



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
March 30, 2015	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Laura Speed, Assistant Director, Governmental Affairs	Laura Speed, 916-323-3121 laura.speed@jud.ca.gov Charles Martel, 415-865-4967 charles.martel@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Disposition of the San Pedro Courthouse	

Executive Summary

Government Code section 70391¹ vests in the Judicial Council the authority to dispose of surplus court facilities acquired through the SB 1732 transfer process in compliance with section 11011.

Section 70391 states, in pertinent part:

The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

[¶] . . . [¶]

¹ All future code references in this report are to the Government Code, unless otherwise noted.

- (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:
 - 1. If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011

Section 11011 provides the general statutory framework and process for disposition of surplus state-owned property by the Department of General Services (DGS). That process requires DGS to report annually to the Legislature the real property it has declared excess and to request legislative authorization to dispose of that excess process by sale or otherwise.² Carrying that process over to the judicial branch, the first step in disposing of a surplus court facility is for the Judicial Council³ to declare that property to be surplus and to request legislative authorization to then dispose of it by sale or otherwise.

The State of California, acting by and through the Judicial Council, holds title to the San Pedro Courthouse, a building of approximately 30,000 square feet with two interior floors, and front and rear parking lots (the Courthouse). The Courthouse is a shared-use facility, with the Judicial Council holding a 95.15% equity interest and the County of Los Angeles (the County) the remaining 4.85%. The Superior Court of California, County of Los Angeles (the court) closed the Courthouse on June 30, 2013 and has since advised Judicial Council staff that the court does not have a current or any future need for the Courthouse.

The County has expressed its desire to purchase the Courthouse at its fair market value as soon as possible, and the court supports its sale to the County as surplus property.

On March 20, 2015, the Facilities Policies Working Group (FPWG) reviewed the status of the Courthouse, the County's stated desire to purchase it, and relevant law. The FPWG voted to move the matter to the Judicial Council with the recommendation that the council (1) declare the Courthouse as surplus, (2) direct Judicial Council staff to notify the Legislature that the court facility is surplus and take all actions necessary to obtain the Legislature's authorization to dispose of the surplus facility in accordance with Government Code sections 70391(c) and 11011, (3) authorize sale of the Courthouse to the County, and (4) delegate to the Administrative Director authority to execute a real property sale agreement with the County for the Courthouse that is contingent on receipt of legislative authorization. Those recommendations are set for Judicial Council action at its April 17 meeting.

² Section 11011(c).

³ See California Rule of Court Rule 10.183(c)(2):

The Judicial Council must determine the following issues concerning transfer of responsibility of court facilities, except in the case of a need for urgent action between meetings of the council, in which case the Executive and Planning Committee is authorized to act under rule 10.11(d).

¶ . . . ¶

- (2) A decision to dispose of a surplus court facility under Government Code section 70391(c).

The proposed legislation, a copy of which is attached hereto as Attachment 1, is the legislative authorization required in order to dispose of the Courthouse as surplus property. Because of the County's desire to complete its purchase of the Courthouse as soon as possible, the proposed legislative language is being brought to the Policy Coordination and Liaison Committee (PCLC) before the April 17 Judicial Council meeting to keep the matter moving in as timely a manner as possible, but with the understanding that no further action will be taken with respect to the proposed legislation until after the Judicial Council acts on April 17.

Recommendation

Contingent on Judicial Council action to declare the Courthouse as surplus for purposes of sections 70391(c) and 11011 at its April 17, 2015 meeting, the Facilities Policies Working Group recommends the Judicial Council sponsor legislation in the form of the proposed legislation attached as Attachment 1 to authorize the disposition of the San Pedro Courthouse as surplus property.

Previous Council Action

No previous Judicial Council action, but note earlier action by the FPWG described above and pending Judicial Council action on April 17, 2015.

Rationale for Recommendation

Under existing law, disposition of a court facility declared surplus by the Judicial Council requires authorizing legislation. PCLC's consideration of the proposed authorization language prior to Judicial Council action is needed to support the County's desire to complete its acquisition of the Courthouse as soon as possible.

Comments, Alternatives Considered, and Policy Implications

No alternatives were considered given that the authorizing legislation is required by statute.

Implementation Requirements, Costs, and Operational Impacts

Judicial Council staff time would be required to complete the sale of the Courthouse.

