

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2073**

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**Introduced by Assembly Member Silva**

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2073, as amended, 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 the Orange County Superior Court, until July 1, 2014, to establish a pilot project 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. The bill would require the Judicial Council to conduct an evaluation of any pilot project established pursuant to that provision and report to the Legislature on or before December 31, 2013, on the results of the evaluation—and. *The bill would also require the Judicial*

*Council to adopt uniform rules to permit mandatory electronic filing and service of documents in eligible civil actions on or before July 1, 2014. The bill would authorize a superior court to require mandatory electronic filing, as specified, upon the adoption of those uniform rules by the Judicial Council.*

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:  
 3 1010.6. (a) A document may be served electronically in an  
 4 action filed with the court as provided in this section, in accordance  
 5 with rules adopted pursuant to subdivision (e).  
 6 (1) For purposes of this section:  
 7 (A) “Electronic service” means service of a document, on a  
 8 party or other person, by either electronic transmission or electronic  
 9 notification. Electronic service may be performed directly by a  
 10 party, by an agent of a party, including the party’s attorney, or  
 11 through an electronic filing service provider.  
 12 (B) “Electronic transmission” means the transmission of a  
 13 document by electronic means to the electronic service address at  
 14 or through which a party or other person has authorized electronic  
 15 service.  
 16 (C) “Electronic notification” means the notification of the party  
 17 or other person that a document is served by sending an electronic  
 18 message to the electronic address at or through which the party or  
 19 other person has authorized electronic service, specifying the exact  
 20 name of the document served, and providing a hyperlink at which  
 21 the served document may be viewed and downloaded.  
 22 (2) If a document may be served by mail, express mail, overnight  
 23 delivery, or facsimile transmission, electronic service of the  
 24 document is authorized when a party has agreed to accept service  
 25 electronically in that action.  
 26 (3) In any action in which a party has agreed to accept electronic  
 27 service under paragraph (2), or in which the court has ordered  
 28 electronic service under subdivision (c) or (d), the court may  
 29 electronically serve any document issued by the court that is not  
 30 required to be personally served in the same manner that parties

1 electronically serve documents. The electronic service of  
2 documents by the court shall have the same legal effect as service  
3 by mail, except as provided in paragraph (4).

4 (4) Electronic service of a document is complete at the time of  
5 the electronic transmission of the document or at the time that the  
6 electronic notification of service of the document is sent. However,  
7 any period of notice, or any right or duty to do any act or make  
8 any response within any period or on a date certain after the service  
9 of the document, which time period or date is prescribed by statute  
10 or rule of court, shall be extended after service by electronic means  
11 by two court days, but the extension shall not apply to extend the  
12 time for filing any of the following:

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

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

16 (C) A notice of appeal.

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

19 (b) A trial court may adopt local rules permitting electronic  
20 filing of documents, subject to rules adopted pursuant to  
21 subdivision (e) and the following conditions:

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

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

28 (B) When a document to be filed requires the signature, under  
29 penalty of perjury, of any person, the document shall be deemed  
30 to have been signed by that person if filed electronically and if a  
31 printed form of the document has been signed by that person prior  
32 to, or on the same day as, the date of filing. The attorney or person  
33 filing the document represents, by the act of filing, that the  
34 declarant has complied with this section. The attorney or person  
35 filing the document shall maintain the printed form of the document  
36 bearing the original signature and make it available for review and  
37 copying upon the request of the court or any party to the action or  
38 proceeding in which it is filed.

39 (3) Any document that is electronically filed with the court after  
40 the close of business on any day shall be deemed to have been

1 filed on the next court day. “Close of business,” as used in this  
2 paragraph, shall mean 5 p.m. or the time at which the court would  
3 not accept filing at the court’s filing counter, whichever is earlier.

4 (4) The court receiving a document filed electronically shall  
5 issue a confirmation that the document has been received and filed.  
6 The confirmation shall serve as proof that the document has been  
7 filed.

8 (5) Upon electronic filing of a complaint, petition, or other  
9 document that must be served with a summons, a trial court, upon  
10 request of the party filing the action, shall issue a summons with  
11 the court seal and the case number. The court shall keep the  
12 summons in its records and may electronically transmit a copy of  
13 the summons to the requesting party. Personal service of a printed  
14 form of the electronic summons shall have the same legal effect  
15 as personal service of an original summons. If a trial court plans  
16 to electronically transmit a summons to the party filing a complaint,  
17 the court shall immediately upon receipt of the complaint notify  
18 the attorney or party that a summons will be electronically  
19 transmitted to the electronic address given by the person filing the  
20 complaint.

21 (6) The court shall permit a party or attorney to file an  
22 application for waiver of court fees and costs, in lieu of requiring  
23 the payment of the filing fee, as part of the process involving the  
24 electronic filing of a document. The court shall consider and  
25 determine the application in accordance with Sections 68630 to  
26 68641, inclusive, of the Government Code and shall not require  
27 the party or attorney to submit any documentation other than that  
28 set forth in Sections 68630 to 68641, inclusive, of the Government  
29 Code. Nothing in this section shall require the court to waive a  
30 filing fee that is not otherwise waivable.

