

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

SB 1105 (Umberg)
Version: May 13, 2020
Hearing Date: May 22, 2020
Fiscal: No
Urgency: No
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SUBJECT

Civil actions: pleadings and settlement

DIGEST

This bill amends the mechanics and process for the handling of settlements in civil cases.

EXECUTIVE SUMMARY

Section 664.6 of the Code of Civil Procedure (Section 664.6) authorizes courts to enter judgment pursuant to the terms of a settlement stipulated to by the parties to a civil action. Upon request by the parties, courts are authorized to retain jurisdiction over those parties in the event the court is needed to enforce the terms of such a settlement until full performance.

Currently the parties themselves must stipulate in writing or orally before the court to the terms of the settlement. This bill seeks to increase judicial efficiency by authorizing attorneys, on behalf of their clients, to request the court retain jurisdiction and making clear that the court may dismiss the case without prejudice upon granting a Section 664.6 request.

The bill is sponsored by the California Judges Association. There is currently no opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires that, when trial by jury has been had, judgment be entered by the clerk, in conformity to the verdict within 24 hours after the rendition of the verdict, whether or not a motion for judgment notwithstanding the verdict be pending, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings. (Code Civ. Proc. § 664.)
- 2) Requires that, if the trial has been had by the court, judgment must be entered by the clerk, in conformity to the decision of the court, immediately upon the filing of such decision. It further provides that a judgment is not effectual for any purpose until entered. (Code Civ. Proc. § 664.)
- 3) Provides that, if parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. (Code Civ. Proc. § 664.6.)
- 4) Authorizes the court, if requested by the parties, to retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. (Code Civ. Proc. § 664.6.)
- 5) Provides, pursuant to the California Rules of Court, that if a settlement agreement conditions dismissal of the entire case on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, including payment in installment payments, the notice of conditional settlement served and filed by each plaintiff or other party seeking affirmative relief must specify the date by which the dismissal is to be filed. If the party required to serve and file a request for dismissal within 45 days after the dismissal date specified in the notice does not do so, the court must dismiss the entire case unless good cause is shown why the case should not be dismissed. (Cal. Rules of Court, rule 3.1385(c).)

This bill:

- 1) Provides that if the settling parties or their counsel further stipulate in writing or orally before the court, the court may dismiss the case without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.
- 2) Authorizes the court, where a party or its counsel has filed a conditional notice of settlement pursuant to subdivision (c) of Rule 3.1385 of the California Rules of

Court indicating that the settlement will not be performed within 90 days from the date the notice of settlement has been filed with the court, to dismiss the case without prejudice and retain jurisdiction to enforce the settlement without stipulation from the parties or their counsel.

COMMENTS

1. Stated intent of the bill

According to the author:

SB 1105 would permit stipulations under CCP section 664.6 to be made by the counsel for the parties, in writing or orally before the Court. A change that will make it easier and less expensive for the parties if their attorneys can simply make an oral or written request to the court, typically when they are appearing for a case management or final status conference.

Additionally, for any matters where the parties have filed a conditional notice of settlement pursuant to California Rule of Court 3.1385(c) indicating that the settlement will not be performed within three months, this bill would permit the court to dismiss the case without prejudice and retain jurisdiction to enforce the settlement. This will cut down on expenses for both the parties to attend status conferences and for the Court to hold them, without any harm.

2. Streamlining and clarifying the process for conditional settlements

Current law prescribes the manner of giving and entering judgment in civil actions. (Code Civ. Proc. § 664 et seq.) It lays out processes for entering judgment specific to whether a trial is had by a jury or by the court. It also lays out the process for when judgment comes pursuant to terms of a settlement agreed to by the parties.

Currently parties can stipulate in a writing signed by the parties or orally before the court for settlement of civil matters and request the court enter judgment pursuant thereto. (§ 664.6.) The parties can further request that the court retain jurisdiction over them, enabling the court to enforce the settlement until such time as its terms have been fully satisfied.

The California Supreme Court has detailed the history behind Section 664.6:

Section 664.6 was enacted in 1981. As this court noted recently . . . , prior to 1981 the Courts of Appeal had expressed conflicting views concerning the proper procedures to enforce settlement agreements in pending litigation.

Under one line of authority, settlement agreements preceding the enactment of section 664.6 in 1981 could be enforced only by a motion for summary judgment, a separate suit in equity, or an amendment to the pleadings. This became the dominant view. It was based on the theory that nonstatutory motions to enforce settlements were motions based on facts outside the pleadings and, under this court's decisions had to be treated as motions for summary judgment that could be granted only if all of the papers submitted showed there was no triable issue of fact.

A second line of authority permitted motions to enforce settlements based on facts outside the pleadings if the fact of settlement and the terms of the settlement were not subject to reasonable dispute. The theory underlying this approach was that the statutory means of enforcing settlements by motions for summary judgment, separate suits in equity, or amendments to pleadings were inadequate, and that a court therefore must have authority to enforce settlements as a means of controlling proceedings before the court and protecting the interests of the parties.

The conflict was resolved in 1981 when the Legislature enacted section 664.6, which created a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met.