Attachment

1. Proposed legislation is at page 4

Proposed Legislation

- 1 () The Judicial Council may sell, exchange, sell combined with an exchange, or lease for fair
2 market value, upon those terms and conditions as the Judicial Council determines are in the best
3 interests of the state pursuant to Section 70391(c) of the Government Code that certain parcel of
4 real property consisting of approximately 1.8 acres and improvements, known as the San Pedro
5 Courthouse located at 505 South Centre Street, in San Pedro, Los Angeles County Assessor
6 Parcel Number 7455-013-901.
7
- 8 () The Judicial Council parcel has both county and state equity. Proceeds received from the
9 disposition of that parcel shall be subject to the reimbursement of county equity as required
10 under applicable state laws.

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INVITATION TO COMMENT LEG15-__

Title	Action Requested
Criminal Justice Realignment: Court jurisdiction over supervision revocation; calculation of time during supervision revocation.	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code sections 1203.2(a), 1170(h)(5)(B), 3456(b)	January 1, 2016
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b) to enhance court jurisdiction over all forms of supervision revocations by clarifying that when supervision has been revoked, summarily or otherwise, the time that elapses during revocation shall not be credited toward any period of supervision. This proposal, developed at the request of judges, preserves court jurisdiction to reinstate supervision, and harmonizes the statutory provisions that address tolling of supervision time during a period of revocation.

Background

Under criminal justice realignment, courts are required to conduct revocation proceedings for four distinct categories of supervision—probation, mandatory supervision, postrelease community supervision (PRCS), and parole. Revocation proceedings for all categories are governed by the longstanding procedures in Penal Code section 1203.2,¹ which includes a “tolling” provision: “[t]he revocation, summary or otherwise, shall serve to toll the running of the period of supervision.” Comparable provisions are included in section 1170(h)(5)(B) (mandatory supervision), and section 3456(b) (PRCS).²

¹ All further statutory references are to the Penal Code.

² Section 3000.08, the provision governing parole revocation, does not include a tolling provision.

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.

In *People v. Leiva* (2013) 56 Cal 4th 498, the California Supreme Court interpreted the tolling provision in section 1203.2, and reviewed the court's jurisdiction to adjudicate an alleged violation of probation that occurred while the defendant's supervision had been summarily revoked, but *after* the original probation term had expired. The Supreme Court determined that the language in section 1203.2 preserved the court's jurisdiction to adjudicate only those violations that occurred within the original term of probation. (*Leiva*, at pp. 515-516.) As a result, following *Leiva*, if no violation is found to have occurred during the original period, supervision will be deemed completed even if the defendant never complied with the terms of supervision, or violated the terms after the original supervision period expired. As noted in *Leiva*, section 1203.2 as currently constructed limits the exercise of jurisdiction and, once physical custody over the probationer has been regained, restricts courts in determining the consequences that should flow from conduct the supervised person has committed in the interim. (*Leiva*, at pp. 519-520.)

These issues arise in two other statutes that address court jurisdiction and the calculation of time during a period of supervision revocation: section 1170(h)(5)(B), (mandatory supervision), and section 3456(b), (PRCS). To promote uniformity and eliminate ambiguity, the tolling provisions in all three statutes should be harmonized.

The Proposal

The Criminal Law Advisory Committee proposes the following statutory changes to preserve court jurisdiction over defendants when supervision has been revoked, and authorize courts to reinstate supervision following a violation, whenever the violation occurs:

Amend Penal Code sections 1203.2(a), 1170(h)(5)(B) and 3456 to replace their current tolling provisions³ with the following sentence, "Time during revocation, summary or otherwise, shall not be credited toward any period of supervision."

The proposed language would harmonize the statutory provisions that address calculation of supervision time during a period of revocation, and would clarify that time that elapses during revocation shall not be credited toward any period of supervision. Courts would have continuing authority to determine the consequences of supervision violations, whether or not the violation occurred during the original period of supervision. This reformulation would enable courts to ensure that defendants receive the benefit of serving the full term of supervised release.

³ Section 1203.2(a): "The revocation, summary or otherwise, shall serve to toll the running of the period of supervision." Section 1170(h)(5)(B): "Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision." Section 3456(b): "Time during which a person on post-release supervision is suspended because the person has absconded shall not be credited toward any period of postrelease supervision."

Alternatives Considered

The committee considered amending solely Penal Code section 1203.2, but determined that it was beneficial to harmonize the statutory provisions to promote uniformity and avoid ambiguity.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are expected.

