

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee  
Hon. Steven Z. Perren, Chair  
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DATE: July 27, 2009

SUBJECT: Criminal Law: Deadlines for Filing Pretrial Motions (amend Cal. Rules of Court, rule 4.111(a)) (Action Required)

Issue Statement

Under current rule 4.111(a) of the California Rules of Court, “all pretrial motions, accompanied by a memorandum, must be served and filed at least 10 calendar days, all papers opposing the motion at least 5 calendar days, and all reply papers at least 2 court days before the time appointed for hearing.” In addition, proof of service must be filed no later than 5 “calendar” days before the hearing. (Cal. Rules of Court, rule 4.111(a).)

Use of the word “calendar” in the deadlines prescribed to file pretrial motions, opposition papers, and proofs of service severely shortens the number of days parties have to file those papers, particularly during time frames that include weekends and governmental holidays. The current rule can even result in obviously unintended consequences. For example, under the current rule, if a party files a motion to be heard on a Monday following a three-day weekend, the reply to the opposition papers would have to be filed on *the same day* as the opposition papers.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, amend California Rules of Court, rule 4.111(a) to replace the word “calendar” with “court” in the deadlines prescribed for filing pretrial motions, replies, and proofs of service.

The text of the proposed amendments to rule 4.111(a) is attached at page 4.

#### Rationale for Recommendation

The proposed amendments replace the word “calendar” with the word “court” in the rule’s prescribed filing deadlines for pretrial motions, opposition papers, and proofs of service. The proposed amendments ensure that parties have sufficient time to file during time frames that include weekends and governmental holidays and eliminate occasional unintended consequences, as illustrated above.

#### Alternative Actions Considered

As explained in the next section, the committee considered but declined to (a) leave the rule unchanged, and (b) further extend the deadlines as required in civil cases.

#### Comments From Interested Parties

The proposed revisions were circulated as part of the spring 2009 comment cycle. A total of eight comments were received. Of those, six agreed with the proposal, one did not specify a position, and one disagreed with the proposal. A chart with all the comments received and the committee responses to each is attached at pages 5–7.

One commentator suggested further extending the deadlines, as required in civil cases, to provide parties with even more time to prepare and file responsive pleadings. Another commentator suggested leaving the rule unchanged because the proposed earlier filing deadlines would unduly burden the parties, particularly in cases in which statutory trial deadlines are not waived.

As to the former, the committee declined to further extend the deadlines as required in civil cases because even earlier deadlines would considerably shorten the time in which the moving party must research, prepare, and file the motion. As to the latter, the committee decided that the proposal is necessary to ensure that parties have sufficient time to file during time frames that include weekends and governmental holidays and that it sufficiently balances the needs of both the moving and responding parties by providing adequate time to file and respond to motions.

The only other substantive comment, which addressed the consequences of noncompliance with the filing deadlines, failed to specify a suggestion related to the proposal.

Implementation Requirements and Costs

Expected costs would be limited to revising the California Rules of Court to reflect the proposed amendments and associated training of court staff and judicial officers.

Attachments



Rule 4.111 of the California Rules of Court is amended, effective January 1, 2010, to read:

1 **Rule 4.111. Pretrial motions in criminal cases**

2  
3 **(a) Time for filing papers and proof of service**

4  
5 Unless otherwise ordered or specifically provided by law, all pretrial  
6 motions, accompanied by a memorandum, must be served and filed at least  
7 10 ~~calendar~~ court days, all papers opposing the motion at least 5 ~~calendar~~  
8 court days, and all reply papers at least 2 court days before the time  
9 appointed for hearing. Proof of service of the moving papers must be filed no  
10 later than 5 ~~calendar~~ court days before the time appointed for hearing.

