

RESOLUTION 11-04-2003

DIGEST

Orders Shortening Time: Criteria for Issuance

Amends Rules of Court, rule 317, to require the court to consider whether an ex parte request for an order shortening time is necessary and whether it was brought with reasonable diligence.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Rules of Court, rule 317, to require the court to consider whether an ex parte request for an order shortening time is necessary and whether it was brought with reasonable diligence. This resolution should be disapproved because it is unnecessary and unduly restricts court discretion.

Requests for orders shortening time are made by ex parte applications. Rule 379, subdivision (g), provides that an applicant for ex parte relief must make an affirmative factual showing of the need for the extraordinary relief. With respect to a request for an order shortening time that means the moving applicant must show why the motion cannot be heard as a regularly noticed motion or why he/she does not have time to bring a regularly noticed motion. The opposing party will have the opportunity to argue that the moving party failed to act diligently. Thus, as a practical matter, the court already considers the factors listed in this resolution.

This resolution also unduly restricts the court's discretion. It provides only a limited set of criteria for the court to consider in granting or denying the application. Even if the moving party was not diligent in bringing a motion, the court still needs the discretion to control its calendar and processes.

SECTION/COMMITTEE REPORT

FAMILY LAW SECTION

Recommendation: **DISAPPROVE**

Reason:

The resolution is unnecessary. A judicial officer reviewing an application for an order shortening time can determine if good cause exists for the order. It should be left to the discretion of the judicial officer.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Judicial Counsel amend California Rules of Court, rule 317, to read as follows:

- 1 Rule 317
- 2 (a) Unless otherwise ordered or specifically provided by law, all moving and supporting
- 3 papers shall be served in accordance with Code of Civil Procedure section 1005.
- 4 (b) The court, on its own motion or on application for an order shortening time supported by

5 a declaration showing good cause, may prescribe shorter times for the filing and service of papers
6 than the times specified in Code of Civil Procedure section 1005. In determining whether good
7 cause exists for an order shortening time, the court shall consider whether the relief sought can be
8 obtained by a regularly noticed motion. The court shall also consider whether the party seeking the
9 order, through the exercise of reasonable diligence, could have previously filed a regularly noticed
10 motion.

11 (c) Proof of service of the moving papers shall be filed no later than five calendar days
12 before the time appointed for the hearing.

13 (d) No paper shall be rejected for filing on the ground that it was untimely submitted for
14 filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order shall
15 so indicate.

16 (e) A paper submitted before the close of the clerk's office to the public on the day the paper
17 is due is deemed timely filed.

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

PROPOSER: Santa Barbara County Bar Association

STATEMENT OF REASONS

Existing Law: Permits the court to issue an order shortening the time periods set forth in Code of Civil Procedure section 1005 for filing and serving motion papers. Existing law does not specify the grounds or factors the court should consider before issuing such an order.

This Resolution: Directs the court to consider two factors before issuing an order shortening time: (1) whether the relief sought by the moving party can be obtained by a regularly noticed motion, and (2) whether the party seeking the order shortening time could reasonably have sought relief sooner by filing a regularly noticed motion.

The Problem: The time periods set forth in Code of Civil Procedure section 1005 were enacted to enable the proponent and opponent of a motion to have adequate time to present evidence and legal authorities relating to the subject of the motion. It is becoming increasingly common, however, for litigants to seek an order under Rule 317 reducing the time between the filing and the hearing of a motion. Such orders reduce the time for the party opposing the motion to present a response, sometimes severely, giving an unfair advantage to the moving party. Reasons for seeking an order under Rule 317 vary. In some cases, the order is sought because unforeseeable or uncontrollable events make it impossible for the moving party to provide the amount of notice specified in Code of Civil Procedure section 1005. In other cases, however, an order shortening time is sought for tactical reasons (to give less time to the opposing party) or because the moving party did not act diligently to file its motion in time to give the notice required by Code of Civil Procedure section 1005. Although orders shortening time rarely should be granted in the last two circumstances, such orders are routinely granted in some counties, regardless of the moving party's reasons for seeking the order.

IMPACT STATEMENT

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

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COUNTERARGUMENT

SACRAMENTO COUNTY BAR ASSOCIATION

The proposed amendment provides a definition of good cause that the court must use in exercising its discretion as to whether to grant a motion for order shortening time. The definition contains only two factors. The amendment is susceptible of the interpretation that these are the only two factors that the court may consider since all other factors are excluded by omission. The definition is too narrow and unnecessarily restricts the court's discretion to consider the other factors that would normally be considered in making a determination of good cause.