

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2961 (Committee on Judiciary)

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Fiscal: Yes

Urgency: No

AWM

SUBJECT

Civil procedure: electronic filing and service

DIGEST

This bill revises and recasts the statute governing electronic filing and service in civil cases to eliminate redundancies and inconsistent provisions and clarify existing requirements.

EXECUTIVE SUMMARY

Code of Civil Procedure section 1010.6 (section 1010.6) governs the filing and service of documents by electronic means in civil cases. Section 1010.6 was added in 1999 and has been amended over a dozen times since then, leaving the statute unwieldy and potentially internally contradictory. The confusing state of the statute has also led different courts to adopt different local rules relating to electronic filing and service, leading to further confusion on the part of litigants.

This bill revises and recasts the provisions of section 1010.6 to provide litigants with clear and useable instructions on when and how to electronically file and serve documents. The bill also makes moderate changes to the electronic service and filing provisions by clarifying that all represented parties shall be required to accept or provide electronic service beginning in 2024, and ensuring that unrepresented parties entitled to a fee waiver are not charged an electronic filing fee. AB 2961 is the product of negotiations between stakeholders, including the Judicial Council of California.

This bill is sponsored by the authoring committee and is supported by the Coalition for Improving Court Access. There is no known opposition. If this bill is passed by this Committee, it will be heard by the Senate Public Safety Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Defines the following terms:

- a) "Electronic service" means service of a document, on a party or another person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person's attorney, or through an electronic filing service provider.
- b) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
- c) "Electronic notification" means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the other party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.
- d) "Electronic filing" means the electronic transmission to a court of a document presented for filing in electronic form. For purposes of section 1010.6, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court's records, which are necessary for a document to be officially filed. (Code Civ. Proc., § 1010.6(a)(1).)

2) Provides that a document may be served electronically in an action filed with the court, in accordance with rules adopted under section 1010.6(h), as follows:

- a) For cases filed on or before December 31, 2018, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service is not authorized unless a party or other person has agreed to accept electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person pursuant to 4) or 5).
- b) For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of a document is authorized if a party or other person has expressly consented to receive electronic service in that specific action, the court has ordered electronic service on a represented party or other person pursuant to 4) or 5), or the document is served electronically pursuant to the procedures specified in 6)-7). Express consent to electronic service may be accomplished by serving notice on all parties and filing the notice with the court or by manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider and concurrently providing the

- party's electronic address with that consent for purposes of receiving electronic service. The act of electronic service shall not be construed as express consent.
- c) If a document is required to be served by certified or registered mail, electronic service is not authorized.
 - d) Before July 1, 2024, in any action in which a party has agreed or provided express consent to accept electronic service, or in which the court has ordered electronic service on a represented party pursuant to 4) or 5), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents.
 - e) On and after July 1, 2024, in any action in which a party or other person has agreed or provided express consent to accept electronic service under paragraph (2), or in which the court has ordered electronic service on a represented party or other represented person pursuant to 4) or 5), the court shall electronically transmit, to the agreeing or expressly consenting party or person, any document issued by the court that the court is required to transmit, deliver, or serve.
 - f) The electronic service of documents by the court in 2)(d) and (e) has the same legal effect as service by mail, except as provided in 2)(g).
 - g) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of that document is deemed complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.
 - h) Any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after service of a document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days; however, the extension does not apply to extend the time for filing (1) a notice of intention to move for new trial, (2) a notice of intention to move to vacate a judgment under Code of Civil Procedure section 663a, (3) a notice of appeal, or (4) where otherwise specifically provided by statute or rule of court.
 - i) Any document served electronically between 12:00 am and 11:59:59 on a court day is deemed served on that court day. Any document that is served electronically on a noncourt day is deemed served on the next court day.
 - j) A party or other person who has provided express consent to accept service electronically may withdraw consent at any time by completing and filing with the court the appropriate Judicial Council form, which the Judicial Council was required to create by January 1, 2019.
 - k) Consent, or the withdrawal of consent, to receive electronic service may only be completed by a party or other person entitled to service or that person's attorney.

