
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2961 **Hearing Date:** June 28, 2022
Author: Committee on Judiciary
Version: June 2, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Civil procedure: electronic filing and service*

HISTORY

Source: Author

Prior Legislation: AB 2165 (R. Rivas), Ch. 215, Stats. 2020
AB 1146 (Umberg), Ch. 112, Stats. 2020
AB 976 (Berman), Ch. 319, Stats. 2017
AB 2244 (Gatto), Ch. 461, Stats. 2016

Support: Coalition for Improving Court Access

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to revise and recast the statute governing electronic filing and service in civil cases to eliminate redundancies and inconsistent provisions and clarify existing requirements.

Existing law defines the following terms:

- “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.
- “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.
- “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.

- “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, subd. (a)(1).)

This bill amends these definitions as follows:

- “Electronic service” means service of a document on a person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a person, including a party, by a person’s agent, including the person’s attorney, or through an electronic filing service provider, and by a court.
- “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a person receives electronic service.
- “Electronic notification” means the notification of the person that a document is served by sending an electronic message to the electronic address at or through which the person receives electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

Existing law states that 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 of the document 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. (Code Civ. Proc., § 1010.6, subd. (a)(2)(A)(i).)

Existing law states that 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 the 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 represented person, or the document is served electronically pursuant to the procedures specified. Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) 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 the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent. (Code Civ. Proc., § 1010.6, subd. (a)(2)(A)(ii).)

This bill deletes the separate electronic filing rules for cases filed before and after December 31, 2018.

Existing law states that 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, 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. (Code Civ. Proc., § 1010.6, subd. (a)(3)(A).)

Existing law states that 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, or in which the court has ordered electronic service on a represented party or other represented person, 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. (Code Civ. Proc., § 1010.6, subd. (a)(3)(B).)

This bill 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.

Existing law states that confidential or sealed records shall be electronically served through encrypted methods to ensure that the documents are not improperly disclosed. (Code Civ. Proc., § 1010.6, subd. (a)(8).)

This bill recasts the provision on confidential or sealed records.

This bill 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.

Existing law states that 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. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint. (Code Civ. Proc. § 1010.6, subd. (b)(5).)

This bill 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.

Existing law requires a court to permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with existing laws on fee waivers and shall not require the party or attorney to submit any documentation other than specified in fee waiver requirements. This section does not require the court to waive a filing fee that is not otherwise waivable. (Code Civ. Proc., § 1010.6, subd. (b)(6).)

This bill 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.

Existing law provides that if a trial court adopts specified rules, it may provide by order, subject to the stated requirements and conditions, inclusive, and the rules adopted by 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 that is deemed complex, 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, subd. (c).)

This bill 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.

This bill makes clarifying changes to provisions providing how proof of electronic service may be made.

This bill 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

This bill makes additional nonsubstantive, clarifying changes and other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

As a result of the thirteen amendments to CCP 1010.6, since electronic filing was originally contemplated and a modest first measure was approved by the Legislature, including eight amendments to that code section since 2016, the statute now features numerous implementation deadlines and due to the various changes to the statutes, individual county courts are interpreting the statute differently. It has become clear that the 58 county patchwork of rules regarding electronic service of legal documents is posing significant challenges for litigants and this bill seeks to clarify the statute to the benefit of all court users, both criminal and civil.

2. Effect of this Legislation

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. (SB 367 (Dunn), Ch. 514, Stats. 1999.) 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 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 has created confusion and now-obsolete implementation deadlines and the occasional internal inconsistency should be fixed.

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.

Because this bill makes conforming changes to the Penal Code provision on electronic service and filing in criminal cases, this bill has been double-referred to this Committee.