



THE STATE BAR OF CALIFORNIA

– COMMITTEE ON ADMINISTRATION OF JUSTICE

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COMPUTATION OF NUMBER OF DAYS BEFORE A HEARING

LEGISLATIVE PROPOSAL (CAJ-2010-11)

TO: Saul Bercovitch, Legislative Counsel
State Bar Office of Governmental Affairs

FROM: Reuben A. Ginsburg, Chair
Committee on Administration of Justice

DATE: July 22, 2009

RE: Computation of Number of Days before a Hearing
- A proposal to add Section 12c to the Code of Civil Procedure

COMMITTEE ACTION AND CONTACT

Date of Approval by Committee: July 15, 2009
Approval vote: Unanimous

Committee Contact:
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SUMMARY OF PROPOSAL

This proposal would clarify that when a statute requires moving, opposition or reply papers to be served a specified number of days before a hearing, those days are computed backward from the hearing date, and not forward from the date the moving, opposition or reply papers are served. The results may differ depending on whether the days are counted backward

from the hearing date or forward from the service date if the period includes a combination of “court” days and “calendar” days.

ISSUES AND PURPOSE

Code of Civil Procedure Section 1005 provides the deadlines for service of specified moving, opposition and reply papers. Under Section 1005(b), moving and supporting papers must be served at least 16 *court* days before the hearing.¹ The required 16-day period of notice before the hearing must be increased by a specified number of *calendar* days, depending upon the method of service.²

Under Code of Civil Procedure Section 437c(a), notice of a motion for summary judgment and supporting papers must be served at least 75 *calendar* days before the hearing. The required 75-day period is increased by a specified number of *calendar* days if served by mail, and is increased by two *court* days if served by fax, express mail, or other method of delivery providing for overnight delivery.

Given the combination of court days and calendar days, it make a difference whether the days are counted backward from the hearing date or forward from the service date, and whether the additional days for service are added closest to the hearing date or closest to the service date. The number of non-court days excluded from a particular count can differ, depending upon their placement in the sequence.

There is no definitive authority on the proper method of counting days under these circumstances. To the extent there is any case law, the authority is split. Compare *Dahms v. Downtown Pomona Property* (2009) 173 Cal.App.4th 1201, 1207, n. 3 (supports counting backward from the hearing date), with *Barefield v. Washington Mutual Bank* (2006) 136 Cal.App.4th 299, 303 (supports counting forward from the service date).

Calculating the last day for service before a hearing is an everyday occurrence in civil litigation. Significantly, the Committee on Administration of Justice is aware of at least one recent situation where a party lost substantive rights because the party counted backward from the hearing date, but the court counted forward from the service date, which made service untimely. Something as basic as counting days before a hearing should be free from ambiguity, and the purpose of this proposal is to provide clarity and consistency in this regard.

PROPOSAL

Under this proposal, a new Section 12c would be added to the Code of Civil Procedure, providing that time is computed backward from the hearing date where the law requires an act to

¹ Court days do not include Saturdays, Sundays, or certain holidays, as specified by statute.

² Under Section 1005(b), the required 16 court day period is increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, 20 calendar days if either the place of mailing or the place of address is outside the United States, and 2 calendar days if service is by fax, express mail, or other method of delivery providing for overnight delivery.

be done no later than a specified number of days before a hearing, and that any additional days required on account of a particular service method are computed backward from the resulting date. This approach is consistent with the methodology currently employed by the vast majority of practitioners and commercial calendaring software. Counting backward from the hearing date is also practical and logical where the law requires moving, opposition, or reply papers to be served a specified number of “days before” (Code Civ. Proc., §§ 1005(b), 437c(a)) or “days preceding” (*id.*, § 437c(b)(2) & (4)) a hearing. In the case of moving papers, the court may inform the moving party of the earliest available hearing date. In the case of opposition and reply papers, a party already knows the hearing date. In all such cases, a party would be counting backward from a date certain to determine the last day for service. Continuing to count backward to add any days required on account of a particular service method also follows in a logical sequence. If calendaring is calculated by counting forward from the date of service, a party would need to guess at a service date, count forward, and see if the resulting date landed on a date that was on or before the hearing date. If not, the party would need to adjust and try again until the party arrived at the last possible date for service.

This proposal would add a new code section that would apply to any other law requiring an act to be done no later than a specified number of days before a hearing.³ The proposed new Section 12c would follow existing sections of the Code of Civil Procedure that govern the computation of time.

HISTORY

CAJ is not aware of any similar legislation being introduced in the past.

IMPACT ON PENDING LITIGATION

CAJ is not aware of any litigation currently pending regarding the issues addressed by this proposal.

LIKELY SUPPORT & OPPOSITION

<u>Support</u>	<u>Why?</u>
CAJ anticipates that civil litigation attorneys will support this proposal.	The proposal promotes clarity and eliminates uncertainty on an issue affecting all litigators and courts.
<u>Oppose</u>	
CAJ does not anticipate any opposition to this proposal.	

³ Code of Civil Procedure Section 1005 and Code of Civil Procedure Section 437c are the two most commonly used statutes that require papers to be served and filed a specified number of days before a hearing, but there are several other statutes that require service or filing a specified number of days before a hearing.

FISCAL IMPACT

There is no anticipated fiscal impact.

GERMANENESS

This proposal relates to the special knowledge, training, experience, and technical expertise of the members of CAJ. The proposal deals with civil procedure and the administration of justice in the civil courts. The subject matter of the proposal relates to improvement of the functioning of the courts, judicial efficacy and efficiency.

TEXT OF PROPOSAL

SECTION 1. Section 12c is added to the Code of Civil Procedure, to read:

12c. Where any law requires an act to be done no later than a specified number of days before a hearing, time is computed backward from the hearing date, and the day of the hearing is excluded from the counting, pursuant to Section 12. From the day that results from such computation, any additional days required on account of a particular service method are also computed backward.