

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN SENATE MAY 24, 2012

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2106

Introduced by Assembly Member Wagner

February 23, 2012

An act to amend Sections 659 and 663a of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2106, as amended, Wagner. Civil procedure: motion to set aside and vacate a judgment and motion for a new trial.

Existing law requires the party intending to move for a new trial to file a notice of intention to move for a new trial, as specified, either before the entry of judgment or within 15 days of the date of mailing notice of entry of judgment by the clerk of the court or service upon him by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.

This bill would require that, when filing the motion before the entry of judgment, the filing be done after the decision is rendered. The bill would also make technical, nonsubstantive changes.

Existing law establishes procedures by which a party to a court action may make a motion to set aside and vacate a judgment. Under existing law, a party intending to make such a motion is required to file with the clerk and serve upon the adverse party a notice of his or her intention, designating the grounds upon which the motion will be made and specifying the particulars, as described, either before the entry of

judgment or within 15 days of the date of mailing of notice of entry of judgment by the clerk of the court, or service by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.

This bill would specify that the power of the court to rule on a motion to set aside and vacate a judgment shall expire 60 days from the mailing of notice of entry of judgment by the clerk of the court or 60 days after service upon the moving party by any party of written notice of entry of the judgment, whichever is earlier, or if that notice has not been given, then 60 days after filing of the first notice of intention to move to set aside and vacate the judgment. The bill would also specify that if that motion is not determined with the 60-day period, or within that period, as extended, the effect shall be a denial of the motion without further order of the court. The bill would further specify that a motion to set aside and vacate a judgment is not determined until a order ruling on the motion is either entered in the permanent minutes of the court or signed by the judge and filed with the clerk.

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

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

- 1 SECTION 1. Section 659 of the Code of Civil Procedure is
- 2 amended to read:
- 3 659. (a) The party intending to move for a new trial ~~must~~ *shall*
- 4 file with the clerk and serve upon each adverse party a notice of
- 5 his or her intention to move for a new trial, designating the grounds
- 6 upon which the motion will be made and whether the same will
- 7 be made upon affidavits or the minutes of the court, or both, either:
- 8 (1) After the decision is rendered and before the entry of
- 9 judgment.
- 10 (2) Within 15 days of the date of mailing notice of entry of
- 11 judgment by the clerk of the court pursuant to Section 664.5, or
- 12 service upon him or her by any party of written notice of entry of
- 13 judgment, or within 180 days after the entry of judgment,
- 14 whichever is earliest; provided, that upon the filing of the first
- 15 notice of intention to move for a new trial by a party, each other
- 16 party shall have 15 days after the service of that notice upon him
- 17 or her to file and serve a notice of intention to move for a new
- 18 trial.

1 (b) That notice of intention to move for a new trial shall be
2 deemed to be a motion for a new trial on all the grounds stated in
3 the notice. ~~The time~~ *times* specified in paragraphs (1) and (2) of
4 subdivision (a) shall not be extended by order or stipulation or by
5 those provisions of Section 1013 that extend the time for exercising
6 a right or doing an act where service is by mail.

7 SEC. 2. Section 663a of the Code of Civil Procedure is
8 amended to read:

9 663a. (a) A party intending to make a motion to set aside and
10 vacate a judgment, as described in Section 663, shall file with the
11 clerk and serve upon the adverse party a notice of his or her
12 intention, designating the grounds upon which the motion will be
13 made, and specifying the particulars in which the legal basis for
14 the decision is not consistent with or supported by the facts, or in
15 which the judgment or decree is not consistent with the special
16 verdict, either:

17 (1) ~~Before~~ *After the decision is rendered and before* the entry
18 of judgment.

19 (2) Within 15 days of the date of mailing of notice of entry of
20 judgment by the clerk of the court pursuant to Section 664.5, or
21 service upon him or her by any party of written notice of entry of
22 judgment, or within 180 days after the entry of judgment,
23 whichever is earliest.

24 (b) Except as otherwise provided in Section 12a, the power of
25 the court to rule on a motion to set aside and vacate a judgment
26 shall expire 60 days from the mailing of notice of entry of judgment
27 by the clerk of the court pursuant to Section 664.5, or 60 days after
28 service upon the moving party by any party of written notice of
29 entry of the judgment, whichever is earlier, or if that notice has
30 not been given, then 60 days after filing of the first notice of
31 intention to move to set aside and vacate the judgment. If that
32 motion is not determined within the 60-day period, or within that
33 period, as extended, the effect shall be a denial of the motion
34 without further order of the court. A motion to set aside and vacate
35 a judgment is not determined within the meaning of this section
36 until an order ruling on the motion is (1) entered in the permanent
37 minutes of the court, or (2) signed by the judge and filed with the
38 clerk. The entry of an order to set aside and vacate the judgment
39 in the permanent minutes of the court shall constitute a
40 determination of the motion, even though that minute order, as

1 entered, expressly directs that a written order be prepared, signed,
2 and filed. The minute entry shall, in all cases, show the date on
3 which the order actually is entered in the permanent minutes, but
4 failure to comply with this direction shall not impair the validity
5 or effectiveness of the order.

6 (c) The provisions of Section 1013 extending the time for
7 exercising a right or doing an act where service is by mail shall
8 not apply to extend the ~~time~~ *times* specified ~~above~~ *in paragraphs*
9 *(1) and (2) of subdivision (a)*.

10 (d) An order of the court granting a motion may be reviewed
11 on appeal in the same manner as a special order made after final
12 judgment.

O