

JONES DAY

3161 MICHELSON DRIVE • SUITE 800 • IRVINE, CALIFORNIA 92612.4408
TELEPHONE: +1.949.851.3939 • FACSIMILE: +1.949.553.7539

October 31, 2012

VIA CM / ECF FILING

Ms. Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 7th Street
San Francisco, California 94103

Re: *Courthouse News Service v. Planet*
Case No. 11-57187

Dear Ms. Dwyer:

This firm represents Appellee Michael Planet in the matter referenced above. We write to provide notice of additional authority pursuant to Federal Rule of Appellate Procedure 28(j).

Appellee's Answering Brief noted that: (a) most California state courts in general, and Ventura Superior Court in particular, do not have electronic filing capabilities (AAB at 2-3; SER 47-54); (b) California Government Code section 68150 and related California Rules of Court authorize courts to maintain filings electronically and to provide "reasonable access" to them (AAB 21-24); and (c) enactment of, and proposed amendments to, these Government Code and Rule of Court provisions demonstrate that the right of reasonable access to court documents is an issue of important state concern (AAB 27-30).

On September 14, 2012 and after we filed our Answering Brief, Governor Brown signed AB 2073 into law. Among other things, AB 2073 amends California Code of Civil Procedure section 1010.6(d) to permit Orange County Superior Court to conduct a pilot project that will for the first time *require* parties to electronically file documents in "specified civil actions":

Ms. Molly C. Dwyer
October 31, 2012
Page 2

(d) (1) Notwithstanding subdivision (b), at the discretion of the presiding judge, a trial court may, by order, the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to eligible specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to subdivision (e) and the following conditions:

(A) The court has the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

(B) The court has and the parties have access to more than one electronic service provider capable of electronically filing documents with the court, including access directly through the court. Any fees charged by the court shall be for no more than the actual cost of the electronic filing and service of the documents, and shall be waived when appropriate, including for any party who has received a fee waiver. Any fees charged by an electronic service provider shall be reasonable and shall be waived when appropriate, including for any party who has received a fee waiver."

(C) The court has a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including unrepresented parties.

In addition, AB 2073 adds new subdivision (f) to California Code of Civil Procedure section 1010.6, which requires the Judicial Council to issue new statewide mandatory e-filing rules, including rules for "public access" of electronically filed documents:

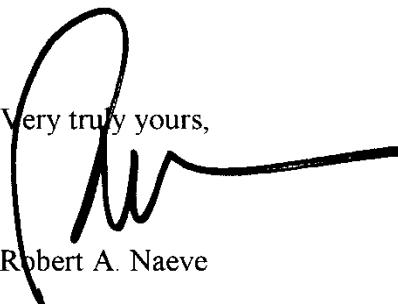
(f) The Judicial Council shall, before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall be informed by any study performed pursuant to paragraph (2) of subdivision (d) and which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

Appellee submits that enactment of AB 2073 further demonstrates that: (a) the State of California continues to grapple with whether and how to establish an electronic filing system

Ms. Molly C. Dwyer
October 31, 2012
Page 3

which should improve overall accessibility to court records, including newly-filed complaints; and (b) the State of California continues to grapple with how best to provide “reasonable access” to electronically filed court records as a matter of state law.

The chaptered version of AB 2073 as signed by Governor Brown is appended to this letter for the Court’s convenience.

Very truly yours,

Robert A. Naeve

Ms. Molly C. Dwyer
October 31, 2012
Page 4

AB 2073

As Chaptered On

September 14, 2012

Assembly Bill No. 2073

CHAPTER 320

An act to amend Section 1010.6 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 14, 2012. Filed with Secretary of State September 14, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2073, Silva. Courts: electronic filing and service of documents.

Existing law authorizes a trial court to adopt local rules permitting electronic filing and service of documents, subject to rules adopted by the Judicial Council and other specified conditions. Existing law also authorizes the court, in any action in which a party has agreed to accept electronic service, or in which the court has ordered electronic service, as specified, 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.

This bill would authorize the Orange County Superior Court, until July 1, 2014, to establish a pilot project to require parties to eligible civil actions, as specified, to electronically file and serve documents, subject to rules adopted by the Judicial Council and other specified conditions. The bill would require the Judicial Council to conduct an evaluation of any pilot project established pursuant to that provision and report to the Legislature on or before December 31, 2013, on the results of the evaluation. The bill would also require the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in eligible civil actions on or before July 1, 2014. The bill would authorize a superior court to require mandatory electronic filing, as specified, upon the adoption of those uniform rules by the Judicial Council.

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

SECTION 1. Section 1010.6 of the Code of Civil Procedure is amended to read:

1010.6. (a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) "Electronic service" means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party,

including the party's attorney, or through an electronic filing service provider.

(B) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(C) "Electronic notification" means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

(2) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized when a party has agreed to accept service electronically in that action.

(3) In any action in which a party has agreed to accept electronic service under paragraph (2), or in which the court has ordered electronic service under subdivision (c) or (d), the court may 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. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

(4) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. However, any period of notice, or 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 after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following:

- (A) A notice of intention to move for new trial.
- (B) A notice of intention to move to vacate judgment under Section 663a.
- (C) A notice of appeal.

This extension applies in the absence of a specific exception provided by any other statute or rule of court.

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of

filings. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(3) Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. “Close of business,” as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court’s filing counter, whichever is earlier.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Sections 68630 to 68641, inclusive, of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Sections 68630 to 68641, inclusive, of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(c) If a trial court adopts rules conforming to subdivision (b), it may provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court’s order does not cause undue hardship or significant prejudice to any party in the action.

(d) (1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to subdivision (e) and the following conditions:

(A) The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

(B) The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court. Any fees charged by the court shall be for no more than the actual cost of the electronic filing and service of the documents, and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver. Any fees charged by an electronic filing service provider shall be reasonable and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver.

(C) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties.

(D) A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court date that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county. Documents filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest court day following the filing.

(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost-effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants.

(e) The Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(f) The Judicial Council shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall be informed by any study performed pursuant to paragraph (2) of subdivision (d) and which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to

the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, as specified in subdivision (f), a superior court may, by local rule, require mandatory electronic filing, pursuant to paragraph (2) of this subdivision.

(2) Any superior court that elects to adopt mandatory electronic filing shall do so pursuant to the requirements and conditions set forth in this section, including, but not limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the rules adopted by the Judicial Council, as specified in subdivision (f).