



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 16–17, 2017

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Modernization of Civil Statutes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Civ. Code, § 1719 and Code Civ. Proc., §§ 594, 659, 660, and 663a	November 17, 2017
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair	September 15, 2017
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Contact
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Executive Summary

The Policy Coordination and Liaison Committee and Information Technology Advisory Committee recommend that the Judicial Council sponsor legislation to amend section 1719 of the Civil Code and sections 594, 659, 660, and 663a of the Code of Civil Procedure. This legislative proposal is needed to modernize the statutes and would (1) authorize the courts to electronically serve a written demand for payment on the drawer of a bad check, (2) authorize electronic service of notices of intention to move for a new trial or vacate judgment, and (3) amend certain deadlines tied to dates of “mailing” to be tied instead to dates of “service.”

Recommendation

The Policy Coordination and Liaison Committee and Information Technology Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Amend Civil Code section 1719 to redesignate subdivision (g) as (g)(1) and add new subdivision (g)(2), which would allow a court to electronically serve a written demand for

payment on the drawer of a bad check when the court is the payee of the check and the drawer of the check is already accepting electronic service in the matter to which the check pertains.

2. Amend Code of Civil Procedure section 594 to include electronic service as an option for service of a notice of a trial or hearing.
3. Amend subdivisions (a)(2) and (b) of Code of Civil Procedure section 659. The amendment to subdivision (a)(2) would strike “mailing” and replace it with “service” to ensure consistency with Code of Civil Procedure section 664.5, which section 659 references. The amendment to subdivision (b) would add language that the time to file a notice of intention to move for a new trial is not extended by electronic service, which is consistent with Code of Civil Procedure section 1010.6(a)(4)(A)(i).¹
4. Amend Code of Civil Procedure section 660 to strike “mailing” and replace it with “service” to ensure consistency with Code of Civil Procedure section 664.5, which section 660 references.
5. Amend subdivisions (a)(2), (b) and (c) of Code of Civil Procedure section 663a. The amendments to subdivisions (a)(2) and (b) would strike references to “mailing” and replace them with “service” to ensure consistency with Code of Civil Procedure section 664.5, which section 663a references. The amendment to subdivision (c) would add language that electronic service does not extend time for exercising a right or doing an act, consistent with Code of Civil Procedure section 1010.6(a)(4)(A)(ii).

Previous Council Action

Code of Civil Procedure section 1010.6 authorizes electronic service in the superior courts. Under section 1010.6, the Judicial Council implemented rules for both permissive and mandatory electronic service. Legislation that the Judicial Council sponsored in 2017 (Assem. Bill 976 [Berman]) will codify certain electronic service provisions currently covered in the rules, including the addition of Code of Civil Procedure section 1013b to govern proof of electronic service.

Rationale for Recommendation

This proposal builds on prior Judicial Council efforts to modernize court procedures and, more specifically, provide clarity about and foster the use of electronic service.

¹ With the enactment of Assembly Bill 976 (Stats. 2017, ch. 319), effective January 1, 2018, Code of Civil Procedure section 1010.6(a)(4)(A)(i)-(iii) will be re-designated as section 1010.6(a)(4)(B)(i)-(iii).

Civil Code section 1719

Subdivisions (a) and (b) of Civil Code section 1719 govern procedures and remedies available to a payee of a check passed on insufficient funds. Remedies include service charges and treble damages owed to the payee. For damages, under subdivision (b) payees must make written demand for payment. When the payee is a court, subdivision (g) allows only mailing of the demand and, in a dispute, allows damages only when a copy of the written demand is entered into evidence along with the “certificate of mailing” in the form provided for in Code of Civil Procedure section 1013a(4).

Subdivision (g) is at odds with Code of Civil Procedure section 1010.6(a)(3), which allows courts to “electronically serve any document issued by the court” when personal service is not required and when a party has consented or is required to accept electronic service. To resolve this incongruity, the proposal amends subdivision (g) to add a provision that clearly permits a court to electronically serve a written demand on the drawer of a bad check when the court is the payee of a check passed on insufficient funds and the check relates to an action in which the drawer has consented or is required to accept electronic service. It also clarifies that proof of electronic service rather than proof of mailing is allowed. These changes will eliminate the need for a court to mail a demand when the drawer is already accepting electronic service of documents in the case to which the check pertains. This is a narrow exception to the requirement of mailing a demand.

