

Focus

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'Palmer' Clarifies Valid Written Notice of an Entry of Judgment

By James C. Martin
and Benjamin G. Shatz

Properly calendaring judgment-notwithstanding-the-verdict and new-trial motions is especially important because timing traps for the unwary exist at both ends of the process. The party must file the motion, and the judge must rule, within strict statutory deadlines.

Because a scheduling error may cause the loss of the right to consideration of the motions and to a subsequent appeal involving issues raised in the motions, understanding what triggers the commencement of the relevant statutory periods is essential.

The time within which to file a notice of intention to file a motion for new trial or a motion for judgment notwithstanding the verdict usually begins to run on the service of written notice of entry of the judgment. Until June, the cases were unclear, however, on what qualifies as valid written notice.

A recent Supreme Court decision, *Palmer v. GTE California Inc.*, 30 Cal.4th

filed within 15 days from either "mailing notice of entry of judgment by the clerk ... pursuant to [Code of Civil Procedure] Section 664.5" or service by any party of "written notice of entry of judgment." Code of Civil Procedure Section 629, 659.

This notice by the court clerk or a party also triggers a 60-day deadline for the court to rule on the motions. Code of Civil Procedure Section 660. Significantly, these statutes impose on the clerk the requirements of Section 664.5, involving the service and filing of a document titled "Notice of Entry of Judgment," along with a proof of service.

Despite the seeming clarity of this statutory language, questions arose. For instance, must a party receive a separately served and filed document titled "Notice of Entry of Judgment" to trigger these deadlines? Or does actual notice of the judgment — perhaps by fax or personal delivery, with or without any proof of service — qualify as adequate written notice? Must parties also comply with the formalities imposed on court clerks for giving notice?

In 1997, the Supreme Court addressed the requirements necessary for a court clerk's notice of entry of judgment, finding that the clerk's mailing of a conformed copy of the judgment did not trigger the time to file post-trial motions. *Van Beurden Ins. Services Inc. v. Customized Worldwide Weather Ins. Agency Inc.*, 15 Cal.4th 51 (1997). This decision was premised on the statutory language requiring a clerk's notice of entry of judgment to comply with Section 664.5's added requirements.

In dicta, *Van Beurden* noted that a party's notice of entry of judgment also should comply with Section 664.5; for example, the original notice of entry or judgment and proof of service must be filed with the court.

This dicta, not grounded in the statutory language, resulted in confusing and contradictory precedent. For instance, in *People v. Cherry Highland Properties*, 76 Cal.App.4th 257 (4th Dist. 1999), the court construed *Van Beurden's* dicta as a holding that a party's notice of entry of judgment must comply with the formalities of a clerk's notice.

Cherry Highland held that the 60-day period to rule on a new-trial motion began on the date of filing the proof of service of the notice of entry of judgment. This contradicted pre-*Van Beurden* precedent that filing a notice of entry of judgment or a proof of service of the notice was unnecessary.

A direct conflict then arose between *Cherry Highland* and *Dodge v. Superior Court*, 77 Cal.App.4th 513 (4th Dist. 2000), in which defense counsel was served personally with a conformed copy of the judgment. The plaintiff's process server did not execute a proof of service until six days later, and the plaintiff did not file that proof of service until a month later.

Distinguishing *Cherry Highland* and *Van Beurden*, *Dodge* held that personal service of a conformed copy of a judgment was the legal equivalent of service of written notice, so that the 60-day period for ruling on post-trial motions began on the date of personal service, not the date of filing the proof of service.



Counsel should calendar post-trial motions after receipt of any document appearing to be a copy of the judgment entered on the verdict.

1265 (June 26, 2003), clarifies what constitutes written notice. *Palmer* holds that a party may satisfy the statutory "written notice of entry of judgment" requirement by serving a copy of the file-stamped judgment. The party need not serve a separate document titled "Notice of Entry of Judgment."

The natural starting point for determining what triggers the statutory filing deadline is the language of the relevant statutes. Under the judgment-notwithstanding-the-verdict and new-trial statutes, such motions typically must be

Until 1997, the case law indicated that a separate "Notice of Entry of Judgment" was not required to be served or filed with a formal proof of service to trigger the post-trial deadlines. See *Ramirez v. Moran*, 201 Cal.App.3d 431 (4th Dist. 1988) (mailing conformed copy of judgment, even without customary affidavit-format "proof of service," satisfied post-trial motions' "written notice" requirement); *Tri-County Elevator Co. v. Superior Court*, 134 Cal.App.3d 271 (2nd Dist. 1982) (party's mailing conformed copy of judgment qualifies as "written notice").

