

Reference Materials

Calendaring in California State Court: Steps and Traps for the Unwary

This is the packet of materials referred to in "*Calendaring in California State Court: Steps and Traps for the Unwary*," by Julie A. Goren (the "Goren Calendaring Video.")

Please note the following regarding these materials:

- They include calendaring-related excerpts from prior (outdated) versions of *Litigation By The Numbers*® by Julie A. Goren ("LBTN").
- They should not be relied upon for any purpose other than learning calendaring procedures, *i.e.*, how to count, what to count, extensions based on service method, common mistakes, *etc.*
- Where applicable, calendar-related changes that have been made in subsequent editions of LBTN are noted.

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Calendaring in California State Court: Steps and Traps for the Unwary

by Julie A. Goren, Esq.

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The Essential California Civil Litigation Handbook

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LITIGATION BY THE NUMBERS®

REVISED EFFECTIVE: July 1, 2017

[Revised every January and July]

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LAWDABLE PRESS
LOS ANGELES, CALIFORNIA

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To calendar dates and deadlines in California state court, one must do all of the following:

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, and extra time.
 - (a) *For personal service only*, adjust when the 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 the last day falls on a weekend or California holiday.*
 - (c) *For hearing-related dates*, count backward from the hearing date.

Except for step 1, identifying the triggering event, rules-based computerized calendaring programs do every one of these steps automatically.

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

§ 1.4 Filing Complaint/Issuing Summons

The clerk files the Complaint by stamping it with the date and case number, issues the Summons by signing, dating, and stamping it with the case number and court seal, file-stamps the accompanying forms, and conforms the copies. Retaining the originals (including the Summons), the clerk returns conformed copies by mail or your attorney service along with other documents, e.g., an alternative dispute resolution information package regarding mediation and arbitration (“ADR Package”), notices/orders informing the parties of the judge and department to which the case is assigned, the date of any case management conference (“CMC”), any local requirements regarding eFiling, etc. (collectively, “Clerk’s Notices”).^{3/}

- Substitute the conformed copies of the Summons, Complaint and accompanying forms for those in your file. Make at least one copy of the Clerk’s Notices, and place a copy in your file. All of these will have to be served on the defendant.

BE SURE TO CALENDAR ALL OF THE FOLLOWING:

****WHAT'S TRIGGERED****

- The date the Complaint was filed
- 60 days after the Complaint was filed (or 180 days in a Collections case) as the last day to file Proof of Service of Summons (see § 1.5) and perhaps a tickler a few days prior to consider applying for an extension of that deadline (see § 1.6)
- In a Collections case, 360 days after the Complaint was filed as the last day to obtain default judgment (see § 3.4)
- All appearance dates and deadlines in, or triggered by, the Clerk’s Notices, e.g., CMC, final status conference, trial date, and associated dates (see §§ 7.2.2, 7.5)
NOTE: If any of these dates falls on a holiday or weekend continue counting backward to the next court day.
- If there is no CMC, 365 days after the date the Complaint was filed as the last day to deposit advance jury fees (see C.C.P. § 631(c))

NOTE: Except as noted above, when calendaring these deadlines, if the last day is a holiday or weekend, extend the deadline to the next court day. (C.C.P. § 12a(a))

§ 1.5 Service and Proof of Service of Summons and Complaint and Accompanying Documents

Next, you serve the defendant with the Summons, Complaint, any accompanying forms, and Clerk’s Notices. The defendant may be served personally, by substituted service, by mail with notice and acknowledgment of receipt, or, upon court order, by publication. A defendant outside California may be served by these methods and by certified mail. Each method is discussed below, beginning with § 1.5.1.

^{3/} In L.A., the clerk will include in all unlimited civil cases information about the court’s “Voluntary Efficient Litigation Stipulations” (see Appendix “G”), and in Personal Injury Actions, a General Order with, among other things, the dates of the Final Status Conference and trial date.

