Civil Procedure

The Expedited Jury Trials Act: Enhancing Access, Reducing Costs, and Increasing Efficiency

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Code Sections Affected

Code of Civil Procedure §§ 630.01, 630.02, 630.03, 630.04, 630.05, 630.06, 630.07, 630.08, 630.09, 630.10, 630.11, 630.12 (new).
AB 2284 (Evans); 2010 STAT. Ch. 674.

I. INTRODUCTION

Picture a beautiful day without a cloud in the sky, and a family driving to the beach, a park, or maybe to catch a ball game—then out of nowhere, another car crashes into them. Just like that, a wonderful day is ruined and the family is left with a few thousand dollars in medical bills and automobile repairs. Yet, the problems are just beginning because no personal injury attorney will take the family’s case. The other driver is clearly at fault, but between the cost of trial and the amount at stake, litigating the accident is just too expensive.\(^1\) However, California finally may have provided a solution to the high cost of traditional litigation that prevents people in similar scenarios from accessing the courts.\(^2\)

By passing Chapter 674, California adopts a procedure for expedited civil jury trials patterned after a South Carolina model.\(^3\) An expedited jury trial is a flexible approach to litigation that utilizes a reduced jury size with binding verdicts, relaxed rules of evidence, high/low agreements on the scope of damages,\(^4\) and limited post-trial motions and appeals with the objective of

\(^1\) See Robert Bowman, Jr., The Expedited Jury Trials Act (AB 2284), PERSONAL INJURY BLOG, Sept. 1, 2010, [http://bowmanandassoc.com/the-expedited-jury-trials-act-ab-2284/](http://bowmanandassoc.com/the-expedited-jury-trials-act-ab-2284/) (on file with the McGeorge Law Review) (providing an analogous hypothetical situation: “Imagine a scenario where a bicyclist is hit by a car and sustains around $20,000 in medical bills and damages. The bicyclist wants to sue the driver, and although the driver is undoubtedly at fault, it is difficult to find a personal injury attorney to take the case. The cost of litigation is too high for both sides”).

\(^2\) See Memorandum from the Small Civil Cases Working Group to the Members of the Civil and Small Claims Advisory Comm. 1 (Feb. 19, 2010) [hereinafter Judicial Council Memorandum] (on file with the McGeorge Law Review) (providing the Judicial Council sub-committee’s proposal for the adoption of an expedited jury trial procedure in order to promote access to California courts by limiting costs and increasing efficiency).

\(^3\) SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 1 (June 29, 2010).

\(^4\) CAL. CODE CIV. PROC. § 630.01 (enacted by Chapter 674). “High/low agreement” means a written agreement entered into by the parties that specifies a minimum amount of damages that a plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict returned by the jury. Neither the existence of, nor the amounts contained in any high/low agreements, may be disclosed to the jury.

Id. § 630.01(c).
keeping the duration of a trial to just a single day. Thus, Chapter 674 provides “a new expedited jury trial process as an alternative, streamlined method for handling civil actions to promote the speedy and economical resolution of cases and conserve judicial resources.”

II. LEGAL BACKGROUND

In an unusual attempt to work toward a common goal, the plaintiff and defense bars, courts, insurers, and businesses all came together to support the creation of Chapter 674. In California, “traditional trials [are] extremely time consuming and expensive for both litigants and courts.” Access to justice is becoming increasingly difficult, particularly for parties with relatively small claims. “For many of these litigants, traditional forms of alternative dispute resolution have not proven successful in resolving their cases prior to trial.” As a result, the Expedited Jury Trials Act looks to “establish[] a voluntary, inexpensive, accessible, and binding ‘summary jury trial’ program.”

Chapter 674 is not the first incarnation of an expedited jury trial system. Modeled after South Carolina’s system, the Judicial Council of California and a wide-range of stakeholders developed Chapter 674 in response to the “ongoing challenge” regarding access to justice and the expense of litigation.

A. The Beginning: Summary Jury Trials

In the early 1980s, some courts experimented with a type of alternative dispute resolution called the summary jury trial. The goal of a summary jury

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6. Id.
7. See Cheryl Miller, Faster Jury Trials May Get Their Day, RECORDER (S.F.), Mar. 17, 2010, at 1 (“Trial lawyers, the defense bar and their respective allies don’t usually agree on much. But a collegial bunch of these courtroom adversaries have found common ground in [rules] designed to speed up some civil trials in California.”); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010) (quoting Miller’s article and pointing out the need for this procedure and its benefits).
9. Id.
10. Id.
11. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).
15. Croley, supra note 12, at 1586. The experimenting-courts allowed, and sometimes required, parties to give a condensed version of their case to a jury. Id.
trial was to allow litigants to assess their position and promote settlement after gaining some insight into the merits of their case.\textsuperscript{16}

Although some variation existed between jurisdictions, summary jury trials originally shared several key features—in particular, the trials were short.\textsuperscript{17} Depending on the forum, each litigant was allowed as little as one hour to present his or her case, and more commonly, a single day for the entire trial.\textsuperscript{18} The flexibility of a summary jury trial in regard to evidentiary rules made this possible.\textsuperscript{19} Summary jury trials permitted an attorney or stand-in witness to read or summarize deposition testimony to the jury.\textsuperscript{20} Like an ordinary case, a judge oversaw the summary trial, but with a more limited role because of the lenient evidentiary rules.\textsuperscript{21} Another key-feature of summary jury trials was fewer jurors; sometimes, as little as four jurors per case.\textsuperscript{22} Juries were asked to render separate verdicts on liability and damages in order to provide the parties with as much information as possible.\textsuperscript{23} However, because the parties were not required to adopt the jury’s findings on liability or damages, these verdicts were purely advisory.\textsuperscript{24}

Consequently, the procedure was unsuccessful because it was non-binding and participants often chose not to adopt the summary jury’s verdict as their settlement.\textsuperscript{25} Thus, despite its potential and proponents’ high expectations, the innovative summary jury trial “never took wide root”\textsuperscript{26} and “failed to win over the majority of trial lawyers and judges.”\textsuperscript{27} The process began to decline in the last fifteen years, and the prospective benefits were never fully realized.\textsuperscript{28} Yet, a version of the summary jury trial is still widely and successfully used in the Charleston, Dorchester, and Berkeley counties of South Carolina.\textsuperscript{29}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. at 1588.
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id.
\item \textsuperscript{20} Id. at 1588-89. Testimony that could be summarized also included what medical records or doctors said about a particular issue. Id. at 1589.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id.
\item \textsuperscript{24} Croley et al., supra note 13, at 15.
\item \textsuperscript{25} See Croley, supra note 12, at 1586 (explaining the procedure’s success “depended on participants choosing to adopt the summary jury’s verdict as their settlement. [However, participants] did not often do so . . . ”).
\item \textsuperscript{26} Croley et al., supra note 13, at 15.
\item \textsuperscript{27} Nora Lockwood Toother, Summary Jury Trials Save Time and Money, LAWYERS WEEKLY USA, Apr. 25, 2005 (on file with the McGeorge Law Review).
\item \textsuperscript{28} Croley et al., supra note 13, at 16.
\item \textsuperscript{29} Id.
\end{enumerate}
\end{footnotesize}
B. The Evolution: South Carolina’s Model

