

Rolling, Rolling, Rolling, Keep Those Deadlines Rolling
By Audrey Priolo, Litigation Review Attorney

On July 4, Southern Californians felt the unsettling feeling of a 6.4 rolling magnitude earthquake. My heart certainly skipped a beat for a moment waiting to see if the “big one” was coming. Similarly, many attorneys have had the same heart stopping feeling about procedural deadlines. To avoid these panic moments, it is important to know the minutiae of legal deadlines.

Most legal professionals are fully aware of the existence of codes that roll procedural deadlines falling on weekends and holidays. For example, Federal Rule of Civil Procedure 6(a)(1)(C) states, “if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” In California, Code of Civil Procedure Section 12a, gives the applicable rule, “If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.” Ostensibly, these rules seem simple. However, not all rolling statutes can be treated equally. When a second procedure rule is layered onto the first, things become much more complex.

Start with the Federal service offset. FRCP 6(d) states:

Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added *after the period would otherwise expire* under Rule 6(a). (emphasis added).

Compare California Code of Civil Procedure’s service offset. CCP 1013(a) states:

“...but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, *which time period or date is prescribed by statute or rule of court, shall be extended* five calendar days, upon service by mail...” (emphasis added).

Notice that the FRCP indicates the service offset is added after the original calculation would expire, but the CCP states the time period is extended. Accordingly, calculations in California State Court and California Federal Court cannot be treated the same. In order to ensure that the FRCP is fully abided by, a party must complete the full time calculation, including a weekend/holiday roll (if applicable) - then the service offset is added and another weekend/holiday roll is applied (if applicable). However, in California, the weekend/holiday roll is only applied once.

Each jurisdiction gives differing language regarding how service offsets should be applied. Accordingly, it is important for diligent practitioners to check each jurisdiction to ensure legal filings are in full compliance and procedural deadlines are properly calculated. Further, it is always possible that individual courts will interpret cases and codes uniquely. Therefore, it is always the best practice to use the most conservative deadline possible to ensure that a deadline is met and not missed.

Audrey L. Priolo is a licensed California attorney with over 13 years of litigation and trial experience, who now works at American LegalNet as a Litigation Review Attorney. Questions may be directed to apriolo@alncorp.com