- 1) Confidential or sealed records must be electronically served through encrypted methods to ensure that the documents are not improperly disclosed. (Code Civ. Proc., § 1010.6(a)(2)-(8).)
- 3) Authorizes a trial court to adopt local rules permitting electronic filing of documents, subject to rules adopted by the Judicial Council pursuant to 8) and the following conditions:
- a) A document that is filed electronically shall have the same legal effect as an original paper document.
 - b) When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by that person if filed electronically and either (1) the filer is the signer, or (2) the person has signed the document pursuant to the procedure set forth in the California Rules of Court.
 - c) When a document to be filed requires a signature under penalty of perjury, the document shall be deemed to have been signed by that person if filed electronically and if either (1) the person has signed a printed form of the document, as specified, and the printed form of the document with the original signature is maintained until the final disposition of the case, as defined, or (2) the person has signed the document using a computer or other technology pursuant to the procedure set forth in the Rules of Court.
 - d) Any document received electronically by the court between 12:00 am and 11:59:59 pm on a court day is deemed filed on that court day, and any document received electronically on a noncourt day is deemed filed on the next court day.
 - e) The first entity to receive a document for electronic filing – a court, an electronic filing service provider, or an electronic filing manager – shall promptly send a confirmation of receipt of the document indicating the date and time of receipt to the party or person who submitted the document. If the document received by the court complies with filing requirements and all required filing fees have been paid, the court shall promptly send confirmation that the document has been filed to the party or person who submitted the document.
 - f) If the clerk of the court does not file a document received for filing because the document does not comply with applicable filing requirements or the filing fee has not been paid, the court shall promptly send a notice of rejection of the document for filing to the party or person who submitted the document. The notice must state the reasons the document was rejected for filing and include the date the clerk of the court sent the notice.
 - g) If a court uses an electronic filing service provider or electronic filing manager to send the notice of rejection in 3)(f), the electronic filing service provider or manager shall promptly send the notice of rejection to the party or person who submitted the document. The notice of rejection must include the date the electronic filing service provider or manager sent the notice.

- h) If the clerk of the court does not file a complaint or cross-complaint because the pleading does not comply with applicable filing requirements or the required filing fee has not been paid, any statute of limitations applicable to the causes of action alleged shall be tolled for the period beginning on the date on which the court received the document through the later of the date when the court or electronic filing service provider/manager sent the notice to the filing party, plus one additional day, if the pleading is subsequently submitted in a form that corrects the errors that caused it to be rejected. The party filing the complaint or cross-complaint shall not make any change to the pleading other than those required to correct the errors that caused the document to be rejected.
 - i) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party; personal service of the electronic copy has the same legal effect as personal service of an original summons. The court must immediately notify a filing party or their attorney that a summons will be electronically transmitted.
 - j) The court must permit a party or attorney to file an application for waiver of fees and costs in lieu of requiring the payment of the filing fee, as specified, and the court or an electronic service provider/manager shall waive any fees charged if the fee waiver has been granted.
 - k) If a party electronically files a filing that is exempt from the payment of filing fees by law, the party shall not be required to pay any court fees associated with the filing, and an electronic service provider/manager shall not seek payment of these fees from the court.
 - l) A fee, if any, charged by the court or an electronic filing service provider/manager to process a payment for filing fees and other court fees shall not exceed the costs incurred in processing the payment.
 - m) A court shall not charge fees for electronic filing and service of documents that are more than the court's actual cost of electronic filing and service of the documents. (Code Civ. Proc., § 1010.6(b).)
- 4) Provides that, if a court adopts rules conforming to 3), it may require by order, subject to the requirements of 5), and the rules adopted by the Judicial Council, that all parties to an action file and serve documents electronically in a class action, a consolidated action, a group of actions, a coordinated action, or an action deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action. (Code Civ. Proc., § 1010.6(c).)

- 5) Provides that a trial court may, by local rule, require electronic filing and service in civil actions, subject to the requirements and conditions stated in 3), the rules adopted by the Judicial Council pursuant to 8), and the following conditions:
 - a) The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.
 - b) The court and parties shall have access to more than one electronic filing service provider capable of electronically filing documents or to electronically file documents directly through the court. Any fees charged by an electronic filing service provider shall be reasonable, and an electronic filing service provider/manager shall waive any fees charged if the court deems a waiver is appropriate, including where a party has received a fee waiver.
 - c) The court shall have a procedure for the filing of nonelectronic documents to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties. The Judicial Council shall make a form available to allow a party to seek an exemption from mandatory electronic filing and service on such grounds.
 - d) Unrepresented persons are exempt from mandatory electronic filing and service.
 - e) Until January 1, 2021, a local child support agency, as defined, was exempt from mandatory electronic filing and service requirements, as specified. (Code Civ. Proc., § 1010.6(d).)

- 6) Requires a party represented by counsel, who has appeared in an action or proceeding, to accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. Before first serving a represented party, the serving party shall confirm by telephone or email the appropriate electronic service address for counsel being served. (Code Civ. Proc., § 1010.6(e)(1).)

- 7) Requires a party represented by counsel to, upon the request of any party who has appeared in an action or proceeding and who provides an electronic service address, electronically serve the requesting party with any notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (Code Civ. Proc., § 1010.6(e)(2).)