“Working together, the local plaintiff and defense bars of Charleston County have developed a version of the summary jury trial that not only resolves cases quickly and inexpensively, but also provides a class of civil litigants with access to civil justice they would otherwise lack.”30 For over five years, attorneys in Charleston, Berkeley, and Dorchester counties have successfully used the summary jury trial, also known as the fast track jury trial, in nearly half of all civil trials.31

Though similar to the summary jury trial of the 1980s, South Carolina’s fast track jury trials have two fundamental differences.32 First, South Carolina’s model is completely voluntary.33 “Second, for [litigants] who use it, the fast track jury trial is binding,” and because the parties cannot appeal, the process is final.34

In essence, the parties consent to all the procedures, including the appointment of the special hearing officer or judge.35 Most fast track jury trials finish within one day, but fewer time constraints than the former summary jury trials allow attorneys to call live witnesses or to summarize deposition testimony.36 “[T]he rules of evidence are substantially relaxed,” and because medical hearsay is not barred, neither side is forced to hire medical experts to testify.37 Additionally, a key-component of the fast track jury trial process is the high/low agreement.38

As a result, South Carolina created “an inventive process that other jurisdictions are emulating.”39 In a struggling economy, the rest of the country quickly recognized the fast track jury trial as “an inexpensive way to deliver civil justice while using only minimal court resources.”40 The process was praised for “enhancing access to courts, reducing costs for litigants, and increasing court efficiency.”41 Subsequently, endorsement in California from the courts, insurers, businesses, and especially both the plaintiff and defense bars, prompted

30. Croley, supra note 12, at 1595.
32. Id.
33. Id.
34. See id. (clarifying that usually appeals are granted only in cases of fraud).
35. Id. (noting that the judge is chosen from an approved list of bar members, “participants tend to know one another, and a fast track jury trial judge in one case could be an attorney in the next”).
36. Croley, supra note 12, at 1595-96. “In practice, the ability to read or summarize witness testimony instead of calling live witnesses means that the only live witnesses tend to be the parties themselves.” Id. at 1596.
37. Id.
38. Id. at 13 (“The heart of the fast track jury trial process is the high-low agreement. If the plaintiff prevails, the plaintiff receives whatever amount the jury awards, unless that amount is higher than the ‘high’ or lower than the ‘low.’”).
39. Id. at 17.
40. Id.
41. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).
California to adopt its own expedited jury trial process through Chapter 674, the Expedited Jury Trials Act.  

C. The Result: Bringing Summary Jury Trials to California

Access to justice and the rising cost of litigation have been contentious issues in California, especially over the last ten years. On April 30, 2009, a working group formed under the Judicial Council of California met for the first time to address the lack of access to the courts and the rising cost for litigants in smaller civil cases. The group was primarily formed to address the high cost of trying cases under existing laws.

The group was to consider “innovative program models, including but not limited to summary jury trial programs, which could be implemented in California to enhance settlements and promote more effective and efficient administration of civil cases.” An expert from the National Center on State Courts provided in-depth presentations on New York and South Carolina summary jury trial programs. A subcommittee was then formed to draft rules that could be utilized to meet California’s goals.

III. CHAPTER 674

Chapter 674 establishes the Expedited Jury Trials Act. It states that parties may agree to participate in a binding, expedited jury trial by signing a proposed

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42. See id. (explaining how these different stakeholders came together to support the adoption of an expedited method “[using the South Carolina model as an overlay . . . .”).

43. Telephone Interview with Daniel Pone, Senior Attorney, Office of Governmental Affairs, Judicial Council of Cal. (June 4, 2010) (on file with the McGeorge Law Review).

44. Judicial Council Memorandum, supra note 2, at 2-3 (“[T]he Small Civil Cases Working Group, which is comprised of members of the Small Claims and Limited Cases Subcommittee plus other members of the Civil and Small Claims Advisory Committee, together with members of the plaintiffs’ and defense bars, and with the assistance of representatives from the insurance industry, business groups, and a consumer organization.”).

45. Id. at 3.

46. Id.

47. Id.

48. Id.

49. CAL. CODE CIV. PROC. §§ 630.01-630.12 (enacted by Chapter 674) (defining an “expedited jury trial” as a “consensual, binding jury trial before a reduced jury panel and a judicial officer”).

50. See id. § 630.03(b) (enacted by Chapter 674) (explaining that participation in the process is binding “unless either of the following occurs: (1) All parties stipulate to end the agreement to participate. (2) The court . . . finds that good cause exists for the action not to proceed . . . .”).
consent order.\textsuperscript{51} The consent order must provide that all parties are aware of the rules governing expedited jury trials and agree to “all the specific provisions set forth in the consent order.”\textsuperscript{52} Additionally, the parties must agree that the litigants have three hours to present their case,\textsuperscript{53} in front of a jury composed of eight jurors or less,\textsuperscript{54} with a three peremptory-challenge limit\textsuperscript{55} and waiver of “all rights to appeal . . . or make any post-trial motions.”\textsuperscript{56} Also, though the rules of evidence apply, the parties may stipulate to their own relaxed evidentiary rules.\textsuperscript{57} Finally, while the verdict of an expedited jury trial is binding, any finding is subject to the parties’ high/low agreement or other stipulation regarding awards.\textsuperscript{58}

On or before January 1, 2011, the Judicial Council was to adopt its own rules and forms to “establish uniform procedures implementing the provisions of [the Expedited Jury Trials Act].”\textsuperscript{59} The Expedited Jury Trials Act is to remain in effect until January 1, 2016.\textsuperscript{60}

IV. ANALYSIS OF CHAPTER 674

Chapter 674 is a “potentially path-breaking development in the state’s civil justice system at a time when court resources are at the breaking point in so many jurisdictions.”\textsuperscript{61} The Expedited Jury Trials Act appears to benefit the California