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 the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachment

1. The text of the proposed legislation is attached at pages 8–9

Section 1203.2, section 1170(h)(5)(B), and section 3456(b) of the Penal Code would be amended, effective January 1, 2017, to read as follows:

1 **§ 1203.2**

2 (a) At any time during the period of supervision of a person (1) released on probation under the
3 care of a probation officer pursuant to this chapter, (2) released on conditional sentence or
4 summary probation not under the care of a probation officer, (3) placed on mandatory
5 supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4)
6 subject to revocation of postrelease community supervision pursuant to Section 3455, or (5)
7 subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer,
8 parole officer, or peace officer has probable cause to believe that the supervised person is
9 violating any term or condition of his or her supervision, the officer may, without warrant or
10 other process and at any time until the final disposition of the case, rearrest the supervised person
11 and bring him or her before the court or the court may, in its discretion, issue a warrant for his or
12 her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may
13 revoke and terminate the supervision of the person if the interests of justice so require and the
14 court, in its judgment, has reason to believe from the report of the probation or parole officer or
15 otherwise that the person has violated any of the conditions of his or her supervision, has become
16 abandoned to improper associates or a vicious life, or has subsequently committed other
17 offenses, regardless whether he or she has been prosecuted for such offenses. However, the court
18 shall not terminate parole pursuant to this section. Supervision shall not be revoked for failure of
19 a person to make restitution imposed as a condition of supervision unless the court determines
20 that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be
21 consistent with a person's ability to pay. ~~The revocation, summary or otherwise, shall serve to~~
22 ~~toll the running of the period of supervision.~~ Time during revocation, summary or otherwise,
23 shall not be credited toward any period of supervision.

24
25 **§ 1170(h)**

26 (5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular
27 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend
28 execution of a concluding portion of the term for a period selected at the court's discretion.

29 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph
30 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall
31 commence upon release from physical custody or an alternative custody program, whichever is
32 later. During the period of mandatory supervision, the defendant shall be supervised by the
33 county probation officer in accordance with the terms, conditions, and procedures generally
34 applicable to persons placed on probation, for the remaining unserved portion of the sentence
35 imposed by the court. The period of supervision shall be mandatory, and may not be earlier
36 terminated except by court order. Any proceeding to revoke or modify mandatory supervision
37 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section
38 1203.2 or Section 1203.3. During the period when the defendant is under such supervision,
39 unless in actual custody related to the sentence imposed by the court, the defendant shall be
40 entitled to only actual time credit against the term of imprisonment imposed by the court. ~~Any~~

41 ~~time period which is suspended because a person has absconded shall not be credited toward the~~
42 ~~period of supervision. Time during revocation, summary or otherwise, shall not be credited~~
43 ~~toward any period of supervision.~~

44 **§ 3456**

45 (a) The county agency responsible for postrelease supervision, as established by the county board
46 of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease supervision
47 over a person under postrelease supervision pursuant to this title until one of the following events
48 occurs:

49 (1) The person has been subject to postrelease supervision pursuant to this title for three years at
50 which time the offender shall be immediately discharged from postrelease supervision.

51 (2) Any person on postrelease supervision for six consecutive months with no violations of his or
52 her conditions of postrelease supervision that result in a custodial sanction may be considered for
53 immediate discharge by the supervising county.

54 (3) The person who has been on postrelease supervision continuously for one year with no
55 violations of his or her conditions of postrelease supervision that result in a custodial sanction
56 shall be discharged from supervision within 30 days.

57 (4) Jurisdiction over the person has been terminated by operation of law.

58 (5) Jurisdiction is transferred to another supervising county agency.

59 (6) Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and
60 terminate supervision by the supervising county agency.

61 ~~(b) Time during which a person on postrelease supervision is suspended because the person has~~
62 ~~absconded shall not be credited toward any period of postrelease supervision. Time during~~
63 ~~revocation, summary or otherwise, shall not be credited toward any period of supervision.~~

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INVITATION TO COMMENT

LEG-__

Title	Action Requested
Probate: Statements of Decision in Probate Proceedings	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Probate Code section 1046.5	January 1, 2017
Proposed by	Contact
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Douglas C. Miller, 818-558-4178 douglas.c.miller@jud.ca.gov

Executive Summary and Origin

Contested court trials in probate proceedings are governed by the Code of Civil Procedure (CCP) to the extent not otherwise provided in the Probate Code. CCP section 632 provides for statements of decision upon the trial of questions of fact by the court but does not prescribe the extent of their applicability to probate proceedings and currently there are no applicable Probate Code provisions.

The Probate and Mental Health Advisory Committee proposes Judicial Council sponsorship of legislation that would add section 1046.5 to the Probate Code to prescribe when statements of decision are required, authorized, or allowed to be dispensed with. The new statute would also provide a procedure for requesting a statement of decision in contested court trials in proceedings conducted under the Probate Code.

