

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-01

Title	Action Requested
Appellate Procedure: Electronic Signatures	Review and submit comments by May 27, 2021
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.70 and 8.75	January 1, 2022
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The trial court electronic filing rules have been amended several times recently, including to allow electronic signatures. Several similar amendments for the parallel appellate rules are now being proposed to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The proposed amendments to rule 8.70 would add a definition for electronic signature and update several other definitions. The amendments to rule 8.75 would authorize the use of electronic signatures on electronic documents filed with the court and reorganize parts of the rule to improve clarity and eliminate redundancies. This proposal originated from the suggestion of an attorney in private practice.

Background

Rule 8.70(c)¹ sets forth definitions of terms used in the electronic filing rules. Rule 8.75 governs the requirements for signatures on documents to be filed electronically. Under rule 8.75(a), electronic filers of a document signed under penalty of perjury must use and retain a printed form of the document with the original signature.² Rule 8.75(c) requires electronic filers of documents

¹ All rule references are to the California Rules of Court.

² In this invitation to comment, “original” signature means the wet ink signature on a paper form of the document. See JC Report Appellate Procedure: Signatures on Filed Documents, Aug. 2, 2013, at pp. [discussing amendments to predecessor rule 8.77; original signatures as contrasted with copies of the signed signature page]; JC Report Court Technology: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District, Apr. 5, 2010, at pp.

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

with multiple signatures such as stipulations to either use and retain a printed copy with the original signature or copies of the signed signature page of the document.

Effective January 1, 2019, the Judicial Council amended rule 2.257, the parallel trial court rule governing requirements for signatures on documents, to add a definition of “electronic signature” and authorize the use of electronic signatures on documents signed under penalty of perjury.

One year later, effective January 1, 2020, rule 2.257 was amended again to authorize using an electronic signature for a document signed under penalty of perjury when the declarant is not the filer. The option to use electronic signatures was also added for documents not signed under penalty of perjury, including stipulations and other documents requiring multiple signatures.

Many private law firms and government agencies now use secure electronic signature internet services as frequently as possible to sign contracts and agreements. These services avoid the inefficiency of printing, physically signing, and then either scanning or mailing a document back to the originator.

The appellate rule governing signatures on documents has not been updated and does not provide an electronic signature option. Thus, for example, an opposing counsel’s stipulation in an appellate court still requires that the filer obtain “an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document,” “maintain the original signed document and any copies of signed signature pages and . . . make them available for inspection and copying” upon request. (Rule 8.75(c).)

The Proposal

This proposal would add the option of using electronic signatures on documents filed electronically in the appellate courts, including documents requiring multiple signatures, by including a definition of “electronic signature” in rule 8.70 and including procedures for electronic signatures in rule 8.75. It would also update several other definitions in rule 8.70 for additional clarity and consistency with the trial court rules.

Rule 8.70

The proposal would add a new definition of electronic signature and amend several other definitions in rule 8.70(c). The new definition is identical to that used in the trial court rules. Unlike the trial court rules, which include the definition of electronic signature in the rule on requirements for signatures on documents (rule 2.257(a)), this proposal would place the definition in rule 8.70(c) with other definitions of terms used in the electronic filing rules.

The other proposed amendments largely mirror the parallel trial court rule providing definitions of electronic filing terms, rule 2.250(c). The proposal would:

1–4 [adopting predecessor rule 8.77; requiring the party electronically filing a document with multiple signatures to retain the “original signed document” for inspection and copying].)

- Amend and reorganize the definition of “document” to avoid using the word “document” in the definition, maintain internal consistency by referring to “any writing” rather than “any filing,”³ and maintain parallel structure with the rest of the subdivision.
- Amend the definition of “electronic filing” to clarify that it refers to the action of filing by the filer and does not include the steps taken by the court upon receipt of the document.
- Amend definitions for “electronic service,” “electronic filer,” and “electronic filing service provider” to add provisions related to electronic filing and service by or on a nonparty. Specifically, in addition to “a party,” the definitions would also include “or other person” to account for others who may be involved in a case but are not parties.
- Amend several definitions to improve clarity and accuracy.

Rule 8.75

The proposal would amend this rule to mirror trial court rule 2.257(b) and (c), both in its organization and its substance. The proposal would:

- Add the option of using electronic signatures.
- Require that the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data such that, if the data are changed, the electronic signature is invalid. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and is invalidated if the document appears to have been altered after being electronically signed.
- Strike the subdivision (c) heading, “Documents requiring signatures of opposing parties,” and instead incorporate the requirements from subdivision (c) into subdivision (b), which governs documents not signed under penalty of perjury. Subdivision (c) is no longer necessary for signatures of opposing parties under penalty of perjury as those requirements are captured in subdivision (a). Therefore, the only remaining requirements would be for signatures not under penalty of perjury.
- Include “other persons” in addition to parties within the scope of the rule to account for others who may be involved in a case but are not parties.