The proposed amendment references Code of Civil Procedure section 1013b, which will govern proof of electronic service and was part of Judicial Council–sponsored legislation found in AB 976.

Code of Civil Procedure section 594

Subdivision (a) of Code of Civil Procedure section 594 allows a party to bring an issue to trial or hearing in the absence of the adverse party. When the issue to be tried is an issue of fact, however, the court must first be satisfied that the adverse party had adequate notice (15 days for most trials and 5 days for unlawful detainers). Subdivision (b) states that the notice to the adverse party “shall be served by mail” by the court clerk, but if the court clerk does not do so, any party may serve the notice “by mail.” This proposal amends section 594 to clearly authorize electronic service and proof of electronic service in accordance with Code of Civil Procedure sections 1010.6 and 1013b.

The proposed amendment to section 594 references Code of Civil Procedure section 1013b, which was part of Judicial Council–sponsored legislation found in AB 976 and which will govern proof of electronic service.

Code of Civil Procedure sections 659, 660, and 663a

With the enactment of AB 976, effective January 1, 2018, Code of Civil Procedure section 664.5 will amended allow notices of entry of judgment to be electronically served rather than mailed or

personally served in certain actions. Code of Civil Procedure sections 659, 660, and 663a all reference section 664.5, and the proposal amends those provisions for consistency.

Amending section 659. Subdivision (a)(2) of section 659 refers to section 664.5 in setting the deadline to file a notice of intention to move for a new trial, and specifically keys one deadline to the date of “mailing” of the notice of entry of judgment. To keep sections 664.5 and 659 consistent, the proposal strikes “mailing” from section 659 and replaces it with “service.” In addition, subdivision (b) of section 659 states that the deadlines to file cannot be extended by order, stipulation, or provisions of the Code of Civil Procedure that extend time when service is by mail. Under Code of Civil Procedure section 1010.6(a)(4)(A)(i), electronic service also does not extend the time for filing a notice of intention to move for a new trial. Accordingly, the proposal amends subdivision (b) of section 659 to add that time cannot be extended by electronic service.

Amending section 660. Section 660 references section 664.5 in setting a jurisdictional deadline for a court to rule on a motion for a new trial, and specifically keys one deadline to the date of “mailing” of the notice of entry of judgment. To keep sections 664.5 and 660 consistent, the proposal strikes “mailing” from section 660 and replaces it with “service.”

Amending section 663a. Subdivision (a)(2) of section 663a refers to section 664.5 in setting the deadline to file a notice of intention to move to vacate judgment, and specifically keys one deadline to the date of “mailing” of the notice of entry of judgment. Subdivision (b) also references section 664.5 in setting a jurisdictional deadline for a court to rule on a motion to vacate judgment, and specifically ties one deadline to the date of “mailing” of the notice of entry of judgment. To keep sections 664.5 and 663a consistent, the proposal strikes “mailing” from section 663a and replaces it with “service.”

Finally, subdivision (c) of section 663a states that the deadlines to file cannot be extended by order, stipulation, or provisions of the Code of Civil Procedure that extend time when service is by mail. Under Code of Civil Procedure section 1010.6(a)(4)(A)(ii), electronic service also does not extend the time for filing a notice of intention to move to vacate judgment. Accordingly, the proposal amends subdivision (c) to add that time cannot be extended by electronic service.

Comments, Alternatives Considered, and Policy Implications

This legislative proposal was circulated for public comment during the spring 2017 invitation-to-comment cycle. Four commenters submitted comments on the proposal. Most of the comments supported the legislation, a couple of comments included suggested modifications to specific portions of the proposal, and one comment disagreed with one portion of the proposal. Both the Information Technology Advisory Committee (ITAC) and Civil and Small Claims Advisory Committee (CSCAC) considered the comments.

One commenter agreed with the amendment to Civil Code section 1719(g) but raised a concern that if the drawer of a bad check was a party represented by counsel, the demand would be sent

to counsel's electronic service address rather than the party's. ITAC and CSCAC considered the comment, but declined to alter the proposal. The committees determined that counsel's professional ethical obligations should be sufficient to ensure counsel communicates with the client.

