

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2283 (Pacheco)
Version: May 2, 2024
Hearing Date: June 25, 2018
Fiscal: No
Urgency: Yes
AWM

SUBJECT

Civil actions: electronic service

DIGEST

This bill extends, until July 1, 2025, the implementation of a provision requiring a court to electronically serve parties who have consented to electronic service or in cases where the court has ordered electronic service.

EXECUTIVE SUMMARY

Current law establishes rules and procedures for the electronic service of documents in civil cases, including providing which parties must make and accept, and which parties may elect to make and accept, service through electronic means. Courts, however, are exempt from these requirements. In 2021, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021) which, among other things, set a July 1, 2024, deadline for the courts to transmit documents electronically to parties who are required or have requested to accept electronic service.

According to Judicial Council, the sponsor of the bill, the courts will not be able to meet the statutory deadline for implementing electronic service. This bill, therefore, extends the implementation deadline by one year, until July 1, 2025. The bill also changes the court's obligation to electronically "transmit" documents to an obligation to electronically "serve" documents, which will allow courts to complete service by sending a party a link to a download rather than emailing large documents. This change conforms the courts' service requirement with the types of service permitted by parties, and avoids the prospect of the courts being legally required to email a file that is too large to be sent over email.

This bill is sponsored by the Judicial Council of California. This Committee has not received timely opposition to this bill. The bill contains an urgency clause.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines the following relevant terms:
 - a) “Electronic service” means service of a document, on a person, by either electronic transmission of electronic notification; electronic service may be performed directly by a person, including a party or a person’s attorney, or through an electronic service provider, and by a court.
 - b) “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.
 - c) “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. (Code Civ. Proc., § 1010.6(a)(1).)
- 2) Permits electronic service of documents in a civil action, consistent with specified requirements, except that a document is required to be served by certified or registered mail, electronic service of the document is not authorized. (Code Civ. Proc., § 1010.6(a).)
- 3) Provides for mandatory electronic service in a civil action as follows:
 - a) The court may order electronic service on a person represented by counsel who has appeared in an action or proceeding.
 - b) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission.
 - c) Before first serving a represented person electronically, the person effecting service shall confirm the appropriate electronic service address for the counsel being served.
 - d) A person represented by counsel shall, upon request of any person who has appeared in an action or proceeding and who provides an electronic service address, electronically serve the requesting person with any notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (Code Civ. Proc., § 1010.6(b).)
- 4) Provides that an unrepresented person may consent to electronic service in a civil action, provided that the person gave express consent; the unrepresented person may withdraw consent at any time by filing the appropriate Judicial Council form with the court. (Code Civ. Proc., § 1010.6(c).)

- 5) Provides that, on or after July 1, 2024, in any action in which a party or other person is subject to mandatory electronic service under 3) or has consented to electronic service under 4), the court shall electronically transmit, to the person subject to mandatory electronic service or who has consented to electronic service, any document issued by the court that the court is required to transmit, deliver, or serve. This service shall have the same legal effect as service by mail, as specified. (Code Civ. Proc., § 1010.6(d).)

This bill:

- 1) Modifies the impending obligation for Judicial Council to provide court-issued documents to parties electronically, requiring that they be “served” electronically rather than “transmitted.”
- 2) Extends, from July 1, 2024, until July 1, 2025, the deadline by which court is required to electronically serve court-issued documents on parties who are required to be served, or who have consented to be served, pursuant to 1).

COMMENTS

1. Author’s comment

According to the author:

Emerging from the COVID-19 pandemic, the Legislature approved legislation building upon the expanded use of technology within the legal industry to improve access to justice, reduce costs to courts and litigants, lessen trial length, and quicken trial pace. AB 2283 furthers these efforts by affording the courts a reasonable extension of time to ensure seamless and reliable access to digitized documents for those being electronically served and by clarifying that electronic service includes both transmission and notification of documents.

2. Background on electronic service of documents in civil actions

Electronic service – which can be service by email or through an electronic filing service¹ – has come a long way in the past quarter of a century. Code of Civil Procedure section 1010.6 (Section 1010.6), which governs electronic 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.² 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 service.