11  
12 **(b) Failure to serve and file timely points and authorities**

13  
14 The court may consider the failure without good cause of the moving party  
15 to serve and file a memorandum within the time permitted as an admission  
16 that the motion is without merit.  
17



**SPR09-20****Criminal Law: Deadlines for Filing Pretrial Motions** (amend Cal. Rules of Court, rule 4.111(a))

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Joyce Angell Assistant District Attorney Santa Cruz County District Attorney's Office	NI	<p>This proposed change in the rule for the filing of criminal pretrial motions makes a small improvement but does not go far enough. The deadline for filing needs to be at least 16 court days before the hearing, with the opposing papers due no sooner than 7 court days after the motion is filed, as Code of Civil Procedure section 1005 and rule 3.1300 provide in civil cases.</p> <p>As a longtime prosecutor, I know what the problems have been for my office. The attorney who is familiar with the case in which the criminal pretrial motion is filed, and who generally has to respond to that motion, is often engaged in the litigation of other cases when the motion is received. Under the rule currently proposed, however, the moving party can choose to spend weeks or even months preparing a pretrial motion and then can serve a lengthy or complex motion just 10 court days before a hearing date of the movant's choosing. This situation is sometimes exacerbated by the filing of multiple motions at one time. In addition, there is no page limit for a criminal motion, as far as I know. As a result, there is frequently insufficient time for the opposing attorney to competently respond to the motion(s), and this situation will only get worse with current government staff shortages and furloughs. Thus, although it is an improvement to use court</p>	<p>The committee declines to extend the deadlines as suggested. The proposed revisions are designed to ensure sufficient time to file motions and responses during time frames that include weekends and governmental holidays. Earlier deadlines, as required in civil cases, would considerably shorten the amount of time the moving party has to research, prepare, and file the motion. Although the concerns addressed by the commentator are appreciated, the committee believes that the proposal provides adequate time to respond to motions. Extending the deadlines as suggested would unduly burden the moving party, particularly in cases in which statutory trial deadlines are not waived. The proposed revisions sufficiently balance the needs of both the moving and responding parties.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			days to calculate the deadlines, the fact remains that the time set for the filing of the motion still allows too little time for the preparation and filing of responsive pleadings.	
2.	Kenneth Carver Research Attorney Superior Court of Fresno County	A	It's about time this was changed.	No response required.
3.	Los Angeles County District Attorney's Office Irene Wakabayashi Head Deputy District Attorney	A	I understand the application of the proposed rule change to be as follows: An opposing motion does not have to be filed 5 court days prior to the time the motion is to be heard if the movant does not file the pretrial motion in a timely manner (i.e., at least 10 court days prior to the time the motion is to be heard).	This proposal is not designed to address the consequences of noncompliance.
4.	Orange County Bar Association Michael G. Yoder President	N	There is no sufficient justification advanced for changing rule 4.111(a). The statutory time set for filing the information and for both misdemeanor and felony trials in Penal Code section 1382 is based upon calendar days, not court days. Indeed, under the present rule, the parties are always free to request the court set different dates should there be a problem with a due date falling upon a government holiday. Further, many counties hold law and motion calendars a week or two prior to the trial. The additional	The committee declines to leave the rule unchanged. The proposed revisions are necessary to (a) ensure that parties have sufficient time to file motions and replies during time frames that include weekends and governmental holidays, and (b) eliminate the occasional unintended consequence as described in the report, particularly in courts that set hearings on specific days of the week. Although the concerns addressed by the commentator are appreciated, the committee believes that the proposal improves the

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			time proposed from the change from calendar days to court days would be unduly burdensome on the parties and impractical as in cases where the trial is set within the statutory time, certain pretrial motions would be required to be filed prior to the completion of discovery under Penal Code section 1054.	deadlines and sufficiently balances the needs of both the moving and responding parties by providing adequate time to file and respond to motions.
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
6.	Superior Court of Riverside County Carrie Snuggs Regional Operations Director	A	No specific comment.	No response required.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response required.
8.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Working Group on Rules	A	No specific comment.	No response required.

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