

## RESOLUTION 9-04-03

### DIGEST

#### Service: Express Mail or Overnight Courier

Amends Code of Civil Procedure section 1013 to allow service by express mail or overnight courier through use of a law firm's internal delivery system and to set forth the language to be used in proofs of service by express mail or overnight courier.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

None known.

#### Reasons:

This resolution amends Code of Civil Procedure section 1013 to allow service by express mail or overnight courier through use of a law firm's internal delivery system and to set forth the language to be used in proofs of service by express mail or overnight courier. This resolution should be approved in principle because it clarifies the language required for proofs of service where the service has been by express mail or overnight courier and it recognizes that internal delivery systems are reliable.

Currently, Code of Civil Procedure section 1013a, which only covers proofs of service for service by United States mail, allows a person signing a proof of service to certify only that he or she placed the letter into the firm's internal delivery system. Section 1013a recognizes the reality that most law firms use an internal mail collection system prior to delivering mail to the post office. However, Code of Civil Procedure section 1013, which covers service by United States mail, express mail, overnight courier and facsimile, lends itself to the interpretation that only the firm clerk who actually handed the express mail or overnight package to the courier may sign the proof of service. This resolution recognizes that law firms have been using their "internal delivery systems" for all types of service without detriment to litigants or the judicial process. Indeed, service by express mail or overnight courier that began in the internal delivery system of a law office is often more reliable than service by United States mail. There is no good reason to require a heightened standard for service of documents via express mail or overnight courier.

This resolution also aids practitioners, litigants, and the courts by clarifying the proper language to be used in proofs of service where service is effectuated by express mail or overnight courier.

It may be more appropriate, and more elegant, for the proponent to amend section 1013a. However, the problem illuminated by the proponent is legitimate and the method of repair is not made less effective by its incorporation into section 1013, which covers issues related to service by express mail and overnight courier.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1013 to read as follows:

- 1 §1013
- 2 (a) In case of service by mail, the notice or other paper shall be deposited in a post office,
- 3 mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the
- 4 United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on

5 whom it is to be served, at the office address as last given by that person on any document filed in  
6 the cause and served on the party making service by mail; otherwise at that party's place of  
7 residence. The service is complete at the time of the deposit, but any period of notice and any right  
8 or duty to do any act or make any response within any period or on a date certain after the service of  
9 the document, which time period or date is prescribed by statute or rule of court, shall be extended  
10 five calendar days, upon service by mail, if the place of address and the place of mailing is within the  
11 State of California, 10 calendar days if either the place of mailing or the place of address is outside  
12 the State of California but within the United States, and 20 calendar days if either the place of  
13 mailing or the place of address is outside the United States, but the extension shall not apply to  
14 extend the time for filing notice of intention to move for new trial, notice of intention to move to  
15 vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence  
16 of a specific exception provided for by this section or other statute or rule of court.

17 (b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a  
18 notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or  
19 certificate of mailing.

20 (c) In case of service by Express Mail, the notice or other paper must be deposited in a post  
21 office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained  
22 by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express  
23 Mail postage paid, addressed to the person on whom it is to be served, at the office address as last  
24 given by that person on any document filed in the cause and served on the party making service by  
25 Express Mail; otherwise at that party's place of residence. In case of service by another method of  
26 delivery providing for overnight delivery, the notice or other paper must be deposited in a box or  
27 other facility regularly maintained by the express service carrier, or delivered to an authorized  
28 courier or driver authorized by the express service carrier to receive documents, in an envelope or  
29 package designated by the express service carrier with delivery fees paid or provided for, addressed  
30 to the person on whom it is to be served, at the office address as last given by that person on any  
31 document filed in the cause and served on the party making service; otherwise at that party's place  
32 of residence. The service is complete at the time of the deposit, but any period of notice and any  
33 right or duty to do any act or make any response within any period or on a date certain after the  
34 service of the document served by Express Mail or other method of delivery providing for overnight  
35 delivery shall be extended by two court days, but the extension shall not apply to extend the time for  
36 filing notice of intention to move for new trial, notice of intention to move to vacate judgment  
37 pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific  
38 exception provided for by this section or other statute or rule of court.

39 (1) A proof of service by Express Mail shall contain language substantially similar to the  
40 following:

41 Said documents were placed in an envelope designated as Express Mail, sealed and  
42 deposited in the internal delivery system at [Business Name]. I am readily familiar with [Business  
43 Name's] practice for collection and processing of documents for delivery by Express Mail and, in the  
44 ordinary course of business, on the same day, the documents will be delivered to a post office, mail  
45 box, subpost office, substation, or mail chute or other like facility, regularly maintained by the  
46 United States Postal Service for receipt of Express Mail, with Express Mail postage paid, to be  
47 delivered to the office of the addressee listed above on the next business day.

48 or

49 I placed said documents in an envelope designated as Express Mail, and sealed and  
50 deposited said envelope in a post office, mail box, subpost office, substation, or mail chute or other  
51 like facility, regularly maintained by the United States Postal Service for receipt of Express Mail,  
52 with Express Mail postage paid, to be delivered to the office of the addressee listed above on the next  
53 business day.

54 (2) A proof of service by overnight courier service shall contain language substantially  
55 similar to the following:

56 Said documents were placed in a(n) [envelope, box] designated by [Carrier Name], sealed  
57 and deposited in the internal delivery system at [Business Name]. I am readily familiar with  
58 [Business Name's] practice for collection and processing of documents for delivery by [Carrier  
59 Name] and, in the ordinary course of business, on the same day, the documents will be placed for  
60 collection in a box or other facility regularly maintained by said express service carrier or delivered  
61 to an authorized courier or driver authorized by said express service carrier, with whom we have a  
62 direct billing account for payment of said delivery, to be delivered to the office of the addressee(s)  
63 listed above on the next business day.

64 or

65 I placed said documents in a(n) [envelope, box] designated by [Carrier Name], and [sealed  
66 and deposited said envelope for collection in a box or other facility regularly maintained by said  
67 express service carrier] or [delivered to an authorized courier or driver authorized by said express  
68 service carrier], with delivery charges fully prepaid, to be delivered to the office of the addressee(s)  
69 listed above on the next business day.

70 (d) The copy of the notice or other paper served by Express Mail or another means of  
71 delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and  
72 place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

73

74 [Subdivisions (e) through (g) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: The Lawyers' Club of San Francisco

#### STATEMENT OF REASONS

Existing Law: Does not provide explicit language for the proof of service with respect to overnight and express mail and appears not to contemplate use of an internal mail system for eventual delivery to the courier. Some courts have interpreted this section to require that the person who actually and directly provides the package to the courier or places it in the courier's box sign the proof of service. In many firms, an internal mail system is used to route such mail to the courier service, as is done with regular mail.

This Resolution: Treats overnight mail similarly to regular mail in that such delivery could be made in the ordinary course of business by the firm internal mail system.

The Problem: Currently, to literally comply with this section, one must have the mailroom staff member who actually takes the document to the courier sign the proof of service. This can be a logistical nightmare.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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