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**SB-543 Civil actions: service of documents.** (2017-2018)

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**Senate Bill No. 543**

**CHAPTER 64**

An act to amend Sections 877.6, 2016.050, and 2034.260 of the Code of Civil Procedure, relating to civil procedure.

[ Approved by Governor July 10, 2017. Filed with Secretary of State July 10, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 543, Morrell. Civil actions: service of documents.

(1) Existing law provides that a party to an action in which it is alleged that 2 or more parties are joint tortfeasors or co-obligors on a contract debt is entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving a specified notice. In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for a determination of good faith settlement and a proposed order. Existing law requires that the notice, application, and proposed order be given by certified mail, return receipt requested.

This bill would provide that the notice, application, and proposed order may additionally be given by personal service.

(2) Existing law provides for the service of documents in a civil action, and establishes procedures for the service of documents by mail, Express Mail or other means of overnight delivery, facsimile transmission, or electronic service, as specified. Existing law applies these procedures to methods of discovery or service of a motion, as provided.

This bill would additionally apply existing procedures governing the personal service of documents to methods of discovery or the service of a motion, as provided.

(3) Existing law authorizes a party to demand that all parties simultaneously exchange information concerning each other's expert trial witnesses. Existing law requires all parties who have appeared in the action to exchange information concerning expert witnesses in writing on or before the date of the exchange specified in the demand. Existing law permits the exchange of information to occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

This bill would revise the methods by which parties may exchange information concerning expert witnesses by authorizing the parties to follow the procedures described above that are applicable to personal, mail, and electronic service, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 877.6 of the Code of Civil Procedure is amended to read:

**877.6.** (a) (1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(2) In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested, or by personal service. Proof of service shall be filed with the court. Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

(3) The running of any period of time after which an action would be subject to dismissal pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 shall be tolled during the period of review of a determination pursuant to this subdivision.

**SEC. 2.** Section 2016.050 of the Code of Civil Procedure is amended to read:

**2016.050.** Sections 1011 and 1013 apply to any method of discovery or service of a motion provided for in this title.

**SEC. 3.** Section 2034.260 of the Code of Civil Procedure is amended to read:

**2034.260.** (a) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by serving the information on the other party by any method specified in Sections 1011 or 1013, on or before the date of exchange.

(b) The exchange of expert witness information shall include either of the following:

(1) A list setting forth the name and address of a person whose expert opinion that party expects to offer in evidence at the trial.

(2) A statement that the party does not presently intend to offer the testimony of an expert witness.

(c) If a witness on the list is an expert as described in subdivision (b) of Section 2034.210, the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain all of the following:

(1) A brief narrative statement of the qualifications of each expert.

(2) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(3) A representation that the expert has agreed to testify at the trial.

(4) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including an opinion and its basis, that the expert is expected to give at trial.

(5) A statement of the expert's hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.