The original proposal included amendments to Code of Civil Procedure sections 405.22 and 405.23, which would have authorized a party asserting a real property claim to electronically serve a notice of pendency of the action in certain circumstances rather than serve notice by registered or certified mail. However, those amendments were removed from the proposal to ensure consistency with the final version of AB 976, which precludes electronic service when registered or certified mail is required. When the proposal was circulating, one commenter disagreed with the amendments and stated that the amendments may provide no real benefit and it was likely most notices of pendency would still be served by mail. ITAC and CSCAC considered this concern and, while the proposal would likely be applicable to only a narrow subset of litigants, the committees found it reasonable to allow an electronic option for notice where the litigants are already dealing electronically with one another. The same commenter raised a concern that electronic service may be lacking because the current requirement for registered mail provides "heightened requirements" that provide for tracking and evidence of receipt. ITAC and CSCAC considered these issues, but found that electronic service provides sufficient record of transmission of the notice. However, these proposed amendments were removed when the proposal reached the Policy Coordination and Liaison Committee (PCLC) owing to the language in the proposal that was inconsistent with the final version of AB 976.

Two commenters discussed timing issues related to Code of Civil Procedure section 594(b), which requires that a notice of trial be served within different time frames depending on whether a party or the court clerk serves the notice and depending on whether the action is an unlawful detainer. The commenters suggested altering the time frames. ITAC and CSCAC determined that these comments were beyond the scope of the proposal as the proposal is intended to add electronic service as a mechanism for service of a notice of new trial, not alter statutory time frames.

After the proposal circulated for comment, ITAC and CSCAC approved a nonsubstantive, technical revision to the language in the proposed amendment to Civil Code section 1719(g)(2), which references Code of Civil Procedure section 1013b. The purpose of this revision was to conform the proposal to a nonsubstantive edit made this year by the Legislature in AB 976 to Code of Civil Procedure section 1013b.

Following the ITAC and CSCAC meetings, the Judicial Council Technology Committee (JCTC) considered the proposal and discussed that the language used across the proposed amendments could be more consistent. Accordingly, staff have revised the language; the edits are technical and nonsubstantive. Specifically, the proposed language in subdivision (g)(2) of Civil Code section 1719 that originally read "has consented to accept or is required to accept electronic service" has been pared down to read "is accepting electronic service."

With respect to alternatives considered, the alternative to the proposed amendments would be to preserve the status quo. However, the status quo is inconsistent with ITAC's project to modernize statutes to promote modern e-business practices and with the goal to ensure cohesion between Judicial Council–sponsored legislation and related statutes.

Implementation Requirements, Costs, and Operational Impacts

The proposal should provide more consistency and clarity in the use of electronic service in the areas covered by Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a. The proposal is unlikely to result in additional costs. The proposal provides the option of electronic service, but does not add any new requirement to use electronic service.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposal is consistent with Goal 4: Promote Rule and Legislative Changes in the *Strategic Plan for Technology 2014–2018*. Under Goal 4, the judicial branch will drive modernization of statutes, rules, and procedures to facilitate use of technology in court operations and delivery of court services. Goal 4 is strongly aligned with the judicial branch strategic and operational plans' overarching goals for (1) access, fairness, and diversity; (2) independence and accountability; (3) modernization of management and administration; and (4) quality of justice and service to the public.

Attachments and Links

1. Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a, at pages 7–12
2. Chart of comments, at pages 13–20
3. AB 976 (Stats. 2017, ch. 319),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB976

Section 1719 of the Civil Code and sections 594, 659, 660, and 663a of the Code of Civil Procedure would be amended, effective January 1, 2019, to read:

1 **Civil Code, § 1719.**

2
3 (a)(1) Notwithstanding any penal sanctions that may apply, any person who passes a
4 check on insufficient funds shall be liable to the payee for the amount of the check and a
5 service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25)
6 for the first check passed on insufficient funds and an amount not to exceed thirty-five
7 dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

