

RESOLUTION 07-04-2011

DIGEST

Civil Procedure: Motions to Vacate Judgment

Amends Code of Civil Procedure section 663a to specify that the time in which a court must rule on a motion to set aside and vacate a judgment be the same time limit as a motion for new trial.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 663a to specify that the time in which a court must rule on a motion to set aside and vacate a judgment be the same time limit as a motion for new trial. This resolution should be approved in principle because it promotes judicial economy in resolving all post-trial motions at the same time and avoids potential confusion in appellate deadlines.

The time for making the motion to set aside and vacate a judgment under Code of Civil Procedure section 663a is consistent with the timing of motions for new trial (Code Civ. Proc., §659) and JNOV (id., §629) – it must be made either before entry of judgment or within 15 days of mailing of notice of entry, or within 180 days from entry of judgment, whichever comes first. (Code Civ. Proc., § 663a.) A JNOV motion may not be ruled on prior to the time in which a party has to move for a new trial, and if a new trial motion is pending, the court must rule on both at the same time (Code Civ. Proc., § 629). Motions for new trial and JNOV motions are considered preferential, and jurisdictionally must be decided within 60 days from mailing of notice of entry of judgment (Code Civ. Proc., §§ 629, 660). Yet, a motion to vacate judgment and enter a different one under section 663 of the Code of Civil Procedure, lacks any coordination with its cousin motions. It is not governed by a similar deadline for the court to act, in either granting or denying it. More than symmetry is involved. The lack of direction and limitation invites different hearing times, the prospect of effectively rearguing in this motion the very issues already decided at a prior hearing on the motion(s) for new trial and JNOV, conceivably with a different result, and further extending if not creating confusion concerning the time to appeal. The extension of time to appeal under Rules of Court 8.108 when these different post-judgment motions are interposed attaches separately for each. As noted, there is no linkage with this motion and a motion for new trial. Moreover, the absence of a specified ruling deadline on a timely noticed section 663 motion could even arguably allow the judge to vacate judgment and enter a new one at any time, especially if no appeal is ever filed divesting the trial court of jurisdiction.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 663a to read as follows:

1 § 663a

2 The party intending to make the motion mentioned in the last section must file with the
3 clerk and serve upon the adverse party a notice of his intention, designating the grounds upon
4 which the motion will be made, and specifying the particulars in which the legal basis for the
5 decision is not consistent with or supported by the facts, or in which the judgment or decree is
6 not consistent with the special verdict, either

7 1. Before the entry of judgment; or

8 2. Within 15 days of the date of mailing of notice of entry of judgment by the clerk of the
9 court pursuant to Section 664.5, or service upon him by any party of written notice of entry of
10 judgment, or within 180 days after the entry of judgment, whichever is earliest.

11 Except as otherwise provided in Section 12a of this code, the power of the court to rule on a
12 motion for to set aside and vacate a judgment shall expire 60 days from and after the mailing of
13 notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days from
14 and after service on the moving party by any party of written notice of the entry of the judgment,
15 whichever is earlier, or if such notice has not theretofore been given, then 60 days after filing of
16 the first notice of intention to move to set aside and vacate the judgment. If such motion is not
17 determined within said period of 60 days, or within said period as thus extended, the effect shall
18 be a denial of the motion without further order of the court. A motion to set aside and vacate a
19 judgment is not determined within the meaning of this section until an order ruling on the motion
20 (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with
21 the clerk. The entry of a an order to set aside and vacate the judgment in the permanent minutes
22 of the court shall constitute a determination of the motion even though such minute order as
23 entered expressly directs that a written order be prepared, signed and filed. The minute entry
24 shall in all cases show the date on which the order actually is entered in the permanent minutes,
25 but failure to comply with this direction shall not impair the validity or effectiveness of the order.

26 The provisions of Section 1013 of this code extending the time for exercising a right or doing an
27 act where service is by mail shall not apply to extend the times above specified.

28 An order of the court granting such motion may be reviewed on appeal in the same manner as a
29 special order made after final judgment.

(Proposed new language underlined, language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing law: Provides for a motion to vacate a judgment and enter a different judgment, but does not provide any time limit within which the motion must be determined.

This Resolution: Would clarify existing law and specify the time in which a court must rule on a motion to set aside and vacate a judgment. The time limit provided in the amendment is the same time limit provided for new trial motions under Code of Civil Procedure section 660.

The Problem: Current law allows a motion to set aside and vacate a judgment, but does not specify how long the court has to rule on the motion. California Rules of Court, rule 8.108(b) provides that the a motion to vacate a judgment extends the time to appeal to the earliest of: (1) 30 days after the clerk or a party serves an order denying the motion or a notice of entry of that order, or (2) 90 days after the first notice of intention to move—or motion—is filed, or (3) 180 days after entry of the judgment. The rule is consistent with the rules providing for extensions of the time to appeal after motions for a new trial, for judgment notwithstanding the verdict, or to reconsider. But, neither rule 8.108(b) nor the statute, Code of Civil Procedure section 663a, nor any published decision provides that the court's time to rule on a motion to vacate the judgment expires at any of these times or any other time.

IMPACT STATEMENT

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

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