CALENDARING NOTES FOR REQUESTS FOR ADMISSION:

- ❑ **Calendar** the date the response is due (30 days after service) (C.C.P. § 2033.250), plus the extra time allowed by C.C.P. §§ 1013 or 1010.6 if the requests were not personally served. (See § 2.3.) If the last day falls on a Saturday, Sunday or holiday, the time limit is extended to the next day that is not a Saturday, Sunday or holiday. (C.C.P. § 2016.060) (See Appendix “E” for Calendar of California Court Holidays.)
- ❑ **IF RESPONSES ARE NOT SERVED TIMELY, THE PROPOUNDING PARTY MAY MOVE TO HAVE THE MATTERS DEEMED ADMITTED AND FOR MANDATORY MONETARY SANCTIONS. (C.C.P. § 2033.280)**

§ 5.5.3 “Response to Requests for Admission”

Unless the propounding and responding parties agree in writing to extend the response due date (C.C.P. § 2033.260), the responding party must serve a response to the RFA’s within 30 days after service (C.C.P. § 2033.250), plus the additional time allowed by C.C.P. § 1013 or 1010.6 if the requests were not personally served. (See § 2.3.)

WHEN YOU RECEIVE A SET OF RFA’S PROPOUNDED TO YOUR CLIENT, BE SURE TO CALENDAR THE DATE THE RESPONSE IS DUE AS NOTED IN THE BOX ABOVE.

WARNING!!

IF YOU DO NOT RESPOND WITHIN THE TIME ALLOTTED, YOU HAVE WAIVED YOUR CLIENT’S RIGHT TO OBJECT TO THE REQUESTS AND THE PROPOUNDING PARTY MAY MOVE TO HAVE THE MATTERS DEEMED ADMITTED AND FOR MANDATORY MONETARY SANCTIONS. (SEE C.C.P. § 2033.280 FOR MORE DETAILS.)

- Type the response to RFA’s in the same format as the response to rogs, § 5.4.5, substituting “Requests for Admission” for “Interrogatories.” Do not repeat the requests themselves. (C.C.P. § 2033.210(d)) In addition, responses must comply with the substantive requirements of C.C.P. § 2033.220 and .230 with respect to admissions, denials, and objections.

§ 6.3.1 "Notice of Motion"

The notice of motion describes the nature of and grounds for the order sought, and details regarding the date, time, place of hearing, etc. All parties must be given at least 16 court days' notice, plus the additional time under C.C.P. § 1005(b) if service is by a means other than personal service. (See § 2.3.) C.C.P. § 12c requires counting backward from the hearing date to determine adequacy of notice. (For more information, see "*Certainty in Calculating Hearing-Related Deadlines in California State Court*," <http://litigationbythenumbers.com/CCP12c.html>.)

§ 6.3.1.1 Setting the Hearing

Choosing a hearing date requires coordinating: (1) any motion cut-off date, (2) the service method, and (3) the court's availability.²¹ Hearing dates might be chosen by the movant, set by the court upon filing, reserved in advance, etc. Where reservations are required, several counties use online reservation systems; in others, reservations may be made by telephone. **Check your court website to determine how hearings are set and to identify any applicable rules.** For more information about the system used in several Los Angeles County courts, the Court Reservation System ("CRS"), see <https://www.lacourt.org/mrs/ui/index.aspx>.

ONCE YOU HAVE A HEARING DATE, BE SURE TO CALENDAR:

- The date, time, and place of the hearing
- The deadlines for filing and serving the motion, opposition, and reply (see p. 6-7)
- Any deadlines pursuant to local rule, e.g., for submitting courtesy copies directly to the courtroom (see § 6.3.6)
- A reminder to check the tentative ruling (see § 6.3.9)
- A reminder to give notice of intent to appear by telephone, if any (see § 6.3.10.1)
- A reminder to arrange for a court reporter, if necessary (see § 6.3.10.2)

§ 6.3.1.2 Preparing the Notice

- 1▶ Use the same caption as on previous pleadings.
 - 2▶ List all attached documents in the title. (C.R.C., Rule 3.1112(c)) The footer is an abbreviation of the title. (C.R.C., Rule 2.110) If the attorney plans to appear telephonically (see § 6.3.10), type "Telephone Appearance" right below the title.
 - 3▶ Enter the hearing date, time, department, judge's name, if known, the date the action was filed, and the trial date, if set. (C.R.C., 3.1110(b)) **If you have a hearing reservation number, be sure to add it.**
 - 4▶ Type the standard introductory clause as described on page 5-10, Step 3.
 - 5▶ Type "PLEASE TAKE NOTICE" in all caps at the beginning of the next paragraph. This paragraph must include the nature of the order being sought and the grounds for issuance of the order. (C.R.C., Rule 3.1110(a))
- The page number on the first page may be suppressed. (C.R.C., Rule 3.1110(c))

Rule
Revised
1/1/17

²¹ With the budget cuts, long waits for a hearing date are common. Parties are encouraged to stipulate to continue trial dates, motion, and discovery cut-off dates to deal with this reality.