8
9 (2) Notwithstanding any penal sanctions that may apply, any person who passes a check
10 on insufficient funds shall be liable to the payee for damages equal to treble the amount
11 of the check if a written demand for payment is mailed by certified mail to the person
12 who had passed a check on insufficient funds and the written demand informs this person
13 of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of
14 the service charge payable to the payee. The person who had passed a check on
15 insufficient funds shall have 30 days from the date the written demand was mailed to pay
16 the amount of the check, the amount of the service charge payable to the payee, and the
17 costs to mail the written demand for payment. If this person fails to pay in full the amount
18 of the check, the service charge payable to the payee, and the costs to mail the written
19 demand within this period, this person shall then be liable instead for the amount of the
20 check, minus any partial payments made toward the amount of the check or the service
21 charge within 30 days of the written demand, and damages equal to treble that amount,
22 which shall not be less than one hundred dollars (\$100) nor more than one thousand five
23 hundred dollars (\$1,500). When a person becomes liable for treble damages for a check
24 that is the subject of a written demand, that person shall no longer be liable for any
25 service charge for that check and any costs to mail the written demand.

26
27 (3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service
28 charge, costs to mail the written demand, or treble damages if he or she stops payment in
29 order to resolve a good faith dispute with the payee. The payee is entitled to the service
30 charge, costs to mail the written demand, or treble damages only upon proving by
31 clear and convincing evidence that there was no good faith dispute, as defined in
32 subdivision (b).

33
34 (4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for
35 the service charge if, at any time, he or she presents the payee with written confirmation
36 by his or her financial institution that the check was returned to the payee by the financial
37 institution due to an error on the part of the financial institution.

38
39 (5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for
40 the service charge if the person presents the payee with written confirmation that his or
41 her account had insufficient funds as a result of a delay in the regularly scheduled transfer

1 of, or the posting of, a direct deposit of a social security or government benefit assistance
2 payment.

3
4 (6) As used in this subdivision, to “pass a check on insufficient funds” means to make,
5 utter, draw, or deliver any check, draft, or order for the payment of money upon any
6 bank, depository, person, firm, or corporation that refuses to honor the check, draft, or
7 order for any of the following reasons:

8
9 (A) Lack of funds or credit in the account to pay the check.

10
11 (B) The person who wrote the check does not have an account with the drawee.

12
13 (C) The person who wrote the check instructed the drawee to stop payment on the check.

14
15 (b)–(c) * * *

16
17 (d) In the case of a stop payment, a court may not award damages or costs under this
18 section unless the court receives into evidence a copy of the written demand that, in that
19 case, shall have been sent to the drawer and a signed certified mail receipt showing
20 delivery, or attempted delivery if refused, of the written demand to the drawer’s last
21 known address.

22
23 (e)–(f) * * *

24
25 (g)(1) Notwithstanding subdivision (a), if the payee is the court, the written demand for
26 payment described in subdivision (a) may be mailed to the drawer by the court clerk.
27 Notwithstanding subdivision (d), in the case of a stop payment where the demand is
28 mailed by the court clerk, a court may not award damages or costs pursuant to
29 subdivision (d), unless the court receives into evidence a copy of the written demand, and
30 a certificate of mailing by the court clerk in the form provided for in subdivision (4) of
31 Section 1013a of the Code of Civil Procedure for service in civil actions.

32
33 (2) In lieu of the mailing provisions of (g)(1), if the payee is the court and the check
34 passed on insufficient funds relates to an action in which the drawer is accepting
35 electronic service pursuant to Section 1010.6 of the Code of Civil Procedure, the court
36 clerk may serve the written demand electronically. Notwithstanding subdivision (d), in
37 the case of a stop payment where the demand is electronically served by the court clerk, a
38 court may not award damages or costs pursuant to subdivision (d) unless the court
39 receives into evidence a copy of the written demand and a certificate of electronic service
40 by the court clerk in the form provided for in subdivision (a)(4) of Section 1013b of the
41 Code of Civil Procedure.

1 (3) For purposes of this subdivision, in courts where a single court clerk serves more than
2 one court, the clerk shall be deemed the court clerk of each court.

3
4 (h)–(k) * * *

5
6 **Code of Civil Procedure, § 594.**

7
8 (a) In superior courts either party may bring an issue to trial or to a hearing, and, in the
9 absence of the adverse party, unless the court, for good cause, otherwise directs, may
10 proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the
11 case may require; provided, however, if the issue to be tried is an issue of fact, proof shall
12 first be made to the satisfaction of the court that the adverse party has had 15 days' notice
13 of such trial or five days' notice of the trial in an unlawful detainer action as specified in
14 subdivision (b). If the adverse party has served notice of trial upon the party seeking the
15 dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall
16 be deemed to have had notice.

