

# Judicial Council of California

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## INVITATION TO COMMENT

### LEG15-03

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Title	Action Requested
Proposed Legislation: Timing of Electronic Service	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Code Civ. Proc., § 1005	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

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### Executive Summary and Origin

Code of Civil Procedure section 1005 addresses the time of service of supporting and opposing papers for specified motions. It provides that the notice period before a hearing is extended a certain number of days—which vary depending on whether the motion is served by mail, facsimile transmission, express mail, or another method of overnight delivery—and it excludes certain papers from the extension. Although Code of Civil Procedure section 1010.6 and rule 2.251 of the California Rules of Court provide for electronic service and specify that the notice period before a hearing and any right or duty to act or respond within a specified period or on a date certain after service of the document are extended two court days if a document is served electronically, section 1005 of the Code of Civil Procedure does not include electronic service among the methods of service in that statute. The Civil and Small Claims Advisory Committee recommends amending section 1005 to (1) clarify that service of motion papers may be made electronically, and (2) provide that if a document is served electronically, the notice period before a hearing is extended two court days.

The text of the proposed amendments to Code of Civil Procedure section 1005 is attached at page 43.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **Background**

The proposal to amend section 1005 came from an attorney with Aderant, a provider of software for business and law practice management.<sup>1</sup> The advisory committee determined that the proposal was urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts and the public.

## **The Proposal**

Amending section 1005 to include electronic service among the different methods of delivery for which a specified number of days are added to the notice period would provide, in a single statute, the notice periods for various methods of service.<sup>2</sup> Because section 1005 does not currently address electronic service, there may be uncertainty about extension of the notice period when service is made electronically. The proposed amendment will correct this omission and provide clarity. The committee decided not to refer to electronic notice “pursuant to section 1010.6” in the statute because the proposed amendment is intended to apply to any legally authorized electronic service—including service that could be established in the future—and not limited to section 1010.6.

Both section 1010.6 and rule 2.251 provide that if a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of the document, is extended by two court days. Section 1010.6 provides in the first sentence that “[a] document may be served electronically in accordance with rules adopted pursuant to subdivision (e).” That subdivision provides that the Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts, which it has done. Rule 2.251 is among the rules adopted, and it provides an extended notice period of two court days “unless otherwise provided by a statute or a rule.” Because neither section 1005 nor any other statute provides a different extended notice period, rule 2.251 is effective in establishing the extended notice period of two court days for electronic service. The same extended notice period is provided in section 1010.6.

Thus the electronic service time period is addressed by existing law. But because section 1005 addresses notice periods for many types of service and does not include electronic service, it leaves a gap. The proposal would fill the gap by amending the statute to include electronic service.

## **Alternatives Considered**

The advisory committee considered recommending no change to section 1005 because the increased notice period for electronic delivery is already addressed in section 1010.6 and rule

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

<sup>2</sup> Section 1005(b) currently provides for a two-calendar-day extension for the following methods of service: “facsimile transmission, express mail, or another method of delivery providing for overnight delivery.” Under section 1010.6 and rule 2.251, the time extension for electronic service is two *court* days.

2.251. As discussed above, however, the committee believes that the amendment will provide clarity and fill a gap.

The advisory committee also considered but ultimately decided against proposing an amendment to section 1005 that would make the extended notice period for the following alternative methods of service the same as the notice period for electronic service, i.e., two court days: facsimile transmission, express mail, or another method of delivery providing for overnight delivery. Currently section 1005 provides an increased notice period of two calendar days for these methods of service.

Although this amendment would provide uniformity, it would also increase the notice period that attorneys are familiar with from two calendar days to two court days. As a result, in general, papers now served on a Thursday, for example, would have to be served on a Wednesday. When a court holiday and weekend fall within the extended notice period, the difference between two calendar days and two court days would be even greater.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal should result in no implementation requirements or costs because it does not change the law on timing of electronic service.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does this legislative proposal appropriately address the stated purpose?
- Should section 1005 be amended to change the extended notice period for service by facsimile transmission, express mail, and other methods of delivery providing for overnight delivery from two calendar days to two court days? (This amendment would change the notice period for those methods of delivery and make them the same as the extended notice period for electronic delivery.)
- Alternatively, should section 1005 be amended to provide that, if notice is served electronically, the period for service is extended by two calendar days (i.e., change the period for electronic service by conforming it to the period for the other kinds of service)?

### **Attachment**

1. The text of the proposed legislation is at page 43.

Section 1005 of the Code of Civil Procedure would be amended, effective January 1, 2017, to read as follows:

1 **§ 1005. Requirement of written notice for certain motions; Time for serving and filing;**  
2 **Method of serving**

3  
4 (a) \* \* \*

5 (b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers  
6 shall be served and filed at least 16 court days before the hearing. The moving and supporting  
7 papers served shall be a copy of the papers filed or to be filed with the court. However, if the  
8 notice is served by mail, the required 16-day period of notice before the hearing shall be  
9 increased by five calendar days if the place of mailing and the place of address are within the  
10 State of California, 10 calendar days if either the place of mailing or the place of address is  
11 outside the State of California but within the United States, and 20 calendar days if either the  
12 place of mailing or the place of address is outside the United States, ~~and~~. If the notice is served  
13 by facsimile transmission, express mail, or another method of delivery providing for overnight  
14 delivery, the required 16-day period of notice before the hearing shall be increased by two  
15 calendar days, and if the notice is served by electronic service, the required 16-day period of  
16 notice before the hearing shall be increased by two court days. Pursuant to paragraph (4) of  
17 subdivision (a) of Section 1010.6, the extension does not apply to extend the time for filing a  
18 notice of intention to move for new trial, a notice of intention to vacate judgment under section  
19 663a, or a notice of appeal. Section 1013, which extends the time within which a right may be  
20 exercised, or an act may be done, does not apply to a notice of motion, papers opposing a  
21 motion, or reply papers governed by this section. All papers opposing a motion so noticed shall  
22 be filed with the court and a copy served on each party at least nine court days, and all reply  
23 papers at least five court days before the hearing.

24 The court, or a judge thereof, may prescribe a shorter time.

25 (c) Notwithstanding any other provision of this section, all papers opposing a motion and all  
26 reply papers shall be served by personal delivery, facsimile transmission, express mail, electronic  
27 service, or other means consistent with Sections 1010, 1010.6, 1011, 1012, and 1013, and  
28 reasonably calculated to ensure delivery to the other party or parties not later than the close of  
29 the next business day after the time the opposing papers or reply papers, as applicable, are filed.  
30 This subdivision applies to the service of opposition and reply papers regarding motions for  
31 summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

32 The court, or a judge thereof, may prescribe a shorter time

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