



## Judicial Council of California · Administrative Office of the Courts

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### JUDICIAL COUNCIL REPORT

For business meeting on October 29, 2010

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Title	Agenda Item Type
Electronic Service: Authorize Electronic Service by Notice and Hyperlink	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 2.250, 2.252– 2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P)	January 1, 2011
	Date of Report
	September 17, 2010
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Hon. Ming W. Chin, Chair	

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#### Executive Summary

The Court Technology Advisory Committee recommends that the California Rules of Court on electronic filing and service be amended to authorize electronic service by providing electronic notice and a hyperlink to a document as well as by the electronic transmission of a document. These amendments will make the rules on electronic service consistent with Senate Bill 1274, legislation that has been enacted authorizing electronic service by providing notice and a hyperlink. The amendments would be made to the trial court rules on electronic filing and service and to the appellate e-filing pilot program rules for the Court of Appeal, Second Appellate District. To be consistent with the terminology in the amended rules and statute on electronic service, four forms relating to electronic filing and service would be revised to use the term “electronic service address” rather than “electronic notification address.”

## Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2011:

1. Amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; and repeal rules 2.251 and 8.71; and
2. Revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P).

The text of the amended rules and the revised forms are attached at pages 14–38.

## Previous Committee and Judicial Council Action

The Judicial Council has been developing rules authorizing service by electronic means for several years. It initially adopted the trial court rules on electronic service and filing (Cal. Rules of Court, rules 2.250–2.260), effective January 1, 2003. More recently, the council adopted the appellate e-filing pilot program rules for the Court of Appeal, Second Appellate District (rules 8.70–8.80), effective July 1, 2010. The appellate pilot program rules were designed to mirror the existing trial court rules in most respects; hence, like the trial court rules, they do not presently include authorization for service by notification and the provision of a hyperlink.

In response to the decision in *Insys, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129 described below, the Court Technology Advisory Committee last year developed a legislative proposal to amend section 1010.6 of the Code of Civil Procedure on electronic service to authorize, as an additional legal method of electronic service, the service of documents by providing electronic notice and a hyperlink to a document. The Judicial Council in December 2009 agreed to sponsor that legislation. The legislation was introduced as Senate Bill 1274 (Committee on Judiciary). The bill has been chaptered and will become effective on January 1, 2011.

As a companion to the legislative proposal, the Court Technology Advisory Committee developed this proposal so that the trial and appellate court rules and the forms on electronic service will be consistent with the provisions in the amended statute on electronic service.<sup>1</sup>

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<sup>1</sup> In developing this proposal, the committee was assisted by its E-Practices Subcommittee, chaired by Professor Dorothy Glancy, and the Appellate E-Filing Working Group, chaired by Justice Judith Meisels Ashmann-Gerst. The subcommittee included members of the Civil and Small Claims Advisory Committee as well as the Court Technology Advisory Committee. The working group included members from the Court Technology Advisory Committee, the Appellate Advisory Committee, and the Administrative Presiding Justices Advisory Committee. The subcommittee and working group jointly reviewed all the comments on this proposal and sent their recommendations to the Court Technology Advisory Committee. Mr. Joseph A. Lane, the Clerk/Administrator for the Court of Appeal, Second Appellate District, was also substantially involved in the development and review of this rules proposal.

## **Rationale for Recommendation**

Electronic service offers a quick, effective, and often cheaper means of serving documents than other existing methods, including mail. It is desirable to encourage the use of electronic service for the benefit of the public and the courts. The Court of Appeal in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129 held that under existing law electronic service must involve the transmission of a document and that providing a hyperlink to a document does not legally constitute electronic service. In response, the Judicial Council sponsored legislation to amend Code of Civil Procedure section 1010.6 to authorize, as an additional legal method of electronic service, the service of documents by providing electronic notice and a hyperlink to a document. This legislation will become effective January 1, 2011.<sup>2</sup>

Consistent with SB 1274's amendments to expand the methods of electronic service permitted by the statute on electronic service, amendments should be made to the rules in the California Rules of Court on electronic filing and service in the trial courts (rules 2.250–2.260) and in the e-filing pilot program in the Court of Appeal, Second Appellate District (rules 8.70–8.80).

Specifically this proposal would:

- Amend the rules on electronic filing and service—consistent with the proposed legislation—to include the authorization of service by notice and the provision of a hyperlink to a served document;
- Add new rule provisions relating to the integrity of electronic service, as provided in the legislation;
- Make certain other changes to the rules that are desirable at this time; and
- Revise four forms on electronic service and filing to use language referring to parties' "electronic service address" consistent with the amended statute and rules.

The specific rules and form changes proposed are described in detail below.

## **Reorganization of the rules**

As a preliminary matter, the trial and appellate rules on electronic filing and service have been reorganized to reflect the reorganization of the Code of Civil Procedure section 1010.6, the statute on electronic filing and service. The rules on service have been moved from the end of the chapter on trial court rules and the end of the article on the appellate pilot program rules to the beginning, right after the definitions. Thus, rule 2.260 has been renumbered and relocated as rule 2.251 and rule 8.80 has been renumbered and relocated as rule 8.71. These changes are explained more fully below under the discussion of comments.

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<sup>2</sup> See Sen. Bill 1274 (Committee on Judiciary). The text is available online at [www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_1251-1300/sb\\_1274\\_bill\\_20100818\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1251-1300/sb_1274_bill_20100818_chaptered.pdf).

### **Amendments to authorize service by notice and hyperlinks**

The main change to the law made by Senate Bill 1274 is to authorize electronic service of documents not only by the electronic transmission of a document (“electronic transmission”), but also by giving electronic notice of service of a document and providing a hyperlink at which the document may be viewed and downloaded (“electronic notification”). To reflect this statutory change, the rules on electronic filing and service would be amended in several respects.

