

**RESOLUTION ABC-01-2020**

**AREA OF LAW** (Optional): Civil Procedure

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 3287 and 3291 to read as follows:

1 § 3287

2 (a) A person who is entitled to recover damages certain, or capable of being made certain  
3 by calculation, and the right to recover which is vested in the person upon a particular day, is  
4 entitled also to recover interest thereon from that day, except when the debtor is prevented by  
5 law, or by the act of the creditor from paying the debt. This section is applicable to recovery of  
6 damages and interest from any debtor, including the state or any county, city, city and county,  
7 municipal corporation, public district, public agency, or any political subdivision of the state.

8 (b) Every person who is entitled under any judgment to receive damages based upon a  
9 cause of action in contract where the claim was unliquidated, may also recover interest thereon  
10 from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event  
11 earlier than the date the action was filed.

12 (c) Unless another statute provides a different interest rate, in a tax or fee claim against a  
13 public entity that results in a judgment against the public entity, interest shall accrue at a rate  
14 equal to the weekly average one year constant maturity United States Treasury yield, but shall  
15 not exceed 7 percent per annum. That rate shall control until the judgment becomes enforceable  
16 under Section 965.5 or 970.1 of the Government Code, at which time interest shall accrue at an  
17 annual rate equal to the weekly average one year constant maturity United States Treasury yield  
18 at the time of the judgment plus 2 percent, but shall not exceed 7 percent per annum.

19 (d) A motion to recover interest under this section must be filed no later than fifteen days  
20 after written notice of entry of judgment.

21 § 3291

22 (a) In any action brought to recover damages for personal injury sustained by any person  
23 resulting from or occasioned by the tort of any other person, corporation, association, or  
24 partnership, whether by negligence or by willful intent of the other person, corporation,  
25 association, or partnership, and whether the injury was fatal or otherwise, it is lawful for the  
26 plaintiff in the complaint to claim interest on the damages alleged as provided in this section.

27 (b) If the plaintiff makes an offer pursuant to Section 998 of the Code of Civil Procedure  
28 which the defendant does not accept prior to trial or within 30 days, whichever occurs first, and  
29 the plaintiff obtains a more favorable judgment, the judgment shall bear interest at the legal rate  
30 of 10 percent per annum calculated from the date of the plaintiff's first offer pursuant to Section  
31 998 of the Code of Civil Procedure which is exceeded by the judgment, and interest shall accrue  
32 until the satisfaction of judgment.

33 (c) This section shall not apply to a public entity, or to a public employee for an act or  
34 omission within the scope of employment, and neither the public entity nor the public employee  
35 shall be liable, directly or indirectly, to any person for any interest imposed by this section.  
36

37 (d) A motion to recover interest under this section must be filed no later than fifteen days  
38 after written notice of entry of judgment.

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

**PROPONENT:** Bar Association Name

**STATEMENT OF REASONS**

The Problem (including Existing Law): Civil Code section 3287 provides for the award of prejudgment interest by the court in contract actions. Civil Code section 3291 provides for an award of prejudgment interest in certain tort actions and in relation to Code of Civil Procedure section 998 offers. However, these sections do not set a time limit for moving to recover prejudgment interest as recognized by the appellate court in *North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824. This ambiguity has resulted in differing conclusions on whether there is a time limit and what a time limit should be for bringing such a motion. (See, e.g., *Rockroller v. Koljonen* (2015) 2015 WL 1456033 at 13 [“Under the particular facts here, we conclude a formal motion was not required and [plaintiff]’s request was sufficient. Neither the Legislature nor the Judicial Council has prescribed a noticed motion procedure for recovery of prejudgment interest, and we decline to impose one when the damages are undisputedly liquidated. A noticed motion would not have added anything to the analysis, it would have been a mere formality.”].)

The Solution: This resolution solves the current ambiguity by fixing the time limit to bring a motion to claim prejudgment interest. It sets that time limit as similar to the time for claiming costs under Code of Civil Procedure section 1034 and related rules fixed by the Judicial Council, currently found in California Rules of Court, rule 3.1700. This time limit is chosen over that of the time for filing a motion for new trial as adopted by the *North Oakland Medical Clinic* Court because it would give an additional five days where notice of entry of judgment is served by mail.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:**

John Smith, 123 Mainstreet, Anywhere, CA 98765, (555) 123-4567, johnsmith@email.com

**RESPONSIBLE FLOOR DELEGATE:** John Smith