Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
December 2016 Issue

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Ball of confusion

Deconstructing "Notice of Entry": There is no single definition, yet its date triggers many deadlines

"*Notice of Entry*" – Three simple words, yet one of the most important procedural concepts in state-court civil litigation. "Notice of entry" governs jurisdictional deadlines for filing (and ruling on) post judgment motions; for reconsideration of orders; and for filing notices of appeal and writ proceedings.

Given the principal role of notice of entry in triggering these deadlines, one would expect a uniform rule defining what is, and what is not, effective notice of entry of a judgment or order.

Dream on. There is no single definition of notice of entry, and whether the service of a particular document triggers a particular deadline is governed by an array of sloppily written and facially conflicting statutes that have, in turn, spawned a slew of appellate court opinions attempting to sort out the ball of confusion.

The problem

Whether the service of a particular document constitutes notice of entry of a judgment or order, that in turn is effective to activate jurisdictional deadlines for relief, varies with the particular deadline being triggered. For some deadlines, the service of a copy of the file-stamped judgment or order itself, with or without an attached proof of service, is sufficient to start the clock. Other deadlines are triggered by a formal document that is entitled "Notice of Entry," with or without a copy of the judgment or order, as long as the document is correctly labeled.

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Compounding the problem is that some jurisdictional deadlines begin to run only when service is made "upon" the party whose further action is governed by the deadline (i.e., service is effective only if made by the opposing party), while other deadlines are triggered regardless of who initiates service.

Completing the muddle is the elusive effect of notice of entry served by the court clerk. In some situations, service by the clerk is sufficient, but only if the judgment or order is "filed endorsed" and there is a clear and unambiguous certificate of service that shows the date it was mailed. Yet in other circumstances, service by the clerk is effective *only* if the served document states on its face that the clerk's service is pursuant to court order or section 664.5 of the Code of Civil Procedure.

And what of a "Notice of Ruling" that summarizes the judge's decision? It's usually useless.

Confused? Most of us are. But the importance of ascertaining whether you have been served with effective notice of entry (or that you have served the opposing party effectively) cannot be overstated. If you are the losing party, failure to recognize effective service can result in losing your client's right to seek relief, including the right to appeal. On the other hand, if you are the prevailing party, failing to serve an effective notice of entry on your opponent can extend their time to seek relief to as long as 180 days from entry of judgment.

Where to begin?

Whether service of a particular document triggers the running of a statutory deadline can only be determined by identifying the deadline and working backwards. What constitutes notice of entry that triggers a post-judgment motion deadline, for example, is different than the notice of entry that triggers the deadline for filing a notice of appeal.

So let's start with the basics.

What is a *judgment*?

A judgment is the final determination of the rights of the parties in an action or proceeding (Code Civ. Proc., § 577.) Its form can vary, but it must be a document that leaves no issue for future consideration except the fact of compliance or noncompliance with the terms. (*Griset v. Fair Political Practices Com'n* (2001) 25 Cal.4th 688, 698.) A judgment is not the jury's verdict form (see, e.g., Code Civ. Proc., § 664, distinguishing verdict from the judgment) and it is (usually) not the trial court's statement of decision. (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901.)

What is an *order*?

An order is a direction of a court or judge, made or entered in a writing and not included in a judgment. (Code Civ. Proc., § 1003.) Thus, an order is not the tentative ruling. (*California Fair Plan Assn. v. Politi* (1990) 220 Cal.App.3d 1612, 1617.) Nor is it the oral disposition at hearing. It is instead the written formal order signed by the court or a minute order entered by the court clerk. (Rules of Court, rule 3.1312 [directing prevailing party to prepare formal order unless court orders otherwise] and 8.1312(c)(2), [distinguishing for notice-of-appeal purposes a minute order that directs the preparation of a formal order].)

What is *"entry"*?

Here's a fun fact: our courts no longer "enter" orders or judgments. The term "entry" is archaic, which only contributes to the confusion.

