

RESOLUTION 06-03-2015

DIGEST

Civil Procedure: Deadline for Filing Demurrer in Unlawful Detainer Actions

Amends Code of Civil Procedure section 1167.4 to include a deadline for filing demurrers in unlawful detainer actions.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Code of Civil Procedure Code section 1167.4 to read as follows:

§1167.4

- 1 Notwithstanding any other provision of law, in any action under this chapter:
- 2 (a) Where the defendant files a notice of motion as provided for in subdivision (a) of
- 3 Section 418.10, the time for making the motion shall be not less than three days nor more than
- 4 seven days after the filing of the notice.
- 5 (b) Where the defendant files a demurrer as provided for in subdivision (a) of Section
- 6 430.30, the time for making the motion shall be not less than three days nor more than seven
- 7 days after the filing of the notice.
- 8 ~~(b)~~(c) The service and filing of a notice of motion under subdivision (a) or a demurrer
- 9 under subdivision (b) shall extend the defendant’s time to plead until five days after service ~~upon~~
- 10 ~~him~~ of the written notice of entry of an order denying ~~his~~the motion, except that for good cause
- 11 shown the court may extend the defendant’s time to plead for an additional period not exceeding
- 12 15 days.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: The unlawful detainer law neither explicitly includes nor explicitly excludes provision for demurrer to a complaint. Because the unlawful detainer law contains no specific prohibition against demurrers and there is no discussion of the time frame for demurrer in unlawful detainer proceedings, in some courts the defendant can file a demurrer and have it heard in ordinary course. This is in derogation of the legislative intent that unlawful detainer be a summary proceeding on tight time frames, and can be prejudicial to an unlawful detainer plaintiff who is not receiving rent. By comparison, the notice time frame for summary judgment motions under Code of Civil Procedure section 1170.7 is five days. Also, current subdivision (b) is in the masculine, so we propose making new subdivision (c) gender neutral.

The Solution: This Resolution provides that if a defendant wishes to demur, the time frame for demurrer is the same as that for a motion to quash and render the section gender neutral.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Mary V.J. Cataldo, Esq.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1167.4 to include a deadline for filing demurrers in unlawful detainer actions. This resolution should be approved in principle because eliminating a legally deficient complaint at the pleading stage in an unlawful detainer action, and on an expedited basis, would deter frivolous unlawful detainers and promote justice.

Currently, defendants in unlawful detainer actions can challenge a complaint by filing a motion to quash and have the matter resolved on an expedited schedule. Because there is not a specific provision for demurrers in unlawful detainer actions, courts often set demurrer hearings on a normal law and motion schedule. Doing so is inconsistent with the policy of expediting unlawful detainer actions. This resolution merely allows defendants in unlawful detainer actions to challenge legally deficient complaints by demurring to them and having the hearing on an expedited schedule. It is unjust and inequitable to make a defendant go to trial on a complaint that fails as a matter of law. Further, to ensure an efficient resolution of unlawful detainer actions, this resolution requires that a demurrer be filed within the same time-constraints as those existing for motions to quash.

COUNTERARGUMENTS TO RESOLUTION 06-03-2015

ORANGE COUNTY BAR ASSOCIATION

The concept of providing a limited period of time for a tenant in an unlawful detainer action to have a demurrer heard has substantial merit. Many a tenant has delayed the unlawful detainer process by filing an unmeritorious demurrer and because the unlawful detainer statutes do not provide for an expedited notice period a demurrer can often result in a delay of four to six weeks.

Unfortunately, this resolution is not the solution. Code of Civil Procedure section 1167.4 governs motion to quash service of summons for lack of jurisdiction and motions to dismiss on the grounds of inconvenient forum. Motions to quash and/or dismiss are relatively rare in the unlawful detainer process, need little opposition, and require little in the way of research for the court. Most courts can accommodate such hearings in the time frame required by Section 1167.4. However, with the budget crisis many courts would be extremely hard pressed to be able to schedule a demurrer hearing within three to seven days of its filing. In Los Angeles County there were twenty-five courtrooms hearing unlawful detainer actions but now there are but five. These five courtrooms are extremely busy and the backlog is tremendous. It would be virtually impossible for one of these courts to schedule a demurrer hearing within three to seven days. Although most demurrers arising in a residential unlawful detainer action need very little, if any, written opposition some commercial unlawful detainers involve complicated issues requiring substantial written opposition and court research. The resolution as written would not provide plaintiff with an opportunity to prepare written opposition. The proposed changes to subdivision (c) requiring service upon a defendant of notice that his/her demurrer has been overruled would effectively provide a defendant with substantially more time than the courts generally provide after overruling a demurrer. The objectives of the proponent could be achieved by proposing a resolution similar to Code of Civil Procedure section 1170.7 which governs summary judgments in unlawful detainer actions. A resolution which provides that “a demurrer can be made within the time to plead upon the giving of five days’ notice” would avoid causing issues with the court’s schedule, provide the opportunity to prepare written opposition, and would not lengthen the time for an Answer to be filed after a demurrer is overruled.