17
18 (b) The notice to the adverse party required by subdivision (a) shall be served
19 electronically in accordance with Section 1010.6 or by mail on all the parties by the clerk
20 of the court not less than 20 days prior to the date set for trial. In an unlawful detainer
21 action where notice is served electronically in accordance with Section 1010.6 or by mail,
22 that service shall be electronically served or mailed not less than 10 days prior to the date
23 set for trial. If notice is not served by the clerk as required by this subdivision, it may be
24 served electronically in accordance with Section 1010.6 or by mail by any party on the
25 adverse party not less than 15 days prior to the date set for trial, and in an unlawful
26 detainer action where notice is served electronically in accordance with Section 1010.6 or
27 by mail, that service shall be electronically served or mailed not less than 10 days prior to
28 the date set for trial. The time provisions of Section 1010.6 and Section 1013 shall not
29 serve to extend the notice of trial requirements under this subdivision for unlawful
30 detainer actions. If notice is served by the clerk, proof thereof may be made by
31 introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section
32 1013a, compliance with Section 1013b when service is electronic, or other competent
33 evidence. If notice is served by a party, proof may be made by introduction into evidence
34 of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a,
35 compliance with Section 1013b when service is electronic, or other competent evidence.
36 The provisions of this subdivision are exclusive.

37
38 **Code of Civil Procedure, § 659.**

39
40 (a) The party intending to move for a new trial shall file with the clerk and serve upon
41 each adverse party a notice of his or her intention to move for a new trial, designating the
42 grounds upon which the motion will be made and whether the same will be made upon
43 affidavits or the minutes of the court, or both, either:

1
2 (1) After the decision is rendered and before the entry of judgment.

3
4 (2) Within 15 days of the date of mailing service of the notice of entry of judgment by the
5 clerk of the court pursuant to Section 664.5, or service upon him or her by any party of
6 written notice of entry of judgment, or within 180 days after the entry of judgment,
7 whichever is earliest; provided, that upon the filing of the first notice of intention to move
8 for a new trial by a party, each other party shall have 15 days after the service of that
9 notice upon him or her to file and serve a notice of intention to move for a new trial.

10
11 (b) That notice of intention to move for a new trial shall be deemed to be a motion for a
12 new trial on all the grounds stated in the notice. The times specified in paragraphs (1)
13 and (2) of subdivision (a) shall not be extended by order, ~~or~~ stipulation, ~~or~~ by those
14 provisions of Section 1013 that extend the time for exercising a right or doing an act
15 where service is by mail, or those provisions of Section 1010.6 that extend the time for
16 exercising a right or doing an act where service is electronic.

17
18 **Code of Civil Procedure, § 660.**

19
20 On the hearing of such motion, reference may be had in all cases to the pleadings and
21 orders of the court on file, and when the motion is made on the minutes, reference may
22 also be had to any depositions and documentary evidence offered at the trial and to the
23 report of the proceedings on the trial taken by the phonographic reporter, or to any
24 certified transcript of such report or if there be no such report or certified transcript, to
25 such proceedings occurring at the trial as are within the recollection of the judge; when
26 the proceedings at the trial have been phonographically reported, but the reporter's notes
27 have not been transcribed, the reporter must upon request of the court or either party,
28 attend the hearing of the motion and shall read his notes, or such parts thereof as the
29 court, or either party, may require.

30
31 The hearing and disposition of the motion for a new trial shall have precedence over all
32 other matters except criminal cases, probate matters and cases actually on trial, and it
33 shall be the duty of the court to determine the same at the earliest possible moment.

34
35 Except as otherwise provided in Section 12a of this code, the power of the court to rule
36 on a motion for a new trial shall expire 60 days from and after the mailing service of the
37 notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days
38 from and after service on the moving party by any party of written notice of the entry of
39 the judgment, whichever is earlier, or if such notice has not theretofore been given, then
40 60 days after filing of the first notice of intention to move for a new trial. If such motion
41 is not determined within said period of 60 days, or within said period as thus extended,
42 the effect shall be a denial of the motion without further order of the court. A motion for
43 a new trial is not determined within the meaning of this section until an order ruling on

1 the motion (1) is entered in the permanent minutes of the court or (2) is signed by the
2 judge and filed with the clerk. The entry of a new trial order in the permanent minutes of
3 the court shall constitute a determination of the motion even though such minute order as
4 entered expressly directs that a written order be prepared, signed and filed. The minute
5 entry shall in all cases show the date on which the order actually is entered in the
6 permanent minutes, but failure to comply with this direction shall not impair the validity
7 or effectiveness of the order.

