

AMENDMENT TO RESOLUTION 11-15-05

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 659 to read as follows:

1 § 659
2 The party intending to move for a new trial must file with the clerk and serve upon each
3 adverse party a notice of his intention to move for a new trial, designating the grounds upon which
4 the motion will be made and whether the same will be made upon affidavits or the minutes of the
5 court or both,
6 The notice of intention to move for new trial must be filed with the clerk and served upon each
7 adverse party within 15 days of the date of mailing notice of entry of judgment by the clerk of the
8 court pursuant to Section 664.5, or service upon him by any party of written notice of entry of
9 judgment, or within 180 days after the entry of judgment, whichever is earliest; provided, that upon
10 the filing of the first notice of intention to move for a new trial by a party, each other party shall have
11 15 days after the service of such notice upon him to file and serve a notice of intention to move for a
12 new trial.
13 Said notice of intention to move for a new trial shall be deemed to be a motion for a new trial on all
14 the grounds stated in the notice. The time above specified shall not be extended by order or
15 stipulation or by those provisions of Section 1013 of this code which extend the time for exercising a
16 right or doing an act where service is by mail.
17 A premature notice of intent to move for a new trial shall be deemed effective for all purposes as of
18 the date of entry of judgment.

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

RESOLUTION 11-15-05

DIGEST

New Trial Motion: When to File.

Amends Code of Civil Procedure section 659 to require that new trial motions filed before final judgment be filed after rendition.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 659 to require that new trial motions filed before final judgment be filed after rendition and before final judgment. This resolution should be disapproved because "rendition" is not adequately defined in California law.

A motion for a new trial is the California lawyer's version of the labyrinth. The rules are complex and the statute is jurisdictional. Failure to file the motion at a proper time can result in the motion not being considered in the trial court and/or the running of the appeal time before counsel realizes his or her mistake.

Unfortunately, adding rendition is not the solution. The term "rendition" is not defined in California statutory law. However, the term has been commonly understood to mean the announcement of a decision, orally or in writing, by a trial court before judgment is actually entered. This was established by the Supreme Court in 1888 when it defined "rendition" as "when, after trial and final submission of the case, the court pronounces a judgment in apt language, which finally determines the rights of the parties . . . and leaves nothing more to be done except the ministerial act of the clerk in entering it" (*Estate of Cook* (1888) 77 Cal. 220, 227.) Thus, there was an anticipation of time elapsing between rendition and judgment. This view is no longer operable as "rendition" is now defined as the time when the court "signs and files the judgment." (*In re Marriage of Haverkamp* (1998) 61 Cal.App.4th 789, 793.) *Haverkamp*, and the cases that preceded it, reasoned that California Rule of Court 232 made any announcement of an intended decision nonbinding on the court and therefore not a rendition. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 152-153.) As proposed, this resolution would only leave the delay between the physical signing of the judgment and its entry as the time to file a motion before entry. Since this is an internal court process, counsel would not know when it occurred. In any event, under modern practice, the two events, signing and entry by the clerk, are usually on the same day.

SECTION/COMMITTEE REPORT

COMMITTEE ON APPELLATE COURTS

APPROVE AS AMENDED

The existing version of Code of Civil Procedure section 659 permits a motion for new trial to be filed "[b]efore the entry of judgment." However, courts have interpreted the statute to require a final decision on all issues in the case before a motion for new trial may be made. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 458-461; *In re Green's Estate* (1944) 25 Cal.2d 535, 539-540.) The stated purpose of this resolution is to "conform[] the statute to the judicial interpretation, which requires a final decision before a party may move for a new trial."

Clarification of the statute is a laudable goal. The statute as currently written appears to permit a motion for new trial anytime before entry of judgment. However, a motion for new trial made before all issues in the case have been finally decided is premature and void. (*Auto Equity, supra*, 57 Cal.2d at p. 460.)

Witkin has characterized the existing version of section 659 as “obscure, misleading, and a dangerous trap for the uninformed attorney.” (8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 56, pp. 560-561.)

The Committee on Appellate Courts believes the proposed clarification could itself raise significant problems of interpretation. There is no statutory definition of “rendition” and it does not always seem to mean exactly the same thing. In criminal cases, courts have defined “rendition of judgment” as the “oral pronouncement” of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; see also 46 Am.Jur.2d Judgments § 76.) In the context of a civil bench trial where a statement of decision is waived, the term has been defined to mean “the signing and filing of judgment.” (*In re Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 793, citation omitted.) *Auto Equity* defined the term to include either “the *verdict* of the jury or the signed and filed *findings* of the court.” (*Auto Equity, supra*, 57 Cal.2d at p. 460, citation omitted.) Another court has stated: “In a court trial, rendition of judgment occurs when the court signs and filed the findings, conclusions *and the judgment*.” (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 152, italics added.)

