

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2875 (Obernolte) – As Introduced February 21, 2020

PROPOSED CONSENT

SUBJECT: CIVIL ACTIONS: SUMMARY JUDGMENT: SERVICE

KEY ISSUE: SHOULD THE LENGTH OF TIME REQUIRED BETWEEN THE SERVING OF A NOTICE FOR SUMMARY JUDGMENT AND THE TIME APPOINTED FOR HEARING THE MOTION BE INCREASED BY TWO COURT DAYS FOR MOTIONS FILED ELECTRONICALLY?

SYNOPSIS

This modest, non-controversial measure seeks to clarify the existing law related to serving motions for summary judgment and supporting papers to ensure that these documents can be delivered utilizing electronic service. The author and proponents of the bill state that the popularity of electronic service growing, yet ambiguity in the existing law related to motions for summary judgment is precluding some attorneys from using electronic service for these motions. This bill simply clarifies the law and ensures that electronic service of motions for summary judgment can continue to be used once the existing Judicial Council of California emergency order mandating electronic service is lifted after the COVID-19 state of emergency abates.

This measure is sponsored by the Conference of California Bar Associations who highlight the efficiency of using electronic service and argue that clarifying the law will be helpful to avoid any legal challenges to the use of electronic service for motions for summary judgment in the future. As currently in print, this bill has no known opposition.

SUMMARY: Extends the period 75-day notice period for motions for summary judgment by two court days if notice of the motion is served electronically. Specifically, **this bill:**

- 1) Provides that if a motion for summary judgment and supporting papers are served electronically, in accordance with existing law, then the party being served is provided an additional court two days between the serving of the papers and the hearing on the proceeding.
- 2) Makes various technical and conforming changes.

EXISTING LAW:

- 1) Provides that a party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding, so long as the motion is made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. (Code of Civil Procedure Section 437c (a)(1).)

- 2) Provides that the notice of the motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. If the notice is served by mail, the required 75-day period of notice shall be increased by 5 days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. (Code of Civil Procedure Section 437c (a)(2).)
- 3) If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days. (*Ibid.*)
- 4) Permits documents to be served electronically, in accordance with state law and rules established by the Judicial Council. (Code of Civil Procedure Section 1010.6 (a).)
- 5) Defines “electronic service” as service of a document on a party or other person by either electronic transmission or electronic notification, and permits electronic service to be performed directly by a party or other person, directly by an agent (including an attorney) of a party or other person, or through an electronic filing service provider. (Code of Civil Procedure Section 1010.6 (a)(1)(A).)
- 6) Defines “electronic transmission” as the transmission of a document, by electronic means, to an electronic address at or through which a party or other person has authorized electronic service. (Code of Civil Procedure Section 1010.6 (a)(1)(B).)
- 7) Defines “electronic notification” as notification of a party or other person that a document is being served electronically, together with the exact name of the document served and a hyperlink at which the served document may be viewed and downloaded. (Code of Civil Procedure Section 1010.6 (a)(1)(C).)
- 8) Provides that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or represented person. (Code of Civil Procedure Section 1010.6 (a)(2)(A)(ii).)
- 9) Provides that express consent to electronic service may be given either by either of the following:
 - a) Serving a notice on all the parties and filing the notice with the court, or
 - b) Manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing an electronic address with that consent for the purpose of receiving electronic service. (*Ibid.*)
- 10) Provides that electronic service of a document is not authorized if that document is required to be served by certified or registered mail. (Code of Civil Procedure Section 1010.6 (a)(2)(B).)
- 11) Provides that in an action in which electronic service of documents is authorized, the court may electronically serve any court documents that it issues in the same manner that the

parties electronically serve documents, unless the court is required to personally serve the document. (Code of Civil Procedure Section 1010.6 (a)(3).)