³ The change from “any *filing* submitted to the reviewing court” to “any *writing* . . .” is also intended to reflect that the definition includes documents that are submitted to the reviewing court but not filed, such as documents that are lodged.

- Add an advisory committee comment to clarify that the rule’s electronic signature requirements do not alter the courts’ authority to resolve disputes about the validity of a signature.
- Add an advisory committee comment regarding the distinction between an electronic signature and a digital signature.

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them may provide litigants a potentially faster and more convenient way to obtain needed signatures. These issues are even more important and relevant during the coronavirus pandemic, as social distancing measures lead more litigants and attorneys to work from home and to communicate digitally to avoid transmission of the virus on paper documents.

Alternatives Considered

The committee considered taking no action but concluded that updating the rules to permit electronic signatures would assist litigants with obtaining signatures, simplify procedures, and reduce the use of paper and exchange of documents by mail.

The committee also considered adding provisions regarding electronic signatures without making other changes to the rules, but rejected this alternative. The parallel trial court rules have been updated several times in the last three years. Delaying the other updates for the appellate rules would be inefficient and would preserve inconsistencies, redundancies, and outdated terminology and procedures.

The committee also considered placing the definition of “electronic signature” in rule 8.75 as new subdivision (a), to mirror trial court rule 2.257(a), rather than in rule 8.70(c), which defines terms used in the electronic filing rules. For internal consistency, the committee decided to include the new definition in the rule with other definitions. The committee requests comments on this issue.

Fiscal and Operational Impacts

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them should offer litigants a potentially faster and more convenient way to obtain needed signatures. The committee expects that the proposed amendments will provide greater clarity in the rules for parties, attorneys, courts, and other court users, and improved consistency between the appellate rules and the trial court rules. The proposal is not expected to result in any costs for the courts.

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?
- Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)?
- Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.70 and 8.75, at pages 6–10

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 **Rule 8.70. Application, construction, and definitions**

2
3 **(a) Application**

4
5 Notwithstanding any other rules to the contrary, the rules in this article govern
6 filing and service by electronic means in the Supreme Court and the Courts of
7 Appeal.

8
9 **(b) Construction**

10
11 The rules in this article must be construed to authorize and permit filing and service
12 by electronic means to the extent feasible.

13
14 **(c) Definitions**

15
16 As used in this article, unless the context otherwise requires:

17
18 (1) “The court” means the Supreme Court or a Court of Appeal.

19
20 (2) A “document” is:

21
22 ~~(A)~~ any filing writing submitted to the reviewing court by a party or other
23 person, including a brief, a petition, an appendix, or a motion;

24
25 ~~(B)~~ Any A document is also any writing transmitted by a trial court to the
26 reviewing court, including a notice or a clerk’s or reporter’s transcript;
27 and

28
29 ~~(C)~~ any writing prepared by the reviewing court, including an opinion, an
30 order, or a notice.

31
32 ~~(D)~~ A document may be in paper or electronic form.

33
34 (3) “Electronic service” is service of a document on a party or other person by
35 either electronic transmission or electronic notification. Electronic service
36 may be performed directly by a party or other person, by an agent of a party
37 or other person including the party’s or other person’s attorney, through an
38 electronic filing service provider, or by a court.

39
40 (4) “Electronic transmission” means the ~~transmission~~ sending of a document by
41 electronic means to the electronic service address at or through which a party
42 or other person has authorized electronic service.

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

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- (5) “Electronic notification” means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.
- (6) “Electronic service address” ~~of a party~~ means the electronic address at or through which ~~the~~ party or other person has authorized electronic service.
- (7) An “electronic filer” is a ~~party~~ person filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.
- (8) “Electronic filing” is the electronic transmission to a court of a document in electronic form for filing. Electronic filing refers to the activity of filing by the electronic filer and does not include the court’s actions upon receipt of the document for filing, including processing and review of the document and its entry into the court’s records.
- (9) An “electronic filing service provider” is a person or entity that receives an electronic ~~filing~~ document from a party or other person for retransmission to the court or for electronic service on other parties, or both. ~~In submission of submitting electronic filings,~~ the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.
- (10) An “electronic signature” is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

Advisory Committee Comment

The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to ~~modify the rules on electronic service to~~ expressly authorize electronic notification as a ~~legally effective~~ an alternative means of service ~~to electronic transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which
2 interpreted the rules as authorizing only electronic transmission as ~~the only~~ an effective means of
3 electronic service.