Background

Except to the extent the Probate Code provides to the contrary, the rules of practice in civil actions, including CCP section 632, apply to proceedings governed by the Probate Code (Prob. Code, § 1000). There is currently no Probate Code provision addressing statements of decision and with the sole exception of a trial to determine whether a conservatorship should be established if a jury is demanded by the proposed conservatee, all trials in proceedings under that code are court trials.¹

¹ See Probate Code sections 825, 1827, and 17006.

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.

The most significant probate matters—proceedings concerning the internal affairs of trusts, decedents’ estates, guardianships, and conservatorships—share unique characteristics that set them apart from regular civil actions governed by CCP section 632. One of these is that each proceeding may be of interest to a number of persons, usually heirs and beneficiaries, family members of the principal, and creditors of and others in business with the principal. These persons are eligible, or may take steps to become eligible, to receive advance notice of important actions or events in the court proceeding, with an opportunity to support or oppose them by litigation filed in the proceeding before the actions or events can be taken or occur. Some of these persons may also be eligible to compel certain of these actions or events or otherwise to challenge the proposed or completed conduct of the appointed fiduciary. A person declining to join in one piece of litigation remains entitled to participate in a later one; he or she cannot be defaulted in the later one because of his or her decision not to contest the earlier matter.

Each of these opportunities may lead to contested litigation—a court trial. Over the entire life of a probate proceeding, often lasting for several years, numbers of these interested persons may elect to participate in some or all of these opportunities. During this period there may well be several court trials involving various configurations of the larger class of interested persons entitled to notice of filings in the proceeding.

Another characteristic of these probate proceedings is that the “one final judgment” or “single judgment” rule does not apply to many of the court orders that determine the litigation described above.² The Probate Code provides for a considerable number of appealable orders that may be entered not just at the end of the proceeding, but at earlier stages of it, including some at the very beginning.³

A third characteristic of some probate proceedings, especially guardianships and conservatorships, is that an increasing number of them involve proposed and appointed fiduciaries and other interested persons who are self-represented in litigation arising during the proceedings.

An additional circumstance affecting courts hearing probate calendars and trials in recent years because of judicial branch financial difficulties is a significant increase in the number of unreported hearings in probate matters.

The Proposal

The factors mentioned above that are present in probate proceedings but not in the typical civil case to which Code of Civil Procedure section 632 applies have caused the advisory committee to propose legislation to add a new section 1046.5 to the Probate Code.

² See 7 Witkin, California Procedure (5th Edition 2008) Judgment, § 7, p. 551.

³ See e.g., Probate Code sections 1300 (all proceedings under the code); 1301 (guardianships, conservatorships under the new California Conservatorship Jurisdiction Act, effective January 1, 2016); 1303 (decedents’ estates); and 1304 (trust proceedings).

Subdivisions (a) and (c) of the new code section would define the circumstances in which statements of decision would be required or permitted in probate proceedings:

- Statements would be required (except as noted below) in contested proceedings that could result in an appealable order under Probate Code sections 1300, et seq.
- Statements could be dispensed with, in the discretion of the court, for all other contested proceedings and for very short contested proceedings involving appealable orders (those in which the trial is concluded within one calendar day or in less than eight hours over more than one day).
- Very short trials, sometimes consisting of brief testimony by a single witness on one or two issues at the end of a probate calendar or in an afternoon session following a morning calendar, are common. The court should have discretion to dispense with statements of decision in such matters.

Subdivision (b) would establish the following procedure for requesting and issuing a statement of decision in probate proceedings:

- A statement of decision must be requested “by a party appearing at the trial.” This text, which also appears in Code of Civil Procedure section 632, is proposed here to clarify that only the persons who are participants in the particular matter being tried, not the usually larger class of persons entitled to notices of hearing of petitions filed in the proceeding, may request a statement of decision.
- The statement of decision must be requested in writing. This requirement is recommended because an increasing number of hearings in probate matters are unreported.⁴
- The statement must be requested prior to commencement of the trial, defined by reference to Code of Civil Procedure section 581(a)(6) as prior to the opening statement or argument of any party or counsel or, if none, before the oath or affirmation of the first witness or the introduction of any evidence. This provision is inconsistent with section 632, but is recommended here because the requirement would alert presiding judicial officers before the start of trial that a statement of decision will be required. Greater reliance on notes taken by judicial officers during the trial in their preparation of