"Entry" dates back to 19th Century procedures when court clerks entered a notation in a book known as the "judgment book," and could do so on a day different than the date the judgment was "filed" into the court's file. Thus the date of entry could be different than the date of filing. Our courts no longer use "judgment books," however, and when a judgment is entered in the register of actions or the court's electronic data-processing systems, the date shown by the filed-stamp, is the date of entry (see Code Civ. Proc., §§ 668, 668.5.)

As the Supreme Court explained over a decade ago, the concept of "entry," as distinct from filing, has lost its utility, and "its survival has become a frequent source of confusion... Its complete removal from our system of civil procedure will, however, require an extensive statutory revision by the Legislature." (*Palmer v. GTE California Inc.* (2003) 30 Cal.4th 1265, 1268 at fn. 2.)

What is *notice of entry*?

The obligation to serve "notice of entry" of a judgment or order is established by statute and court rules.

For judgments, the party who submits the judgment for entry in any contested action or special proceeding (except a small claims action or a proceeding where the prevailing party is not represented by counsel) is required to prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and to file with the court the original notice of entry of judgment together with the proof of service by mail. (Code Civ. Proc. 664.5(a).) The clerk is required to serve notice of entry in civil proceedings only where the prevailing party is unrepresented, or upon order of the court. (Code Civ. Proc. §664.5 (subds. b & d.)

As for orders, section 1019.5 of the Code of Civil Procedure requires the party prevailing on a motion to give notice of a court's "decision or order" unless notice is waived. But if the court took the motion under submission, the clerk must give notice of the eventual ruling, although that notice may not be sufficient to constitute notice of entry. (Rule of Court 3.1109.)

What *is* and what *is not* effective Notice of Entry?

The incongruence between sections 664.5 and 1019.5 of the Code of Civil Procedure, and various other statutes and Rules of Court establishing deadlines for post-trial motions and notices of appeal, has resulted in numerous appellate court opinions, including at least three Supreme Court cases, attempting to reconcile the rules for notice of entry in contexts where they trigger jurisdictional deadlines. (See, e.g., *Van Beurden Insurance Services, Inc. v. Customized Worldwide Weather Insurance Agency, Inc.* (1997) 15 Cal.4th 51*; Palmer v. GTE California Inc.,* 30 Cal.4th at p. 1265; and

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Alan v. American Honda Motor Co., Inc., 40 Cal.4th at p. 894.) Those cases, in turn, have created special and contradictory rules governing the sufficiency of notice of entry as applied to specific jurisdictional deadlines.

Thus instead of asking whether the service of a particular document is effective in the abstract to start the clock on a deadline, one must work backwards from the specific remedy that you may be seeking, and determine whether the document triggers that particular deadline.

Post-judgment motions

The three common post-judgment motions (motion for new trial; motion for judgment notwithstanding the verdict; and motion to vacate judgment) are all governed by the same jurisdictional deadlines flowing from the service of notice of entry of the judgment. (See Code Civ. Proc., §§ 629(b); 659; 660 and 663a.) But as will be seen, in this context, notice of entry is not what it seems.

There are, in fact, three jurisdictional deadlines arising from these post-judgment motions: the deadline for filing the mandatory notice of intent to file the motions; the jurisdictional deadline within which the trial court must rule; and the extension of the deadline to file a notice of appeal that flows from the denial of any of these motions.

Notice of Intent: Each of the three post-judgment motions requires an initial notice of intent that must be filed within 15 days of mailing written notice of entry of judgment by the clerk pursuant to Code of Civil Procedure section 664.5 or service upon the moving party of written notice of entry by another party; or, if no notice of entry is served, within 180 days of entry of the judgment. (Code Civ. Proc. §§ 629(b); 659(a); 663a(a)(2),(d).)

For the purpose of triggering the 15-day deadline the notice of entry must be made on the party moving for a post-judgment motion by another party. (*Marony v. Iacobsohn* (2015) 233 Cal.App.4th 473, 480-481.) In other words, service of notice of entry by the party moving for post-judgment relief does not trigger that party's deadline.