- 8) Requires the Judicial Council to adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in section 1010.6, as amended from time to time. (Code Civ. Proc., § 1010.6(g).)

- 9) Provides the specific accessibility requirements for any system for the electronic filing and service of documents, used by an electronic service provider or any other vendor or contractor that provides an electronic filing service system to a trial court, or where the court provides electronic filing and service directly to the public. (Code Civ. Proc., § 1010.6(h)(1)-(4).)

- 10) Requires the Judicial Council to submit four reports to the appropriate committees of the Legislature relating to the trial courts that implemented a system of electronic filing and service, by the following dates: June 30, 2018; December 31, 2019; December 31, 2021; and December 31, 2023. The reports must include:
 - a) The name of each court that has implemented a system of electronic filing and service of documents.
 - b) A description of the system of electronic filing and service.
 - c) The name of the entity or entities providing the system.
 - d) A statement as to whether the system complies with the requirements of 9) and, if the system is not fully complaint, a description of the actions that have been taken to make the system compliant. (Code Civ. Proc., § 1010.6(h)(5).)

- 11) Requires an entity that contracts with a trial court to provide a system for electronic filing and service of documents to cooperate with the Judicial Council by providing all information, and by permitting all testing, necessary for the Judicial Council to prepare its reports to the Legislature in a complete and timely manner. (Code Civ. Proc., § 1010.6(h)(6).)

- 12) Provides that proof of electronic service may be made by the filing of a signed certificate or affidavit by specified persons and must contain the following information:
 - a) The electronic service address and the residence or business address of the person making the electronic service.
 - b) The date of electronic service.
 - c) The name and electronic service address of the person served.
 - d) A statement that the document was served electronically. (Code Civ. Proc., § 1013b.)

- 13) Provides that a local child support agency may substitute any original signatures – including, but not limited to, signatures of agents of the local child support agencies, support obligors, support obligees, other parents, witnesses, and the attorneys for the parties to the action – ,with a printed copy or electronic image of an electronic signature obtained in compliance with the rules of court adopted pursuant to the Code of Civil Procedure related to electronic service, on pleadings or documents filed for the purpose of establishing, modifying, or enforcing paternity, child support, or medical support. If the pleading or document is signed under the penalty of perjury or the signature does not belong to an agent of the local child support agency, the local child support agency represents, by the act of filing, that

the declarant electronically signed the pleading or document before, or on the same day as, the date of filing. (Fam. Code, § 17400(b)(4)(A).)

a) This provision is set to sunset on January 1, 2023. (Fam. Code, § 17400(p).)

14) Provides that if a claim, amendment to a claim, or application to a public entity for leave to present a late claim is submitted electronically, or if any notice of a claim against a public entity is given electronically, proof of electronic service may be made in a manner prescribed by the Code of Civil Procedure. (Gov. Code, § 915.2.)

15) Provides that permissive electronic filing and service pursuant to 2) and 3) is permitted in criminal actions, as specified. (Pen. Code, § 690.5.)

This bill:

- 1) Revises and recasts section 1010.6.
- 2) Makes nonsubstantive, clarifying changes to the definitions of “electronic service,” “electronic transmission,” and “electronic notification.”
- 3) Eliminates separate electronic filing rules for cases filed before and after December 31, 2018.
- 4) Creates new subdivisions to set forth clearly, without substantively altering, the rules for mandatory electronic service on or by represented parties and voluntary electronic service on or by unrepresented parties.
- 5) Nonsubstantively recasts the provision requiring the courts, beginning July 1, 2024, to electronically serve documents issued by the court on parties who have consented to electronic service.
- 6) Requires, rather than permits, a court that receives an electronically filed complaint, petition, or other document that requires the issuance of a summons to electronically transmit a copy of the summons to the requesting party, and eliminates notice requirements relating to the previous optional electronic service of a summons.
- 7) Adds to existing requirements for when a court, electronic filing service provider, or electronic filing manager must waive fees charged to a party or the party’s counsel to include circumstances where the party is indigent or being represented by a public defender or court-appointed counsel.
- 8) Provides that, under the court’s authority to require mandatory electronic filing in a class action, a consolidated action, a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, unrepresented persons are exempt from the electronic filing requirement.

- 9) Makes nonsubstantive clarifying changes to the provisions providing how proof of electronic service may be made.
- 10) Eliminates the sunset provision on the statute authorizing a local child support agency to substitute any original signatures – including, but not limited to, signatures of agents of the local child support agencies, support obligors, support obligees, other parents, witnesses, and the attorneys for the parties to the action – with a printed copy or electronic image of an electronic signature obtained in compliance with the rules of court adopted pursuant to the Code of Civil Procedure related to electronic service, on pleadings or documents filed for the purpose of establishing, modifying, or enforcing paternity, child support, or medical support.
- 11) Modifies cross-references in the statutes addressing electronic service and filing under the Government Code and Penal Code to reflect the new subdivisions in section 1010.6.
- 12) Makes additional nonsubstantive technical and conforming changes.