¹ Code Civ. Proc., § 1010.6(a).

² SB 367 (Dunn, Ch. 514, Stats. 199), § 1.

Most of Section 1010.6 is directed at when parties may serve each other electronically. As a general rule, represented parties must accept electronic service, and serve any party electronically who requests it, whereas unrepresented parties cannot be served electronically unless they affirmatively consent to such service.³

Electronic service from the courts, however, has progressed much more slowly. Until 2021, Section 1010.6 stated only that courts may elect to electronically serve parties who had consented, or were required, to accept electronic service; there was no requirement that courts electronically serve anyone. Then in 2021, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021) which, among other things, set a deadline for the courts to transmit documents electronically to parties who are required or have requested to accept electronic service. Specifically, SB 241 required courts to begin electronically transmitting, to parties required or consenting to accept electronic service, documents that the court is required to transmit, deliver, or serve, beginning July 1, 2024.⁴ The delayed implementation date was the result of Judicial Council's insistence that it needed extra time to establish an electronic service mechanism for the courts.

3. This bill modifies the courts' obligation to provide court-issued documents to certain parties and delays, by one year, the implementation date for that obligation

This bill modifies SB 241's requirement that courts provide court-issued documents to certain parties in two ways.

First, the bill changes the verb: instead of being required to electronically "transmit" court-issued documents that the court is required to transmit, deliver, or serve, the court will be required to electronically "serve" those documents to the parties who are required to accept, or have elected to accept, electronic service.

Second, with July 1, 2024, just around the corner, this bill extends the implementation deadline for electronic service by the courts until July 1, 2025. The bill is an urgency measure.

According to Judicial Council, the bill's sponsor, writing in support:

The Judicial Council supported Senate Bill 241 last session because among other attributes, it allowed courts to continue to develop the tools rolled out during the pandemic and maximize the ability to provide a full menu of equal, safe, and reliable access to justice and court services, including e-service. Despite the desire and good-faith effort to meet the July 1, 2024, deadline in SB 241, some courts indicated that they would likely be unable to achieve full functionality of e-service due to technological delays in the significant amount of reprogramming

³ Code Civ. Proc., § 1010.6(b), (c.)

⁴ See *id.*, § 1010.6(d).

and testing needed. Relatedly under SB 241, courts will be required to, but cannot, electronically “transmit” large documents to parties. With the single word clarification in AB 2283, courts will appropriately be permitted to electronically “notify” parties of documents or electronically “transmit” documents.

SUPPORT

Judicial Council (sponsor)

OPPOSITION

None received⁵

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2961 (Committee on Judiciary, Ch. 215, Stats. 2022) revised and recast the Code of Civil Procedure section 1010.6 to eliminate redundancies and inconsistent provisions and clarify existing requirements.

SB 666 (Umberg, 2021) would have required courts to electronically transmit documents issued by the court where parties in actions where the parties consented to, or are required to use, electronic service; the contents of SB 666 were amended into SB 241, below. SB 666 died on the Senate Inactive File.

SB 241 (Umberg, Ch. 214, Stats. 2021) among other things, required, beginning July 1, 2024, courts to electronically transmit documents issued by the court where parties have consented to, or are required to use, electronic service.

SB 1146 (Umberg, Ch. 112, Stats. 2020) among other things, allowed parties to electronically serve documents on represented parties and opt to have represented parties serve them electronically.

AB 2165 (Robert Rivas, Ch. 215, Stats. 2020) amended section 1010.6 to clarify and update requirements relating to signing electronically filed documents, notices of

⁵ It appears that opposition was submitted to the Assembly Judiciary Committee before this bill was gutted and amended in the Assembly to address an entirely different topic. The opposition to the prior version of the bill is not relevant to this bill and no timely opposition has been submitted to this Committee.

rejection of electronically filed documents, electronic filing fees, and court-ordered electronic filing.

PRIOR VOTES:

Assembly Floor (Ayes 73, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)