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\item \textsuperscript{51}Id. § 630.03(a) (enacted by Chapter 674). If a litigant is self-represented, a minor, an incompetent person, or represented by an appointed conservator, then all stipulations of the expedited jury trial are to be approved by the court. \textit{Id.} § 630.03(d) (enacted by Chapter 674).
\item \textsuperscript{52}Id. § 630.03(e)(1) (enacted by Chapter 674).
\item \textsuperscript{53}Id. § 630.03(e)(2)(B) (enacted by Chapter 674).
\item \textsuperscript{54}Id. § 630.03(e)(2)(C) (enacted by Chapter 674). No alternate jurors will be selected, but “nothing in [the Expedited Jury Trial Act] is intended to preclude a jury from deliberating as long as needed. \textit{Id.} §§ 630.04(a), 630.05 (enacted by Chapter 674).
\item \textsuperscript{55}Id. § 630.03(e)(2)(D) (enacted by Chapter 674); see also id. § 630.04(b) (enacted by Chapter 674 ) (“If there are more than two parties in a case and more than two sides . . . the parties may request one additional peremptory challenge each . . . granted by the court as the interest of justice may require.”).
\item \textsuperscript{56}Id. § 630.03(e)(2)(A) (enacted by Chapter 674). A litigant participating in an expedited jury trial waives the right to a directed verdict, to have the verdict set aside, or to a new trial on the basis of inadequate/excessive damages. \textit{Id.} § 630.08 (enacted by Chapter 674). As well, parties waive the right to make any post-trial motions or to appeal the determination, except in the case of judicial misconduct, jury misconduct, corruption, fraud, or other undue means that prevented a fair trial. \textit{Id.} § 630.09(a) (enacted by Chapter 674). In fact, the only post-trial motions allowed in an expedited jury trial are those relating to costs and attorney’s fees, to correct a clerical error, or to enforce a judgment. \textit{Id.} § 630.09(c) (enacted by Chapter 674).
\item \textsuperscript{57}Id. § 630.06 (enacted by Chapter 674).
\item \textsuperscript{58}Id. § 630.07 (enacted by Chapter 674) (explaining that “[a] vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise”).
\item \textsuperscript{59}Id. § 630.11 (enacted by Chapter 674) (providing that the Judicial Council is to make rules for “(a) Additional content of proposed consent orders. (b) Pretrial exchanges and submissions. (c) Pretrial conferences. (d) Time limits for jury selection. (e) Time limits for trial, including presentation of evidence and argument. (f) Presentation of evidence and testimony”).
\item \textsuperscript{60}Id. § 630.12 (enacted by Chapter 674) (clarifying that Chapter 674 will not be repealed on January 1, 2016 if a “later enacted statute, that is enacted before January 1, 2016, deletes or extends that date”).
\item \textsuperscript{61}Assembly Committee on Judiciary, Committee Analysis of AB 2284, at 3 (Mar. 23, 2010).
court system in a number of ways, and it also attempts to address some initial, potential concerns with the procedure.  

A. The Good: Benefits of the Expedited Jury Trials Act

Chapter 674 establishes the “expedited jury trial in California as a voluntary, alternative, streamlined method of handling civil actions.” 

Supporters believe that Chapter 674 will “allow[] parties to get their day in court,” reduce parties’ costs, decrease the backlog of civil cases, “and more efficiently manage jury resources.” Both plaintiff and defense lawyers are the legislation’s primary sponsors, represented by the Consumer Attorneys of California and the California Defense Counsel, respectively. This vast support arises from Chapter 674’s potential to “cut litigation costs across the board for plaintiffs, defendants, insurance carriers, and the courts.” Furthermore, litigants need only participate in the system “on a mutually voluntary basis when it suits the needs of the[ir] case.” Studies show that similar procedures, such as the fast track jury trials in South Carolina, do not “favor plaintiffs or defendants any more than a traditional trial.”

Proponents believe that a streamlined jury trial process primarily gains its effectiveness from the following four areas:

First, both sides can stipulate to a high and low range on damages, which guarantees that plaintiffs get paid a minimum amount and that defendants can cap their liability. Second, the parties agree to empanel only eight jurors without alternates rather than twelve with alternates. Third, the voir dire process would be further streamlined by using a questionnaire agreed upon by the parties, by limiting the use of peremptory challenges, and by allowing the judge to participate. This fast track voir dire process could help the litigants and the court empanel an impartial jury in a

62. See, e.g., SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 6-9 (June 29, 2010) (laying out the reasons that the Expedited Jury Trials Act is needed in California, its promising benefits, the legislation’s possible risks, and the built-in remedies for those risks).

63. Id. at 6.

64. Id.

65. Id. at 2. Chapter 674 is also supported by the Judicial Council of California, the American Insurance Association, the Association of California Insurance Companies, the California Chamber of Commerce, the Civil Justice Association of California, and the Consumers Union. Id. at 9 (stating further that there is no known opposition).

66. Id. at 7.

67. Id.

68. Id.; see also Croley, supra note 12, at 1618 (stating that there is nothing that “works systematically in favor of plaintiffs or against defendants,” but rather expedited jury trials “provide plaintiffs and defendants the benefit of resolution of their cases by unbiased decision-makers, applying neutral procedural and evidentiary rules of the parties’ own choosing”).

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matter of hours. Fourth, the streamlined jury trials would not employ a court reporter unless a party pays that cost. 69

These features allow the Expedited Jury Trials Act to provide “tremendous savings to all participants in the civil jury trial system by promoting a fast and fair jury trial and allowing courts to clear the backlog of civil cases on their docket.”70

B. The Issues: Concerns with the Expedited Jury Trials Act and Their Mitigation

The two main issues with the Expedited Jury Trials Act are whether the participants’ rights are protected and whether the process will actually be successful.71 “Instead of paying for several days . . . of traditional jury trial costs,” Chapter 674 provides a process where “parties will be able to litigate their cases within one day.”72 Thus, the judicial system and legislature must take care to ensure that participating litigants are able to effectively utilize this process, especially since the procedure may be particularly attractive to individuals representing themselves.73

The requirement that both parties consent to an expedited jury trial and submit their agreement to the court for approval is the primary protection for litigants’ rights.74 “This judicial review . . . protect[s] all parties to the agreement from unconscionable terms.”75 Further, should the judge have grounds or both parties decide to terminate the expedited jury trial agreement, the case reverts back to a traditional trial process.76 “This mechanism will protect the unsophisticated litigant and . . . maintain fairness to all parties.”77

Still, the other difficult and obvious question is whether Chapter 674 will actually attain its promised potential.78 Because Chapter 674 provides a new mechanism for litigants to be heard in court, a five-year sunset provision has been included “[t]o make certain this new system is working effectively, and there are no unintended effects.”79 The Judicial Council will provide information

69. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 7 (June 29, 2010).
70. Id.
71. Id. at 7-9.
72. Id. at 7.
73. Id.
74. Id. at 8.
75. Id.
76. Id.
77. Id.
78. See id. (detailing the bill’s sunset provision intended to act as a fail-safe against the Expedited Jury Trials Act’s failure or unforeseen consequences); see also supra Part I.A (explaining how the original summary jury trials in the 1980s were not widely used and their benefits were never fully realized).
79. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 8 (June 29, 2010).
on “how [Chapter 674] is functioning and whether it is having the desired results in decreasing litigant and court costs while allowing litigants and courts to efficiently and expeditiously move actions through the trial court system.” Accordingly, whether California’s system is as successful as the fast track jury trials of South Carolina or a flop like the summary jury trials of the 1980s can only be determined after Chapter 674 has been fully implemented for some time.

