

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT SPR19-41

Title	Action Requested
Rules and Forms: Remote Access to Electronic Records by Government Entities	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 2.540	January 1, 2020
Proposed by	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee recommends that the Judicial Council amend rule 2.540 of the California Rules of Court to add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain electronic records, and make a minor amendment to the good cause provision of the rule. The purpose of the proposal is to make the rule clearer and more comprehensive based on comments received when the rule was originally circulated for public comment in 2018.

Background

Rule 2.540 is one of several new rules addressing remote access to electronic records by government entities that went into effect January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. It was geared toward government entities that have a high volume of business before the court with respect to certain case types. The rule includes a good cause provision under which a court may grant remote access to electronic court records to additional government entities and case types beyond those specifically identified in the rule. The standard for good cause is “the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.” (Cal. Rules of Court, rule 2.540(b)(1)(O).)

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

The Proposal

The proposal would add county public administrator and county public conservator to the list of government entities in rule 2.540(b)(1). Under the amendments, courts could permit (1) the county public administrator to have remote access to probate electronic records, and (2) the county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for the county public administrator is tailored to electronic records relevant to administering decedents' estates. Remote access for the county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person. In addition, the proposal would amend the good cause provision under rule 2.540(b)(1). The current rule allows courts to permit remote access to additional government entities not otherwise listed in rule 2.540(b)(1) when there is good cause to do so. Good cause means that "the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation." (Cal. Rules of Court, rule 2.540(b)(1)(O).) The proposal amends "statutory duties" to "legal duties." The purpose of the amendments to rule 2.540(b)(1) is to make the rule clearer and more comprehensive.

Alternatives Considered

The committee did not consider the alternative of maintaining the status quo as the amendments provide more clarity and make the rule more comprehensive.

Fiscal and Operational Impacts

Adding the county public administrator and county public conservator to the list of government entities the court may allow to remotely access electronic records will remove a need to make a good cause finding for those entities. The amendments are not expected to result in any costs.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Cal. Rules of Court, rule 2.540, at page 3
2. Link A: Existing text of Cal. Rules of Court, rule 2.540,
https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_540

Rule 2.540 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 2.540. Application and scope**

2
3 **(a) Applicability to government entities**

4
5 The rules in this article provide for remote access to electronic records by
6 government entities described in (b). The access allowed under these rules is in
7 addition to any access these entities or authorized persons working for such entities
8 may have under the rules in articles 2 and 3.
9

10 **(b) Level of remote access**

11
12 (1) A court may provide authorized persons from government entities with
13 remote access to electronic records as follows:

14
15 (A)–(M) * * *

16
17 (N) County public conservator: criminal electronic records, mental health
18 electronic records, and probate electronic records.

19
20 (O) County public administrator: probate electronic records.

21
22 ~~(N)~~(P) Federally recognized Indian tribe (including any reservation,
23 department, subdivision, or court of the tribe) with concurrent
24 jurisdiction: child welfare electronic records, family electronic records,
25 juvenile justice electronic records, and probate electronic records.

26
27 ~~(O)~~(Q) For good cause, a court may grant remote access to electronic
28 records in particular case types to government entities beyond those
29 listed in (b)(1)(A)–~~(P)~~~~(N)~~. For purposes of this rule, “good cause”
30 means that the government entity requires access to the electronic
31 records in order to adequately perform its ~~statutory~~ legal duties or fulfill
32 its responsibilities in litigation.
33

34 ~~(P)~~(R) All other remote access for government entities is governed by
35 articles 2 and 3.
36

37 (2)–(3) * * *

38
39 **(c) * * ***
40