California's Extensions of Time Based On Service Method

Section 1013	Extends certain deadlines to act or respond, as well as non-motion notice periods (e.g., notice of deposition) for service methods other than electronic service
Section 1005(b)	Extends notice of motion period for regular motions (but not motions for summary judgment ("MSJ") or summary adjudication ("MSA")) for service methods other than electronic service
Section 437c	Extends notice of motion period for MSJ's and MSA's
Section 1010.6	Extends all of the above when service is by electronic service

Service by Mail under C.C.P. §§ 1013, 1005(b) & 437c^{1/}

Recipient's Location	Extension
within California	5 days
outside California, within U.S.	10 days
outside U.S.	20 days

Fax/Overnight Delivery/Express Mail

Code Section	Extension
C.C.P. §1013 & 437c	two <i>court</i> days
C.C.P. § 1005(b) - Regular motions only	two <i>calendar</i> days

Electronic Service

What is extended	Extension
time to act or respond	two <i>court</i> days
notice of motion	two <i>court</i> days

^{1/} C.C.P. § 1013 and § 1005(b) **do not extend all deadlines!** They do not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to C.C.P. § 663a, or notice of appeal.

To identify triggering events in your case, assume that everything you file with the court and/or serve on opposing counsel, and everything you are served with, including notices from the court, involves a triggering event, i.e., something needs to be calendared.^{19/}

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 file and 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. For example:

<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

^{19/} Deadlines.com contains a list of triggering events. The user selects a triggering event in order for the program to calculate the triggered deadlines. The list, organized by categories such as pleadings, discovery, motions, settlement, trial, etc., may be accessed for free. Studying the triggering events list is a great way to learn to recognize triggering events.

Step 3: Identify the current codes and rules which apply to the deadlines.

Once you have determined what is triggered, you need to identify the *current* codes and rules governing the applicable deadlines. For example, you should know that the following deadlines are governed by the given code section(s) or rule:

<u>DEADLINE</u>	<u>APPLICABLE CODE/RULE</u>
to serve defendant/file Proof of Service of Summons	C.R.C., Rule 3.110
to serve response to interrogatories	C.C.P. § 2030.260
to move to compel further response to interrogatories	C.C.P. § 2030.300
to serve notice of motion, opposition, and replies for regular motions	C.C.P. § 1005(b) AND C.C.P. § 12c

In California, the codes and rules are “moving targets.” Rule numbers and code sections may change.^{20/} The time limits provided for within existing codes and rules may be revised -- the deadline you memorized last year may be different today.^{21/} New codes and rules may be enacted, creating deadlines that previously did not exist. Newly enacted C.C.P. § 12c, of tremendous significance, now dictates how hearing-related deadlines are calculated. These “moving targets” highlight another benefit of rules-based computerized calendaring programs -- they are updated to apply the current code sections and rules.

Step 4: Correctly apply those codes and rules.

This is the most difficult part. It requires several steps which must be accomplished in order, painstakingly applied, checked and rechecked. It involves identifying what to count, how to count, and then actually counting in conformance with certain very specific rules. Again, rules-based computerized calendaring programs do all of this instantly.

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* of the complaint (and you have to know how to determine that effective date), and the period ends when the response must be *served*. When calculating the due date for responses to written discovery, you

^{20/} Prior to January 2007, there was no C.R.C., Rule 3.110; every rule was renumbered effective January 1, 2007. Prior to July 2005, there was no C.C.P. §§ 2030.260 or 2030.300; every discovery-related code section was renumbered effective July 1, 2005.

^{21/} Since 1982, the notice required for a regular motion has changed from 15 days, to 21 days, to 16 court days. Each time the notice period changed, the deadline for filing the opposition and the reply changed as well.

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.