First, the definition of “electronic service” in rules 2.250 and 8.70<sup>3</sup> would be amended to match the new definition in Code of Civil Procedure section 1010.6. Electronic service of a document would be defined as providing electronic service either by electronic transmission of a document or by electronic notification of the service of a document and the provision of a hyperlink to the document.

Second, rule 2.251(f)(currently rule 2.260(e)) on when service is complete, would be amended to state that electronic 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.” However, as explained further below, the subdivision on when service is complete in the current appellate pilot program rule 8.80(e) would be eliminated entirely. The time for actions in the appellate rules is tied to filing, not to service; so the extension of time is not relevant. Because it is confusing and unnecessary to include a provision on this subject in the appellate rules, the subdivision on when service is complete would not be included in amended and renumbered rule 8.71 on service on appeal.

Throughout the rules, the term “electronic notification address” would be changed to “electronic service address.” This change is to avoid confusion. Because the amended statute and the rules provide for electronic service by both transmission and notification, the “electronic service address” would be used to identify the address for both forms of electronic service. Using the older term “electronic notification address” might imply that the address was only for service by notification, which is not the case. Using the broader terminology “electronic service address” is clearer.

### **Amendments to ensure the “integrity of electronic service”**

When the proposed legislation on electronic service was circulated in 2009, some commentators expressed concerns that service by hyperlinks might be unreliable and subject to abuse or gamesmanship. The Court Technology Advisory Committee considered these comments and concluded that the issues relating to the use of hyperlinks as a method of electronic service—and, more specifically, the concerns about the reliability and duration of hyperlinks—could be effectively addressed. However, rather than doing this in the statute, the legislation that has been enacted provides that the Judicial Council “shall adopt . . . rules relating to the integrity of electronic service.” (See SB 1274, § 1; amended Code Civ. Proc., § 1010.6(d).)

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<sup>3</sup> The definitions, which are currently in appellate rule 8.71, would be moved to rule 8.70(d), under this proposal.

To accomplish this requirement, the rules relating to service by notification and the provision of a hyperlink need to do at least three things: (1) ensure that the documents served can be viewed and downloaded using the hyperlink provided; (2) require that any documents so served must not be altered from the time they are posted until they are removed; and (3) specify the length of time that documents provided by hyperlink must remain available to the parties in the case.

Accordingly, this proposal recommends that a new subdivision (e) be added to amended rule 2.251 (currently rule 2.260), the trial court rule on service, to provide:<sup>4</sup>

“A party that serves a document by means of electronic notification must:

- (1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (3) Maintain the hyperlink until either:
  - (A) All parties in the case have settled or the case has ended and the time for appeals has expired; or
  - (B) If the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given.”

Subparagraph (3)(B) was added to the rule, based on the comments, to address the situation in the trial courts where a party is no longer in a pending case. This provision provides a means for such a party, after giving other parties notice and an opportunity to download documents, to cease maintaining a hyperlink. The appellate version of this provision would be different. Because on appeal parties rarely drop out of a case before it is over, in the appellate rules subpart (e)(3) of rule 8.71 would simply provide that the hyperlink must be maintained “until the case is final.”

### **Other proposed rule changes**

This proposal recommends a few other rule changes. For instance, rules 2.253(a) and 8.73(a) would be amended to state that the court may issue an order requiring electronic filing or service “provided that” rather than “after finding that” the order would not cause undue hardship or

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<sup>4</sup> As discussed further below, the version of this provision that was circulated was different in that it did not contain the provision in (3)(B), which has been added based on the comments.

significant prejudice to any party. (See rule 2.253(a)(1) and 8.73(a)(1)). These amendments will make the rules consistent with the Code of Civil Procedure section 1010.6, which uses the “provided that” language.

Rule 2.253(a) would be amended to provide a new procedure for a party to be given notice and an opportunity to object if the court, on its own motion, intends to order electronic filing or service, or both. (See rule 2.253(a)(2).)<sup>5</sup> Based on the comments, the trial court rule would be further modified to add a provision addressing the situation in which a new party is added in a case in which e-filing or e-service has already been ordered.

Current rule 2.254(a), on an “Internet-accessible system,” would be eliminated.<sup>6</sup> The language and intent of the subdivision are unclear. To the extent the subdivision was attempting to provide some guidance on filing in courts that might have web-based electronic filing systems, the provision was vague, confusing, and of limited value. The option of direct electronic filing through a web-based portal is currently being carefully considered. Once this alternative is more fully developed, additional rules may be appropriate to clarify how that filing system should operate and be used.

Rules 2.255(a) and 8.75(a) would be amended to clarify that, even if a court contracts with more than one vendor, the vendors must accept filing from other electronic filing service providers to the extent that they are compatible with them. This change is not intended to alter the meaning of the rules; it is only meant to clarify that the rules apply whether there is only a single vendor or more than one vendor.

Rule 2.255(c) would be amended to reflect that there are varying acceptable methods for electronic service providers to provide filing fees to the courts for documents that are filed electronically. The rule language referring to “electronically filing *with* the applicable fee” was too restrictive to capture these practices.

The advisory committee comment on rule 2.255 would be repealed. The website referred to in the comment is not currently being maintained and updated.

Rule 2.251(c)(2)(currently rule 2.260(c)(2)) and rule 8.71 (currently rule 8.80(c)(2)) would be amended to provide that a document may not be served electronically on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.<sup>7</sup>

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<sup>5</sup> A similar provision is already contained in the appellate e-filing pilot program rules (see rule 8.73(a)(3)).

<sup>6</sup> This subdivision was not included in the appellate pilot program rules adopted effective July 1, 2010.

