

“Calendaring in California State Court”

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by Julie A. Goren, Esq., “the essential California civil litigation handbook.”
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Calendaring in the litigation context involves entering appearances and deadlines into a calendar so that someone is reminded to make the appearance or comply with the deadline. A typical lawsuit requires calendaring appearances such as depositions, hearings, mediations, and settlement conferences, and calendaring deadlines such as last day to serve or respond to pleadings, first or last day to serve discovery, last day to respond to discovery, last day to serve notice of, or opposition to, motions, etc.

* * *

Although the court may set deadlines in a particular case, the deadlines generally applicable to California state court cases come from several sources, including the Code of Civil Procedure, the California Rules of Court, and local rules. Calculating a single deadline requires the application of many different codes and rules. A single error, e.g., using an old rule, forgetting to add extra time based on the service method, counting calendar days instead of court days, or simply miscounting, will cause a calendaring error.^{1/}

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Even with rules-based computerized calendaring, however, you need to know how to calendar manually. What if you need to calendar something when your computer is down or inaccessible? What if your computer is fully operational, but you do not know enough to tell it that something needs calendaring?

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, extra time, and counting backwards
 - (a) *for personal service only*, adjust when 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 last day falls on a weekend or California holiday

^{1/} Calendar-related deadlines are the leading cause of malpractice claims in California.

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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

* * *

Step 2: Identify what is triggered

Once you have recognized that a triggering event has occurred, you need to identify what has been triggered. For example:

<u>Triggering Event</u>	<u>What Is Triggered</u>
Filing of complaint	deadline to serve defendant with the summons and complaint and file Proof of Service of Summons form
Service of complaint	deadline to serve response to complaint
Setting of hearing on motion	deadline to file and serve notice of motion, opposition, and reply

Often deadlines are triggered which are not as obvious as the above examples. Rules-based computerized calendaring could reveal several deadlines that you would not think of calendaring on your own.

<u>Triggering Event</u>	<u>What Is Also Triggered</u>
Filing of complaint	last day for plaintiff to challenge the judge assigned to the case; last day to hold case management conference; first day defendant may make motion for summary judgment; last day to bring action to trial
Service of complaint	first day plaintiff may serve written discovery; first day plaintiff may serve notice of deposition; last day plaintiff may file request for entry of default
Setting of hearing on motion	deadlines relating to <i>ex parte</i> application to file longer memoranda, filing proof of service, introduction of oral evidence, appearance by telephone

* * *

Step 4A: Identify the events which define the time period in question

When calculating the due date for a response to a complaint, you have to know that the relevant time period begins with the *effective date of service* (and you have to know how to determine the effective date of service). When calculating the due date for responses to written discovery, you have to know that the relevant time frame begins with the date the discovery was served, and ends with the date the responses are to be served.

There are some common misconceptions in this area, particularly as regards discovery deadlines.

- You do not count from the date you *received* the interrogatories. That date is irrelevant. The focus is on the date it was served, i.e., the date the proof of service says it was served.
- Discovery responses do not have to be *received* by the opposing party by the due date. The responding party simply has to *serve* the responses on or before the due date by any authorized method.

* * *

Step 4B(1): Counting or skipping interim weekends and California holidays

In order to calendar correctly, you must know whether to count or skip weekends and California holidays occurring during the relevant time frame. This depends upon whether you are supposed to count “calendar days” or “court days.”

* * *

Of course, you cannot count court days unless you know the holidays in the court in which your case is pending. You must be very careful to use a calendar which shows the California holidays. (See Appendix “E” for “Calendar of Court Holidays” for California.)

In addition to the federal holidays, California celebrates Lincoln’s Birthday (February 12th), Cesar Chavez Day (March 31st), and the day after Thanksgiving.

Court Closure Days and Furlough Days Distinguished

Court Closure Days: the state-mandated 3rd Wednesday of the month statewide closures from September 2009 through June 2010 were *non-court days*.

Furlough Days: the optional one day per month selected on a court by court basis as a day upon which the court is closed for most purposes is a *court day*.

November 2009

MON	TUES	WED	THU	FRI	SAT	SUN
						1
2	3	4	5	6	7	8
9	10	11 holiday	12	13	14	15
16	17	18 holiday	19	20	21	22
23	24	25	26 holiday	27 holiday	28	29
30	1	2	3	4	5	6

Let's say that the 30th day after interrogatories were *personally served* is Saturday, November 14th. This is the "last day" under C.C.P. § 12a(a). Since the last day is a weekend, the due date is extended to the next court day, Monday, November 16th. Similarly, if the 30th day after interrogatories were personally served were to land on November 11th, the deadline would be extended to November 12th.^{2/}

* * *

Using these latter dates would be a mistake for two reasons. First, they involve a misinterpretation of C.C.P. § 12a(a)'s "last day" rule. In fact, the service by mail deadline involves two separate applications of C.C.P. § 12a(a).^{3/} Second, given a choice between two sets of deadlines, you should always choose the earlier dates. You cannot serve the responses too early; you will certainly have a problem if you serve them too late. Why take the risk?

* * *

Another thorny area involves determining the last day to serve a notice of motion when the hearing date is already set. Assume you have a May 26th hearing date, and you want to personally serve the notice. . . .

[end of excerpts]

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^{2/} With respect to calendaring motions, oppositions or replies, so long as they are personally served, there is no way for the last day to fall on a weekend or California holiday as you only count court days.

^{3/} C.C.P. § 12a(a) was first applied in the personal service calculation to move the Saturday, November 14th last day to Monday, the 16th; it was applied again after the extra fifth day for mailing landed on Saturday, the 21st.