

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 666 (Umberg)  
Version: March 10, 2021  
Hearing Date: April 6, 2021  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Service of papers: electronic service by court

**DIGEST**

This bill requires courts 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, where the party being served has consented to electronic service.

**EXECUTIVE SUMMARY**

Under current law, parties may opt for electronic service of court documents from represented parties and may electronically serve court documents on court parties as a matter of course; courts may also order electronic service in certain cases. Courts, however, are not required to serve documents electronically, but may do so at their discretion where a party has provided express consent to electronic service. This bill requires a court to electronically serve court-issued documents on any party or other person who has provided express consent or has been ordered to accept electronic service.

This bill is sponsored by the author. There is no known opposition.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for electronic service of any document that may be served by mail, express mail, overnight delivery, or facsimile transmission, as between parties or other persons under specified circumstances:
  - a) When a party or other person has expressly consented to receive electronic service in the specific action (Code Civ. Proc., § 1010.6(a)(2)(A)(ii));
  - b) When the court has ordered electronic service on a represented party or other represented person in a jurisdiction that has adopted local rules permitting electronic filing of documents and related procedures. (Code Civ. Proc., § 1010.6(a)(2)(A)(ii), (c), (d));
  - c) On a party represented by counsel, when the person wishing to serve that party confirms by telephone or email the appropriate email address for electronic service. (Code Civ. Proc., § 1010.6(e)(1)); and
  - d) From a party represented by counsel, when the person wished to be served requests electronic service and provides the appropriate email address for electronic service. (Code Civ. Proc., § 1010.6(e)(2).)
- 2) Provides that a court may, in cases where parties or persons have expressly consented to electronic service of documents or the court has ordered electronic service, 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. (Code Civ. Proc., § 1010.6(a)(3).)

This bill:

- 1) Requires that a court, in cases where parties or persons have expressly consented to electronic service of documents or the court has ordered electronic service, 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.

## COMMENTS

### 1. Author's comment

According to the author:

In 1999, the California Legislature first declared its intent to move toward uniform, statewide electronic filing procedures in civil cases. (SB 367 (Dunn, 1999) Ch. 514, Stats. 1999.) Since then, as the internet and email have become increasingly integrated into – and essential for – daily life, the Legislature and the Judiciary have taken progressive steps to incorporate additional avenues for

electronic service. For many litigants, electronic service is a faster, more reliable, and more eco-friendly alternative to traditional mail and fax service. At the beginning of 2020, parties could consent to, and, in some cases, courts could order, represented parties and other represented litigants to serve each other electronically. Courts, however, maintained the discretion to serve court-issued documents electronically, even where parties consented to electronic service.

The COVID-19 pandemic threw the value of electronic service into stark relief. Whereas mail or facsimile service typically requires a law firm employee to travel to an office and collect a served document – which, during the pandemic, could violate a state or local stay-at-home order – electronic service allows consenting and represented parties to receive documents more safely and more efficiently. In response to the realities presented by the pandemic, and in recognition of the fact that email is now an essential part of every attorney’s practice, Senator Umberg authored SB 1146 (Ch. 112, Stats. 2020), which expanded mandatory electronic service (1) on represented parties, where the serving party confirmed the correct email address for service, and (2) by represented parties, where the party to be served made the request and provided the correct email address for service.

This bill takes another step toward streamlining litigation by requiring courts to electronically serve court-issued documents on a party or participant who has requested electronic service. This measure will increase the efficiency of litigation and allow parties to respond more quickly to court orders – an issue of dire concern, in light of the impending civil case backlog. At the same time, the bill protects the interests of litigants by limiting mandatory electronic service to those who have consented to it, ensuring that parties who might not have reliable access to the internet or the necessary programs are not denied access to justice.

2. Requiring courts to serve court-issued documents when parties have consented to, or courts have already ordered, electronic service will promote efficiency

The Legislature first authorized courts to adopt optional electronic filing and service procedures in 1999.<sup>1</sup> As email and the internet moved from novelties to conveniences to indispensable, the Legislature passed additional measures to expand and enhance the availability of electronic filing and service.<sup>2</sup>

The current electronic service regime provides for nearly universal electronic service. Parties may consent to electronic service from other parties;<sup>3</sup> parties may require

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<sup>1</sup> See SB 367 (Dunn, Ch. 514, Stats. 1999).