<sup>7</sup> Also, rule 2.252 would be amended to list proposed orders among the types of documents that may be filed and submitted to the court electronically. This amendment is discussed in more detail in a separate report.

## Revision of forms

To implement SB 1274 and the rule changes described above, some technical changes to four Judicial Council forms are required. Specifically, several of the new Electronic Filing and Service (EFS) forms adopted last year use the terminology “electronic notification address.” To be consistent with the terminology used in the legislation and rules, the terminology used throughout forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P) have been changed from “electronic notification address” to “electronic service address.” Also, the references to rule 2.260 in the footers of the forms have been changed to rule 2.251 to reflect the renumbering of the rule.

## Comments, Alternatives Considered, and Policy Implications

### Comments and alternatives considered

Six comments were received on this proposal.<sup>8</sup> The commentators were a legal software firm, a research attorney, a local bar association, the State Bar’s Committee on Administration of Justice, and two superior courts (one of which designated a judge to provide comments). Though the comments were generally favorable, there were a number of specific suggestions for modifications of the rules.

**General comments.** A judge, designated by a superior court to submit comments on this proposal, suggested some general revisions to the rules on electronic filing and service. (Comment 5.) Specifically, he commented that the rules tend to conflate e-filing and e-service in a number of places. He stated that, in view of the fact that many courts will not have the infrastructure or capability to offer e-filing for several years, it may be appropriate to separate the provisions relating to e-filing from the provisions relating to e-service. While e-service orders are routinely entered in class actions, complex cases, and consolidated cases, and groups of cases under rule 2.253, it is likely that in the future parties will elect e-service in more routine cases even though e-filing may not be an option.

The committee considered these comments. Regarding the organization of the rules, the committee agreed with the judge’s suggestion for reordering the rules on e-service and e-filing. In SB 1274, the companion legislation, the statutory provisions relating to electronic service have been separated out from the provisions on e-filing and relocated from the middle to the beginning of Code of Civil Procedure section 1010.6. Following this same approach, the rules on service—currently 2.2.60 and 8.80—might be relocated to the beginning of the rules right after the definitions. The committee has done this. It thought that it would be appropriate at this time to reorganize the rules on electronic filing and service to make them more consistent with the statute.<sup>9</sup>

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<sup>8</sup> A chart summarizing the comments and the committee’s responses is attached at pages 39–52.

<sup>9</sup> Hence, rules 2.260 and 8.80 have been renumbered as rules 2.251 and 8.71, respectively. Existing rules 2.251 and 8.71 have been incorporated into rules 2.250 and 8.70. The definitions within rules 2.250 and 8.70 have been reordered to reflect the reorganization.

The judge also recommended clarifying the manner in which e-service providers may be used and addressing service issues unique to the use of a web-based e-service provider. The committee thought that, although it would be appropriate eventually to consider these matters, they are beyond the scope of the current proposal. The committee in the future may solicit more detailed suggestions about these topics and consider related amendments to the rules.

***Comments on amended rules 2.250 and 8.71 (renumbered as rule 8.70).*** The State Bar Committee on Administration of Justice (CAJ) supported amending rules 2.250 and 8.71<sup>10</sup> to track the definitions of “electronic service,” “electronic transmission” and “electronic notification” in Code of Civil Procedure section 1010.6(a), subject to some suggested modifications. (Comment 4.) Instead of defining the terms “electronic transmission” and “electronic notification” as subparts under the definition of “electronic service” (as provided in the proposal as circulated), CAJ believed it would be clearer to define each term separately in its own subdivision, to more faithfully track the definitions of those terms in Code of Civil Procedure section 1010.6(a)(1)(A), (B), and (C), as contained in SB 1274.

The committee agreed with these suggestions. The rules have been revised to separately define the terms “electronic service,” “electronic transmission,” and “electronic notification.”

***Comments on amended rule 2.252.*** The CAJ commented that, under this proposal, rule 2.252(b) would be amended to read as follows: “In a proceeding that requires the filing of an original document, an electronic filer may file ~~a scanned~~ an electronic copy of a document if the original document is then filed with the court within 10 calendar days.” The CAJ believed that this language is unclear, in light of the language in Code of Civil Procedure section 1010.6 providing: “A document that is filed electronically shall have the same legal effect as an original paper document.” It suggested that rule 2.252 should be clarified, to explain the circumstances and type of documents to which subdivision (b) is intended to refer.

The committee noted that rule 2.252(b) addresses the filing of documents in situations where, under a statute or rule, a true original (for example, a signed or notarized version) is required. The amended rule would provide that in such a cases, an electronic copy may be filed if the original is filed within 10 calendar days. However, for most purposes, an electronic copy of a document that is filed has the same effect as a paper version of the same document. Thus, in these more common situations, no “original” (i.e., paper) version needs to be filed at all, as indicated in Code of Civil Procedure section 1010.6 and rule 2.252(f)(1). The committee regarded it as sufficient to explain this in the response to the comment. It did not think that further changes to the rules are necessary.

***Comments on amended rule 2.253.*** Proposed new subdivision (a)(2) of rule 2.253 provides that, if a court proposes on its own motion to order parties to file and serve documents electronically,

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<sup>10</sup> In the proposed amended rules, the definitions applicable to the appellate rules have been relocated to rule 8.70(d).



the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after notice is mailed or such later time as the court may specify. This provision has already been included in the appellate e-filing pilot program rules. (See rule 8.73(a)(3).)

