

**RESOLUTION 11-04-2015 (as amended and adopted)**

**DIGEST**

Entry of Judgment: Service of Notice

Amends Code of Civil Procedure section 664.5 to clarify that service of a notice of entry of judgment may be made by mail or by personal service.

**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 664.5 to read as follows:

§664.5

1           (a) In any contested action or special proceeding other than a small claims action or an  
2 action or proceeding in which a prevailing party is not represented by counsel, the party  
3 submitting an order or judgment for entry shall prepare and mail or personally serve a copy of  
4 the notice of entry of judgment with a completed proof of service to all parties who have  
5 appeared in the action or proceeding and shall file with the court the original notice of entry of  
6 judgment together with the proof of service ~~by mail~~. This subdivision does not apply in a  
7 proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

8           (b) Promptly upon entry of judgment in a contested action or special proceeding in  
9 which a prevailing party is not represented by counsel, the clerk of the court shall mail notice of  
10 entry of judgment to all parties who have appeared in the action or special proceeding and shall  
11 execute a certificate of such mailing and place it in the court's file in the cause.

12           (c) For purposes of this section, "judgment" includes any judgment, decree, or signed  
13 order from which an appeal lies.

14           (d) Upon order of the court in any action or special proceeding, the clerk shall mail  
15 notice of entry of any judgment or ruling, whether or not appealable.

16           (e) The Judicial Council shall, by January 1, 1999, adopt a rule of court for the purposes  
17 of providing that, upon entry of judgment in a contested action or special proceeding in which a  
18 state statute or regulation has been declared unconstitutional by the court, the Attorney General  
19 is promptly notified of the judgment and that a certificate of that mailing is placed in the court's  
20 file in the cause.

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

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: This statute causes confusion as to whether the order or judgment for entry can be personally served (which can be advantageous as it starts the clock for filing an appeal).

The Solution: This simply removes references to serving by mail.

**IMPACT STATEMENT:**

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

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**RESPONSIBLE FLOOR DELEGATE:** Melissa L. Bustarde, Esq.

**RESOLUTIONS COMMITTEE RECOMMENDATION  
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 664.5 to clarify that service of a notice of entry of judgment may be made by mail or by personal service. This resolution should be disapproved because service of the notice of entry of judgment by mail does not extend the time to file a notice of appeal and therefore personal service will not, as the proponent asserts, affect the commencement of the time within which a party can appeal the judgment.

While at first glance it may seem desirable that a person preparing a notice of entry of order or judgment should have the option of either mailing the notice or personally serving it, there are in fact sound reasons why it is preferable that it be mailed. Mail service requires the furnishing of a proof of service establishing the date of mailing (see Cal. Rules of Court, rule 8.104(a)), which assists the recipient in calendaring any further actions, such as an appeal). Personal service does not, and a busy recipient might have no easy reference point for calendaring future actions. Moreover, personal service of a notice of entry of order or judgment will provide no advantage over mail service because mail service immediately starts the clock for filing an appeal. This is because section 1013, which extends the time for responding to many documents served by mail and other similar means, does not apply to a notice of appeal. (See Code Civ. Proc., § 1013 subds. (a), (c), (e); see also, Cal. Rules of Court, rule 8.104(b); see also, *InSyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, 1134-1135.) Therefore, the proposed amendment may result in more personal service of these notices, and may result in confusion as to when the notice was in fact served.