COMMENTS

1. Authors comment

According to the author:

Recognizing that the existing electronic filing statute for civil cases is growing increasingly unwieldy, this bill seeks to eliminate the ambiguity in the existing law regarding electronic service in civil cases. After working with numerous stakeholders, this bill proposes to revise and recast the existing statute authorizing electronic service to eliminate the adoption of conflicting local rules related to electronic service, revise or eliminate various implementation deadlines, and generally eliminate inconsistent policies in the current statute to ensure that California courts are operating with uniform rules regarding electronic service in civil matters.

2. This bill recasts and streamlines the statutes governing electronic filing and service

Section 1010.6, which governs electronic filing and service in civil actions, was enacted in 1999 as a modest provision allowing trial courts to adopt local rules for electronic filing and service of documents and giving the Judicial Council until January 1, 2003, to adopt uniform rules of electronic filing and service.¹ As the internet became more ubiquitous and electronically transmitting documents became easier to do, Section 1010.6 grew to accommodate an increasing interest in electronic filing and service. As a

¹ SB 367 (Dunn, Ch. 514, Stats. 199), § 1.

result, Section 1010.6 has been amended 13 times since its inception, and 8 of those amendments being made since 2016. These frequent incremental modifications to section 1010.6 have rendered it an unruly Frankenstein's monster of a statute, with now-obsolete implementation deadlines and the occasional internal inconsistency.

Section 1010.6 also currently provides for significant discretion by individual superior courts in devising local rules relating to electronic service. According to the author of the bill, providing such local control has resulted in the development of a patchwork set of rules and policies across California's 58 county superior courts. Electronic service may be permitted for a specified case type with a set of procedures in one county but wholly different set of procedures apply in a neighboring county. This creates significant complications for attorneys practicing in multiple jurisdictions.

This bill is the product of discussions between Judicial Counsel and other stakeholders to revise and recast section 1010.6 to clean it up and make it more user-friendly. The brunt of the bill is nonsubstantive, simply removing unnecessary implementation dates, moving provisions to better placements, eliminating duplicative provisions, and so forth. In addition, the bill clarifies that all parties represented by counsel must accept or provide electronic service beginning in 2024, and ensures that persons entitled to a fee waiver can obtain an electronic filing fee waiver when not represented by counsel.

3. Arguments in support

According to the Coalition for Improving Court Access (CICA):

California Code of Civil Procedure Section 1010.6 articulates the rights and obligations of all parties in the e-filing workflow, including litigants, lawyers, courts, electronic filing managers, and EFSPs. Over the past decade, CCP 1010.6 has been amended 8 times and was just amended last year by SB 241 (Umberg; Chapter 214, Statutes of 2021). Over time the amending and re-amending of this section has caused a structure to the statute that is causing confusion for courts, litigants, and EFSPs. Starting last year CICA approached the Judicial Council with a desire to reorganize CCP 1010.6 to better enable compliance and ease in understanding the important differences between permissive and mandatory e-filing. We appreciate the committee's authorship of this technical clean-up language and believe that it will be helpful as more and more courts consider moving to e-filing.

SUPPORT

Coalition for Improving Court Access

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 2791 (Bloom, 2022) requires a marshal or sheriff to accept an electronically signed notice or other process issued by a superior court in a civil action, including service of process and court documents for the purpose of notice. AB 2791 is pending before the Senate Judiciary Committee.

Prior Legislation:

SB 666 (Umberg, 2021) would have required courts to electronically transmit documents issued by the court where parties in actions where the parties consented to, or are required to use, electronic service; the contents of SB 666 were amended into SB 241, below. SB 666 died on the Senate Inactive File.

SB 241 (Umberg, Ch. 214, Stats. 2021) among other things, required, beginning July 1, 2024, courts to electronically transmit documents issued by the court where parties have consented to, or are required to use, electronic service.

SB 1146 (Umberg, Ch. 112, Stats. 2020) among other things, allowed parties to electronically serve documents on represented parties and opt to have represented parties serve them electronically.

AB 2165 (Robert Rivas, Ch. 215, Stats. 2020) amended section 1010.6 to clarify and update requirements relating to signing electronically filed documents, notices of rejection of electronically filed documents, electronic filing fees, and court-ordered electronic filing.

AB 976 (Berman, Ch. 319, Stats. 2017) expanded the use of permissive and mandatory electronic filing and service in civil courts as well as in criminal, probate, and juvenile courts.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