A judge commented that this subdivision has the potential to place a significant burden on court staff in cases with multiple parties. (Comment 5.) He indicated that it is not uncommon to have a significant number of individual parties in construction defect, mass tort, and insurance coverage cases. The judge stated that requiring the court to serve notice of its intent to enter an e-service order is not practical. He suggested that a more practical approach would be to require that any order requiring e-service in a case contain a provision that allows a party objecting to the order on a claim of hardship to request exemption. An example of such a provision would be as follows:

“Any party appearing after [date of order], shall have fifteen days from their initial appearance to lodge any objections to this Order and to seek exemption. A copy of this Order shall be served upon any newly appearing party with the initiating pleadings. Exemptions may be granted in the discretion of the Court if it appears that a party would suffer undue hardship or significant prejudice. “

The committee discussed this comment and recommends that rule 2.253(a) be modified to authorize a procedure similar to what the judge proposed. A new subdivision (a)(3) has been added for this purpose. It provides that, if the court issues an order to a new party to electronically file or serve documents, the new party would generally have 10 days after service of the order to object. The committee did not think it necessary to add such a provision to the appellate rules because new parties will generally not be added on appeal.

The judge also commented on subdivision (b)(2) of rule 2.253. That provision states that a court may order that, when the court sends confirmation of filing to all parties, receipt of the confirmation constitutes service of the filing if the filed document is available electronically. The judge believed that the subdivision implies that the court must send confirmation of filing to all parties; and he asks if this is intended to require confirmation of e-service as well. He noted that the e-service provider or the e-filing provider will generally provide notice to all parties registered with the service. He suggested that some acknowledgment of this practice should be included in the rules to avoid placing unnecessary burdens on the court staff.

The committee had several responses to this comment. First, changes to subdivision (b)(2) are beyond the scope of the present proposal, which did not suggest amending that subdivision. Second, the existing subdivision does not state or imply that the court *must* send confirmation to all parties; rather, it provides only that a court *may* include in its order, when it provides confirmation of filing, that receipt of the confirmation constitutes service of the filing if the filed document is available electronically. This option, rather than imposing a burden on the court, may provide a simple and expeditious means to accomplish the task of having all parties served with a filed-endorsed copy of the court’s order. Finally, it does not seem necessary to

state in the rule that another means of service of the order would be for an e-service provider to serve it.

***Comments on amended rule 2.255.*** A judge offered two comments on this rule. He suggested that the rule should clarify that (1) contracts with e-filing providers are required only for e-filing services, and (2) courts do not have contracts with web-based e-service providers and do not incur any costs associated with e-service providers. (Comment 5.) These suggestions are beyond the scope of the proposal that was circulated for comment. It also is unclear that it is necessary to put such information in the rule.

***Comments on amended rules 2.259 and 8.79.*** In rules 2.259(c) and 8.79(c), the CAJ supported changing the first two references from “filed” to “received,” but believed the third reference should not be changed from “filed” to “received,” in order to clarify when the document is deemed filed. The committee concluded that the original proposed language regarding “received” is correct; it should be retained in all three places in each of the rules. The legal effect of the language in the rules concerning a document being deemed “received” on the next court day is that, if the document is then deemed received, it is also deemed filed on that day. (See rules 1.20(a) and 8.25(b)(1).)

The CAJ also noted that the circulated proposal changed “with” to “by” in rule 2.259, but not in rule 8.79. The committee agreed that in rule 8.79 “with” should be changed to “by,” the same as in rule 2.259.

***Comments on amended rules 2.260 (renumbered as rule 2.251) and 8.80 (renumbered as rule 8.71).***

***Rules 2.260 and 8.80-Generally.*** A judge suggested that there should be an exception for the requirements of the electronic service rules where the electronic service is pursuant to a court order. (Comment 5.) This suggestion is beyond the scope of the rules proposal that was circulated for comment. In the future, more information may be solicited about this suggestion and, if appropriate, a rule proposal may be developed to address the issue.

***Rules 2.260(b) and 8.80(b).*** A judge suggested that there should be an exception to the requirement that the court maintain electronic service lists when an e-service provider is designated by the court to provide e-service in a case. (Comment 5.) This suggestion is beyond the scope of the proposal that was circulated for comment. Again, if there is a need to change the service rules to reflect electronic service through electronic filing service providers, this subject can be considered in the future.

***Rules 2.260(c) and 8.80(c).*** The CAJ believed that, in new subdivision (c) on the issue of electronic service on a nonparty, further clarification is needed on the question of what constitutes a nonparty’s “consent” to electronic service. The committee thought that the provision is sufficiently clear and that it should be adopted at this time without change. However,

if experience with the provision indicates more specificity is required, subdivision (c) can be amended in the future.

*Rule 2.260(e) and 8.80(e).* A couple of commentators discussed the issue of how long the hyperlink needs to be maintained if service is provided by notice and the provision of a hyperlink. A local bar association commented that the requirement in the proposed rules, requiring the serving party to maintain the hyperlink until all parties have settled and the time for appeals has expired, places an unreasonable burden on the party serving the documents. (Comment 2.) If the party is dismissed or settles out of the case, its responsibility to maintain the links is ongoing—the obligation almost rises to the level of forcing the serving party to maintain a repository of documents. The local bar thought that a better solution would be to require the serving party to maintain the link for a finite amount of time (that is, 30 days) absent a written agreement between the parties to the contrary. This would put the onus on the recipient of the notice to download the document from the link and maintain the document in its own files (either electronically, or printed, as the case may be). It would allow the parties to agree otherwise if, for example, there is a large class action or qui tam case and one of the parties has a particular capability to maintain such a large repository of documents.

The CAJ also commented on this issue. (Comment 4.) It opposed including this provision in the rules, which it thought appears to go beyond the purpose of ensuring the integrity of electronic service under Code of Civil Procedure section 1010.6 as amended. The CAJ questioned the placement in the “electronic service” rule of a provision to maintain hyperlinks to documents filed through an electronic service provider, and questioned whether the burden properly rests with the party for maintaining those hyperlinks. The CAJ further noted that the requirement to maintain the hyperlink “until all parties in the case have settled or the case has ended and the time for appeals has expired” appears to place a burden on parties to maintain the hyperlink to an electronically served document for a longer period of time than parties are currently required to retain a document following service of that document by non-electronic means.

