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PERSPECTIVE

## What lawyers and litigants need to know about Senate Bill 1146

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On Sept. 18, Gov. Gavin Newsom approved Senate Bill 1146, codifying current COVID-19 Emergency Rules of Court 11 and 12 as California Code of Civil Procedure Sections 2025.310 and 1010.6, respectively, and establishing an overarching uniformity to various individual jurist rulings regarding trial continuances as

is required, remote depositions are made easier, and all pretrial deadlines are extended when trial is continued (unless otherwise indicated).

California Code of Civil Procedure Sections 2025.310 and 1010.6 are intended to be permanent additions to the code and should have a significant effect on most litigators' practices, if they have not already. By contrast, Code of Civil Procedure Section 599 only lasts for the length of the state of

modified to meet current social distancing requirements. Now, either the party noticing the deposition or the deponent may choose to have the deposition officer attend the deposition remotely, and the deponent is no longer required to be present with the deposition officer when sworn in. However, any party or attorney of record may choose to attend the deposition in person, and the deponent must appear as noticed. As a practice pointer, the notice of deposition should indicate that the deposition will be taken remotely, if only so that the parties may adequately be prepared.

Interestingly, the California Court Reporters Association was concerned that the amendment to this section would allow an influx of out-of-state court reporters to begin reporting depositions taking place in California. The Legislature examined this issue in some detail, but determined that the rules allowing only court officers, shorthand reporters licensed by the Court Reporters Board of California, and licensed notaries to administer the oath for a deposition effectively precluded significant influx of out-of-state court reporters. Regardless, Section 2025.310 was additionally amended to reinforce that existing laws as to who may serve as the deposition officer still apply. Further, the Legislature reinforced that only a

transcript stenographically prepared by a California certified shorthand reporter may be admitted into evidence automatically, precluding parties from preparing their own transcripts for automatic submission into evidence.

Early on in the life of the bill, the California Court Reporters Association opposed another suggested amendment which would have codified the so-called "SoCal Stip" to relieve the court reporter of his or her duties under the Code of Civil Procedure, seemingly also based on a concern regarding the language for remote depositions. At this time, at least one court has disallowed transcripts containing the "SoCal Stip," while others have expressed no issues. For the time being, lawyers would be wise to proceed "per Code" to avoid running into a potentially significant issue at the time of trial, whenever that might be.

### **Code of Civil Procedure Section 1010.6: Electronic Service (Formerly Emergency Rule of Court 12)**

Whereas previously the trial courts were authorized under this section to adopt their own local rules permitting electronic filing of documents, this section is now amended to mandate that a represented party who has already appeared in a matter must accept electronic service of any document in that matter that may be served

### **Under these Code of Civil Procedure sections, acceptance of electronic service is required, remote depositions are made easier, and all pretrial deadlines are extended when trial is continued (unless otherwise indicated).**

California Code of Civil Procedure Section 599.

In bringing forth these changes to the Code of Civil Procedure, the Legislature's specific focus was on preventing the spread of COVID-19 while at the same time allowing the judicial system to continue to function, particularly when working remotely for the foreseeable future. The Legislature enacted these rules to take effect immediately on an urgent basis due to the ongoing nature of the pandemic and its repercussions on the litigators and courts. Under these Code of Civil Procedure sections, acceptance of electronic service

emergency plus 180 days, but it provides a specific clarity in this time of uncertainty where the courts are backlogged and unable to individually address concerns regarding the exact parameters of each matter's trial continuance.

Here's what lawyers and litigants need to know about these new Code sections.

#### **Code of Civil Procedure**

#### **Section 2025.310:**

#### **Remote Depositions**

#### **(Formerly Emergency Rule of Court 11)**

Under amended Code of Civil Procedure Section 2025.310, remote depositions have been

by mail, express mail, overnight delivery, or fax, and must electronically serve any such document when requested by a party to do so. Before first electronically serving a party, the e-mail address for service must be confirmed by either telephone or e-mail.

Importantly, although the emergency rule on which this section is based and the legislature indicate that this section applies broadly, this electronic service requirement may only include represented parties in cases filed on or after Jan. 1, 2019. Section 1010.6(a)(2)(A)(ii) regarding cases filed on or after Jan. 1, 2019 was amended to include reference to the new electronic service requirements. However, Section 1010.6(a)(2)(A)(i) regarding cases filed on or before Dec. 31, 2018 was not. If indeed the new electronic service mandate does not apply to cases filed on or before Dec. 31, 2018, electronic service remains not authorized unless a party has agreed to accept electronic service or the court has ordered electronic service on a represented party in a jurisdiction with local rule(s) permitting electronic service.

Furthermore, self-represented litigants are exempt from the new electronic service mandate, though they may opt into electronic service from

represented parties. However, self-represented litigants cannot be required to accept electronic service or to serve electronically.

The time by which a period of notice or right or duty to act following the electronic service of a document is still two (2) court days.

### **Code of Civil Procedure Section 599: Extension of Trial Deadlines**

This entirely new section to the Code of Civil Procedure states that when a trial date is continued or postponed, any trial deadlines that have not already passed as of March 19, 2020 are similarly extended for the length of time of the continuance or postponement. Of course, other statutory law, court order, or stipulation by the parties can alter this automatic extension. However, as opposed to pre-pandemic trial continuances, the simultaneous continuance of pretrial deadlines is intended to be the rule, not the exception.

According to the text of the statute, the deadlines extended include designating expert witnesses and mandatory settlement conferences. However, the language of the statute referring to “any deadlines” would seem to include the extension of the all-important discovery cut-off as well. This

is supported by the legislative history, indicating that the lack of uniformity in trial court treatment of continuing discovery dates was a motivating factor in enacting this statute.

Notably, Section 599 is set to expire 180 days after the end of the COVID-related state of emergency proclaimed by the governor on March 4, 2020.

In a break from the previously cumbersome and uneven rules regarding e-service, remote depositions, and the individual preferences of jurists as to trial and pretrial deadline continuances, the Legislature has provided some much needed certainty and uniformity across California courts while

lawyers and judges continue to adapt to remote litigation. The newly codified rules requiring electronic service and permitting remote depositions are particularly beneficial to allow litigation to move forward in most instances, even though many attorneys are still working from home. At the same time, the statute automatically extending pretrial deadlines with a trial continuance creates reliability for lawyers and litigants in a time when there is no expectation of when a case may ultimately go to trial. Taking advantage of these rules is the key to lawyers and litigants alike surviving and thriving during this new era of litigation. ■

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