

ASSEMBLY BILL

No. 2073

Introduced by Assembly Member Silva

February 23, 2012

An act to amend Section 1010.6 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2073, as introduced, Silva. Courts: electronic filing and service of documents.

Existing law authorizes a trial court to adopt local rules permitting electronic filing and service of documents, subject to rules adopted by the Judicial Council and other specified conditions. Existing law also authorizes the court, in any action in which a party has agreed to accept electronic service, or in which the court has ordered electronic service, as specified, to 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.

This bill would authorize a trial court, by order and at the discretion of the presiding judge, to require parties to eligible civil actions, as specified, to electronically file and serve documents, subject to rules adopted by the Judicial Council and other specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1010.6 of the Code of Civil Procedure
- 2 is amended to read:

1 1010.6. (a) A document may be served electronically in an
2 action filed with the court as provided in this section, in accordance
3 with rules adopted pursuant to subdivision ~~(d)~~ (e).

4 (1) For purposes of this section:

5 (A) “Electronic service” means service of a document, on a
6 party or other person, by either electronic transmission or electronic
7 notification. Electronic service may be performed directly by a
8 party, by an agent of a party, including the party’s attorney, or
9 through an electronic filing service provider.

10 (B) “Electronic transmission” means the transmission of a
11 document by electronic means to the electronic service address at
12 or through which a party or other person has authorized electronic
13 service.

14 (C) “Electronic notification” means the notification of the party
15 or other person that a document is served by sending an electronic
16 message to the electronic address at or through which the party or
17 other person has authorized electronic service, specifying the exact
18 name of the document served, and providing a hyperlink at which
19 the served document may be viewed and downloaded.

20 (2) If a document may be served by mail, express mail, overnight
21 delivery, or facsimile transmission, electronic service of the
22 document is authorized when a party has agreed to accept service
23 electronically in that action.

24 (3) In any action in which a party has agreed to accept electronic
25 service under paragraph (2), or in which the court has ordered
26 electronic service under subdivision (c) *or* (d), the court may
27 electronically serve any document issued by the court that is not
28 required to be personally served in the same manner that parties
29 electronically serve documents. The electronic service of
30 documents by the court shall have the same legal effect as service
31 by mail, except as provided in paragraph (4).

32 (4) Electronic service of a document is complete at the time of
33 the electronic transmission of the document or at the time that the
34 electronic notification of service of the document is sent. However,
35 any period of notice, or any right or duty to do any act or make
36 any response within any period or on a date certain after the service
37 of the document, which time period or date is prescribed by statute
38 or rule of court, shall be extended after service by electronic means
39 by two court days, but the extension shall not apply to extend the
40 time for filing any of the following:

1 (A) A notice of intention to move for new trial.

2 (B) A notice of intention to move to vacate judgment under
3 Section 663a.

4 (C) A notice of appeal.

5 This extension applies in the absence of a specific exception
6 provided by any other statute or rule of court.

7 (b) A trial court may adopt local rules permitting electronic
8 filing of documents, subject to rules adopted pursuant to
9 subdivision-~~(d)~~ (e) and the following conditions:

10 (1) A document that is filed electronically shall have the same
11 legal effect as an original paper document.

12 (2) (A) When a document to be filed requires the signature, not
13 under penalty of perjury, of an attorney or a self-represented party,
14 the document shall be deemed to have been signed by that attorney
15 or self-represented party if filed electronically.

16 (B) When a document to be filed requires the signature, under
17 penalty of perjury, of any person, the document shall be deemed
18 to have been signed by that person if filed electronically and if a
19 printed form of the document has been signed by that person prior
20 to, or on the same day as, the date of filing. The attorney or person
21 filing the document represents, by the act of filing, that the
22 declarant has complied with this section. The attorney or person
23 filing the document shall maintain the printed form of the document
24 bearing the original signature and make it available for review and
25 copying upon the request of the court or any party to the action or
26 proceeding in which it is filed.

27 (3) Any document that is electronically filed with the court after
28 the close of business on any day shall be deemed to have been
29 filed on the next court day. "Close of business," as used in this
30 paragraph, shall mean 5 p.m. or the time at which the court would
31 not accept filing at the court's filing counter, whichever is earlier.