(*Levy v. Superior Court* (1995) 10 Cal. 4th 578, 584-586, internal citations omitted.)

Principles of efficiency and economy promote the settlement of civil disputes by the parties, involving the court and expending its resources only where absolutely needed. This bill seeks to streamline the procedure provided for in Section 664.6 in several ways, expediting the process still further.

- a. Removing the requirement that parties stipulate to settlements for purposes of Section 664.6

The first amendment involves the requirement that the *parties* must stipulate to the settlement underlying the Section 664.6 motion. The California Supreme Court specifically addressed the issue of whether motions pursuant to Section 664.6 require the signature (or oral testimony) of the parties themselves, concluding that they do. As indicated in the quote above, the court found that the expedited procedure provided for by Section 664.6 required certain protective measures to “decrease the likelihood of misunderstandings.” The court held that the “parties” had to “stipulate in writing or orally before the court that they have settled the case.”

The Supreme Court specifically extolled the virtues of such a requirement:

The litigants' direct participation tends to ensure that the settlement is the result of their mature reflection and deliberate assent. This protects the parties against hasty and improvident settlement agreements by impressing upon them the seriousness and finality of the decision to settle, and minimizes the possibility of conflicting interpretations of the settlement. It also protects parties from impairment of their substantial rights without their knowledge and consent.

(*Levy*, 10 Cal. 4th at 585.)

For these reasons, the court concluded "the term 'parties' as used in section 664.6 . . . means the litigants themselves, and does not include their attorneys of record." (*Id.* at 586.)

This bill eliminates the requirement that parties themselves must personally sign or orally stipulate to these settlements and instead allows counsel for the parties to so stipulate on their behalf. The virtues outlined by the Supreme Court notwithstanding, the author and the sponsor, the California Judges Association, now seek to streamline this process in order to meet the goals of efficiency and economy. They argue that the change is necessary to remove an "expensive and burdensome" barrier to settling civil matters.

To mitigate the loss of the procedural protection, there already exist clear legal guidelines in the Business and Professions Code and in the California Rules of Professional Conduct requiring attorneys to act in their clients' best interests and to avoid self-dealing. This bill, by allowing for counsel to make a request pursuant to Section 664.6, will streamline the process and obviate the need for counsel to track down their clients before progressing toward a settlement of a civil dispute. However, this shifts the burden to attorneys to "impress[] upon [their clients] the seriousness and finality of the decision to settle," and to "minimize[] the possibility of conflicting interpretations of the settlement."

b. Empowering courts to retain jurisdiction and dismiss without prejudice

The bill also provides that when the parties or their counsel stipulate, the court may dismiss the case without prejudice and retain jurisdiction. The California Judges Association explains: "This amendment reflects the current process that is taking place, whereby the court is dismissing the case without prejudice in conjunction with the granting of a request for the court retaining jurisdiction." Therefore, they argue such a change is simply a clarification of existing law. However, some concerns have been raised regarding this process and are discussed below.

The bill further provides that if a party has filed a conditional notice of settlement pursuant to Rule 3.1385 of the California Rules of Court indicating that the settlement will not be performed within 90 days from the filing of the notice of settlement, the court may, on its own, without the consent of the parties or their counsel, dismiss the case without prejudice and retain jurisdiction to enforce the settlement.

The existing law allows parties to settle cases without the court's further substantive involvement but allows the parties to request the court retain jurisdiction should conflict arise in the performance of the terms of that settlement. According to the sponsor, this change reduces expenses and unclogs the court system, obviating the need for superfluous court appearances without impairing the rights of any party.

3. Additional considerations

Stakeholder feedback has raised some potential issues with the expedited procedure provided for by the bill. There are concerns that when cases are dismissed, even without prejudice, there is not an ease of access back to the courts for motions to enforce the judgment and other matters pertaining to the settlement process. For instance, anecdotal reports indicate that when parties have attempted to file motions for good faith settlement or petitions related to the compromise of a claim of a minor or a person with a disability in a case that has been dismissed without prejudice, they are being turned away, sent to different courtrooms, or being charged first paper filing fees. The Consumer Attorneys of California (CAOC) writes, in a letter of concern:

SB 1105 seeks to allow courts to clear their dockets of cases involving settlement terms that must be performed over a period of several months, avoiding the required status conferences on court calendars. CAOC supports this idea but must ensure that procedural mechanisms remain in place for filing motions once a case is dismissed. Motions that further terms of the settlement like motions regarding medical liens or minors compromise agreements must be accepted by the court.

CAOC also expresses concern with potential conflicts between the bill and existing court rules governing class actions. It has committed to continue to work with the author and sponsor.

In response to these concerns, the author and sponsor have pledged to work with stakeholders and this Committee to include language in the bill that protects against such improper barriers to effectively and efficiently settling civil matters.

SUPPORT

California Judges Association (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending: AB 2723 (Chiu, 2020) provides that a writing is “signed by a party” where it is signed by the party, the attorney representing the party, or, if the party is an insurer, an agent who is authorized in writing by the insurer to sign on the insurer’s behalf. This bill is on the Assembly Floor.

Prior: None known