- Do not count from the date you *received* the discovery. Count from 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 due date. They have to be *served* by the due date by any authorized method.
- Discovery responses served by mail do not have to be mailed five days before the deadline; discovery responses served by fax do not have to be faxed two court days before the deadline. They just have to be *served* on or before the deadline.
- The method by which the discovery was served does not dictate how the response is served. Responses may be served by any authorized method.

When calculating the last day to serve notices of motion, you have to know that the relevant time frame begins on the hearing date, and ends on the service date.

Once you have identified the time period you need to count, you need to know exactly how to count the days in that time period.

Step 4B: Identify what date to start counting and what date to stop counting.

Accurate calendaring requires that you know on what day during the applicable time frame you start your count and on what date you stop your count. Depending upon the method of service, whether you are counting calendar days or court days, and where holidays and weekends fall, this may involve the application of several rules and substeps, the first being C.C.P. § 12.

C.C.P. § 12 provides: *“The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.”^{22/}* In applying C.C.P. § 12, if interrogatories are served on April 1 (the date the proof of service says they were served), in order to calculate the 30-day deadline to respond, you start counting April 2 as the first day, April 3 as the second day, and keep counting every calendar day until you reach the 30th calendar day, May 1. If the interrogatories were personally served, and so long as May 1 is not a weekend or a holiday, the deadline to serve the response is May 1. But, calendaring is usually not that simple.

^{22/} C.R.C., Rule 1.10(a) says essentially the same thing when counting the number of days for an act to be performed pursuant to a court rule.

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

In order to calendar accurately, you must know whether to count or skip weekends and holidays occurring during the relevant time frame. This depends upon whether you are supposed to count "calendar days" or "court days." In that regard, unless a code or rule specifies "court days," as is the case with notices of motion, oppositions, and replies under C.C.P. § 1005(b), you are supposed to count calendar days. Thus, "five days" means "five calendar days."

November 2011

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

Using the above calendar, if you were counting *seven calendar days* from November 7, you would land on November 14. If you were counting *seven court days* from November 7, you would skip November 11, 12, and 13, and land on November 17. Thus, counting the wrong type of day could easily result in a miscalculated deadline.

Added
January
2015

Of course, you cannot count court days unless you know the applicable holidays, which, pursuant to C.C.P. § 135, are all full days listed in Gov. Code § 6700 except Admission Day, plus the day after Thanksgiving. **Be sure to use a calendar which shows the California holidays. (See Appendix "E" - "Calendar of California Court Holidays.")**

****ESSENTIAL CALENDARING NOTES****

NOTE 1: CALIFORNIA OBSERVES HOLIDAYS THAT ARE NOT FEDERAL HOLIDAYS.
In addition to the federal holidays, California celebrates Lincoln's Birthday (February 12), Cesar Chavez Day (March 31), and the day after Thanksgiving.

NOTE 2: LIMITED SERVICE DAYS ARE COURT DAYS.
Gov. Code § 68106 allows individual courts to designate "**limited service days**" on which to close one or more courtrooms, reduce hours of one or more of its clerks' offices, or both. Even where the court is closed for the entire day, a limited service day is a *court day*.^{23/}

^{23/} The Judicial Council publishes the courts' notices of limited service days on its website. The list may be accessed here: www.courts.ca.gov/12973.htm. Each court must also publish its notice on its own website. Be sure to check yours.

NOTE 3: 2015 BRINGS AN ACCIDENTAL COURT HOLIDAY.

As of 1/1/15, Gov. Code § 6700 adds “Native American Day” on the 4th Friday of September. There was no intent in the legislation to create a *court* holiday, but because C.C.P. § 135 was not also simultaneously amended to except it (i.e., like Admission Day), it is a judicial holiday. If and when this is rectified, the court holiday will disappear. If there are any changes before July 2015, we will post it on our website at www.litigationbythenumbers.com/NAD.

**New for
January
2015**

At this juncture, err on the side of caution by counting it as a non-court day when giving notice, and as a court day when calculating your own deadlines to perform an act within a specified time. You will be safe if it is a holiday and if it is not.

Step 4B(2): Determine the last day - deal with weekends, holidays, and extra time.

When calculating the last day to perform an act triggered by the service of a document (e.g., last day to respond to a discovery demand, last day to make a motion to compel further responses to discovery), you must consider how the document which triggered the deadline was served. If it was personally served, there is one procedure; if it was not personally served, additional steps must be taken. In any case, to calculate these deadlines, you need to know what happens when the last day to do something lands on a holiday, and you need to know how to determine the “last day.”

