

RESOLUTION 11-05-2015

DIGEST

Civil Procedure: Motions for Reconsideration Pending at Entry of Judgment

Amends Code of Civil Procedure section 1008 to permit a trial court to hear a motion for reconsideration already pending at the time judgment is entered.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Code of Civil Procedure section 1008, to read as follows:

§1008

1 (a) When an application for an order has been made to a judge, or to a court, and refused
2 in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the
3 order may, within 10 days after service upon the party of written notice of entry of the order and
4 based upon new or different facts, circumstances, or law, make application to the same judge or
5 court that made the order, to reconsider the matter and modify, amend, or revoke the prior order.
6 The party making the application shall state by affidavit what application was made before, when
7 and to what judge, what order or decisions were made, and what new or different facts,
8 circumstances, or law are claimed to be shown.

9 (b) A party who originally made an application for an order which was refused in whole
10 or part, or granted conditionally or on terms, may make a subsequent application for the same
11 order upon new or different facts, circumstances, or law, in which case it shall be shown by
12 affidavit what application was made before, when and to what judge, what order or decisions
13 were made, and what new or different facts, circumstances, or law are claimed to be shown. For
14 a failure to comply with this subdivision, any order made on a subsequent application may be
15 revoked or set aside on ex parte motion.

16 (c) If a court at any time determines that there has been a change of law that warrants it to
17 reconsider a prior order it entered, it may do so on its own motion and enter a different order.

18 (d) A violation of this section may be punished as a contempt and with sanctions as
19 allowed by Section 128.7. In addition, an order made contrary to this section may be revoked by
20 the judge or commissioner who made it, or vacated by a judge of the court in which the action or
21 proceeding is pending.

22 (e) This section specifies the court’s jurisdiction with regard to applications for
23 reconsideration of its orders and renewals of previous motions, and applies to all applications to
24 reconsider any order of a judge or court, or for the renewal of a previous motion, whether the
25 order deciding the previous matter or motion is interim or final. No application to reconsider any
26 order or for the renewal of a previous motion may be considered by any judge or court unless
27 made according to this section.

28 (f) For the purposes of this section, an alleged new or different law shall not include a
29 later enacted statute without a retroactive application.

30 (g) An order denying a motion for reconsideration made pursuant to subdivision (a) is not
31 separately appealable. However, if the order that was the subject of a motion for reconsideration
32 is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from
33 that order.

34 (h) This section applies to all applications for interim orders.
35 (i) The entry of a judgment shall not deprive the court of jurisdiction to rule on a motion
36 for reconsideration brought under this section and pending when judgment is entered, nor shall
37 entry of judgment operate as a denial of a motion for reconsideration brought under this section.
38 The power of the court to rule on a motion brought under this section which is pending when
39 judgment is entered shall expire as specified in Section 660 of this code.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Under current case law, trial courts lose jurisdiction to rule on pending motions for reconsideration when they enter a judgment in the case in relation to the party bringing the motion. (See *APRI Ins. Co. S.A. v. Superior Court* (1999) 76 Cal.App.4th 176, 181-182.) Courts have alternatively construed the entry of judgment as an implied denial of any pending reconsideration motion. (*Nave v. Taggart* (1995) 34 Cal. App. 4th 1173, 1177.) This creates a trap for the unwary who have filed a motion for reconsideration and have a hearing date pending when judgment is entered because they would have to be familiar with this case law *and* incur the expense of requesting the court not enter any proposed judgment until after the hearing. At least one court has attempted to mitigate this trap by holding the trial court has discretion to treat a motion for reconsideration from an order granting summary judgment pending at entry of judgment, as a new trial motion and thereafter rule on the motion within the jurisdictional time limits for ruling on a new trial motion. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193-194.)

This Solution: This Resolution resolves the problem by providing that the trial court does not lose jurisdiction to decide motions for reconsideration that are pending before the court simply because judgment is entered. This benefits the party seeking reconsideration by avoiding a current trap for the unwary and by helping to ensure the party's reconsideration motion is disposed of on the merits. This benefits the prevailing party by allowing for speedy entry of judgment so that rights to post-judgment interest on any awards begin to accrue. This Resolution solves the problem of implied denial by specifying that entry of judgment does not operate as a denial of any pending reconsideration motion. This Resolution also harmonizes the court's extended jurisdiction to hear reconsideration motions by limiting the power to rule on the motion to the same time frame as other post-judgment motions.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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**RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE WITH RECOMMENDED AMENDMENTS**

History:

Similar to Resolution 13-09-2009, which was approved in principle, and subsequently enacted into law in 2011.

Reasons:

This resolution amends Code of Civil Procedure section 1008 to permit a trial court to hear a motion for reconsideration already pending at the time judgment is entered. This resolution should be approved in principle with the recommended amendment (to add the word “in” to the proposed statutory text) because a trial court should be permitted to rule on motions for reconsideration pending at the time judgment is entered, in the same manner that trial courts are permitted to rule on other post-judgment motions brought within the same time frame.

Under current case law, trial courts lose jurisdiction to rule on pending motions for reconsideration when they enter a judgment in the case. (APRI Ins. Co. S.A. v. Superior Court (1999) 76 Cal.App.4th 176, 181-182.) Courts have alternatively construed the entry of judgment as an implied denial of any pending reconsideration motion. (Nave v. Taggart (1995) 34 Cal.App.4th 1173, 1177.) This creates a trap for the unwary who have filed a motion for reconsideration and have a hearing date pending when judgment is entered because they would have to be familiar with this case law and incur the expense of requesting the court not enter any proposed judgment until after the hearing. At least one court has attempted to mitigate this trap by holding the trial court has discretion to treat a motion for reconsideration from an order granting summary judgment, which was pending at entry of judgment, as a new trial motion and thereafter rule on the motion within the jurisdictional time limits for ruling on a new trial motion. (Sole Energy Co. v. Petrominerals Corp. (2005) 128 Cal.App.4th 187, 193-194.)

This resolution resolves the problem by allowing a trial court to rule on a motion for reconsideration that was pending before judgment is entered. This allows the motion to be resolved on the merits, rather than simply resulting in a denial because of an arbitrary loss of jurisdiction. If enacted, this amendment would harmonize a trial court’s jurisdiction to hear motions for reconsideration with its jurisdiction to rule on other post-judgment motions. This will, in turn, ensure that all issues in the case are brought before the trial court, and adjudicated on the merits, so that any appeals may encompass all issues in the case on a substantive level. This resolution is related to Resolution 06-11-2015.