

TUESDAY, JANUARY 5, 2021

PERSPECTIVE

## Code of Civil Procedure Section 664.6 is now lawyer-friendly

By Michael R. Diliberto

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

In the past, some stipulations to retain jurisdiction were deemed invalid because the writing was not signed by the parties. Assembly Bill 2723 amends Section 664.6 and expands the 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 who is authorized in writing by the insurer to sign on the insurer's behalf. The amendment took effect Jan. 1. The prior restrictive party-signature requirement created problems for the unwary, as illustrated in the following examples.

In *Levy v. Superior Court*, 10 Cal. 4th 578, 586 (1995), the California Supreme Court held that "parties" "means the litigants themselves, and does not include their attorneys of record." Because the *Levy* settlement agreement was signed by the plaintiff's lawyer and not by the plaintiff himself, the settlement agreement was not enforceable under Section 664.6. Why so restrictive? Because Section 664.6 governs the entry of judgment pursuant to the terms of a settlement agreement. Unlike the steps an attorney may

take on behalf of the client that are incidental to the management of a lawsuit, such as making or opposing motions, seeking continuances, or conducting discovery, the settlement of a lawsuit is not incidental to the management of the lawsuit — it ends the lawsuit. Accordingly, settlement is such a serious step that it requires the client's knowledge and express consent. *Id.* at 583.

In *Mesa RHF Partners, L.P. v. City of Los Angeles*, 33 Cal. App. 5th 913 (2019), the parties filed a request for dismissal on Judicial Council form CIV-110 with the following language inserted into the dismissal form: "Court shall retain jurisdiction to enforce settlement per C.C.P. § 664.6." A deputy clerk entered the dismissal "as requested" on the same day. *Id.* at 916. The Court of Appeal found that the parties did not comply with Section 664.6 because the requests for dismissal "were not signed by the 'parties' (or even a single 'party')." The requests were only signed by the attorneys. The court also found that the Judicial Council form did not operate as the parties' "request" for the court to retain jurisdiction before the cases were dismissed. *Id.* at 917-18.

In a variation on a theme, in *Provost v. Regents of University of California*, 201 Cal. App. 4th 1289 (2011), the court wrestled with whether a settlement agreement signed by an attorney who was also an employee of the defendant corporation was enforceable. The plaintiff claimed that the settlement agreement could not be enforced by the corporation under Section 664.6 because it was signed only by an attorney of record. The attorney who signed for the corporation was not the attorney of record defending the complaint — she appeared only on the cross-complaint as one of six lawyers.

The court held that when a party to pending litigation is a corporation or other similar entity that must

act through individuals, the entity may appoint an employee (with appropriate knowledge and position) as the "authorized representative" of the party, and Section 664.6's party-signature requirement is satisfied if that representative signs the settlement agreement. The fact that the representative happened to be an attorney did not prohibit her from acting on the company's behalf. *Id.* at 1296-98.

The original Section 664.6 language appears in the amended Section 664.6 as subdivision (a), with one minor grammatical edit in the first sentence ("outside [of] the presence of the court"): "(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

The amendment adds subdivision (b) to clarify that "a writing is signed by a party if it is signed by any of the following: (1) The party. (2) An attorney who represents the party. [or] (3) If the party is an insurer, an agent who is authorized 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 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 Takeaway

The amended Section 664.6 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. But don't overlook the remaining strict requirements. 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, L.P.*, 33 Cal. App. 5th at 918 offered two tips to correctly invoke Section 664.6:

1. File a stipulation and proposed order with a copy of the settlement agreement and request that the trial court retain jurisdiction under Section 664.6; or

2. File a stipulation and proposed order signed by the parties noting the settlement and 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. ■

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