

**RESOLUTION 08-11-2016**

**DIGEST**

Good Faith Settlements: Personal Service of Applications

Amends Code of Civil Procedure section 877.6 to allow personal service of good faith settlement applications.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 877.6 to read as follows:

§877.6

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

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

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

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

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

30           (e) When a determination of the good faith or lack of good faith of a settlement is made,  
31 any party aggrieved by the determination may petition the proper court to review the  
32 determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days  
33 after service of written notice of the determination, or within any additional time not exceeding  
34 20 days as the trial court may allow.

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

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

40 (3) The running of any period of time after which an action would be subject to dismissal  
41 pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title  
42 8 of Part 2 shall be tolled during the period of review of a determination pursuant to this  
43 subdivision.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

### **STATEMENT OF REASONS**

The Problem: This statute limits service of the application for a good faith settlement to certified mail (\*\*Please note the application procedure in subsection (a)(2) is different from the motion for good faith settlement commonly used in subsection (a)(1)). Although a more reliable form of service should be required for the application period because failure to object automatically deems it a good faith settlement, there is no reason that personal service, the most reliable form of service, cannot be used.

The Solution: This allows an application for good faith settlement to be personally served, in addition to service by certified mail.

### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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### **RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

### History:

Similar to Resolutions 13-16-2009 and 02-04-2000, which were approved in principle.

Reasons:

This resolution amends Code of Civil Procedure section 877.6 to allow personal service of good faith settlement applications. This resolution should be approved in principle because it allows for a reasonable and reliable form of service.

Code of Civil Procedure section 877.6, subdivision (a)(2), allows parties to have a good faith settlement approved by giving notice of that settlement to all other parties, along with the application for the court's approval and a proposed order. If any non-settling party objects to that settlement, then they bear the burden of bringing a motion to contest the settlement. If no one objects to the settlement, then the settlement is deemed to be in good faith. This procedure allows for an efficient way to approve good faith settlements that other parties are unlikely to contest.

The current statute requires that the notice, application, and proposed order be served by certified mail. The resolution would also allow parties to use personal service. Personal service is even more reliable than service by certified mail. Therefore, if a non-settling party does object to the settlement, they will have no doubt as to when they were given notice of the settlement or when their objection is due. Further, with a proof of service verifying that the notice was personally served, the court can be assured that the non-settling party received proper and timely notice.

Additionally, this resolution resolves an internal conflict in the statute. The statute currently mandates service by certified mail. However, it also expressly provides that a non-settling party's deadline for filing a motion is different if the notice is served by certified mail, or personally served.