The Committee on Appellate Courts believes a better solution is to amend section 659 by eliminating the words “*either (1) Before the entry of judgment; or (2)*” in the statute. This means that a party must file a notice of intention to move for a new trial within 15 days of the date of mailing of notice of entry of judgment and without the five day extension of Section 1013 as currently codified in the final paragraph of section 659. The Committee also believes the following sentence should be added to that section: “A *premature notice of intent to move for a new trial shall be deemed effective for all purposes as of the date of entry of judgment.*”

This position is only that of the State Bar of California’s Committee on Appellate Courts. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

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3 adverse party a notice of his intention to move for a new trial, designating the grounds upon which
4 the motion will be made and whether the same will be made upon affidavits or the minutes of the
5 court or both, either
6 After rendition and ~~B~~before the entry of a final judgment; or
7 2. Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant
8 to Section 664.5, or service upon him by any party of written notice of entry of judgment, or within
9 180 days after the entry of judgment, whichever is earliest; provided, that upon the filing of the first
10 notice of intention to move for a new trial by a party, each other party shall have 15 days after the
11 service of such notice upon him to file and serve a notice of intention to move for a new trial.
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13 the grounds stated in the notice. The time above specified shall not be extended by order or
14 stipulation or by those provisions of Section 1013 of this code which extend the time for exercising a
15 right or doing an act where service is by mail.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing law: Code of Civil Procedure section 659 currently allows a party to make a motion for new trial at any time “before entry of judgment.”

This resolution: Would provide that a motion for new trial may be made “after rendition and before entry of a final judgment.”

The problem: In Witkin's words, the provision of section 659 that allows a party to move for a new trial before entry of judgment “is obscure, misleading, and a dangerous trap for the uninformed attorney.” (8 Witkin, Cal. Procedure 4th (1997) Attack on Judgment in Trial Court, § 56.)

Despite the language of section 659, the motion cannot be made until the case has been decided. (Code Civ. Proc. § 656; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 460.) A new trial motion filed before the decision is premature and void. (*Ibid.*) But there are conflicting rules on what constitutes the decision.

In a jury trial, the verdict ordinarily constitutes the decision and the new trial motion may be made after rendition of the verdict. (*Ibid.*) But, if the verdict is advisory, the motion cannot be made until the court files its statement of decision adopting, rejecting or modifying the verdict. (*Ibid.*) Where a jury trial is bifurcated, the motion is premature before there are verdicts on all issues. (*Meysner v. American Bldg. Maintenance, Inc.* (1978) 85 Cal.App.3d 933, 937.)

In a bench trial, the motion cannot be made until the court files its statement of decision. (*Auto Equity Sales, supra*, 57 Cal.2d at p. 459.) If there's no statement of decision, the court must render judgment. (*Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 793.) In cases tried partly to a jury and partly to the court, the jury must return its verdict and the court must render its decision before the motion can be made. (*Cobb v University of Southern California* (1996) 45 Cal.App.4th 1140, 1144.)

The unclear language of section 659 has its harshest effect on the right to appeal. Under California Rules of Court, rule 3(a), the time to appeal is extended up to 30 days after denial of a motion for new trial. But because a premature new trial motion is void, it does not extend the time to appeal. (*Marriage of Hafferkamp, supra*, 61 Cal.App.4th at p. 794.)

This resolution would set a single fixed time when a new trial motion can be made in every case: after rendition of a final judgment. The resolution requires a *final* judgment to take into account cases tried partly by a jury and partly by a judge, as well as cases where there may be several verdicts on bifurcated or severed issues.

The resolution conforms the statute to the judicial interpretation, which requires a final decision before a party may move for a new trial. It removes a dangerous and unjustifiable trap for the unwary by making the statute state what the courts say it means.

IMPACT STATEMENT

This resolution does not affect any other laws.

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The new language creates more ambiguities and only adds confusion to the statute. The resolution does not clarify the time in which a new trial motion may be filed. The proponent totally ignores the alternative time provisions in Section 659, and does not provide a "single, final time when a new trial motion can be made in every case," as the proponent states.