V. CONCLUSION

Chapter 674 is an “innovative addition to the civil justice toolkit” and has all of the makings, support, and potential to have a positive impact on the California trial system. A collaborative effort from the beginning, Chapter 674 “reflects a broad and unusual consensus of key court users supporting a new, voluntary, and innovative process to streamline the handling and resolution of some civil actions.” In an attempt to resolve the problems of expensive and time consuming trials, Chapter 674 manages to create greater access to justice, keep trial costs down, and increase the efficient use of judicial resources. It is still to be seen whether expedited jury trials will be as successful in California as they are in South Carolina, or whether the procedure will fall by the wayside like its predecessors. Nonetheless, Chapter 674 reflects a ground-breaking development in California’s civil justice system just when it needed it the most.

80. Id. at 8-9.
81. Compare Croley et al., supra note 13, at 16 (pointing out the South Carolina model’s success and other jurisdictions’ implementation of that program) with Croley, supra note 12, at 1586 (describing the failure and inadequacies of the summary jury trial of the 1980s).
82. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 4 (Mar. 23, 2010).
83. Id. at 2.
84. Id.
85. See Croley, supra note 12, at 1586 (stating how litigants and attorneys stopped using the summary jury trial of the 1980s).
86. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).
Chapter 156: A Surgical Procedure to Revive California’s Crippled Electronic Service of Process

Allan Woodworth

Code Sections Affected
Code of Civil Procedure §§ 1010.6, 1013 (amended).
SB 1274 (Corbett), 2010 STAT. Ch. 156.

I. INTRODUCTION

Over the past two decades, the percentage of Americans using the Internet has increased dramatically. In 1990, less than 1% of the population used the Internet, but by 2008, this number had jumped to almost 80%. In the wake of this popularity, email has become an increasingly prevalent form of communication. For example, a recent survey of email users showed 59% of users check their email from the bathroom, 50% do so while driving, and 15% even admitted to checking their email while in church.

The explosion of Internet use has not gone unnoticed by law offices and courts, where electronic service and filing of documents is becoming a more common, effective, and affordable alternative to paper. In 1997, the National Center for State Courts (NCSC) published a study finding that enormous savings could be realized by switching to an electronic filing, which would save 9.63 work hours, or $218.86, for every 100 documents filed. According to this study, Los Angeles County alone would save three million dollars annually, simply by filing documents electronically.

In 1999, the California Legislature passed a bill allowing trial courts to adopt “rules permitting electronic filing and service of documents . . . .” Until recently, courts executed electronic service with either electronic transmission or electronic notification. “Electronic transmission occurs when a document is electronically sent to the party to be served[,]” attached to an email. Sometimes,
however, an attachment may be too large for an email or parties may not have the necessary software to open the attachment.\textsuperscript{11} Thus, it often makes more sense to notify a party that a document is available electronically and can be retrieved via a provided hyperlink; a method called electronic notification.\textsuperscript{12} Unfortunately, “recent case law has interpreted the authorization of electronic service to include only electronic transmission.”\textsuperscript{13} Thus, a gap emerged between the court’s interpretation of the statute and the actual practice of electronic service in California.\textsuperscript{14} Chapter 156 fills this gap by redefining electronic service to include both electronic transmission and electronic notification.\textsuperscript{15}

\textbf{II. LEGAL BACKGROUND}

California initially authorized electronic service of process more than a decade ago.\textsuperscript{16} As a result, two methods of electronic service emerged: electronic transmission and electronic notification.\textsuperscript{17} Courts and attorneys practiced both methods with increasing regularity until recent case law invalidated electronic notification as a legal method of service.\textsuperscript{18}

\textbf{A. Existing California Law}

In 1999, the California Legislature amended the Code of Civil Procedure to permit electronic service and electronic filing of court documents.\textsuperscript{19} One condition permits electronic service of notice where the party receiving service consents to electronic service and can receive service by mail.\textsuperscript{20} Additionally, parties can only consent to electronic service if the local trial court had authorized such service.\textsuperscript{21}

\begin{thebibliography}{99}
\bibitem{12} \textit{ld.}
\bibitem{13} S\textsc{enate} J\textsc{udiciary} C\textsc{ommittee}, C\textsc{ommittee A\textsc{nalysis} of SB 1274}, at 2 (Apr. 13, 2010); see also InSyst, Ltd. v. Applied Materials, Inc., 170 Cal. App. 4th 1129, 1140, 88 Cal. Rptr. 3d 808, 816 (6th Dist. 2009) (holding that the court does “not regard an e-mail explanation of where to electronically locate a judgment as the equivalent of the electronic transmission of the document”).
\bibitem{14} S\textsc{enate} J\textsc{udiciary} C\textsc{ommittee}, C\textsc{ommittee A\textsc{nalysis} of SB 1274}, at 2 (Apr. 13, 2010).
\bibitem{15} \textit{ld.} at 2-3.
\bibitem{16} C\textsc{al.} C\textsc{ode} C\textsc{iv.} P\textsc{roc.} § 1010.6(a) (West 2009).
\bibitem{17} S\textsc{enate} J\textsc{udiciary} C\textsc{ommittee}, C\textsc{ommittee A\textsc{nalysis} of SB 1274}, at 4 (Apr. 13, 2010).
\bibitem{18} \textit{ld.} at 2.
\bibitem{19} C\textsc{al.} C\textsc{ode} C\textsc{iv.} P\textsc{roc.} § 1010.6(a); S\textsc{enate} F\textsc{loor}, C\textsc{ommittee A\textsc{nalysis} of SB 367}, at 2 (Sept. 5, 1999).
\bibitem{20} C\textsc{al.} C\textsc{ode} C\textsc{iv.} P\textsc{roc.} § 1010.6(a)(6).
\bibitem{21} \textit{See id.} § 1010.6(a) (“A trial court may adopt local rules permitting electronic filing and service of documents . . . .”) (emphasis added).
\end{thebibliography}
B. Methods of Electronic Service

Electronic transmission typically occurs when a party sends a document electronically via email with an attachment. While this method of service is commonly used, it has many shortcomings. In addition to files being too large to send as attachments and parties not having the correct software to view attachments, sending emails may result in parties disputing whether the emails were actually received, mistyping the email addresses of served parties, and even transferring computer viruses.