In *Palmer*, the Supreme Court stepped in to resolve this conflict. There, a GTE employee won a \$790,000 jury verdict for false imprisonment and gender harassment in the workplace. The plaintiff's attorney mailed a conformed copy of the judgment to GTE's attorney on Feb. 26, 1999. When told by GTE's counsel and the court clerk that mailing a conformed judgment did not satisfy the notice requirements of Section 664.5 and *Van Beurden*, the plaintiff's counsel served a separate document titled "Notice of Entry of Judgment" on March 9 and filed it March 10, attaching a copy of the judgment and proof of the Feb. 26 service.

On March 24 — 26 days after the plaintiff's service of a conformed (file-stamped) copy of the judgment — GTE moved for judgment notwithstanding the verdict and a new trial. On May 3 — 66 days after the plaintiff's service of the conformed copy of the judgment — the Los Angeles Superior Court granted judgment notwithstanding the verdict and, alternatively, ordered a new trial.

The 2nd District Court of Appeal reversed, however, finding GTE's motions and the trial court's rulings were untimely because they were beyond the respective 15- and 60-day jurisdictional time limits triggered by service of the conformed judgment. The Supreme Court granted review to resolve whether a party's service of a file-stamped copy of a judgment sufficed to trigger the post-trial motion jurisdictional time frames.

The Supreme Court affirmed, rejecting GTE's argument that only serving and filing a document titled "Notice of Entry of Judgment" triggered the jurisdictional time for filing and ruling on a new-trial or judgment-notwithstanding-the-verdict motion.

The court held that the post-trial motion deadlines begin on the date that the moving party is served with the notice of entry of judgment, which need not be a separate document titled "Notice of Entry of Judgment." Instead, service by a party of a file-stamped judgment suffices (where filing is synonymous with entry, which is true in nearly every California county). Moreover, no document need be filed with the trial court.

Palmer typifies a trend that service of a conformed judgment alone may trigger jurisdictional deadlines. See California Rule of Court 2(a)(2) (serving conformed copy of judgment starts 60-day period for filing appeal). This trend, and the reasoning of *Palmer*, logically may apply to other deadlines triggered by written notice of entry. See *Soderling v Renix Inc.*, 2003 WL 21538126 (Cal. App. 4th Dist. July 8, 2003) (unpublished opinion finding memorandum of costs untimely because service, not filing, of notice of entry of judgment triggers 15-day deadline).

Together, *Palmer* and *Van Beurden* clarify what is necessary to trigger the jurisdictional deadlines governing post-trial motions.

■ **Notice by court clerks.** For court clerks to give valid notice of the entry of judgment to trigger the post-trial deadlines, the clerk must mail either a document titled "notice of entry" or a conformed copy of the judgment that states affirmatively that it is given on "order of the court" or "under section 664.5." The clerk also must execute a certificate of mailing and place it in the file.

■ **Notice by a party.** For a party to give notice of entry of judgment, the formalities applicable to notices from the clerk do not apply. Indeed, no particular form of notice is required, and serving a file-stamped copy of the judgment alone suffices. No separate "notice" document (or proof of service) need be served or filed. Conceivably, then, simply faxing a conformed judgment to opposing counsel, without any proof of service, would suffice.

Palmer also contains several important lessons for practitioners. First, service of a conformed copy of the judgment from opposing counsel triggers the post-trial deadlines. The recipient of such a document should not wait to receive anything more. If service of a conformed copy of the judgment is followed by the filing or service of any separate "notice," counsel should not think that the time starts anew.

Second, now that counsel need not create or serve a separate "notice" document, parties more easily can trigger the relatively short deadlines for filing post-trial motions. Counsel, therefore, will need to get moving promptly on the preparation of post-trial pleadings.

Third, because no proof of service need be filed, a trial court may have difficulty determining when it loses jurisdiction to rule on a post-trial motion. Counsel, therefore, should assist the trial court by promptly filing the served document and a proof of service and informing the trial court when service was made and when the court's jurisdiction to rule expires.

In the end, the final word from *Palmer* is prudence. Once a jury verdict is rendered, counsel contemplating the filing of post-trial motions should be conservative and calendar those motions after receipt of any document appearing to be a copy of the judgment entered on the verdict. By using that approach, counsel can avoid missing the post-trial jurisdictional filing deadlines.

James C. Martin of Reed Smith Crosby Heafey is a member of the firm's appellate group and of the American and California academies of appellate lawyers. **Benjamin G. Shatz** is of-counsel in the firm's appellate group. Both are certified appellate law specialists.