<sup>2</sup> E.g., SB 1146 (Umberg, Ch. 112, Stats. 2020), AB 2244 (Gatto, Ch. 461, Stats. 2016), AB 2073 (Silva, Ch. 320, Stats. 2012), SB 1274 (Committee on Judiciary, Ch. 156, Stats. 2010).

<sup>3</sup> Code Civ. Proc., § 1010.6(a)(2)(A)(ii).

electronic service from parties represented by counsel;<sup>4</sup> parties may electronically serve any party represented by counsel;<sup>5</sup> the courts may adopt local rules requiring parties to serve each other electronically;<sup>6</sup> and a court may order parties to serve each other electronically in a class action, a consolidated action, a group of actions, a coordinated action, or an action deemed complex under Judicial Council rules, provided that the order does not cause undue hardship or significant prejudice to any party in the action.<sup>7</sup> For courts, however, electronic service of court-issued documents always remains optional; courts may still elect to serve parties by mail or other traditional methods of service.<sup>8</sup>

This bill removes the provision allowing courts to decline to electronically serve parties who have consented to electronic service. Instead, wherever a party has consented to electronic service, the court would be required to serve court-issued documents electronically. According to the author, this will promote judicial efficiency by cutting down on wait times for orders.

The importance of streamlining court procedures is difficult to overstate. According to the Judicial Council, California's courts resolved nearly 1.4 million fewer cases during the first six months of the COVID-19 pandemic – a decline of 49.1 percent from the same six-month period in 2019.<sup>9</sup> The pandemic-induced slowdown has disproportionately affected civil cases, because constitutional speedy trial guarantees for criminal cases require courts to prioritize those matters.<sup>10</sup> Even when courts are able to resume normal operations, the backlog of civil cases will affect and delay cases for years to come. By requiring courts to serve electronic documents on consenting parties, this bill will cut down on the time parties must wait to receive an order and move forward with the case; these reductions in wait times, compounded over millions of backlogged cases, could be an important component in the effort to ensure access to justice for the millions of Californians whose cases have been in limbo during the pandemic.

While the bill will cut down on wait times for parties who have consented to electronic service, the bill should not impose any hardships on unrepresented parties who lack reliable access to the internet or email. Unrepresented parties are generally exempt from mandatory electronic service, and courts may not order electronic service if doing so

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<sup>4</sup> *Id.*, § 1010.6(e)(2).

<sup>5</sup> *Id.*, § 1010.6(e)(1).

<sup>6</sup> *Id.*, § 1010.6(d).

<sup>7</sup> *Id.*, § 1010.6(c).

<sup>8</sup> *Id.*, § 1010.6(a)(3).

<sup>9</sup> Report to the Judicial Council, *Trial Court Budget: \$50 Million COVID-19 Backlog Funding* (Jan. 12, 2021), at Attachment A.

<sup>10</sup> *E.g.*, White, *What happens when COVID-19 shuts civil courts?*, Los Angeles Times (Sept. 11, 2020), available at <https://www.latimes.com/business/story/2020-09-11/covid-shuts-courts-mediation-arbitration-boom> [last visited Mar. 23, 2021].

would impose undue hardship or significant prejudice to any party in the action.<sup>11</sup> Accordingly, courts should be required to serve court-issued documents electronically only where the unrepresented party has consented to it, thereby balancing the interests of efficiency and access to justice for all Californians.

### SUPPORT

None known

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1146 (Umberg, Ch. 112, Stats. 2020) required a represented party to accept electronic service, where the serving party confirmed the appropriate email address for counsel; and required a party represented by counsel, upon request of any party, to serve the requesting party electronically.

AB 976 (Berman, Ch. 319, Stats. 2107) amended Code of Civil Procedure section 1010.6's electronic service provisions to create a timeline for the implementation of electronic service: for cases filed on or before December 31, December 18, documents could be served electronically only if the party agreed to accept electronic service or electronic service was ordered by the court pursuant to local rules; for cases filed on or after January 1, 2019, the same restrictions applied, but parties could manifest consent to electronic service either by serving a notice on all the parties and filing the notice with the court, or manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service.

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<sup>11</sup> Code Civ. Proc., §§ 1010.6(c) & (d)(4). Furthermore, the types of cases in which a court may order electronic service – a class action, a consolidated action, a group of actions, a coordinated action, or an action deemed complex under Judicial Council rules – are less likely to involve unrepresented parties in the first place.