- 12) Specifies that electronic service of documents by a court shall have the same legal effect as service by mail, with certain exceptions as set forth in statute or by rule of court. (Code of Civil Procedure Section 1010.6 (a)(3), (4).)
- 13) Establishes that any electronic service of a document is deemed complete either at the time of the electronic transmission of the document or at the time the electronic notification of service of the document is sent, as appropriate. (Code of Civil Procedure Section 1010.6 (a)(4)(A).)
- 14) Clarifies that a document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a noncourt day shall be deemed served on the next court day. (Code of Civil Procedure Section 1010.6 (a)(5).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This modest proposal seeks to recognize, within the state's rules for serving a motion for summary judgment, a party's ability to serve the motion electronically. Furthermore, like many other forms of non-personal service recognized in law, this bill provides a party that receives service electronically an additional two court days before the hearing on the motion can occur. In support of this proposal the author states:

Code of Civil Procedure section 437c lays out different methods of service for summary judgments and the associated time frame for delivery of each. Electronic transmission is not mentioned. This creates an ambiguity when it comes to the authorized methods of service of motions for summary judgment in that it calls out the extension of time for various service methods but is silent on electronic service. Thus, it is unclear whether electronic service of motions for summary judgment or adjudication are permitted. AB 2875 would provide certainty for all parties involved in a summary motion by making clear that the electronic service of summary judgment motions is permitted.

Existing law results in ambiguity for electronic service of motions for summary judgment.

Existing law, specifically Code of Civil Procedure Section 1010.6, generally permits the use of electronic service of legal documents. Pursuant to the guidance provided by the Code of Civil Procedure, the Judicial Council adopted in the California Rules of Court Rule 2.251 which, generally, permits electronic service of documents if both parties agree to the service or if a local court has adopted its own rule mandating electronic service in a given type of legal manner. An exception to the Rule of Court appears to be instances in which personal service is required by statute. The author and proponents of this bill suggest that ambiguity within the existing statutes related to service of motions for summary judgment are curtailing the use of electronic service to effectuate service of these motions. The proponents of the bill, rightfully, note that Code of Civil Procedure Section 437c omits any reference to electronic service despite specifically listing other non-personal means of service including service by mail, fax, or other means of overnight delivery.

Despite the concerns of the proponents of this bill, several other organizations representing litigators noted that, in practice, many of their members simply agree with other parties to accept

electronic service for motions for summary judgment as a part of agreeing to other forms of service in accordance Rule 2.251. Nonetheless, the proponents do highlight a potential gap in the existing law that, if challenged, may frustrate the ongoing move toward electronic service across a variety of legal matters.

This bill. Seeking to clarify the existing law related to electronic service of motions for summary judgment this bill codifies that electronic service is permissible for serving an opposing party with a motion for summary judgment, subject to the existing rules and procedures provided in law for electronic service. Additionally, this bill clarifies that if electronic service is utilized to serve a motion for summary judgment, then the statutorily required 75-day waiting period before the motion can be heard in court is extended by two court days.

COVID-19 highlights California courts increasing embrace of electronic service. As a result of the ongoing public health emergency in California, the use of electronic service has been dramatically expanded by the Judicial Council of California. Emergency Rule of Court 12, which was adopted in mid-April of 2020, provides that in all general civil, probate, and family law cases in which a party is represented by counsel electronic service of all documents is mandated until 90 days after the end of the Governor's declaration of an emergency. (Emergency Rule 12, available at: <https://newsroom.courts.ca.gov/news/judicial-council-mandates-electronic-service-of-documents-in-most-civil-cases>.)

Nothing in this bill would supersede that order during the current crisis, however, it should be noted that Emergency Rule 12 has essentially authorized the electronic service of motions for summary judgment on a temporary basis. Assuming that the current mandated use of electronic service will expand its popularity once the current crisis abates, codifying the ability to use electronic service for motions for summary judgments at this time appears prudent.

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Conference of Bar Associations. In support of the bill, they write:

AB 2875 will align the methods of permissible service for motions for summary judgment and adjudication with Code of Civil Procedure Section 1010.6, which permits the electronic service of papers in certain situations, to clarify that motions for summary judgment may be serviced electronically.

This bill does not require electronic service, it merely clarifies that it is an option...and provides a definite calculation for the extension of time, giving civil practitioners peace of mind knowing that electronic service is available.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations

Opposition

None on file

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334