

## EXCERPT 1

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### § 2.2 Introduction

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 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 a deadline is missed, or if insufficient notice is given, serious problems may result. For example, service of interrogatories triggers a 30-day deadline to respond. If the response is late, the responding party waives its right to object to the interrogatories. On the other hand, if a party gives insufficient notice of a hearing on 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)(3) and C.R.C., Rule 2.251 (formerly Rule 2.260)). At any given time, however, depending upon what you are serving, your options for service may be limited.

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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.

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In that regard, every method other than hand delivery requires extensions of time which might not be feasible 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*. 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 to interrogatories are *served*; a deposition may be taken ten days after the notice of taking deposition is *served*; notice of a motion must be *served* 16 court days prior to the hearing.

Any method other than personal service will result in a delay between the act of service and the 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 envelope might not be delivered 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 that the document will be in the hands of the intended recipient that day. A document *served electronically* is deemed complete when it is sent (C.C.P. § 1010.6(a)(4)), but it may sit unopen in the recipient's email 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, 1010.6, and 437c, as follows:

C.C.P. § 1013	Extends certain deadlines to act or respond, as well as non-motion notice periods (e.g., notice of deposition) for service methods <i>other than electronic service</i> .
C.C.P. § 1005	Extends notice of motion period for regular motions (but not motions for summary judgment ("MSJ") or summary adjudication ("MSA")) for service methods <i>other than electronic service</i> .
C.C.P. § 437c	Extends notice of motion period for MSJ's and MSA's for service methods <i>other than electronic service</i> .
C.C.P. § 1010.6	Extends all of the above for electronic service.

### **Service by Mail**

C.C.P. § 1013(a) requires service by mail to be made by depositing the document in a USPS post office or mail box in a sealed envelope, with postage paid, addressed to the person on whom it is served. The person signing the proof of service either may have personally dropped the envelope into the mailbox or placed it where it would be picked up and mailed that same day in the ordinary course of business.

**EXCERPT 2**

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The disparity between the § 1013 and § 437c two *court* day extensions and the § 1005(b) two *calendar* day extensions can cause confusion and lead to costly calendaring errors.<sup>7/</sup>

**Before serving by overnight delivery or express mail, know whether to add *court* days or *calendar* days, and make sure you have enough time to do so!**

**Service by Fax**

If there is insufficient time to serve by mail, then service by fax might be an option, but *only if the recipient has agreed to accept service by fax*. The extensions of time for service by fax are the same as those for overnight delivery or express mail.

**Extensions for Service by Fax**

Code Section	Extension
C.C.P. §1013 <sup>8/</sup> & § 437c	two <b><i>court</i></b> days
C.C.P. § 1005(b) - Regular motions only	two <b><i>calendar</i></b> days

C.R.C., Rule 2.306 contains several provisions relating to fax service. For example:

- Fax service is only permitted if the parties agree, and a written confirmation of that agreement is made. (C.R.C., Rule 2.306(a)(1))
- The fax is to be sent to the fax number indicated in the last document filed and served by the recipient. (C.R.C., Rule 2.306(a)(2))
- Service by fax is deemed complete upon receipt of the entire document by the receiving fax machine. Service after 5:00 p.m. is deemed to occur on the next *court* day. (C.R.C., Rule 2.306(g))

C.R.C., Rule 2.306(h) provides that the proof of service may be by any of the methods set forth in C.C.P. § 1013a, but in addition:

- The time, date, and sending fax machine telephone number replace the date and place of deposit in the mail.
- The name and fax machine telephone number of the person served replace the name and address of the person served.

<sup>7/</sup> The problem is exacerbated by the fact that the § 437c extensions for MSJ's and MSA's match the C.C.P. § 1013 extensions, not the C.C.P. § 1005(b) regular motions extensions.

<sup>8/</sup> Remember that the C.C.P. § 1013 extensions do not apply to all deadlines. See footnote 3.

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- A statement that the document was sent by fax transmission and that the transmission was reported as complete and without error replaces the statement that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.
- A copy of the transmission report must be attached to the proof of service and the proof of service must declare that the transmission report was properly issued by the sending fax machine.

**Before serving by fax, know whether to add *court days* or *calendar days*, and make sure you have enough time as well as an agreement to do so!**

**Electronic service**

Although the parties may be ordered in certain cases, e.g., complex cases, to serve documents electronically, generally, electronic service is only allowed by agreement of the parties.<sup>9/</sup> (C.C.P. § 1010.6(a)(2)) Electronic service may be done by: (1) attaching the document to an email (“electronic transmission”), or (2) emailing a hyperlink at which the document may be viewed and downloaded (“electronic notification”). In either case, the email is sent to the electronic service address at which the recipient has authorized electronic service.

Service is deemed complete at the time of electronic transmission or at the time the electronic notification of service is sent. However, the applicable notice of motion period, and, with limited exceptions, the time period in which the recipient may act or respond, is extended by two *court days*. (C.C.P. § 1010.6(a)(4))

**Extensions for Electronic Service**

What is extended	Extension
time to act or respond <sup>10/</sup>	two <i>court days</i>
notice of motion for all types of motions	two <i>court days</i>

Thus, if you serve a notice of motion electronically, you would have to serve it 18 court days prior to the hearing (16 court days + 2 court days); if you serve interrogatories electronically, the responses would be due 30 calendar days plus two court days later.

C.R.C., Rule 2.251 (formerly Rule 2.260) contains several provisions relating to electronic service. Here are just a few:

<sup>9/</sup> C.R.C., Rule 2.251(a)(2) (next page) dictates *how* a party agrees to accept electronic service.

<sup>10/</sup> The extensions do not apply to all deadlines. C.C.P. § 1016(a)(4) contains the same exceptions as C.C.P. § 1013. See footnote 3.

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To calendar dates and deadlines in California state court, one must do all of the following:

Calendaring Steps

1. Identify the triggering event.
2. Identify what deadlines are triggered.
3. Identify the *current* codes and rules which apply to those triggered deadlines.
4. Correctly apply those codes and rules.
  - A. Identify the events which define the time period in question.
  - B. Identify what date to start counting and what date to stop counting.
    - (1) Count or skip weekends and California holidays as appropriate during the relevant time period.
    - (2) Determine the last day - deal with weekends, holidays, and extra time.
      - (a) *For personal service only*, adjust when the last day falls on a weekend or California holiday.
      - (b) *For a triggering document not personally served*, first add the applicable extension of time to determine the last day, *then* adjust when the last day falls on a weekend or California holiday.
      - (c) *For hearing-related dates*, count backward from the hearing date.

Except for step 1, identifying the triggering event, rules-based computerized calendaring programs do every one of these steps automatically.

Step 1: Identify the triggering event.

A “triggering event” is anything which triggers one or more deadlines. A triggering event might be the filing of a document, the service of a document, or an appearance. Although not referred to as “triggering events,” triggering events are noted throughout this book. Every time we include a warning such as “be sure to calendar the following,” a triggering event has just been discussed. A few of the triggering events we address are:

- Filing of complaint
- Service of complaint
- Entry of default
- Answering complaint
- Service of interrogatories
- Service of responses to interrogatories
- Hearing on regular motion
- Hearing on summary judgment motion
- Settlement