The committee discussed the length of time that hyperlinks should be maintained. They thought that, for the integrity of service by notification, it was important to have a specified length of time for maintaining hyperlinks. They also thought that the responsibility for maintaining the hyperlink was appropriately on the party using the hyperlink for service, although the party could provide that the hyperlink be made available through an electronic service provider. The committee found that there was merit to the argument that a party that is no longer in a case should not be obligated to maintain hyperlinks indefinitely. Hence, it recommends adding a new provision that will allow a party that is no longer in a case at the trial level to notify other parties, informing them that they have 60 days to download documents. After that time has expired, the party may terminate the hyperlink. (See rule 2.251(e)(3)(B).)

*Rules 2.260(e) and 8.80(e).* A legal software firm commented on the proposed changes to appellate rule 8.80 and how they relate to current trial court rule 2.260 (renumbered as 2.251). (Comment 1.) Specifically, the commentator was concerned about current rule 8.80(e), entitled

“When service is complete.” The proposed amendment to the appellate rule was silent as to whether a party is entitled to extra time after service of a document by electronic means, whereas the trial court rule explicitly states that parties are entitled to an extra two court days. In order to avoid any uncertainty over whether parties in the appellate courts are entitled to extra time to respond or act after service of a document electronically, the commentator suggested that rule 8.80 be further amended to include the same language as current rule 2.260(e)(2) (amended rule 2.251(f)(2)). Thus, the commentator suggested that the following language be added to rule 8.80(f):

“If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of a document, is extended by two court days, unless otherwise provided by a statute or a rule.”

The committee did not agree with this suggestion. The time for actions in the appellate rules is tied to filing, not to service. So the extension of time is not relevant; it was deliberately not included in the appellate rule earlier.

Indeed, based on its discussions, the committee concluded that the entire subdivision on “when service is complete” is not necessary in the appellate context. Because it is confusing to have such a subdivision, the committee recommends eliminating it from the appellate e-filing pilot program rules.

*Rule 2.260(g) and 8.80(f).* A judge proposed modifying the subdivisions on proof of electronic service to recognize the common practice of using web-based e-service providers that provide verification of the information that this subdivision currently requires parties to include in proofs of service. (Comment 5.) He suggested that it might be appropriate to add a provision to the rules allowing confirmation of transmission to the web-based e-service provider in cases where the court has designated such a provider for e-service.

This suggestion is beyond the scope of the proposal that was circulated for comment. While there may be a need to change the service rules to more accurately reflect electronic service through electronic filing service providers, the subject requires more extensive consideration. In the future, more detailed suggestions about these matters may be solicited and, if appropriate, the issues may be addressed in subsequent amendments to the rules.

***Comments on Forms.*** There was only one comment on the forms, which suggested that the Proof of Service form should be modified to permit service not only to a party’s e-mail address, but also to an electronic filing service provider. (See comment 5.) The revised form provides for service on the “electronic service address” of a party. This may be either the party’s e-mail address or the electronic address of an electronic service provider, if the party has so designated. So the form does not need to be further modified.

## **Policy Implications**

By broadening the methods of electronic service available to the public, this proposal implements Judicial Council policy favoring the development of e-filing in the courts.

## **Implementation Requirements, Costs, and Operational Impacts**

This rules and form proposal, together with the accompanying legislation, will authorize an additional method of electronic service. This new method will not be required; it will simply give courts and litigants more options for effectuating electronic service. Courts and litigants will be able to determine if service by notice and hyperlinks is preferable to service by transmission of documents. If so, by agreement or by court order in an appropriate case, they may use this method of service.

Although instituting service by notice and hyperlinks will require some implementation, litigants and courts will base their decisions to use this method of service on its superior benefits compared with service by transmission. In the future, courts may determine that, particularly where the service of numerous documents on many parties is involved, using this new method of service may be advantageous and cost-effective at least in certain types of cases or situations.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposal promotes the Judicial Council goal of access to justice (Goal I). It also furthers the goal of modernizing management and administration (Goal III) and the objective of developing and implementing effective case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases (Goal III, Objective 5).

## **Attachments**

1. Amended Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amended rules 2.260, 8.71, and 8.80 renumbered as rules 2.251, 8.70, and 8.71, respectively; and repealed rules 2.251 and 8.71, at pages 14–32
2. Revised forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P) at pages 33–38
3. Chart of comments, at pages 39–51



Rules 2.250, 2.252-2.256, 2.259, 8.73, 8.75, 8.76, and 8.79, of the California Rules of Court are amended; rules 2.260, 8.71, and 8.80 are amended and renumbered as rules 2.251, 8.70, and 8.71, respectively; and rules 2.251 and 8.71 are repealed, effective January 1, 2011, to read:

1 **Title 2. Trial Court Rules**

2  
3 **Division 3. Filing and Service**

4  
5 **Chapter 2. Filing and Service by Electronic Means**

6  
7  
8 **Rule 2.250. Construction and definitions**

9  
10 **(a) Construction of rules**

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

14  
15 **(b) Definitions**

16  
17 As used in this chapter, unless the context otherwise requires:

18  
19 ~~(2)~~(1) A “document” is a pleading, a paper, a declaration, an exhibit, or another filing submitted  
20 by a party or by an agent of a party on the party’s behalf. A document may be in paper or  
21 electronic form.