C.C.P. § 12a(a) provides: “If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.”^{24/} “Holiday” includes weekends. Thus, if the last day is a Saturday, the deadline would be extended to Monday, so long as it is not a holiday. If Monday is a holiday, the deadline would be Tuesday.

(a) For personal service, adjust when the last day falls on a weekend or California holiday.

Using the November 2011 calendar, let’s say that the 30th day after interrogatories were *personally served* is Saturday, November 12. 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 14. If the 30th day after interrogatories were personally served is November 24, the deadline would be extended to November 28.

(b) For a triggering document not personally served, first add the applicable extension of time to determine the last day, then adjust when the last day falls on a weekend or California holiday.^{25/}

We have already explained that certain time periods are extended when a document is not personally served, e.g., when discovery requests are served by mail within California,

^{24/} C.R.C., Rule 1.10(b) says essentially the same thing when counting the number of days for an act to be performed pursuant to a court rule.

^{25/} With eService, the last day always falls on a court day, eliminating the need for an adjustment. See “eService Simplifies Calendaring in California State Court,” <http://litigationbythenumbers.com/eService.html>.

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

In order to calendar accurately, you must know whether to count or skip weekends and holidays occurring during the relevant time frame. This depends upon whether you are supposed to count “calendar days” or “court days.” In that regard, unless a code or rule specifies “court days,” as is the case with notices of motion, oppositions, and replies under C.C.P. § 1005(b), you are supposed to count calendar days. Thus, “five days” means “five calendar days.”

November 2011

MON	TUES	WED	THU	FRI	SAT	SUN
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Using the above calendar, if you were counting *seven calendar days* from November 7, you would land on November 14. If you were counting *seven court days* from November 7, you would skip November 11, 12, and 13, and land on November 17. Thus, counting the wrong type of day could easily result in a miscalculated deadline.

Of course, you cannot count court days unless you know the applicable holidays, which, pursuant to C.C.P. § 135, are all full days listed in Gov. Code § 6700 except Admission Day and Native American Day, plus the day after Thanksgiving. ***Be sure to use a calendar which shows the California holidays. (See Appendix “E” - “Calendar of California Court Holidays.”)***

Revised
July
2015

****ESSENTIAL CALENDARING NOTES****

NOTE 1: CALIFORNIA OBSERVES HOLIDAYS THAT ARE NOT FEDERAL HOLIDAYS.

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

NOTE 2: LIMITED SERVICE DAYS ARE COURT DAYS.

Gov. Code § 68106 allows individual courts to designate “**limited service days**” on which to close one or more courtrooms, reduce hours of one or more of its clerks’ offices, or both. Even where the court is closed for the entire day, a limited service day is a *court day*.^{23/}

^{23/} The Judicial Council publishes the courts’ notices of limited service days on its website. The list may be accessed here: www.courts.ca.gov/12973.htm. Each court must also publish its notice on its own website. Be sure to check yours.

Step 4B(2): Determine the last day - deal with weekends, holidays, and extra time.

When calculating the last day to perform an act triggered by the service of a document (e.g., last day to respond to a discovery demand, last day to make a motion to compel further responses to discovery), you must consider how the document which triggered the deadline was served. If it was personally served, there is one procedure; if it was not personally served, additional steps must be taken. In any case, to calculate these deadlines, you need to know what happens when the last day to do something lands on a holiday, and you need to know how to determine the “last day.”

C.C.P. § 12a(a) provides: “If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.”^{24/} “Holiday” includes weekends. Thus, if the last day is a Saturday, the deadline would be extended to Monday, so long as it is not a holiday. If Monday is a holiday, the deadline would be Tuesday.

(a) For personal service, adjust when the last day falls on a weekend or California holiday.

Using the November 2011 calendar, let’s say that the 30th day after interrogatories were *personally served* is Saturday, November 12. 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 14. If the 30th day after interrogatories were personally served is November 24, the deadline would be extended to November 28.

(b) For a triggering document not personally served, first add the applicable extension of time to determine the last day, then adjust when the last day falls on a weekend or California holiday.^{25/}

We have already explained that certain time periods are extended when a document is not personally served, e.g., when discovery requests are served by mail within California, the recipient is entitled to an extra five days to respond. It is at this point in the process that you add the extra days. You must know where to add them.

