

## § 2.1 Vocabulary

<b>Attorney of record</b>	an attorney currently representing a party who has appeared in the action
<b>to calendar</b>	to calculate a deadline or other date by applying a number of different rules; may be done by hand or by using rules-based computerized calendaring
<b>Calendar day</b>	every day of the week, including weekends and holidays
<b>Court day</b>	days that the court is open for business, i.e., not weekends, not legal holidays
<b>Electronic filer</b>	a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider
<b>Electronic filing service provider</b>	person or entity that receives an electronic filing from a party for retransmission to the court. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court
<b>Electronic notification address</b>	the electronic address at or through which the party has authorized electronic service
<b>Electronic service</b>	electronic transmission of a document to a party's electronic notification address, either directly or through an electronic filing service provider, for the purpose of effecting service
<b>Esq.</b>	abbreviation for "Esquire," a title of courtesy following the name of an attorney
<b>Fax filing agency</b>	an entity that receives documents by fax for processing and filing with the court
<b>Interested party</b>	a party who has appeared in the action
<b>Legal holiday</b>	any day the court is not in session, including Saturdays, Sundays, and legal holidays
<b>Transmission record</b>	the document printed by a sending fax machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission

§ 2.2 Introduction Please go to [www.litigationbythenumbers.com](http://www.litigationbythenumbers.com) to purchase your own copies.

There are usually many documents and forms prepared and filed during the course of a lawsuit, e.g., pleadings, motions, stipulations, etc. With few exceptions, all parties who have appeared in a lawsuit (“interested parties”) must be served with a copy of each document being filed with the court.<sup>1/</sup> There are also many documents prepared in a case which are *served* on the parties, but are not *filed* with the court, e.g., discovery demands and responses.

Quite often, these documents will trigger one or more deadlines or give notice of one or more deadlines or events. If these deadlines are not met, or if insufficient notice is given, serious problems may result. For example, service of a set of interrogatories triggers a 30-day deadline for the other party to serve its response. If the response is not served within that deadline, the responding party waives its right to object to the interrogatories. If a party gives insufficient notice of a motion, the motion may be taken off calendar or denied.

So, how are documents served? How does one establish when they are served? How does one calculate deadlines and notice periods? The answers to these questions are in this chapter.

- Section 2.3 discusses the authorized methods of service and the various extensions of time associated with each method. These extensions of time, referred to throughout this book, play an integral role in calendaring.
- Section 2.4 discusses completion of the “proof of service,” the document in which the serving party declares, under penalty of perjury, how and when a specified document was served.
- Section 2.10 contains a step-by-step guide to calendaring with helpful hints, warnings about common mistakes, and information about rules-based computerized calendaring programs.

### § 2.3 Authorized Methods of Service and Related Extensions of Time

As a *general rule*, documents may be served personally (also referred to as service “by hand” or “hand delivery”), by mail, by express mail, or overnight delivery (C.C.P. §§ 1011, 1013), and, *so long as the recipient has agreed* to accept service by these methods, service *generally* may be made by fax (C.R.C., Rule 2.306) or electronically (C.C.P. § 1010.6(a)(6) and C.R.C., Rule 2.260). At any given time, however, depending upon what you are serving, your options may be limited. In that regard, every method other than hand delivery requires extensions of time which might not be possible under the circumstances.

These extensions of time are mandated because, for the most part, deadlines and notice periods start running from the date documents are *served*, not the date they are *received* by the opposing party. For example, responses to interrogatories are due 30 days after the interrogatories are *served*; a motion to compel further responses must be filed within 45 days after the responses

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<sup>1/</sup> Whenever a party is represented by an attorney (“attorney of record”), documents are served on the attorney of record. If the party is *in pro per* or self-represented, documents are served directly on the party.

to interrogatories are *served*; a deposition may be taken ten days after the notice of taking deposition is *served*; a motion may be heard 16 court days after notice of the motion is *served*.

Any method other than personal service will result in a delay between the act of service and the person's actual receipt of the document. In that regard, *service by mail* is deemed complete upon deposit in a USPS mail box (C.C.P. § 1013(a)), but the papers might not arrive in the recipient's mail for days. *Service by fax* is deemed complete upon transmission of the entire document to the receiving party's fax machine (C.C.P. § 1013(e) and C.R.C., Rule 2.306(g)), but that does not mean the document will be in the hands of the intended recipient that day. A document *served electronically* is deemed complete upon transmission (C.C.P. § 1010.6(a)(6)), but it may sit unopened in the recipient's email inbox for hours, if not days.

To obviate any inherent prejudice in this delay in receipt of a document, various extensions of time are added depending upon the type of document served and the method by which it is served. These extensions of time are found in C.C.P. §§1013, 1005(b), and 1010.6.

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#### **Extensions for Service by Mail under C.C.P. § 1013 and 1005(b)**<sup>2/</sup>

Recipient's Location	Extension
within California	5 days
outside California, within U.S.	10 days
outside U.S.	20 days

Below are examples of how these extensions are applied in practice.

#### Example #1: Service of Interrogatories (application of C.C.P. § 1013)

C.C.P. § 2030.260 requires a party to serve responses to interrogatories within 30 days after the interrogatories are served. C.C.P. § 1013 extends that 30-day period as follows: if interrogatories are served by mail on a party located within California, that party would be allotted an extra five days, for a total of five days from the date they were served; if that party were located in another State, they would be allotted an extra 10 days, for a total of 40 days from the date they were served, and if that party were located outside the U.S., they would be allotted an extra 20 days, for a total of 50 days from the date they were served.

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<sup>2/</sup> C.C.P. § 1013 and § 1005(b) ***do not extend all deadlines!*** By their own terms, they do not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to C.C.P. § 663a, or notice of appeal. Otherwise, they apply in the absence of a specific exception provided for by another statute or rule of court. C.C.P. § 1005(b) states that the C.C.P. § 1013 extensions do not apply to motions, oppositions, and replies.

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Example #2: Service of Notice of Motion (application of C.C.P. § 1005(b))

C.C.P. § 1005(b) requires notice of motion and supporting papers for a regular motion to be served at least 16 court days before the hearing date. If the papers are served by mail on a party located within California, they must be served at least 16 court days plus five calendar days before the hearing date; if that party were located in another State, the papers would have to be served at least 16 court days plus 10 calendar days before the hearing date, and if that party were located outside the U.S., the papers would have to be served at least 16 court days plus 20 calendar days before the hearing date.

Before you serve by mail, make sure you have enough time to do so!

Whenever you serve a document by mail, you must be sure that the extra time is not problematic. For example, as discussed in more detail in § 5.2, all discovery must be completed prior to the “discovery cut-off date.” With respect to written discovery, such as interrogatories, this means that responses must be due prior to the cut-off date. If the discovery cut-off date is 31 days away, the only way you could serve interrogatories and have the responses due within that 31-day period is to serve them personally -- the five extra days for mail would make the responses due after the discovery cut-off date. Similarly, if your hearing date is 16 court days away, you could not serve by mail, as you could not give the required 16 court days plus five calendar days notice.