8
9 **Code of Civil Procedure, § 663a.**

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

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

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

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

41
42 (c) The provisions of Section 1013 extending the time for exercising a right or doing an
43 act where service is by mail and the provisions of Section 1010.6 extending the time for

1 exercising a right or doing an act where service is electronic shall not apply to extend the
2 times specified in paragraphs (1) and (2) of subdivision (a).

3

4 (d)-(e) * * *

LEG 17-05

Technology: Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Aderant By Victoria Katz, Rules Attorney www.aderant.com Email: victoria.katz@aderant.com	NI	<p>We have reviewed the Invitation to Comment LEG 17-05 and write to request that the proposed amendment to CCP 594(b) be further clarified with respect to the calculation of the 15 and 10-day deadlines for a party to serve notice provided therein.</p> <p>As proposed, CCP 594(b) states, in part:</p> <p>If notice is not served by the clerk as required by this subdivision, it may be served electronically in accordance with Section 1010.6 or by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served electronically in accordance with Section 1010.6 or by mail, that service shall be electronically served or mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions.</p> <p>CCP 1010.6(a)(4) says, “[A]ny period of notice, or any right or duty to do any act or make any response within any period or on</p>	<p>The committees appreciate the comment, but the modification suggested in the comment goes beyond the scope of the proposal. The proposal adds electronic service as a mechanism to serve the notice of trial, but is not intended to alter statutory time frames applicable to specific case types.</p>

LEG 17-05

Technology: Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days....”</p> <p>CCP 1013(a) provides, “[A]ny period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended . . . 20 calendar days if either the place of mailing or the place of address is outside the United States....”</p> <p>The statement that the time provisions in CCP 1010.6 and 1013 shall not “extend the notice of trial requirements under this subdivision for unlawful detainer actions,” makes the calculation for non-unlawful detainer actions ambiguous, because it seems to imply that they <i>do</i> serve to extend the notice of trial requirements in those cases.</p> <p>For example, in a non-unlawful detainer actions, amended CCP 594(b) seems to require notice to be electronically served 15 days + 2 court days prior to the date of trial, pursuant to CCP 594(b) and CCP</p>	

LEG 17-05

Technology: Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a)

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	Commentator	Position	Comment	Committee Response
			<p>1010.6. Similarly, notice served by mail outside of California and outside of the United States, would need to be served 20 and 30 days prior to the date of trial, respectively. Is this correct? Or should the deadline for service of notice in non-unlawful detainer actions served by either method simply be 15 days prior to trial?</p> <p>If the deadline is meant to be only 15 days before trial, we respectfully request that CCP 594(b) be further amended to eliminate the reference to unlawful detainer actions in the sentence regarding the time provisions of CCP 1010.6 and 1013: “The time provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions.”</p> <p>If extra time under CCP 1010.6 and 1013 is meant to be added to the notice deadline, we respectfully request that CCP 594(b) be further amended to clarify this fact. For example, the time provision sentence could be changed to read, “Except for unlawful detainer actions, the time provisions of Section 1010.6 and Section 1013 shall serve to extend the notice of trial requirements under this subdivision.”</p>	

LEG 17-05**Technology: Electronic Service** (amend Civil Code section 1719 and Code of Civil Procedure sections 594, 659, 660, and 663a)