^{24/} C.R.C., Rule 1.10(b) says essentially the same thing when counting the number of days for an act to be performed pursuant to a court rule.

^{25/} With eService, the last day always falls on a court day, eliminating the need for an adjustment. See “eService Simplifies Calendaring in California State Court,” <http://litigationbythenumbers.com/eService.html>.

When determining the last day to respond to a document not personally served, the “last day” is determined by counting the number of days allotted pursuant to the applicable code section or rule, and then immediately adding the applicable extension of time.

- If Saturday, November 12 is the 30th day after service of interrogatories *by mail*, to determine the “last day,” you simply continue counting until you reach the 35th day, November 17. *You do not make any adjustment for the fact that day 30 was a Saturday, because it is not the “last day.”*
- If Saturday, November 12 is the 30th day after service of interrogatories *by fax*, overnight delivery or eService, to determine the “last day,” you simply continue counting two court days, to November 15. *You do not make any adjustment for the fact that day 30 was a Saturday, because it is not the “last day.”*

Thus, using the above scenarios (30th day lands on Saturday, November 12) and calculation methods, the last day to respond would be:

Service by hand	November 14
Service by fax/overnight delivery/eService	November 15
Service by mail within CA	November 17

Note that the service by fax/overnight delivery/eService deadline is only one day after, and the service by mail deadline is only three days after, the last day to serve by hand. Are these possibly correct? Or, do we start from the service by hand deadline, and then add the extensions, e.g., November 14 plus two court days for fax, November 14 plus five days for mail, as follows:

Service by hand	November 14
Service by fax/overnight delivery/eService	November 16
Service by mail within CA	November 21

Using these latter dates would be a mistake for two reasons. First, they appear to misapply C.C.P. § 12a(a)'s “last day” rule. The service by mail deadline was reached by applying C.C.P. §12a(a) twice in the same calculation.^{26/} How can there be two “last days?” Second, given a choice between two deadlines, always err on the safe side by choosing the earlier date. You cannot serve the responses too early; you will certainly have a problem if you serve them too late. Why take the risk?

When in doubt, serve your responses earlier than later.

^{26/} C.C.P. § 12a(a) was applied in the service by hand calculation to move the Saturday, November 12 “last day” to November 14, and again in the service by mail calculation when the extra fifth day fell on a Saturday.

(c) For hearing-related dates, count backward from the hearing date.

Calculating the last day to serve notice of motion often requires counting a combination of calendar days and court days. For example, under C.C.P. § 1005(b), if notice of motion is mailed within California, you add five *calendar* days to 16 *court* days; if served by fax or overnight delivery, you add two *calendar* days.^{27/} Similarly, under C.C.P. § 437c, if notice of an MSJ or MSA is served by fax or overnight delivery, you add two *court* days to the 75-*calendar* days.

Often these calculations will be affected by: (1) the *direction* in which the days are counted (forward from the service date or backward from the hearing date), and/or (2) the *order* in which the two distinct sets of days are counted (first calendar days, then court days or first court days, then calendar days). Prior to January 1, 2011, the code was silent as to the direction and order in which to count. Now, C.C.P. § 12c provides:

(a) *Where any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, excluding the day of the hearing as provided by Section 12.*

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(b) *Any additional days added to the specified number of days because of a particular method of service shall be computed by counting backward from the day determined in accordance with subdivision (a).*

So, we count backward from the hearing date the number of days specified in the applicable code, e.g., 16 court days or 75 calendar days, and then continue counting backward to add the extra days. Let's look at an example.

Assume we have a December 6 hearing for a regular motion. What's the last day to serve the notice and supporting papers? Applying C.C.P. §§ 1005(b) and 12c, start with December 5 as day one, and count backward 16 court days to November 9. November 9 is the last day to personally serve notice. Service by mail requires you to continue counting backward the extra five calendar days to November 4 -- the last day to serve by mail.

November-December 2011

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

^{27/} There is no counting issue with eServing notice of regular motions as two court days are added to the 16-court day period, for a total of 18 court days. See "**eService Simplifies Calendaring in California State Court**," <http://litigationbythenumbers.com/eService.html>.