22  
23 ~~(6)~~(2) “Electronic service” is service of a document on a party or other person by either  
24 electronic transmission or electronic notification. Electronic service may be performed  
25 directly by a party, by an agent of a party including the party’s attorney, through an  
26 electronic filing service provider, or by a court.

27  
28 (3) “Electronic transmission” means the electronic transmission of a document by electronic  
29 means to a party’s electronic notification address, either directly or through an electronic  
30 filing service provider, for the purpose of effecting service to the electronic service address  
31 at or through which a party or other person has authorized electronic service.

32  
33 (4) “Electronic notification” means the notification of a party or other person that a document  
34 is served by sending an electronic message to the electronic service address at or through  
35 which the party or other person has authorized electronic service, specifying the exact  
36 name of the document served and providing a hyperlink at which the served document can  
37 be viewed and downloaded.

1  
2 ~~(8)~~(5) “Electronic ~~notification~~ service address” of a party means the electronic address at or  
3 through which the party has authorized electronic service.  
4

5 ~~(3)~~(6) An “electronic filer” is a party filing a document in electronic form directly with the court,  
6 by an agent, or through an electronic filing service provider.  
7

8 ~~(4)~~(7) “Electronic filing” is the electronic transmission to a court of a document in electronic  
9 form.  
10

11 ~~(5)~~(8) An “electronic filing service provider” is a person or entity that receives an electronic  
12 filing from a party for retransmission to the court or for electronic service on other parties,  
13 or both. In submission of filings, the electronic filing service provider does so on behalf of  
14 the electronic filer and not as an agent of the court.  
15

16 ~~(7)~~(9) “Regular filing hours” are the hours during which a court accepts documents for filing at  
17 its filing counter.  
18

19 ~~(4)~~(10) “Close of business” is 5 p.m. or any other time on a court day at which the court stops  
20 accepting documents for filing at its filing counter, whichever is earlier. The court must  
21 provide notice of its close-of-business time electronically. The court may give this notice  
22 in any additional manner it deems appropriate.  
23  
24

#### 25 Advisory Committee Comment

26  
27 The definition of “electronic service” has been amended to provide that a party may effectuate service not  
28 only by the electronic transmission of a document, but also by providing electronic notification of where a  
29 document served electronically may be located and downloaded. This amendment is intended to modify  
30 the rules on electronic service to expressly authorize electronic notification as a legally effective  
31 alternative means of service to electronic transmission. This rules amendment is consistent with the  
32 amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by  
33 electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on  
34 electronic service as understood by the appellate court in *Insys, Ltd. v. Applied Materials, Inc.* (2009)  
35 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only  
36 effective means of electronic service.  
37  
38

#### 39 ~~Rule 2.251. Construction of rules~~

40  
41 ~~The rules in this chapter must be construed to authorize and permit filing and service by electronic means~~  
42 ~~to the extent feasible.~~  
43



1 **Rule ~~2.260~~ 2.251. Electronic service**

2  
3 **(a) Consent to electronic service**

4  
5 (1) When a ~~notice~~ document may be served by mail, express mail, overnight delivery, or  
6 fax transmission, electronic service of the ~~notice~~ document is permitted when  
7 authorized by these rules.

8  
9 (2) A party indicates that the party agrees to accept electronic service by:

10  
11 (A) ~~Filing and~~ Serving a notice on all parties that the party accepts electronic  
12 service and filing the notice with the court. The notice must include the  
13 electronic ~~notification~~ service address at which the party agrees to accept  
14 service; or

15  
16 (B) Electronically filing any document with the court. The act of electronic filing is  
17 evidence that the party agrees to accept service at the electronic ~~notification~~  
18 service address the party has furnished to the court under rule 2.256(a)(4).

19  
20 (3) A party that has consented to electronic service under (2) and has used an electronic  
21 filing service provider to ~~file and~~ serve and file documents in a case consents to  
22 service on that electronic filing service provider as the designated agent for service  
23 for the party in the case, until such time as the party designates a different agent for  
24 service.

25  
26 **(b) Maintenance of electronic service lists**

27  
28 A court that orders or permits electronic filing in a case must maintain and make available  
29 electronically to the parties an electronic service list that contains the parties' current  
30 electronic ~~notification~~ service addresses, as provided by the parties that have filed  
31 electronically in the case.

32  
33 **(c) Service by the parties**

34  
35 (1) Notwithstanding (b), parties are responsible for electronic service on all other parties  
36 in the case. A party may serve documents electronically directly, by an agent, or  
37 through a designated electronic filing service provider.

38  
39 (2) A document may not be electronically served on a nonparty unless the nonparty  
40 consents to electronic service or electronic service is otherwise provided for by law  
41 or court order.

1 **(d) Change of electronic ~~notification~~ service address**

- 2
- 3 (1) A party whose electronic ~~notification~~ service address changes while the action or
- 4 proceeding is pending must promptly file a notice of change of address electronically
- 5 with the court and must serve this notice electronically on all other parties.
- 6
- 7 (2) A party's election to contract with an electronic filing service provider to
- 8 electronically file and serve documents or to receive electronic service of documents
- 9 on the party's behalf does not relieve the party of its duties under (1).
- 10
- 11 (3) An electronic ~~notification~~ service address is presumed valid for a party if the party
- 12 files electronic documents with the court from that address and has not filed and
- 13 served notice that the address is no longer valid.
- 14

15 **(e) Reliability and integrity of documents served by electronic notification**

16

17 A party that serves a document by means of electronic notification must:

- 18
- 19 (1) Ensure that the documents served can be viewed and downloaded using the
- 20 hyperlink provided;
- 21
- 22 (2) Preserve the document served without any change, alteration, or modification from
- 23 the time the document is posted until the time the hyperlink is terminated; and
- 24
- 25 (3) Maintain the hyperlink until either:
- 26
- 27 (A) All parties in the case have settled or the case has ended and the time for
- 28 appeals has expired; or
- 29
- 30 (B) If the party is no longer in the case, the party has provided notice to all other
- 31 parties that it is no longer in the case and that they have 60 days to download
- 32 any documents, and 60 days have passed after the notice was given.
- 33

34 **(e)(f) When service is complete**

- 35
- 36 (1) Electronic service of a document is complete at the time of the electronic
- 37 transmission of the document or at the time that the electronic notification of service
- 38 of the document is sent.
- 39
- 40 (2) If a document is served electronically, any period of notice, or any right or duty to
- 41 act or respond within a specified period or on a date certain after service of the
- 42 document, is extended by two court days, unless otherwise provided by a statute or a
- 43 rule.