One way to remedy the potential problems with electronic transmission is to use electronic notification, in which a party is notified that a document is available electronically and can be retrieved via a hyperlink. This is usually accomplished by using an Electronic Service Provider (ESP), a commercial entity which hosts documents to be served and notifies parties of the availability and method for retrieval of such documents.

C. The Crippling of Electronic Notification

In 2006, Santa Clara County Superior Court authorized electronic service of documents via electronic notification by an ESP. In a routine process two years later, the court entered a judgment for a defendant, which was electronically filed on April 11, 2008. Shortly thereafter, the court sent an email notice identifying the document to the plaintiff’s attorneys. This email provided instructions describing how to access the document via a provided hyperlink. On April 15, 2008, the court clerk mailed a paper copy of the entry of judgment to the attorneys. “On June 11, 2008, [sixty-one] days after the email notice” and fifty-seven days after the paper notice, “plaintiff filed a notice of appeal from the April 11, 2008 judgment.”

This posed a problem for the plaintiff because the statutory time frame to file a notice of appeal was sixty days after valid service of the judgment. Thus, if

22. See Senate Judiciary Committee, Committee Analysis of SB 1274, at 3 (Apr. 13, 2010) (noting that electronic transmission “occurs when a document is sent through electronic means to an electronic address that has been provided by the receiving party”).
23. Id., supra note 11, at 14.
24. Id.
25. Id.
26. Id. at 13.
28. Id.
29. Id.
30. Id.
31. Id. at 1134, 88 Cal. Rptr. 3d at 810.
32. Id.
33. Id. at 1135, 88 Cal. Rptr. 3d at 812.
the electronic notification on April 11 constituted valid service, the plaintiff would not be able to appeal.\textsuperscript{34}

The court noted that “‘electronic service’ is the electronic transmission of a document to a party’s electronic notification address . . . .”\textsuperscript{35} The court reasoned that section 1010.6 did not authorize service by simply “giving a party notice of where he or she may find it.”\textsuperscript{36} Under this rationale, the court concluded an email explanation of a document’s location did not constitute electronic transmission under the statute.\textsuperscript{37} Therefore, the court ruled that the “notice of appeal was timely filed” within sixty days of “the clerk’s physical mailing of a self-identified notice of entry of judgment.”\textsuperscript{38} This holding rendered electronic notification invalid under California law.\textsuperscript{39} Since electronic notification was a common and effective method of electronic service prior to this decision, a strong need for modification to the statute emerged.\textsuperscript{40} Senator Ellen Corbett introduced Chapter 156 to meet this need by broadening the definition of electronic service to include electronic notification.\textsuperscript{41}

II. CHAPTER 156

Chapter 156 redefines electronic service in California Code of Civil Procedure section 1010.6 to include electronic notification.\textsuperscript{42} A party must consent to electronic service, which is not available if personal service of a document is required.\textsuperscript{43} Chapter 156 also provides that once a party has consented to electronic service, “the court may electronically serve any [future] document issued by the court that is not required to be personally served . . . .”\textsuperscript{44} Under Chapter 156, “[e]lectronic 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.”\textsuperscript{45}

Furthermore, Chapter 156 mandates that the Judicial Council “adopt uniform rules for the electronic filing and service of documents in the trial courts of the

\begin{itemize}
  \item \textsuperscript{34} See \textit{id.} at 1137, 88 Cal. Rptr. 3d at 813 (noting that defendant argued the sixty day timeline for filing a notice to appeal began with the electronic notification).
  \item \textsuperscript{35} \textit{id.} at 1137 n.6.
  \item \textsuperscript{36} \textit{id.} at 1140, 88 Cal. Rptr. 3d at 816.
  \item \textsuperscript{37} \textit{id.}
  \item \textsuperscript{38} \textit{id.}
  \item \textsuperscript{39} See \textit{SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274}, at 4-5 (Apr. 13, 2010) (“[T]he only method which is now considered an acceptable form of electronic service is the electronic transmission method.”).
  \item \textsuperscript{40} \textit{id.} at 5.
  \item \textsuperscript{41} \textit{id.} at 1-2.
  \item \textsuperscript{42} \textit{CAL. CODE CIV. PROC. § 1010.6(a)(1)(3) (amended by Chapter 156).}
  \item \textsuperscript{43} \textit{id.} § 1010.6(a)(2) (amended by Chapter 156).
  \item \textsuperscript{44} \textit{id.} § 1010.6(a)(3) (amended by Chapter 156).
  \item \textsuperscript{45} \textit{id.} § 1010.6(a)(4) (amended by Chapter 156).
\end{itemize}
state . . . [.]" thereby eliminating the requirement for a local rule authorizing electronic service. In other words, Chapter 156 provides parties the option to voluntarily receive electronic service so long as both parties consent and personal service is not required.

IV. ANALYSIS

By explicitly allowing electronic notification as a valid method of electronic service, Chapter 156 fixes a system crippled by the decision in InSyst v. Applied Materials. By mandating all local courts allow electronic service, and putting the choice to opt for electronic service in the hands of the parties, Chapter 156 creates uniformity throughout California courts.

A. The Need for Electronic Notification

Electronic transmission has many shortcomings. Proponents argue that if a party needs to serve a particularly large document, delivery may not be possible via email. Sending parties a document link, as opposed to an actual document file, diminishes the possibility of “delay or non-delivery of email” due to large file size. Without electronic notification, parties would resort to service by mail or facsimile transmission, increasing costs and delays. Beyond overcoming the limitations of electronic transmission, electronic notification offers many additional benefits. One advantage of electronic notification is the universal availability of documents wherever an Internet connection is available. While this is also true of attachments via email, ESPs are much better equipped to organize documents for easy access. Courts can also use ESPs to “provide third-party verification” to prove whether or not a party was served.

46. Id. § 1010.6(d) (amended by Chapter 156).
47. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 5 (Apr. 13, 2010) (stating that “a local rule authorizing electronic service would no longer be required”).
48. Id.
49. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 2 (Apr. 13, 2010).
50. Id.
51. See Nitti, supra note 11, at 14 (describing several issues relating to electronic transmission).
52. Id.
53. Id.
54. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 5 (Apr. 13, 2010).
55. See Nitti, supra note 11, at 14 (“The benefits of using an ESP are measured in terms of cost savings, convenience, and coordination.”).
56. Id.
57. Id.
58. Id.
There are, however, reasons to forgo the use of electronic notification.\textsuperscript{59} Websites that host documents could experience unforeseen down time.\textsuperscript{60} In an atmosphere where time is often of the essence, lack of access to documents could be devastating.\textsuperscript{61} To prevent this problem, Chapter 156 requires the Judicial Council to adopt rules to ensure the reliability of electronic notification.\textsuperscript{62} Possible solutions include requiring that ESPs use redundant servers and data backup systems.\textsuperscript{63}