What if the hearing is December 7 and you are serving by mail? Counting backward 16 court days starting with December 6 takes you to November 10. Counting backward the extra five calendar days takes you to Saturday, November 5. At that point, you *continue counting backward* (getting farther away from the hearing date) to the first court day, Friday, November 4. There is no basis or logic for reversing direction and counting instead to the first court day closer to the hearing date, e.g., Monday, November 7. If you did that, you would give less than the required 16 court plus five days' notice.

**If, when counting backward to determine the last day to serve notice, you land on a holiday, continue counting in the same direction to the first court day.
Do not reverse direction and count toward the hearing date!**

Determining the last day to serve notice is pretty straightforward when the hearing date is set. When you are at the other end of the process -- your papers are ready, and you need to select the hearing date -- grave danger lurks. While you have to count *forward* to select the hearing date, adequacy of notice is determined by counting *backward* from the hearing date, possibly yielding different results if your service method requires an extension based on calendar days, as is the case with any service method other than hand delivery or eService.

**UNLESS YOU HAND DELIVER OR ELECTRONICALLY SERVE THE
MOVING PAPERS, YOU CANNOT SAFELY CHOOSE A
HEARING DATE WITHOUT COUNTING BACKWARD!!**

For example, assume it is November 7. You have just finished your motion, and you need to choose a hearing date and serve the papers that day by mail. If you count forward from November 7 the 16 court days and five calendar days, you land on December 7 (or if you count forward starting with the five calendar days, you still land on December 7). If a December 7 hearing date is available, you select it, and mail your papers. Guess what? Insufficient notice! C.C.P. § 12c requires moving papers for a December 7 hearing to be mailed on or before Friday, November 4 -- three days before the motion was even ready! For more in depth coverage of this very important topic, please see "***Certainty in Calculating Hearing-Related Deadlines in California State Court***," <http://litigationbythenumbers.com/CCP12c.html>.

As you can see, winding one's way through the California state court calendaring maze is difficult at best. It certainly gets easier with experience, and simple calculations may become almost second nature. However, given the constant changes in the codes and rules, the potential for human error at every step of the way, and the dire results of a missed deadline, rules-based computerized calendaring should be utilized.

§ 6.3 Regular Motions

From time to time during the course of a lawsuit, a party might need court intervention to allow them to do something or not do something, or to force the opposing party or a third party to do or not do something. The attorney applies to the court for such relief by filing a motion for an order. For example, a party might file a motion for an order allowing them to amend a complaint, or granting an extension of time to respond to something, or for relief from default; a party might seek an order compelling an opposing party to provide further answers to interrogatories or other discovery.

Various rules govern regular motions, including rules regarding contents, number of pages allowed, and deadlines for filing and serving notice of motions, opposition to motions, and replies to oppositions. Below is a table showing some of the basic rules.

General Rules for Regular Motions

Last day to hear non-expert discovery motions C.C.P. § 2024.020	15 days before the initial trial date
Last day to hear expert discovery motions C.C.P. § 2024.030	10 days before the initial trial date
Notice and motion must be filed and served C.C.P. §§ 1005(b) and 12c	at least 16 court days before the hearing ^{1/} (counting backward from the hearing date)
Opposition must be filed and served C.C.P. §§ 1005(b) and 12c	at least 9 court days before the hearing (counting backward from the hearing date)
Reply must be filed and served C.C.P. §§ 1005(b) and 12c	at least 5 court days before the hearing (counting backward from the hearing date)
Limit on length of opening/opposing P's & A's C.R.C., Rule 3.1113(d)	15 pages
Limit on length of reply P's & A's C.R.C., Rule 3.1113(d)	10 pages
Separate statement required C.R.C., Rule 3.1345	motion to compel <i>further</i> answers

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A regular motion always contains a notice of hearing (also referred to as “notice of motion”) and the motion itself, and, unless excepted under C.R.C., Rule 3.1114, a memorandum of points and authorities. It often contains one or more declarations and exhibits. Sometimes a separate statement is required; sometimes a proposed order is submitted. C.R.C., Rule 3.1112(c) allows these various parts to be prepared and filed either as separate documents or combined in one or more documents. If combined, the caption must list all of the attached documents (see following example). If filed separately, it should say so below the title of the notice of motion, e.g., “[Declaration of Joe Lawyer filed concurrently.]”