⁴ If this legislation is recommended by the Judicial Council and introduced in the 2016 legislative session, the advisory committee intends to propose and circulate for comment a form written request for a statement of decision and a rule of court addressing additional procedural issues similar to existing rule 3.1590 but specific to probate proceedings, both effective on the same date as the anticipated legislation, January 1, 2017. The committee contemplates a form containing a one-sentence request for self-represented litigants, but with space the requesting party or his or her attorney may use to specify anticipated controversial issues they desire to be addressed in the statement. Specification of issues would be optional with the requesting party, a departure from section 632, but a departure the committee believes is justified in these circumstances.

statements of decision is necessary because of the increased number of unreported matters in probate proceedings. A judicial officer can be expected to take greater care in the making and preservation of those notes during the trial of cases in which he or she anticipates that a statement of decision will be required.

- The court must issue a written statement of decision if the proceedings are not reported. If the proceedings are reported, the judicial officer may elect to issue the decision orally on the record or in writing.

Alternatives Considered

During the period 2012–2014, representatives of this advisory committee and its staff participated in a working group on statements of decision with representatives and staff of the Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee in an attempt to develop a uniform statement of decision practice and procedure for civil, probate, and family law litigation. Although some progress was made, including development of portions of the legislation recommended here that were accepted by representatives of the other participating advisory committees, the broader effort to unify statement of decision practice across all of these subject areas did not move forward.

Implementation Requirements, Costs, and Operational Impacts

There would be modest training and other implementation costs incurred by courts in implementing this legislation. However, the greater clarity that will be achieved in court practice and procedure concerning statements of decision in probate matters will ultimately save judicial officer time and other probate litigation costs incurred by courts.

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 the proposal appropriately address the stated purpose?
- Are there questions and concerns about statements of decision in probate matters that this proposal does not now address that should be considered?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- How well would this proposal work in courts of different sizes?

Attachments

1. The text of the proposed Probate Code section 1046.5 is at page 15
2. The text of Code of Civil Procedure section 632 is at page 16

Section 1046.5 of the Probate Code would be added, effective January 1, 2017, to read as follows:

1 Sec. 1: Section 1046.5 of the Probate Code is added, to read as follows:

2

3 1046.5 Statements of Decision in Probate Matters

4

5 (a) Except as provided in Subdivision (c), in a contested proceeding under this Code that could
6 result in an appealable order described in Part 3 of this Division, commencing with Section 1300,
7 upon the trial of a question of fact by the court, the court shall issue a statement of decision in the
8 manner provided in Subdivision (b).

9

10 (b) The court shall issue a statement of decision explaining the factual and legal basis for its
11 decision if a statement of decision is requested by a party appearing at the trial. The request for a
12 statement of decision must be in writing and made prior to the commencement of the trial, as
13 defined in Section 581(a)(6) of the Code of Civil Procedure. The statement of decision may be
14 issued in writing, or issued orally on the record if the proceedings are reported.

15

16 (c) In a contested proceeding under this Code that is not described in Subdivision (a) or in which
17 the trial is concluded within one calendar day or in less than eight hours over more than one day,
18 upon the trial of a question of fact by the court, the court need not issue a statement of decision.

Section 632 of Code of Civil Procedure:

1 In superior courts, upon the trial of a question of fact by the court, written findings of fact and
2 conclusions of law shall not be required. The court shall issue a statement of decision explaining
3 the factual and legal basis for its decision as to each of the principal controverted issues at trial
4 upon the request of any party appearing at the trial. The request must be made within 10 days
5 after the court announces a tentative decision unless the trial is concluded within one calendar
6 day or in less than eight hours over more than one day in which event the request must be made
7 prior to the submission of the matter for decision. The request for a statement of decision shall
8 specify those controverted issues as to which the party is requesting a statement of decision.
9 After a party has requested the statement, any party may make proposals as to the content of the
10 statement of decision.

11
12 The statement of decision shall be in writing, unless the parties appearing at trial agree
13 otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours
14 over more than one day, the statement of decision may be made orally on the record in the
15 presence of the parties.

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INVITATION TO COMMENT

LEG15-__

Title	Action Requested
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	Susan R. McMullan, 415-865-7990
Hon. Patricia M. Lucas, Chair	susan.mcmullan@jud.ca.gov

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 20.

Background

The proposal to amend section 1005 came from an attorney with Aderant, a provider of software for business and law practice management.¹ The advisory committee determined that the

¹ All further statutory references are to the Code of Civil Procedure.

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.

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.² 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 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

² 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.

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 20

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

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

1 (a) * * *

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

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

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

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