Another potential problem is that unintended parties may be able to access documents that are hosted online.\textsuperscript{64} Fortunately, ESPs use multiple safeguards, including passwords, encryption, and firewalls, to shield documents from unauthorized parties.\textsuperscript{65} And while no safeguard is completely secure, electronic transmission through email is open to the same vulnerabilities.\textsuperscript{66} Despite these potential concerns, Chapter 156 (sponsored by the powerful Judicial Council), has no known opponents and was unanimously approved on the assembly floor.\textsuperscript{67}

\textbf{B. Availability of Electronic Service}

Prior to Chapter 156, electronic service was only available to parties whose local courts had adopted it.\textsuperscript{68} Chapter 156 eliminates the requirement for a local rule to authorize electronic service.\textsuperscript{69} This creates uniformity throughout California, giving consenting parties the option to receive electronic service.\textsuperscript{70} Of course, since both parties must consent to electronic service, parties who do not wish to receive electronic notification may refuse to consent to electronic service.\textsuperscript{71} Finally, when the law requires personal service, electronic service is prohibited.\textsuperscript{72}

\begin{itemize}
\item \textsuperscript{59} See id. at 14-15 (detailing some shortcomings of ESPs).
\item \textsuperscript{60} Id.
\item \textsuperscript{61} Id.; see also, e.g., Yehuda Cagen, \textit{Where to Start With Your IT Outsourcing Decision?} RINF NEWS (Oct. 26, 2010), http://rinf.com/alt-news/business-news/where-to-start-with-your-it-outsourcing-decision/8943/ (“For example, at an average hourly billing rate of $292 to $309 per hour for non-equity partners, a law firm of 25 attorneys stands to lose thousands in lost revenue for just one hour of downtime costs.”).
\item \textsuperscript{62} CAL. CODE CIV. PROC. § 1010.6(d) (amended by Chapter 156).
\item \textsuperscript{63} Nitti, supra note 11, at 15.
\item \textsuperscript{64} Id. at 14.
\item \textsuperscript{65} Id.
\item \textsuperscript{66} Id.
\item \textsuperscript{68} SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 1 (Apr. 27, 2010).
\item \textsuperscript{69} Id. at 2.
\item \textsuperscript{70} Id.
\item \textsuperscript{71} Id. at 1.
\item \textsuperscript{72} Id. at 2.
\end{itemize}
V. CONCLUSION

While redefining electronic service might seem of little significance, Chapter 156 will repair a method of service that is currently crippled. Since 1999, when California courts began electronic service, the use of electronic notification as a method of service has become increasingly prevalent, with some local courts even mandating electronic service in certain types of cases.

Chapter 156 allows the courts and parties to advance this successful method of service, while also encouraging others to follow suit. At a time of massive budget deficits and a growing need to conserve resources, allowing parties to use electronic notification is not a difficult decision to make because it has already proven to be both cost effective and efficient.

73. Id.
74. CAL. CODE CIV. PROC. § 1010.6 (West 2009).
75. See Nitti, supra note 11, at 13.
76. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 2 (Apr. 13, 2010).
78. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1274, at 1 (Apr. 13, 2010).
Chapter 64: Assisting Victims of Elder Financial Abuse in Recovering Their Judgment Awards

Ekaterina Deaver

Code Sections Affected


AB 2619 (Block); 2010 STAT. Ch. 64.

I. INTRODUCTION

Merl Resler was nineteen years old and serving on the battleship USS Maryland when the Japanese attacked Pearl Harbor. Resler and the Maryland survived numerous Japanese military attacks, including two suicide plane crashes that killed eighty-four sailors. Several decades later, at age eighty-two, Resler sits at his kitchen table wondering why he is unable to collect a judgment for more than $200,000 against an investor in Florida who ended up owning Resler’s house. Numerous letters of complaint and phone calls to public officials, court visits, and even several trips to Florida did not help. Resler’s problems started when he sold his real estate promissory note to an investment firm in Florida. Resler had received about a third of the agreed amount from the buyer, when the payments under the contract stopped. This scenario is only one of numerous ways by which seniors and dependent adults lose their property and life savings to financial perpetrators.

Elder abuse is “one of the most disturbing and rapidly growing areas of crime in the new millennium.” In California, elder abuse is more prevalent than...
burglary and auto theft (the two most frequently committed crimes). Financial abuse is one of the most common types of elder abuse, which “threatens the health, dignity, and economic security of millions of older Americans.”

Despite an extensive legislative scheme designed to protect elders and dependent adults, hurdles preventing victims from recovering from their perpetrators remain. Even if a victim succeeds in his or her lawsuit against an abuser, the defendant often lacks sufficient funds to pay damages. As many victims of elder and dependent adult financial abuse know, it is not enough to receive a judgment against the perpetrator, as the hard part is collecting the judgment. Assembly Member Marty Block introduced Chapter 64 to aid victims of elder financial abuse in collecting their judgment awards.

II. LEGAL BACKGROUND

A. Nature of Elder Financial Abuse

The National Center on Elder Abuse defines elder financial abuse as “the illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder at risk for harm by another due to changes in physical functioning, mental functioning, or both.” Elder financial abuse “can be as simple as taking money from a wallet and as complex as manipulating a victim into turning over property to an abuser.” Elder financial abuse has devastating consequences for its victims, who “have few options for resolving or avoiding

10. Charles Pratt, Banks’ Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California, 40 Cal. W. L. Rev. 195, 195 (2003); see also METLIFE ET AL., BROKEN TRUST: ELDERS, FAMILY, AND FINANCES: A STUDY ON ELDER FINANCIAL ABUSE PREVENTION 8 (2009) ("Elder financial abuse is regarded as the third most commonly substantiated type of elder abuse, following neglect and emotional/psychological abuse.").
11. METLIFE ET AL., supra note 10, at 5.
13. Lori Stiegel, The Changing Role of the Courts in Elder Abuse Cases, 24 GENERATIONS 59, 61 (2000); see also ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2619, at 1 (May 4, 2010) ("[V]ictims of elder and dependant [sic] adult financial abuse . . . have trouble collecting their damages if the defendant has already spent the money they defrauded from the elder or dependant [sic] adult and cannot otherwise pay the judgment.").
14. Collectively referred to as “elder financial abuse” throughout this article.
15. Teichert, supra note 1.
16. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2619, at 3 (May 4, 2010).
17. METLIFE ET AL., supra note 10, at 7.
the abusive situation." A Mature Market Institute study estimates that the annual loss by victims of elder financial abuse totals at least $2.6 billion. The consequences of elder financial abuse are not limited to negative monetary effects on the elder or dependent adult victims, but “reach[] far beyond its immediate victim, affecting . . . health care costs, living situations, filings for bankruptcy, and costs for its recuperation passed along in service industries.” Moreover, elder financial abuse may lead to mental and physical ailments for the victim, and possibly result in untimely death.

There are several reasons why seniors are frequent victims of financial abuse. First, seniors control a large portion of funds deposited in financial institutions, which makes them especially tempting victims. Second, most senior adults are homeowners, which exposes them to various home improvement scams, home loan bailouts, and other types of homeowner scams. Third, seniors can be socially “isolated due to their lack of mobility,” which increases their risk of victimization.

B. California Laws on Protection of Elders and Dependent Adults

In many respects, California provides an example of current efforts to address the problem of elder financial abuse. In 1991, California enacted the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) “to protect the particularly ‘vulnerable’ elderly and those members of society who rely on others for their daily care.” EADACPA defines elder abuse, prescribes procedures for reporting such abuse, and provides for remedies to victims.

21. Id. at 30; see also Shelby A.D. Moore & Jeanette Schaefer, Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse, 41 SAN DIEGO L. REV. 505, 507 (2004) (discussing financial loss to society when elders “no longer have money to invest legitimately, depriving the state of the taxes they would normally pay on those investments”).
26. Moskowitz, supra note 19, at 595.
29. CAL. WELF. & INST. CODE § 15610.07.
30. Id. § 15630 ("Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not he or she receives compensation, . . . is a mandated reporter.").
Besides recovery of regular compensatory damages, victims of elder financial abuse are entitled to attorney’s fees and costs, compensation for pain and suffering, and punitive damages.

Victims of elder financial abuse can also recover from abusers on the basis of the Consumer Legal Remedies Act, which provides legal remedies for unfair and deceptive practices in the sale or lease of goods to consumers. In addition, the California Probate Code allows for the invalidation of transfers of property from an elderly or dependent adult to the drafter of a transfer instrument.

C. California’s Wage Garnishment Laws

The California Code of Civil Procedure contains the Wage Garnishment Law, which “authorizes the enforcement of a judgment by an order to the . . . debtor’s employer to withhold a portion of the debtor’s earnings and pay it to the levying officer, who in turn pays the money to the judgment creditor.” Earnings withholding orders are subject to the following priority rules:

1. “[W]ithholding order[s] for [child and spousal] support have priority over any other earnings withholding order[s],”
2. Withholding orders for taxes have priority over all other withholding orders except withholding orders for support;
3. The employer has to comply with the first withholding order served;
4. “If the employer is served with two or more . . . orders on the same day, the employer shall comply with the order issued [under] the

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31. Id. §§ 15657, 15657.5.
32. Id. § 15657.5(a).
33. See id. § 15657.5(b) (providing that the limitations imposed by section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply to elder and dependent adult abuse cases).
34. See id. (noting the plaintiff must prove by “clear and convincing evidence that the [perpetrator] has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse . . . .”).
35. Cal. Civ. Code § 1750 (West 2009). Plaintiffs can use remedies provided by the Consumer Legal Remedies Act in conjunction with EDACPA. Id. § 1752.
36. Id. § 1770 (enumerating types of unlawful acts prohibited under the Act); see also id. § 1780(a) (specifying that a consumer can recover actual damages, restitution of property, punitive damages, and any other relief that the court deems proper); id. § 1780(b) (providing additional remedies for elder and disabled consumers).
37. Cal. Prob. Code § 21350(a)(6) (West 2010); see also Suzanne E. Luna, Financial Crimes Against the Elderly: Bernard v. Foley, 22 Prob. & Prop. 35, 37 (2008) (rationale for such invalidation is that “such transfers are likely to be the result of ‘fraud, menace, duress or undue influence.’”).
40. Id. § 706.077(a).
41. Id. § 706.023(a).
judgment first entered[,]” if the judgments are entered on the same
day, the employer may select the order with which to comply.

(5) A “withholding order . . . served while an employer is required to
comply with another . . . order is ineffective and the employer shall
not withhold earnings pursuant to the subsequent order.”

Federal and California law provide certain safeguards for defendants whose
earnings are subject to a withholding order. The maximum amount of a
withholding is either twenty-five percent of the individual’s disposable earnings,
or the amount by which the disposable earnings exceed thirty-times the federal
minimum wage, whichever is less. In addition to this limitation, California law
protects the debtor’s wages by “the hardship exemption,” under which the
portion of the judgment debtor’s earnings necessary for the support of the debtor
or the debtor’s family “is exempt from levy.”

D. The Need for Chapter 64

In light of the problems that victims of elder financial abuse face in
collecting their judgment awards, elder abuse prevention advocates and adult
protective services have been increasingly discussing problems of collecting
restitution awards as more cases of elder financial abuse appear in the judicial
system. Collection of a judgment is easier if the abuse happened “in an
institutional setting or by a fiduciary, either of which is more likely to have ‘deep
pockets.’” If the perpetrator is a family member or a third party individual, who
are often “judgment proof or have limited resources,” recovery is often
impossible. In such situations, defendants fail to pay a judgment and still retain
the financial gain stolen from their victims. Chapter 64 is the legislative attempt
to aid victims of elder financial abuse in collecting their judgment awards from
perpetrators.

42. Id. § 706.023(b).
43. Id. § 706.023(c).
44. 15 U.S.C. § 1673 (2009). There is an exception for withholding orders for support for which the law
allows to withhold one-half of the debtor’s disposable earnings. CAL. CODE CIV. PROC. § 706.052; see also id.
§ 706.050 (specifying that the maximum amount of withholdings is determined pursuant to 15 U.S.C.
§ 1673(a)).
45. CAL. CODE CIV. PROC. § 706.051. However, this exemption does not apply where the debt was
incurred for common necessaries of life furnished to the debtor or the debtor’s family or for personal services
rendered by an employee or former employee of the debtor. Id. § 706.051(c)(1)-(2)).
46. NCPEA: RESTITUTION, supra note 12.
47. Stiegel, supra note 13, at 61.
48. Moskowitz, supra note 19, at 607-08.
49. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2619, at 5 (June 15, 2010).
50. Id. at 3.
III. CHAPTER 64

Chapter 64 allows victims of elder and dependent adult financial abuse a better opportunity to recover by providing that a withholding order for elder financial abuse has priority over any other withholding order, except orders for child and spousal support and back taxes. Additionally, Chapter 64 prescribes the mechanics of implementing this priority in three ways. First, Chapter 64 amends section 706.011 of the Code of Civil Procedure to include the definition of a withholding order for elder financial abuse. Second, Chapter 64 provides the procedure for collecting a judgment in elder financial abuse cases when the defendant’s employer receives competing withholding orders. Third, Chapter 64 amends sections 706.121 and 706.125 of the Code of Civil Procedure to provide that any withholding order or application shall specify “whether the judgment is based in whole or in part on a claim for elder or dependent financial abuse and, if in part, how much of the judgment arises from that claim.”

IV. ANALYSIS

A. Helping Victims of Financial Abuse to Recover Through Wage Withholdings

Chapter 64 “allows victims of elder and dependant [sic] adult financial abuse who are victorious in court but unable to collect the judgment directly from the defendant, a better opportunity to collect through wage withholding . . . .” If the defendant is employed, the victim can recover even if the defendant does not have property that can be used to satisfy the judgment. However, the Legislature continues to stress the importance of collecting child and spousal support and delinquent taxes. To this end, the Legislature upheld the priority of withholding orders for such obligations. Thus, Chapter 64 moves victims of elder financial abuse towards the front of the line to collect wages, affording them the third place in the line of judgment collection.

51. CAL. CODE CIV. PROC. § 706.023(d) (amended by Chapter 64).
52. Id. § 706.011(b) (amended by Chapter 64) (“‘Earnings withholding order for elder or dependent adult financial abuse’ means earnings withholding order, made pursuant to Article 5 (commencing with section 706.100) and based on a money judgment in an action for elder or dependent adult financial abuse under section 15657.5 of the Welfare and Institutions Code.”).
53. Id. § 706.023(d)(2)-(3) (enacted by Chapter 64).
54. Id. §§ 706.121(d), 706.125(d) (amended by Chapter 64). Chapter 64 introduces similar changes to section 15657.5 of the Welfare and Institutions Code, requiring that any money judgment in an action for financial abuse shall include a statement that the damages are pertaining to a claim for financial abuse of an elder or dependent adult. CAL. WELF. & INST. CODE § 15657.5(e) (enacted by Chapter 64).
55. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2619, at 3 (May 4, 2010).
56. Id. at 4.
57. See id. at 3 (noting that priority does not extend over these payments).
58. Id.
59. Id. at 5.
Chapter 64 reaffirms the general rules of judgment collection when an employer receives several competing orders by providing that an employer shall not execute an earnings withholding order for elder financial abuse if a withholding order for support or for taxes is in effect. However, when an employer ceases withholding pursuant to a prior withholding order, the subsequent order for elder financial abuse becomes effective, and the employer shall notify the appropriate levying officer that the supervening order is in effect.

Prior to Chapter 64, neither the judicial system nor publishers of courts’ opinions categorized court orders as decisions rendered in elder abuse cases. Chapter 64 changes this by requiring money judgments to include a statement about the damages being awarded “for financial abuse of an elder or dependent adult.” The application for issuance of an earnings withholding order and the withholding order itself need also state “whether the judgment is based . . . on a claim for elder . . . financial abuse.”

B. Balancing the Rights of Victims and Defendants in Elder Abuse Cases

The Legislature expressed confidence that Chapter 64 “is fair to both the plaintiff and the defendant.” While the new law provides victims of elder financial abuse with an effective mechanism to collect their judgments, existing law already safeguards defendants’ rights in elder abuse cases. For example, existing law gives defendants the opportunity to present evidence of their innocence in court, requires victims to “present a minimum level of evidence” in order to get restitution and additional damages, and contains restrictions on the amount of wage garnishment.

C. Support for Chapter 64

The National Association of Insurance and Financial Advisors of California (NAIFA), the Insurance Brokers and Agents of the West (IBA West), and the Consumer Attorneys of California all support Chapter 64. NAIFA lamented its awareness of “the unfortunate reality that elder and dependent adult financial

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60. CAL. CODE CIV. PROC. CODE § 706.023(d)(2) (enacted by Chapter 64). While an employer has outstanding withholding orders for support or back taxes, an order for elder financial abuse issued against the same employee is ineffective. Id.
61. Id. § 706.023(d)(3) (enacted by Chapter 64).
62. Stiegel, supra note 13, at 60.
63. CAL. WELF. & INST. CODE § 15657.5(e) (enacted by Chapter 64).
64. CAL. CODE CIV. PROC. § 706.121(d) (amended by Chapter 64).
65. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2619, at 4 (June 15, 2010).
66. Id.
67. Id.
68. Id. at 5.
abuse occurs and that . . . victims have difficulties collecting money that is
awarded to them by the court for restitution.” 69 IBA West expressed its concerns
that “[u]nfortunately . . . there are some bad actors in the insurance
marketplace . . . that may have committed actions considered to be elder and
financial abuse.” 70 When such insurance agents have to pay restitution and
damages to several victims, they can become insolvent and fail to satisfy the
judgments against them. 71 IBA West is convinced that Chapter 64 “recognizes the
seriousness of these abuses” and believes that “if a rogue insurance agent is
convicted of elder and dependent [adult] financial abuse, the victim should
absolutely be made whole again.” 72 There was no known opposition to Chapter
64. 73

D. Delay in Implementation of Chapter 64

Chapter 64 becomes effective on January 1, 2012. 74 The rationale for delay in
the implementation of Chapter 64 is to give employers enough time to update the
system of wage withholdings in light of the changes introduced by Chapter 64,
including updating the necessary wage withholding forms. 75

IV. CONCLUSION

“Financial abuse of the elderly is hidden and insidious.” 76 It is one of the
most worrisome problems facing senior citizens and dependent adults as the
victims’ age and fragile health makes it “extremely difficult to recover from a
financial loss.” 77 With the population of California aging rapidly, the number of
erler financial abuse cases has also risen. 78 Society increasingly views the
problem of elder financial abuse not simply as a social problem, but also as a
legal problem that requires legal action. 79 The California Legislature has been
trying to protect dependent adults like Merl Resler from financial exploitation. 80
With adoption of Chapter 64, the California Legislature has once again

69. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2619, at 5 (May 4, 2010).
70. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2619, at 3 (June 15, 2010).
71. Id.
72. Id.
73. Id. at 5.
75. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2619, at 3 (June 15, 2010).
76. Moore & Schaefer, supra note 21, at 508.
77. Dessin, supra note 23, at 204-05.
78. Moskowitz, supra note 19, at 601-02; see also Letter to Fellow Californians, supra note 8 (“Already
at crisis proportions, the problem [of elder abuse] threatens to grow worse as the ‘graying’ of the Baby Boom
generation results in unprecedented demographic shifts.”).
79. Stiegel, supra note 13, at 63.
80. Luna, supra note 37, at 37.
demonstrated its intent to protect victims of elder and dependent adult abuse, and has recognized the difficulties that victims of such abuse face in collecting their judgment awards when “the defendant fails to pay or becomes insolvent at the hands of other creditors.” 81 By giving “these vulnerable victims” the opportunity to receive restitution by garnishing a defendant’s wages, and by moving such victims towards the front of the line in collecting their judgment awards, Chapter 64 provides “a necessary avenue for the victims to recover.” 82

81. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2619, at 5 (June 15, 2010).
82. Id.