^{1/} Service must be made earlier if the papers are not personally served. (See § 2.3)

§ 6.3.12 “Order”

Unless the parties waive notice or the court orders otherwise, C.R.C., Rule 3.1312(a) requires the prevailing party on any motion (other than one which was unopposed and the proposed order was submitted with the motion) to serve the other party, within 5 days of the ruling on the motion, with a proposed order, granting or denying the motion. If the prevailing party fails to do so, any party may submit a proposed order.

- 1▶ Type the caption as on previous pleadings.
- 2▶ The title, in all caps, should mirror the title of the motion, e.g., "ORDER GRANTING MOTION FOR ORDER _____." Many practitioners would say "[PROPOSED] ORDER . . .," the court later crossing out "PROPOSED" upon signing. The footer is an abbreviation of the title. (C.R.C., Rule 2.110)
- 3▶ Type below the title the same information that appears below the title of the motion.
- 4▶ The proposed order may start by providing some details about the hearing, e.g., when it was held and who appeared (see the sample "Notice of Ruling" on page 6-27), but many orders simply begin: "IT IS HEREBY ORDERED."
- 5▶ Type the orders in numbered paragraph form.
- 6▶ Type "DATED" and a signature line for the judge. If you don't know the judge's name, type it as in our example.

Service

At this juncture, the proposed order is only served. Prepare a proof of service as directed in Chapter 2, but be sure to serve ***“in a manner reasonably calculated to ensure delivery by the close of the next business day.”*** (C.R.C., Rule 3.1312(a)) The opposing party has 5 days after the proposed order was served (there is no extension for service method) to advise the prevailing party whether it approves the form of order, or, if not, the reasons for disapproval. Failure to notify the party within that time is deemed approval.

After the 5-day response period, the party who prepared the proposed order must lodge it with the court along with a summary of the opposing party's responses or a statement that the party did not respond. **If the proposed order is being submitted electronically, refer to C.R.C., Rule 3.1312(c). Two separate versions of the proposed order must be submitted to the court; one a PDF attached to a “Proposed Order (Cover Sheet)” (Judicial Council Form No. EFS-020) and one in editable word processing format, to be submitted as directed by the particular court. A copy of the proposed order must be sent to the parties.**

Goren Calendaring articles –
www.litigationbythenumbers.com/articles.html

"Budget Trailer Bill Poised to Avert Accidental CA Court Holiday"

"There's a new court holiday coming to California in 2015. Better recheck your deadlines calculations!"

"eService Simplifies Calendaring in California State Court"

"CCP Resolves One Calendaring Problem, but Leaves Another in its Wake" – Dec. 2011 The Advocate

"Calendaring Under the C.C.P. -- Extending Time Based On Service Method . . . or Not"

"Getting the Date Right" – Dec. 2010 California Lawyer (MCLE Credit)

USE THIS CALENDAR FOR THE CALENDARING EXERCISES ONLY! IT IS OUTDATED.

See note below for current information.

CALENDAR OF COURT HOLIDAYS (2010)

January	February	March
Mo Tu We Th Fr Sa Su X 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 X 19 20 21 22 23 24 25 26 27 28 29 30 31	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 X 16 17 18 19 20 21 22 23 24 25 26 27 28	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
April	May	June
Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 X 31	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
July	August	September
Mo Tu We Th Fr Sa Su 1 2 3 4 X 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	Mo Tu We Th Fr Sa Su 1 2 3 4 5 X 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
October	November	December
Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 X 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 X 12 13 14 15 16 17 18 19 20 21 22 23 24 X 26 27 28 29 30	Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 X 25 26 27 28 29 30 X

January 1	New Year's Day
January 18	Martin Luther King BD
February 12	Lincoln's Birthday
February 15	Presidents' Day
March 31	Cesar Chavez Day
May 31	Memorial Day
July 5	Independence Day

September 6	Labor Day
October 11	Columbus Day
November 11	Veteran's Day
November 25	Thanksgiving
November 26	Day after Thanksgiving
December 24	Christmas Day
December 31	New Year's Day 2011

This 2010 list of holidays is not current. Use it only to do the Calendar Video exercises!

For current holidays, see the latest version of LBTN or go to:

<https://www.lacourt.org/holiday/ui/index.aspx>