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Calif. Fixes Timing Problem For Post-Trial Motions

The California Legislature has finally resolved a long-standing procedural problem involving the misalignment of filing deadlines for the three post-trial motions permitted by statute — motions for new trial (Cal. Civ. Proc. Code § 657 (West 1976)), motions for judgment notwithstanding the verdict (JNOV), id. § 629 (West 2011), and motions to vacate the judgment, id. § 663 (West 1976).



To move for a new trial, a party must file a notice of intention to move for a new trial within 15 days after service (by either the court clerk or a party) of notice of entry of the judgment. Id. § 659(a)(2) (West 1976). By statute, the moving party then has 10 days to file any affidavits that may be needed to support the motion. Id. § 659a (West 1976). (For example, a motion for new trial based on jury misconduct requires supporting affidavits. Id. § 657 para. 2; id. § 658.) By rule of court, the moving party also has 10 days to file a supporting memorandum of points and authorities. Cal. R. Ct. 3.1600(a). Within 10 days thereafter, any adverse party may file an opposition. Id.

Until the Legislature stepped in, the timing for a JNOV motion or motion to vacate was quite different.

Like a new trial motion, a motion for JNOV or to vacate the judgment has to be filed within 15 days of service of notice of entry of the judgment. Cal. Civ. Proc. Code § 629 para. 2; id. § 663a(a)(2) (West 1976). But unlike a new trial motion, no current rule of court or statute provides any extension for the filing of a supporting memorandum of points and authorities. Under the existing statutory scheme, a party must file an entire JNOV motion or motion to vacate, complete with supporting points and authorities, within fifteen days of notice of entry of the judgment — even though that same party would have an additional 10 days to submit briefing on a companion motion for new trial. (Unlike the additional time available for submitting briefing on a new trial motion, a motion for JNOV or motion to vacate would be defective if not accompanied (or preceded by) a memorandum of points and authorities. Id. § 1010 (West 2009).) This anomaly has been a significant problem because arguments made in support of the different post-trial motions are often related and, to ensure consistency, should be presented in a coordinated if not consolidated fashion.

To avoid this problem, a party planning to file a new trial motion and one of the other two post-trial motions will sometimes ask opposing counsel to agree to a coordinated briefing schedule to allow, for example, the memorandum of points and authorities in support of a motion for JNOV to be filed at the same time as the memorandum of points and authorities in support of a new trial motion. But this “work-around” often fails because it not only depends on a level of cooperation between opposing attorneys that is often lacking, but also on the trial court’s willingness to issue an order authorizing a briefing schedule that varies from the rules.

Absent a stipulation of the parties to a consolidated briefing schedule, parties facing the misalignment of schedules for briefing post-trial motions have had to seek an ex parte order from the trial court authorizing a consolidated briefing schedule. But in the face of opposition to ex parte relief, trial judges often fall back on the schedule specified in the Code of Civil

Procedure and Rules of Court, and leave the misalignment unresolved.

Enter the Legislature, riding to the rescue by recently passing Assembly Bill 1659. According to the Assembly Committee synopsis, this “non-controversial bill prudently seeks to conform the filing deadlines and procedures for three post-trial motions — motion for a new trial, motion for judgment notwithstanding the verdict (JNOV), and motion to vacate the judgment” in order to “helpfully align the deadlines for these three motions.”

The new bill went into effect Jan. 1 and amends the statutes governing JNOV motions and motions to vacate to create a briefing schedule that is tied to the statute governing new trial motions, California Civil Procedure Code section 659a. That statute will now provide that:

[w]ithin 10 days of filing the notice [of intention to move for new trial], the moving party shall serve upon all other parties and file any brief and accompanying documents, including affidavits in support of the motion. The other parties shall have 10 days after that service within which to serve upon the moving party and file any opposing briefs and accompanying documents, including counter-affidavits. The moving party shall have five days after that service to file any reply brief and accompanying documents. These deadlines may, for good cause shown by affidavit or by written stipulation of the parties, be extended by any judgment for an additional period not to exceed 10 days.

In other words, the briefing on combinations of these three post-trial motions can now be filed simultaneously, eliminating any need for cooperation among counsel or ex parte relief from trial courts to align the filing deadlines. Significantly, in addition to coordinating the briefing schedule for these post-trial motions, the new statute confirms the previously uncertain right of the moving party to file a reply brief, as well as the right of both sides to seek briefing extensions of up to 10 days. In sum, the new coordinated procedure governing post-trial motions represents a good day’s work by the Legislature to solve a long-standing procedural anomaly.

—By David M. Axelrad and John A. Taylor Jr., Horvitz & Levy LLP

David Axelrad and John Taylor Jr. are partners at Horvitz & Levy in Encino, California. Taylor is a former member of the Judicial Council Appellate Advisory Committee of California.