More important, the notice of entry need not be a formal notice. Service of a conformed copy of the judgment – even absent a proof of service – is sufficient to start the clock running on the 15-day jurisdictional period. (*Palmer v. GTE California Inc.,* 30 Cal.4th at pp. 1276-1277.)

However, service of notice of entry by the clerk is only effective to start the 15-day clock if that notice states on its face that it is served pursuant to Code of Civil Procedure section 664.5 or by order of the court, and the clerk's certificate of mailing is filed. (*Van Beurden Insurance Services, Inc. v. Customized Worldwide Weather Insurance Agency, Inc.*, 15 Cal.4th at p. 64.) The absence of this language on the face of the clerk's notice of entry will not render service effective (*Ibid.*)

The court's jurisdiction to rule: The court has a jurisdictional, 60-day period of time to rule on the post-judgment motion. If the motion is not ruled on within that period, it is deemed denied by operation of law. (Code Civ. Proc. § 660.) That 60-day period begins with the filing of the notice of intent if filed before service of notice of entry. (*Ibid.*) But in the more common situation, the 60-day period begins with the service of notice of entry. (*Ibid.*) Thus the court's jurisdiction to act on any of the post-judgment motions terminates 60 days after the prevailing party served a confirmed copy of the judgment on the moving party, even if unaccompanied by a proof of service and even if no proof of service is filed in court. (*Palmer v. GTE California Inc.,* 30 Cal.4th at pp. 1276-1277.) An order purporting to grant a new trial that is filed after this deadline is void. (*Ibid.*)

Extension of time to file notice of appeal: An order denying any of the three post-judgment motions will extend the time to file a notice of appeal by 30 days from the service by a party or the clerk of a copy of the order *or* a notice of entry of that order. (Rule of Court rule 8.108(b)(1)(A);(c)(1);(d)(1)(A).) But here is the tricky part: that 30-day extension of time to appeal is also triggered by the denial of the post-judgment motion by operation of law, or 90 days after the filing of the notice of intent to move to vacate, without the necessity of any notice at all. (Rule of Court rule, 8.108(b)(1)(B); (c)(2); (d(1)(B).) Once the post-judgment motion is deemed denied by operation of law, the new clock for filing a notice of appeal begins to run absent any formal notice by the court or the opposing party, putting the duty of diligence squarely on the appealing party.

Motions for reconsideration

Any party who is affected by a court's order may seek reconsideration on new or different facts, circumstances or law within ten days "after service *upon the party* of written notice of entry of the order…" (Code Civ. Proc., § 1008(a).) Thus on its face, the ten-day clock begins to run only once the party seeking reconsideration has been served, i.e., a party's own notice of entry will not start the reconsideration clock as to that party.

But there is an apparent split of opinion as to what constitutes written notice of entry for reconsideration purposes. In *Wilson v. Science Applications International Corp.* (1997) 52 Cal.App.4th 1025, 1033 at fn.3, the court held, in dicta, that the ten-day period to seek reconsideration runs from the date that the moving party is served with a copy of the order. However, in *Forrest v. State of California Department of Corporations* (2007) 150 Cal.App.4th 183, 203 and fns. 3,5, the Court held that the ten-day period runs from with service of the notice of entry by the prevailing party pursuant to Code Civ. Proc. § 1019.5 and *not* from the clerk's earlier service of an actual copy of the order itself.

Equally important, the 30-day extension of time to file a notice of appeal that results from an unsuccessful motion for reconsideration of an appealable order (Rule of Court, rule 8.108(d)(1)), does not begin to run until the clerk or a party serves notice of entry of the order denying the motion. (*Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 252.)

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Notice of appeal:

We are all familiar with the rule that the deadline for filing a notice of appeal is usually 60 days from notice of entry of the judgment or appealable order. (Rule of Court, rule 8.104.) Beyond that, however, the definition of notice of entry for purpose of the appellate deadline is a world unto itself.

