

RESOLUTION 04-09-2016

DIGEST

Inconvenient Forum: Motions to Stay or Dismiss

Amends Code of Civil Procedure section 418.10 to eliminate the waiver of challenges for inconvenient forum or failure to prosecute unless brought concurrently with a demurrer or motion to strike.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 418.10 to read as follows:

§418.10

1 (a) A defendant, on or before the last day of his or her time to plead or within any further
2 time that the court may for good cause allow, may serve and file a notice of motion for one or
3 more of the following purposes:

4 (1) To quash service of summons on the ground of lack of jurisdiction of the court over
5 him or her.

6 (2) To stay or dismiss the action on the ground of inconvenient forum.

7 (3) To dismiss the action pursuant to the applicable provisions of Chapter 1.5
8 (commencing with Section 583.110) of Title 8.

9 (b) The notice shall designate, as the time for making the motion, a date not more than 30
10 days after filing of the notice. The notice shall be served in the same manner, and at the same
11 times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall
12 extend the defendant's time to plead until 15 days after service upon him or her of a written
13 notice of entry of an order denying his or her motion, except that for good cause shown the court
14 may extend the defendant's time to plead for an additional period not exceeding 20 days.

15 (c) If the motion is denied by the trial court, the defendant, within 10 days after service
16 upon him or her of a written notice of entry of an order of the court denying his or her motion, or
17 within any further time not exceeding 20 days that the trial court may for good cause allow, and
18 before pleading, may petition an appropriate reviewing court for a writ of mandate to require the
19 trial court to enter its order quashing the service of summons or staying or dismissing the action.
20 The defendant shall file or enter his or her responsive pleading in the trial court within the time
21 prescribed by subdivision (b) unless, on or before the last day of the defendant's time to plead, he
22 or she serves upon the adverse party and files with the trial court a notice that he or she has
23 petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's
24 time to plead until 10 days after service upon him or her of a written notice of the final judgment
25 in the mandate proceeding. The time to plead may for good cause shown be extended by the trial
26 court for an additional period not exceeding 20 days.

27 (d) No default may be entered against the defendant before expiration of his or her time
28 to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a
29 motion under this section, or application to the court or stipulation of the parties for an extension
30 of the time to plead, shall be deemed a general appearance by the defendant.

31 (e) A defendant or cross-defendant may make a motion under this section and
32 simultaneously answer, demur, or move to strike the complaint or cross-complaint.

33 (1) Notwithstanding Section 1014, no act by a party who makes a motion under this
34 section, including filing an answer, demurrer, or motion to strike constitutes an appearance,
35 unless the court denies the motion made under this section. If the court denies the motion made
36 under this section, the defendant or cross-defendant is not deemed to have generally appeared
37 until entry of the order denying the motion.

38 (2) If the motion made under this section is denied and the defendant or cross-defendant
39 petitions for a writ of mandate pursuant to subdivision (c), the defendant or cross-defendant is
40 not deemed to have generally appeared until the proceedings on the writ petition have finally
41 concluded.

42 (3) Failure to make a motion under this section at the time of filing a demurrer or motion
43 to strike constitutes a waiver of the issues of lack of personal jurisdiction, inadequacy of process,
44 and inadequacy of service of process, ~~inconvenient forum, and delay in prosecution.~~

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Section 418.10 provides the procedure for filing jurisdictional challenges, motions to stay or dismiss for inconvenient forum, and motions to dismiss for delay in prosecution. These are very different motions: jurisdictional challenges come early in the case, while inconvenient forum and delay in prosecution may be raised early but are typically brought later. §418.10 mostly focuses on issues unique to jurisdictional challenges and inadequacy of process and service, including special appearances to challenge those issues. §418.10(e)(3)'s "issue waiver" incentivizes parties to raise jurisdictional issues early in the case. It does not and should not apply to inconvenient forum and delay in prosecution. The legislature recognized this in §410.30, which establishes that a motion for inconvenient forum can be brought whenever it is in the interest of substantial justice, and that the "provisions of Section 418.10 do not apply" to such a motion where movant "has made a general appearance." Case law also establishes that the doctrine of inconvenient forum is not jurisdictional, and filing a demurrer, motion to strike or answer without raising a jurisdictional objection constitutes a general appearance. Because §418.10 provides a confusing catch-all procedure for filing motions, many courts mis-apply it, ignoring §410.30 and arguing issue waiver.

The Solution: Delete "inconvenient forum" and "delay in prosecution" from the issues in section 418.10 that can be waived. This reflects current law and the legislature's intent in enacting §410.30, as well as 418.10's focus on jurisdictional challenges. It preserves the right of parties to specially appear for discrete jurisdictional challenges, while balancing that right with court's interest in having all such jurisdictional motions heard early in the case. It also provides flexibility in cases where a motion to dismiss for inconvenient forum or delay in prosecution cannot be brought at the outset, yet is subsequently appropriate and/or can be brought following threshold discovery establishing grounds for the motion. Finally, the fix avoids future confusion over and mis-application of the issue waiver section of 418.10.

IMPACT STATEMENT

This resolution does not affect any other statute or case law.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 418.10 to eliminate the waiver of challenges for inconvenient forum or failure to prosecute unless brought concurrently with a demurrer or motion to strike. The resolution should be approved in principle because it eliminates confusion in the existing statutes and the possibility that challenges could be waived before they arise.

The appropriate forum may not be apparent to defense counsel in the short time between when the complaint is delivered to counsel and the answer is due. Code of Civil Procedure section 410.30, which governs motions for inconvenient forum when the action should be heard outside of California, has no time limit. Section 410.30 allows the court to stay or dismiss an action when it “finds that in the interest of substantial justice an action should be heard in a forum outside this state.” Section 410.30 states that “the provisions of Section 418.10 do not apply to a motion to stay or dismiss the action by a defendant who has made a general appearance.” This creates confusion. If the defendant filed a demurrer or motion to strike, did the defendant waive the right to file a motion under section 410.30, when they would not have waived that right by filing a general appearance? Or, is the filing of a general appearance after a preliminary motion sufficient to allow the defendant to subsequently bring a motion to stay or dismiss based on inconvenient forum? By eliminating the waiver of an inconvenient forum defense from section 418.10, this resolution eliminates possible confusion between sections 418.10 and 410.30. Motions to dismiss based on delay of prosecution are governed by Code of Civil Procedure sections 583.401 and 583.420, and can be brought if the plaintiff did not serve the complaint within two years, if the matter is not brought to trial within two, three, or five years under certain circumstances, or for various other actions. The waiver of a motion to dismiss for delay in prosecution if not brought with a demurrer would be appropriate only if based upon failure to serve. Other grounds for moving to dismiss for delay of prosecution would not yet have occurred when a demurrer or motion to strike is filed.