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	Commentator	Position	Comment	Committee Response
2.	Lomax, Mark W. Pasadena CA, Email: mlomax1074@gmail.com	AM	C.C.P. section 411.20 requires the clerk to mail notice regarding a dishonored check for a filing fee, and C.C.P. section 411.21 requires the clerk to mail notice regarding partial payment of a filing fee. I recommend that both sections be amended to permit the notices to be served electronically or by postal mail.	The committees appreciate the comment, but it is beyond the scope of this proposal. The committees may consider the suggestion as part of a future proposal.
3.	Orange County Bar Association By Michael L. Baroni, President P.O. Box 6130 Newport Beach, CA 92658	A, AM, N	Agree as Modified - As to the proposed changes to CC section 1719, the following modifications are suggested. With very limited exception, parties who have agreed to accept, or who are required to accept, electronic service of documents pursuant to the provisions of CCP section 1010.6, are represented by counsel. For these parties, the email address on file with the court is that of their respective counsel and not that of the actual party. Consequently, a drawer of a check may appear to be a party subject to electronic service in the underlying action, but whose personal email is not the one in the court records. While there is no disagreement with the idea behind the proposal, it is suggested that the proposed language adding subsection (2) to CC section 1719(g) be modified in some manner to ensure that the drawer's personal email address is used	The committees appreciate the comment, but decline to alter the proposal. If the drawer's counsel receives the notice, that should be sufficient in light of professional ethical obligations that counsel would owe the drawer as client.

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			<p>and that permission for its use by the court is obtained. To do anything less would result in an insufficient and failed demand under CC section 1719(g).</p> <p>Disagree – As to the proposed changes to CCP sections 405.22 and 405.23, the following observations are made.</p> <p>As a practical matter, it is difficult to see how allowing the service electronically of a notice of pendency of action would be of real benefit. At the time a plaintiff, for example, would want to serve the notice, it would seem unlikely that an adverse party even if required to be served electronically, would have responded so as to have its electronic contact information on file. In that all affected owners of record also must be served notice, it would seem even more unlikely that their respective electronic contact information or consent would be known to the plaintiff. Finally, in that service must be made “immediately” upon each adverse party later joined per CCP section 405.22, it would seem most unlikely their electronic contact information would have been provided. For these reasons, based on the timing considerations involved, the likelihood exists that most if</p>	<p>The committees appreciate the comment, but decline to alter the proposal at this time. While the proposed amendments would be applicable to only a narrow subset of litigants, it is reasonable to allow an electronic option for the notice where the litigants are already dealing electronically with one another. Electronic service also provides a sufficient record of transmission.</p>

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			<p>not all of these notices would still be served by mail.</p> <p>Beyond the practical considerations, there are differences in the very nature of a notice of pendency of action which set it apart from a pleading, for example. These differences are not just rooted in tradition, but in actual distinction. The use and impact of these notices is serious which is, perhaps, the reason for the heightened requirements associated with their service (these heightened requirements would be lost, of course, were electronic service allowed). Pleadings simply may be mailed, but these notices must be sent registered or certified mail, return receipt requested. Both of these methods allow for tracking and evidence of receipt. Pleadings are filed with the court, while notices are recorded with the county recorder, and require a notary's seal and acknowledgment. Pleading and notices are both public records, but the notice appears in the chain of title giving constructive notice to all who come after. In short, a notice of pendency of action is surrounded by unique considerations, and it should not be equated with, treated like, or served in the manner of a subsequent pleading.</p>	<p>The committees appreciate the support.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Agree – As to the proposed changes to CCP sections 594, 659, 660, and 663a.</p> <p>Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, in light of the modernization project which seeks to “facilitate electronic filing and service and to foster modern e-business practices.” It is believed, however, that the anticipated benefits of these efforts should be carefully weighed against certain implications and ramifications for litigants.</p>	<p>The committees appreciate the comment.</p>
4.	<p>Superior Court of Los Angeles County 111 N. Hill Street Los Angeles, CA 90012</p>	AM	<p>Suggested modifications:</p> <p>Code of Civil Procedure § 594(b)</p> <p>Page 9, lines 1 through 3 - In order to clarify that the 20 day provision only applies to service by mail, not electronic service, change:</p> <p>“...shall be served electronically in accordance with Section 1010.6 or by mail on all parties by the clerk of the court not less than 20 days prior to the date set for trial.”</p> <p>to</p> <p>“...shall be served by mail on all parties by the clerk of the court not less than 20 days</p>	<p>The committees appreciate the comment, but the modification suggested in the comment goes beyond the scope of the proposal. The proposal adds electronic service as a mechanism to serve the notice of trial, but is not intended to alter the 20 day time frame.</p>

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	Commentator	Position	Comment	Committee Response
			prior to the date set for trial or electronically in accordance with Section 1010.6.”	
5.	Superior Court of San Diego County By Mike Roddy, Court Executive Officer County Courthouse 220 West Broadway San Diego, CA 92101	A	No specific comments.	The committees appreciate the support.