First, the 60-day deadline runs from the service by the clerk or a party of a document entitled "notice of entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served; or, service of "a document entitled 'notice of entry' of judgment by any party, or from service of a filed-endorsed copy of the judgment accompanied by a proof of service." If service is rendered by both a party and the clerk, the earliest of the services trigger the time period. (Rule of Court, rule 8.104(a).)

So to unpack this:

If service is effected by the clerk, the document must be entitled "notice of entry" of judgment, showing the date of service. The document must be correctly labeled or the notice will have no effect. (*Alan v. American Honda Motor Company* (2007) 40 Cal.4th at p. 903.)

Alternatively, service of a filed-stamped copy of the judgment or order itself, accompanied by a proof of service, will trigger the running of the clock on a notice of appeal. But the service of a judgment or order that does not show its filing date or is accompanied by an ambiguous proof of service will not start the clock. (*McGuinness v. Johnson* (2015) 243 Cal.App.4th 602.)

Further, unlike the deadline for a post-judgment motion that starts with service by the opposing party or by the clerk only if done pursuant to Code of Civil Procedure section 664.5 or court order, for notice-of-appeal purposes, service by any party or by the clerk – even if not done by court order – will start
the clock running. (Rule of Court, rule 8.104(a)(1)(A).) Thus if you are the party intending to appeal, your own service of notice of entry or a copy of the judgment or order will start your own clock.

Examples of what does not start the notice of appeal clock ticking include service of a minute order that directs the preparation of a written order, in which case filing and service of the formal, signed order that governs. (Rule of Court, rule 8.104(c)(2)), and a self-styled "Notice of Ruling" unless a filed-stamped copy of appealable order or judgment is attached. (*20th Century Insurance Co. v. Superior Court* (1994) 28 Cal.App.4th 666, 671-672.)

Writ petitions:

A number of statutes allow (or restrict) appellate review of specified interlocutory orders by way of a petition for writ of mandate, and impose short deadlines for seeking such relief, often 10 or 20 days. But many of these statutes describe the triggering notice in subtly different ways, creating traps for parties whose only recourse might be such a statutory writ.

Some statutory writs must be filed within the allotted after "service of written notice of entry of the court's order." (See, e.g., Code Civ. Proc., § 170.3(d) [judicial disqualification orders]. But other writs vary.

• *Motion to Change Venue*: "Service of written notice of the order." (Code Civ. Proc. § 400; note no reference to "entry" of the order).

• *Order denying MSJ;* "service *upon him or her* of a written notice of entry of the order." (Code Civ. Proc., § 437c(m)(1), italics added.) But the clerk's mailing of a copy of a minute order has been held effective to start the clock. (*Sturm, Ruger & Co. v. Superior Court* (1985) 164 Cal.App.3d 579, 582.) In a 2005 unpublished opinion, a Court of Appeal held that the attachment of the order to a letter from opposing counsel was not sufficient to trigger the writ deadline.

• *Order denying Motion to Quash Service of Summons*: "Service *upon him or her* of a written notice of entry of an order of the court denying *his or her* motion…" (Code Civ. Proc. § 418.10(c), italics added.)

• *Good Faith Settlement order*: When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved may file a petition for writ of mandate with 20 days of "service of written notice of the *determination…*" (Code Civ. Proc., § 877.6(e).) This atypical language has been held to not require *service* of a copy of the order or notice that an actual ruling has been entered. (*Tiffin Motorhomes, Inc. v. Superior Court* (2011) 202 Cal.App.4th 24, 30-31.)

• *Order denying or granting motion to expunge lis pendens*: "Service of written notice of the order by the court or any party." (Code Civ. Proc., § 405.39): In *Okuda v. Superior Court* (1983) 144 Cal.App.3d 135, 138, the court held that a notice of ruling mailed by clerk before the order was actually entered did not trigger the deadline for filing a writ petition.

What is the effect of waiving notice?

At the close of law-and-motion hearings, judges routinely invite counsel to "waive notice," and counsel is often happy to do so without considering the consequences.

