

Resolution 07-06-2009

Civil Procedure: Service By E-Mail and Calculation Of Time

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to Code of Civil Procedure section 1013 to read as follows:

1 §1013

2 (a) In case of service by mail, the notice or other paper shall be deposited in a post
3 office, mailbox, subpost office, substation, or mail chute, or other like facility regularly
4 maintained by the United States Postal Service, in a sealed envelope, with postage paid,
5 addressed to the person on whom it is to be served, at the office address as last given by that
6 person on any document filed in the cause and served on the party making service by mail;
7 otherwise at that party's place of residence. The service is complete at the time of the
8 deposit, but any period of notice and any right or duty to do any act or make any response
9 within any period or on a date certain after the service of the document, which time period or
10 date is prescribed by statute or rule of court, shall be extended five calendar days, upon
11 service by mail, if the place of address and the place of mailing is within the State of
12 California, 10 calendar days if either the place of mailing or the place of address is outside
13 the State of California but within the United States, and 20 days if either the place of mailing
14 or the place of address is outside the United States, but the extension shall not apply to
15 extend the time for filing notice of intention to move for a new trial, notice of intention to
16 move to vacate judgment pursuant to Section 663a, or a notice of appeal. This extension
17 applies in the absence of a specific exception provided for by this section or other statute or
18 rule of court.

19 (b) The copy of the notice or other paper served by mail pursuant to this chapter shall
20 bear a notation of the date and place of mailing or be accompanied by an unsigned copy of
21 the affidavit or certificate of mailing.

22 (c) In case of service by Express Mail, the notice or other paper must be deposited in
23 a post office, mailbox, subpost office, substation, or mail chute, or other like facility
24 regularly maintained by the United States Postal Service for receipt of Express Mail, in a
25 sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be
26 served, at the office address last given by the person on any document filed in the cause and
27 served on the party making service by Express Mail; otherwise at that party's place of
28 residence. In case of service by another method of delivery providing for overnight delivery,
29 the notice or other paper must be deposited in a box or other facility regularly maintained by
30 the express service carrier, or delivered to an authorized courier or driver authorized by the
31 express service carrier to receive documents, in an envelope or package designated by the
32 express service carrier with the delivery fees paid or provided for, addressed to the person on
33 whom it is to be served, at the office address as last given by that person on any document
34 filed in the cause and served on the party making service; otherwise at that party's place of
35 residence. The service is complete at the time of the deposit, but any period of notice and
36 any right or duty to do any act or make any response within any period or on a date certain
37 after the service of the document served by Express Mail or other method of delivery
38 providing for overnight delivery shall be extended by two court days, but the extension shall

39 not apply to extend the time for filing notice of intention to move for a new trial, notice of
40 intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This
41 extension applies in the absence of a specific exception provided for by this section or other
42 statute or rule of court.

43 (d) The copy of the notice or other paper served by Express Mail or another means of
44 delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the
45 date and place of deposit or be accompanied by an unsigned copy of the affidavit or
46 certificate of deposit.

47 (e) Service by facsimile transmission shall be permitted only where the parties agree
48 and a written confirmation of that agreement is made. The Judicial Council may adopt rules
49 implementing the service of documents by facsimile transmission and may provide a form
50 for the confirmation of the agreement required by this subdivision. In case of service by
51 facsimile transmission, the notice or other paper must be transmitted to a facsimile machine
52 maintained by the person on whom it is served at the facsimile machine telephone number as
53 last given by that person on any document which he or she has filed in the cause and served
54 on the party making the service. The service is complete at the time of transmission, but any
55 period of notice and any right or duty to do any act or make any response within any period
56 or on a date certain after the service of the document which time period or date is prescribed
57 by statute or rule of court, shall be extended, after service by facsimile transmission, by two
58 court days, but the extension shall not apply to extend the time for filing notice of intention to
59 move for a new trial, notice of intention to move to vacate a judgment pursuant to Section
60 663a, or notice of appeal. This extension applies in the absence of a specific exception
61 provided for by this section or other statute or rule of court.

62 (f) The copy of the notice or other paper served by facsimile transmission pursuant to
63 this chapter shall bear a notation of the date and place of transmission and the facsimile
64 telephone number to which transmitted or be accompanied by an unsigned copy of the
65 affidavit or certificate of transmission which shall contain the facsimile telephone number to
66 which the notice or other paper was transmitted.

67 (g) Service by facsimile email shall be permitted only where the parties agree and a
68 written confirmation of that agreement is made. The Judicial Council may adopt rules
69 implementing the service of documents by email and may provide a form for the
70 confirmation of the agreement required by this subdivision. In case of service by email , the
71 notice or other paper must be transmitted to the email address for the person on whom it is
72 served at the email address last given by that person on any document which he or she has
73 filed in the cause and served on the party making the service. The service is complete at the
74 time of transmission, but any period of notice and any right or duty to do any act or make any
75 response within any period or on a date certain after the service of the document which time
76 period or date certain after the service of the document which time period or date is
77 prescribed by statute or rule of court, shall be extended, after service by email by two court
78 days, but the extension shall not apply to extend the time for filing notice of intention to
79 move for a new trial, notice of intention to move to vacate a judgment pursuant to Section
80 663a, or notice of appeal. This extension applies in the absence of a specific exception
81 provided for by this section or other statute or rule of court.

82 (h) The copy of the notice or other paper served by email pursuant to this chapter
83 shall bear a notation of the date, email address of the emailer, and the email address to which

84 it was emailed and shall be accompanied by an unsigned copy of the affidavit or certificate of
85 email transmission which shall contain the email address to which the notice or other paper
86 was emailed.

87 (i) When counting an extension of two court days always count forward from the
88 date of service adding the two court days at the end of the time period being counted.

89 (g) Subdivision (b), (d), (f) and (h) are directory.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: ORANGE COUNTY BAR ASSOCIATION

STATEMENT OF REASONS

Existing Law: Extends the time to do an act or make a response to a document or notice served by overnight mail or facsimile transmission by two court days. The law currently does not allow service via email.

This Resolution: Clarifies which days are to be counted as the court days when a document is served via overnight mail or facsimile. This resolution provides a means for documents to be served via email.

The Problem: There are two problems which this resolution addresses. The first relates to the calculation of dates where the time period is extended by two court days. Extending the time period by two court days can cause confusion for the general public in determining when an act or response is due. Many people have been taught to count backwards from a hearing date to provide the notice period. If one counts backwards from the court hearing date and then adds the two court days, the person counting may incorrectly calculate the notice period. Currently the law does not allow for emailing documents as a form of service. This resolution provides a means for documents to be served via email with agreement of the parties.

IMPACT STATEMENT

It is believed that this proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Elaine B. Alston, 5 Hutton Centre, Suite 900, Santa Ana, CA 92707, (714) 556-9400, ealston@aadlawyers.com

RESPONSIBLE FLOOR DELEGATE: Elaine B. Alston