31 (c) If a trial court adopts rules conforming to subdivision (b),  
32 it may provide by order that all parties to an action file and serve  
33 documents electronically in a class action, a consolidated action,  
34 or a group of actions, a coordinated action, or an action that is  
35 deemed complex under Judicial Council rules, provided that the  
36 trial court’s order does not cause undue hardship or significant  
37 prejudice to any party in the action.

38 (d) (1) Notwithstanding subdivision (b), the Orange County  
39 Superior Court may, by local rule and until July 1, 2014, establish  
40 a pilot project to require parties to specified civil actions to

1 electronically file and serve documents, subject to the requirements  
2 set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b)  
3 and rules adopted pursuant to subdivision (e) and the following  
4 conditions:

5 (A) The court ~~has~~ *shall have* the ability to maintain the official  
6 court record in electronic format for all cases where electronic  
7 filing is required.

8 (B) The court and the parties *shall have access either* to more  
9 than one electronic *filing* service provider capable of electronically  
10 filing documents with the court, ~~including or to electronic filing~~  
11 access directly through the court. Any fees charged by the court  
12 shall be for no more than the actual cost of the electronic filing  
13 and service of the documents, and shall be waived when  
14 ~~appropriate, including~~ *deemed appropriate by the court, including,*  
15 *but not limited to,* for any party who has received a fee waiver.  
16 Any fees charged by an electronic *filing* service provider shall be  
17 reasonable and shall be waived when ~~appropriate, including~~ *deemed*  
18 *appropriate by the electronic filing service provider, including,*  
19 *but not limited to,* for any party who has received a fee ~~waiver.~~  
20 *waiver.*

21 (C) The court ~~has~~ *shall have* a procedure for the filing of  
22 nonelectronic documents in order to prevent the program from  
23 causing undue hardship or significant prejudice to any party in an  
24 action, including, *but not limited to,* unrepresented parties.

25 (D) A court that elects to require electronic filing pursuant to  
26 this subdivision may permit documents to be filed electronically  
27 until 12 a.m. of the day after the court date that the filing is due,  
28 and the filing shall be considered timely. However, if same day  
29 service of a document is required, the document shall be  
30 electronically filed by 5 p.m. on the court date that the filing is  
31 due. Ex parte documents shall be electronically filed on the same  
32 date and within the same time period as would be required for the  
33 filing of a hard copy of the ex parte documents at the clerk's  
34 window in the participating county. Documents filed on or after  
35 12 a.m., or filed upon a noncourt day, will be deemed filed on the  
36 soonest court day following the filing.

37 (2) If a pilot project is established pursuant to paragraph (1),  
38 the Judicial Council shall conduct an evaluation of *the pilot project*  
39 and report to the Legislature, on or before December 31, 2013, on  
40 the results of the evaluation. The evaluation shall review, among

1 other things, the cost of the program to participants,  
2 cost-effectiveness for the court, effect on unrepresented parties  
3 and parties with fee waivers, and ease of use for participants.

4 (e) The Judicial Council shall adopt uniform rules for the  
5 electronic filing and service of documents in the trial courts of the  
6 state, which shall include statewide policies on vendor contracts,  
7 privacy, and access to public records, and rules relating to the  
8 integrity of electronic service. These rules shall conform to the  
9 conditions set forth in this section, as amended from time to time.

10 (f) The Judicial Council shall, *on or* before July 1, 2014, adopt  
11 uniform rules to permit the mandatory electronic filing and service  
12 of documents for specified civil actions in the trial courts of the  
13 state, which shall be informed by any study performed pursuant  
14 to paragraph (2) of subdivision (d) and which shall include  
15 statewide policies on vendor contracts, privacy, access to public  
16 records, unrepresented parties, parties with fee waivers, hardships,  
17 *reasonable exceptions to electronic filing*, and rules relating to the  
18 integrity of electronic service. These rules shall conform to the  
19 conditions set forth in this section, as amended from time to time.

20 (g) (1) *Upon the adoption of uniform rules by the Judicial*  
21 *Council for mandatory electronic filing and service of documents*  
22 *for specified civil actions in the trial courts of the state, as specified*  
23 *in subdivision (f), a superior court may, by local rule, require*  
24 *mandatory electronic filing, pursuant to paragraph (2) of this*  
25 *subdivision.*

26 (2) *Any superior court that elects to adopt mandatory electronic*  
27 *filing shall do so pursuant to the requirements and conditions set*  
28 *forth in this section, including, but not limited to, paragraphs (1),*  
29 *(2), (4), (5), and (6) of subdivision (b) of this section, and*  
30 *subparagraphs (A), (B), and (C) of paragraph (1) of subdivision*  
31 *(d), and pursuant to the rules adopted by the Judicial Council, as*  
32 *specified in subdivision (f).*