If the order in question is appealable, the effect of waiving notice is to extend the time to file a notice of appeal to 180 days from entry of the order, unless the clerk or a party services notice of entry or a file-stamped copy of the order notwithstanding the waiver. (Rule of Court, rule 8.104(a)(3); *In re Marriage of Lin* (2014) 225 Cal.App.4th 471, 476.) If the order is subject to a short, statutory-writ deadline triggered by service of a copy of the order or a notice of entry, that waiver of notice arguably extends the normal, short period indefinitely, or for as long as 180 days. The same is true for extending the 10-day window for filing a Motion for Reconsideration (Code Civ. Proc., § 1008(a.)

What is the effect of a notice of ruling?

Attorneys often prepare a self-styled "Notice of Ruling" that attaches a tentative order or minute order, or worse, simply recaps the gist of the court's decision. But there is no statute or rule defining a notice of ruling, and in many situations such a notice has no effect whatsoever on

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triggering deadlines. A notice of ruling served by a party that purports to summarize the court's order is not an order, and it does not start the clock for an appeal or writ petition. (*Shpiller v. Harry C's Redlands* (1993) 13 Cal.App.4th 1177, 1179; see also *20th Century Insurance Co. v. Superior Court*, 28 Cal.App.4th at pp. 671-672 [a document entitled "notice of ruling" that is not accompanied by a filed-stamped copy of the appealable order or judgment does not start the 60-day clock for filing a notice of appeal.)

When notice does not matter

A motion to vacate pursuant to Code of Civil Procedure section 473(b) must be filed within six months of entry of the targeted order or judgment, without regard to the service of notice of entry or a copy of the order or judgment. However, if the order or judgment affects the right to ownership of real or personal property, service of notice of that order or judgment that expressly warns the party that his or her time to move to vacate is 90 days will shorten the time period to 90 days from the date of service. (Code Civ. Proc. § 473(b).)

In federal court, the deadlines do not flow from notice of entry. Even though federal rules require the court, and allow a party, to serve notice of entry of an order or judgment (FRCP 77(b)), the deadline for filing a notice of appeal is not affected by that service. The deadline runs from entry itself (FRAP 4(a)(1)(A)), although defective service of notice is grounds to seek an order reopening the time to file a notice of appeal. (FRCP 4(a)(6)(A).) The deadlines for seeking relief from a void or defective order or judgment, and for a Motion for New trial, also runs from entry, and is not affected by the date of service. (FRCP 59(b),(e); 60(c)(1).)

Practical advice

There is no single rule that defines or governs the meaning and effect of notice of entry. But a few simple guidelines can be distilled from the various statutes, rules of court, and cases, and diligence can keep you safe rather than sorry.

If you are the prevailing party, you will want to shorten the jurisdictional time period for the opposing party to seek any form of relief, whether it be reconsideration, a post-judgment motion, or a writ or appeal. To do so, serve the opposing party with a formal "notice of entry" of that judgment or order to which is attached a filed-stamped copy of the judgment or order. If no formal order was prepared, then obtain a file-stamped copy of the clerk's minute order and serve that with the notice of entry. If there is no such file-stamped minute order, prepare a formal order and submit it for the court's signature and entry, and serve that. Be sure that the proof of service for the notice of entry explicitly describes the document (e.g., notice of entry of [order or judgment] entered on [date] attached to file-stamped copy of the [order or judgment]. A proof of service that mischaracterizes the document being served may nullify the effect of the service.

If you are the losing party and considering seeking relief, be very careful to monitor your mail and deliveries for receipt of any form of a notice of entry or a copy of the judgment or order itself. Instruct your staff to immediately advise you upon receipt of any copy of an order, judgment *or* a document entitled "notice of entry," whether from opposing counsel or from the court, and calendar your deadlines from there. Remember that the Code of Civil Procedure section 1013 extensions of time for mailing, etc., may or may not apply to your particular deadline; check the statute if you are not sure.

Finally, when in doubt, assume that the clock is ticking. Seeking early relief is rarely a problem. Seeking relief late can be a disaster.

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