

**RESOLUTION 08-16-04**

**DIGEST**

Completion of Service: Service by Overnight Delivery

Amends Code of Civil Procedure section 1013(c) to provide that service is complete after one court day where service is accomplished by overnight delivery.

**RESOLUTIONS COMMITTEE RECOMMENDATION  
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This Resolution amends Code of Civil Procedure section 1013(c) to provide that service is complete after one court day where service is accomplished by overnight delivery. This resolution should be disapproved because it does not distinguish between providers who may guarantee their performance of overnight delivery (such as Federal Express Overnight Delivery), and those providers who claim "overnight delivery" (such as the U.S. Postal Service "Express Mail") but whose service is not guaranteed.

A provision in the code should be written so that it is applied equally to all who use it. In this scenario, not all providers of overnight service have similar guarantees on their performance, nor are they accessible to all areas. In the event parties use carriers who do not guarantee their performance, the receiving party may be harmed by the shorter time to respond.

**TEXT OF RESOLUTION**

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

- 1 §1013
- 2 [Subdivisions (a) and (b) remain unchanged.]
- 3 (c) In case of service by Express Mail, the notice or other paper must be deposited
- 4 in a post office, mailbox, subpost office, substation, or mail chute, or other like facility
- 5 regularly maintained by the United States Postal Service for receipt of Express Mail, in a
- 6 sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to
- 7 be served, at the office address as last given by that person on any document filed in the
- 8 cause and served on the party making service by Express Mail; otherwise at that party's
- 9 place of residence. In case of service by another method of delivery providing for
- 10 overnight delivery, the notice or other paper must be deposited in a box or other facility
- 11 regularly maintained by the express service carrier, or delivered to an authorized courier or
- 12 driver authorized by the express service carrier to receive documents, in an envelope or

13 package designated by the express service carrier with delivery fees paid or provided for,  
14 addressed to the person on whom it is to be served, at the office  
15 address as last given by that person on any document filed in the cause and served on the  
16 party making service; otherwise at that party' s place of residence. The service is complete  
17 at the time of the deposit, but any period of notice and any right or duty to do any act or  
18 make any response within any period or on a date certain after the service of the document  
19 served shall be extended by two court day for service by Express Mail ~~or other method of~~  
20 ~~delivery providing for overnight delivery~~ and shall be extended by one court day for  
21 service by other method of other method of delivery providing for overnight delivery,  
22 ~~shall be extended by two court days~~, but the extension shall not apply to extend the time  
23 for filing notice of intention to move for new trial, notice of intention to move to vacate  
24 judgment pursuant to Section 663a, or notice of appeal. This extension applies in the  
25 absence of a specific exception provided for by this section or other statute or rule of court.  
26 [Subdivisions (d) through (g) remain unchanged.]

(Proposed new language underline; language to be deleted stricken)

PROPONENT: San Fernando Valley Bar Association

#### STATEMENT OF REASONS:

Existing Law: Existing law treats service by Express Mail and overnight delivery in the same manner and provides then the period of notice and any right or duty to take any action or make response after service is extended by two court days. At certain times during the year due to court holidays, two court days may require service, even by overnight delivery, to be made several days ahead.

This Resolution: Separates service by Express Mail and service by overnight delivery as they really are two distinct methods of service and would provide one court day within which to respond or reply if served by overnight delivery.

The Problem: Service by Express Mail and service by overnight delivery are not alike. Express Mail may take up to 3 days to deliver to certain parts of country. Overnight delivery is just that overnight delivery. A premium is paid for such service and delivery is completed by the following business day. Currently, if service is completed by overnight delivery, then the period of notice and any right or duty to take any action or make response after service is extended by two court days. At certain times during the year due to court holidays, two court days may require service, even by overnight delivery, to be made several days ahead. Given that overnight delivery ensures that papers are received in one business day, then extension of time by one business day is appropriate.

#### IMPACT STATEMENT

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

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RESPONSIBLE FLOOR DELEGATE: Anne C. Adams

## **COUNTERARGUMENT**

### **SANTA CLARA COUNTY BAR ASSOCIATION**

The purpose of Resolution 08-16-04 is to separate Express Mail from overnight mail and provide different extensions of time for any period of notice and any right or duty to perform any act or make any response, depending on how a document is served. This resolution, however, ignores the realities of serving documents and ends up creating more hardship by adding another layer of dates to remember.

The claimed basis for the resolution is that overnight mail is truly overnight while Express Mail can take two to three days to arrive. Even the proponent, though, notes that overnight mail may often take two or more days when service occurs near a federal holiday. The proponent fails to recognize that a similar problem exists when something is mailed on a Friday. Even with overnight mail, nothing would be received in the ordinary course until Monday.

The author ignores the fact that service by facsimile, which is about as instantaneous as it gets – and thus even faster than overnight delivery – allows for an additional two days for any period of notice and any right or duty to perform any act or make any response. It seems illogical to decrease the time allowed for service by overnight mail but allow the time for service by facsimile to remain not only unchanged but longer.

This resolution should be rejected.