- 1  
2 (3) The extension under (2) does not extend the time for filing:  
3  
4 (A) A notice of intent to move for a new trial;  
5  
6 (B) A notice of intent to move to vacate the judgment under Code of Civil  
7 Procedure section 663a; or  
8  
9 (C) A notice of appeal.  
10  
11 (4) Service that occurs after the close of business is deemed to have occurred on the next  
12 court day.  
13

14 **(f)(g) Proof of service**

- 15  
16 (1) Proof of electronic service may be by any of the methods provided in Code of Civil  
17 Procedure section 1013a, except that the proof of service must state:  
18  
19 (A) The electronic ~~notification~~ service address of the person making the service, in  
20 addition to that person's residence or business address;  
21  
22 (B) The date and time of the electronic service, instead of the date and place of  
23 deposit in the mail;  
24  
25 (C) The name and electronic ~~notification~~ service address of the person served, in  
26 place of that person's name and address as shown on the envelope; and  
27  
28 (D) That the document was served electronically, in place of the statement that the  
29 envelope was sealed and deposited in the mail with postage fully prepaid.  
30  
31 (2) Proof of electronic service may be in electronic form and may be filed electronically  
32 with the court.  
33  
34 (3) Under rule 3.1300(c), proof of service of the moving papers must be filed at least  
35 five ~~calendar~~ court days before the hearing.  
36  
37 (4) The party filing the proof of electronic service must maintain the printed form of the  
38 document bearing the declarant's original signature and must make the document  
39 available for inspection and copying on the request of the court or any party to the  
40 action or proceeding in which it is filed, in the manner provided in rule 2.257(a).  
41

42 **(g)(h) Electronic service by court**

43

1 The court may electronically serve any notice, order, judgment, or other document issued  
2 by the court in the same manner that parties may serve documents by electronic service.  
3  
4

5 **Rule 2.252. Documents that may be filed electronically**  
6

7 (a) \* \* \*

8 .  
9 (b) **Original documents**  
10

11 In a proceeding that requires the filing of an original document, an electronic filer may file  
12 ~~a scanned~~ an electronic copy of a document if the original document is then filed with the  
13 court within 10 calendar days.  
14

15 (c)–(d) \* \* \*

16  
17 (e) **Proposed orders**  
18

19 Proposed orders may be filed and submitted electronically as provided in rule 3.1312.  
20

21 ~~(e)~~(f) **Effect of document filed electronically**  
22

23 (1) A document that the court or a party files electronically under the rules in this  
24 chapter has the same legal effect as a document in paper form.  
25

26 (2) Filing a document electronically does not alter any filing deadline.  
27  
28  
29

30 **Rule 2.253. Court order requiring electronic service or filing**  
31

32 (a) **Court order**  
33

34 (1) The court may, on the motion of any party or on its own motion, ~~after finding~~  
35 provided that such an the order would not cause undue hardship or significant  
36 prejudice to any party, order all parties in any class action, a consolidated action, a  
37 group of actions, a coordinated action, or an action that is complex under rule 3.403  
38 to:  
39

40 ~~(1)~~(A) Serve all documents electronically, except when personal service is required  
41 by statute or rule;  
42

43 ~~(2)~~(B) File all documents electronically; or

1  
2           ~~(3)(C)~~ Serve and file all documents electronically, except when personal service is  
3           required by statute or rule.  
4

5           (2) If the court proposes to make any order under (1) on its own motion, the court must  
6           mail notice to the parties. Any party may serve and file an opposition within 10 days  
7           after notice is mailed or such later time as the court may specify.  
8

9           (3) If the court has previously ordered parties in a case to electronically serve or file  
10           documents and a new party is added that the court determines should also be ordered  
11           to do so under (1), the court may follow the notice procedures under (2) or may order  
12           the party to electronically serve or file documents and in its order state that the new  
13           party may object within 10 days after service of the order or by such later time as the  
14           court may specify.  
15

16 ~~(b)-(c)~~ \* \* \*

17  
18  
19 **Rule 2.254. Responsibilities of court**  
20

21 ~~(a)~~ **Internet-accessible system**  
22

23           ~~(1)~~ Except as provided in ~~(2)~~, a court that orders electronic filing must permit filing over  
24           the Internet by means designed to ensure the security and integrity of an Internet  
25           transmission.  
26

27           ~~(2)~~ The court may decide not to permit service and filing over the Internet if the court  
28           determines that doing so would facilitate the management of a particular action or  
29           proceeding and would not cause undue prejudice to any party.  
30

31 ~~(b)~~(a) **Publication of electronic filing requirements**  
32

33           Each court that permits electronic filing must publish, in both electronic and print formats,  
34           the court's electronic filing requirements.  
35

36 ~~(e)~~(b) **Problems with electronic filing**  
37

38           If the court is aware of a problem that impedes or precludes electronic filing during the  
39           court's regular filing hours, it must promptly take reasonable steps to provide notice of the  
40           problem.  
41

