

THE MAGAZINE OF THE LOS ANGELES COUNTY BAR ASSOCIATION

Los Angeles Lawyer

APRIL 2022

On the Cover

Bulletproofing Assets

Los Angeles lawyer
Jacob Stein
surveys the
legal ramifications
of various asset
protection
strategies

page 22



Immigrant
Adjustment
Status

page 28

PLUS

Non-Traditional
Trademarks

page 10

Farewell, Client

page 18

by Michael R. Diliberto

Closing Argument

Most settlement agreements provide that the entire action shall be dismissed and the court shall retain jurisdiction under Code of Civil Procedure Section 664.6 to enforce the settlement terms. This summary procedure allows the court to enter judgment on a stipulated settlement without the need for a new lawsuit, which benefits not only the parties but also the justice system, relieving it of the burden of more time-consuming and expensive processes.

Voluntary dismissal of an action terminates the court's jurisdiction over the matter. A request for the trial court to retain jurisdiction under Section 664.6 must meet three requirements: 1) The request must be made during the pendency of the case, not after the case has been dismissed in its entirety, 2) by the parties themselves, and 3) either in a writing signed by the parties or orally before the court.¹

In the past, some stipulations for the court to retain jurisdiction were deemed invalid because the writing was not signed by the parties. Assembly Bill No. 2723 amended Section 664.6 (effective January 1, 2021) and expanded the restrictive party-signature requirement to provide that the writing may also be signed by an attorney who represents a party (or, if a party is an insurer, an agent

Proposal for A User Friendlier CCP § 664.6

who is authorized in writing by the insurer to sign on the insurer's behalf). Recognizing that not all civil actions are alike, subdivision (c) provides that the parties (not their attorneys) must sign the written stipulation for settlements involving civil harassment actions, Family Code or Probate Code actions, or matters in juvenile court or dependency court.

Because settlement is deemed a significant event, the amendment adds subdivision (d) which provides: "In addition to any available civil remedies, an attorney who signs a writing on behalf of a party pursuant to subdivision (b) without the party's express authorization shall, absent good cause, be subject to professional discipline."

The amended section authorizes attorneys for parties in civil litigation to sign a stipulated settlement agreement on behalf of their clients, which may be convenient under certain circumstances. However, a request for the court to retain jurisdiction under Section 664.6 is not made by a secret handshake of the parties in

their settlement agreement. The request must be express, not implied, and filed with the trial court before the dismissal deprives the court of that jurisdiction. *Mesa RHF Partners*² offered two tips to correctly invoke Section 664.6: File either a stipulation and proposed order with a copy of the settlement agreement or a stipulation and proposed order signed by the parties noting the settlement. Either option requires a request that the trial court retain jurisdiction under Section 664.6.

The process need not be complex, but strict compliance demands that the process be followed. Unfortunately, some parties fail to ask the trial court to retain jurisdiction beyond simply agreeing to that in their settlement agreement—the classic ineffective secret handshake.

There is a simple fool-proof solution to ensure that the trial court retains jurisdiction before a case is dismissed, which also reduces paperwork to be filed with the court: revision of Judicial Council form CIV-110 (Request for

Dismissal) by adding a new paragraph with the option to request Section 664.6, with a checkbox next to a sentence stating "The parties have settled this action and request the trial court to retain jurisdiction under Section 664.6." The parties must check the box next to that text to confirm the request. Signature lines can be added below the checkbox to comply with the requirement that the request be made by the parties themselves or by their attorneys. An attachment sheet can be used to accommodate signatures for larger multiparty cases. When the box is checked to select the Section 664.6 procedure, the trial judge will sign off on the form before the clerk indicates whether dismissal is entered to ensure that the court retains jurisdiction before the case is dismissed. The revised form could be titled "Request for Dismissal—Optional Request for Court to Retain Jurisdiction (CODE CIV. PROC. § 664.6)."

A Request for Dismissal is eventually filed with the court after a lawsuit is settled. Merging a request for dismissal with a request for the court to retain jurisdiction reduces the entire process to one form. Dear Judicial Council, what say you? ■

Michael R. Diliberto is a mediator and arbitrator with ADR Services, Inc.

¹ *Wackeen v. Malis*, 97 Cal. App. 4th 429, 440 (2002).

² *Mesa RHF Partners L.P. v. City of L.A.*, 33 Cal. App. 5th 913, 918 (2019).