32 (4) The court receiving a document filed electronically shall
33 issue a confirmation that the document has been received and filed.
34 The confirmation shall serve as proof that the document has been
35 filed.

36 (5) Upon electronic filing of a complaint, petition, or other
37 document that must be served with a summons, a trial court, upon
38 request of the party filing the action, shall issue a summons with
39 the court seal and the case number. The court shall keep the
40 summons in its records and may electronically transmit a copy of

1 the summons to the requesting party. Personal service of a printed
2 form of the electronic summons shall have the same legal effect
3 as personal service of an original summons. If a trial court plans
4 to electronically transmit a summons to the party filing a complaint,
5 the court shall immediately upon receipt of the complaint notify
6 the attorney or party that a summons will be electronically
7 transmitted to the electronic address given by the person filing the
8 complaint.

9 (6) The court shall permit a party or attorney to file an
10 application for waiver of court fees and costs, in lieu of requiring
11 the payment of the filing fee, as part of the process involving the
12 electronic filing of a document. The court shall consider and
13 determine the application in accordance with Sections 68630 to
14 68641, inclusive, of the Government Code and shall not require
15 the party or attorney to submit any documentation other than that
16 set forth in Sections 68630 to 68641, inclusive, of the Government
17 Code. Nothing in this section shall require the court to waive a
18 filing fee that is not otherwise waivable.

19 (c) If a trial court adopts rules conforming to subdivision (b),
20 it may provide by order that all parties to an action file and serve
21 documents electronically in a class action, a consolidated action,
22 or a group of actions, a coordinated action, or an action that is
23 deemed complex under Judicial Council rules, provided that the
24 trial court's order does not cause undue hardship or significant
25 prejudice to any party in the action.

26 (d) (1) *Notwithstanding subdivision (b), at the discretion of the*
27 *presiding judge, a trial court may, by order, require parties to*
28 *eligible civil actions to electronically file and serve documents,*
29 *subject to rules adopted pursuant to subdivision (e) and the*
30 *following conditions:*

31 (A) *The court has the ability to maintain the official court record*
32 *in electronic format for all cases where electronic filing is required.*

33 (B) *The court has access to more than one electronic service*
34 *provider capable of electronically filing documents with the court.*

35 (C) *The court has a procedure for the filing of nonelectronic*
36 *documents in order to prevent the program from causing undue*
37 *hardship or significant prejudice to any party in an action.*

38 (D) *The conditions specified in paragraphs (1) and (2) of*
39 *subdivision (b) shall apply.*

1 (2) *The following civil actions are eligible for electronic filing*
2 *and service pursuant to this subdivision:*

3 (A) *All cases assigned to a judge for all purposes.*

4 (B) *All cases assigned to a specific courtroom or courthouse.*

5 (C) *All civil cases.*

6 (D) *All cases of a specific category, including, but not limited*
7 *to, contract, collection, personal injury, or employment.*

8 (E) *Any combination of the cases described in subparagraphs*
9 *(A) to (D), inclusive.*

10 (3) *A court that elects to require electronic filing pursuant to*
11 *this subdivision may permit documents to be filed electronically*
12 *until 12 a.m. of the day after the court date that the filing is due,*
13 *and the filing shall be considered timely. However, if same day*
14 *service of a document is required, the document shall be*
15 *electronically filed by 5 p.m. on the court date that the filing is*
16 *due. Ex parte documents shall be electronically filed on the same*
17 *date and within the same time period as would be required for the*
18 *filing of a hard copy of the ex parte documents at the clerk's*
19 *window in the participating county. Documents filed on or after*
20 *12 a.m., or filed upon a noncourt day, will be deemed filed on the*
21 *soonest court day following the filing.*

22 (4) *The election under this subdivision to require electronic*
23 *filing of documents may be revoked by the presiding judge of the*
24 *court at any time.*

25 (~~d~~)

26 (e) *The Judicial Council shall adopt uniform rules for the*
27 *electronic filing and service of documents in the trial courts of the*
28 *state, which shall include statewide policies on vendor contracts,*
29 *privacy, and access to public records, and rules relating to the*
30 *integrity of electronic service. These rules shall conform to the*
31 *conditions set forth in this section, as amended from time to time.*