4
5 **Rule 8.75. Requirements for signatures on documents**

6
7 **(a) Documents signed under penalty of perjury**

8
9 ~~If~~ When a document to be filed electronically must be signed under penalty of
10 perjury, the ~~following procedure applies~~ document is deemed to have been signed
11 by the declarant if filed electronically, provided that either of the following
12 conditions is satisfied:

13
14 (1) ~~The document is deemed signed by the declarant if, before filing, the~~
15 ~~declarant has signed a printed form of the document.~~ The declarant has
16 signed the document using an electronic signature and declares under penalty
17 of perjury under the laws of the State of California that the information
18 submitted is true and correct. If the declarant is not the electronic filer, the
19 electronic signature must be unique to the declarant, capable of verification,
20 under the sole control of the declarant, and linked to data such that, if the data
21 are changed, the electronic signature is invalidated; or

22
23 (2) The declarant, before filing, has physically signed a printed form of the
24 document. By electronically filing the document, the electronic filer certifies
25 that (1) has been complied with and that the original signed document is
26 available for inspection and copying at the request of the court or any other
27 party. In the event this second method of submitting documents electronically
28 under penalty of perjury is used, the following conditions apply:

29
30 ~~(3)~~(A) At any time after the electronic version of the document is filed,
31 any other party may serve a demand for production of the original
32 signed document. The demand must be served on all other parties but
33 need not be filed with the court.

34
35 ~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party
36 or other person on whom the demand is made must make the original
37 signed document available for inspection and copying by all other
38 parties.

39
40 ~~(5)~~(C) At any time after the electronic version of the document is filed,
41 the court may order the ~~filing party~~ electronic filer to produce the
42 original signed document ~~in court~~ for inspection and copying by the

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 court. The order must specify the date, time, and place for the
2 production and must be served on all parties.
3

4 **(b) Documents not signed under penalty of perjury**

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6 (1) If a document does not require a signature under penalty of perjury, the
7 document is deemed signed by the party if the document is filed
8 electronically electronic filer.
9

10 ~~(c) Documents requiring signatures of multiple parties~~

11
12 (2) When a document to be filed electronically, such as a stipulation, requires the
13 signatures of multiple ~~parties~~ persons, ~~the following procedure applies the~~
14 document is deemed to have been signed by those persons if filed
15 electronically, provided that either of the following procedures is satisfied:
16

17 ~~(1)(A)~~ The party ~~filing the document~~ electronic filer ~~must obtain~~ has
18 obtained all the signatures ~~of all parties~~ either in the form of an original
19 signature on a printed form of the document or in the form of a copy of
20 the signed signature page of the document. The electronic filer must
21 maintain the original signed document and any copies of signed
22 signature pages and must make them available for inspection and
23 copying as provided in (a)(2)(B). The court and any ~~other~~ party may
24 demand production of the original signed document and any copies of
25 signed signature pages as provided in (a)(2)(A)–(C). By electronically
26 filing the document, the electronic filer indicates that all ~~parties~~ persons
27 whose signatures appear on it have signed the document and that the
28 filer has possession of the signatures of all parties those persons in a
29 form permitted by this rule in his or her possession; or
30

31 ~~(2)(B)~~ The party ~~filing the document~~ must maintain the original signed
32 document and any copies of signed signature pages and must make
33 them available for inspection and copying as provided in (a)(2). The
34 ~~court and any other party may demand production of the original signed~~
35 document and any copies of signed signature pages in the manner
36 provided in (a)(3)–(5). The party or other person has signed the
37 document using an electronic signature and that electronic signature is
38 unique to the person using it, capable of verification, under the sole
39 control of the person using it, and linked to data such that, if the data
40 are changed, the electronic signature is invalidated.
41

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 **~~(d)~~(c) Digital signatures**
2

3 A party or other person is not required to use a digital signature on an electronically
4 filed document.
5

6 **~~(e)~~(d) Judicial signatures**
7

8 If a document requires a signature by a court or a judicial officer, the document
9 may be electronically signed in any manner permitted by law.
10

11 **Advisory Committee Comment**
12

13 The requirements for electronic signatures that are compliant with the rule do not impair the
14 power of the courts to resolve disputes about the validity of a signature.
15

16 **Subdivision (c).** Rule 8.70 defines “electronic signature” but not “digital signature.” A digital
17 signature is a type of electronic signature as defined in Government Code section 16.5(d). (Civ.
18 Code, § 1633.2(h).)
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