42 ~~(d)~~(c) **Public access to electronically filed documents**  
43

1 Except as provided in rules 2.250–~~2.260~~2.259 and 2.500–2.506, an electronically filed  
2 document is a public document at the time it is filed unless it is sealed under rule 2.551(b)  
3 or made confidential by law.  
4  
5

6 **Rule 2.255. Contracts with electronic filing service providers**  
7

8 **(a) Right to contract**  
9

- 10 (1) A court may contract with one or more electronic filing service providers to furnish  
11 and maintain an electronic filing system for the court.  
12  
13 (2) If the court contracts with an electronic filing service provider, it may require  
14 electronic filers to transmit the documents to the provider.  
15  
16 (3) If ~~there is~~ the court contracts with a single an electronic service provider or the court  
17 has an in-house system, ~~it~~ the provider or system must accept filing from other  
18 electronic filing service providers to the extent ~~it~~ the provider or system is  
19 compatible with them.  
20

21 **(b) \* \* \***  
22

23 **(c) Transmission of filing to court**  
24

25 An electronic filing service provider must promptly transmit any electronic filing, ~~with the~~  
26 and any applicable filing fee, to the court.  
27

28 **(d) Confirmation of receipt and filing of document**  
29

- 30 (1) An electronic filing service provider must promptly send to an electronic filer its  
31 confirmation of the receipt of any document that the filer has transmitted to the  
32 provider for filing with the court.  
33  
34 (2) The electronic filing service provider must send its confirmation to the filer's  
35 electronic ~~notification~~ service address and must indicate the date and time of receipt,  
36 in accordance with rule 2.259(a).  
37  
38 (3) After reviewing the documents, the court must promptly transmit to the electronic  
39 filing service provider and the electronic filer the court's confirmation of filing or  
40 notice of rejection of filing, in accordance with rule 2.259.  
41

42 **(e) \* \* \***  
43

1  
2 **Advisory Committee Comment**  
3

4 ~~The Court Technology Advisory Committee recommends that electronic filing service providers comply~~  
5 ~~with the technical standards specified on the California Courts Web site at~~  
6 ~~www.courtinfo.ca.gov/programs/efiling/. The committee anticipates that these rules may be amended to~~  
7 ~~require compliance with the California Electronic Filing Technical Standards once the standards are~~  
8 ~~sufficiently developed.~~  
9

10  
11 **Rule 2.256. Responsibilities of electronic filer**  
12

13 **(a) Conditions of filing**  
14

15 Each electronic filer ~~agrees to, and~~ must:

- 16  
17 (1) Comply with any court requirements designed to ensure the integrity of electronic  
18 filing and to protect sensitive personal information;  
19  
20 (2) Furnish information the court requires for case processing;  
21  
22 (3) Take all reasonable steps to ensure that the filing does not contain computer code,  
23 including viruses, that might be harmful to the court's electronic filing system and to  
24 other users of that system;  
25  
26 (4) Furnish one or more electronic ~~notification~~ service addresses, in the manner  
27 specified by the court, at which the electronic filer agrees to accept service; and  
28  
29 (5) Immediately provide the court and all parties with any change to the electronic filer's  
30 electronic ~~notification~~ service address.  
31

32 **(b) \* \* \***  
33  
34

35 **Rule 2.259. Actions by court on receipt of electronic filing**  
36

37 **(a) Confirmation of receipt and filing of document**  
38

39 (1) *Confirmation of receipt*  
40

41 When a court receives an electronically submitted document, the court must  
42 promptly send the electronic filer confirmation of the court's receipt of the

1 document, indicating the date and time of receipt. A document is considered received  
2 at the date and time the confirmation of receipt is created.

3  
4 (2) *Confirmation of filing*

5  
6 If the document received by the court under (1) complies with filing requirements  
7 and all required filing fees have been paid, the court must promptly send the  
8 electronic filer confirmation that the document has been filed. The filing  
9 confirmation must indicate the date and time of filing and is proof that the document  
10 was filed on the date and at the time specified. The filing confirmation must also  
11 specify:

12  
13 (A) Any transaction number associated with the filing;

14  
15 (B) The titles of the documents as filed by the court; and

16  
17 (C) The fees assessed for the filing.

18  
19 (3) *Transmission of confirmations*

20  
21 The court must send receipt and filing confirmation to the electronic filer at the  
22 electronic ~~notification~~ service address the filer furnished to the court under rule  
23 2.256(a)(4). The court must maintain a record of all receipt and filing confirmations.

24  
25 (4) *Filer responsible for verification*

26  
27 In the absence of the court's confirmation of receipt and filing, there is no  
28 presumption that the court received and filed the document. The electronic filer is  
29 responsible for verifying that the court received and filed any document that the  
30 electronic filer submitted to the court electronically.

31  
32 (b) \* \* \*

33  
34 (c) **Document ~~filed~~ received after close of business**

35  
36 A document that is ~~filed~~ received electronically ~~with~~ by the court after the close of  
37 business is deemed to have been ~~filed~~ received on the next court day.

38  
39 (d)–(f) \* \* \*



1  
2  
3 **Title 8. Appellate Rules**  
4

5 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**  
6

7 **Chapter 1. General Provisions**  
8

9 **Article 4. E-filing Pilot Project in Second Appellate District**  
10

11 **Rule 8.70. Purpose, application, ~~and~~ construction, and definitions**  
12

13 (a)–(c) \* \* \*

14  
15 **(d) Definitions**  
16

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

18  
19 (1) “The court” is the Court of Appeal, Second Appellate District.  
20

21 (2) A document may be in paper or electronic form. A “document” is:  
22

23 (A) Any filing submitted to the reviewing court, including a brief, a petition, an  
24 appendix, or a motion;

25  
26 (B) