to magistrate judge jurisdiction.

The temporary procedures may impact litigation in the Eastern District for the coming years and attorneys should take care to review the Standing Order in its entirety. For those practicing in other California federal courts affected by the strain on judicial resources, it may be a good idea to take note of the Standing Order in the event other district court judges follow suit.

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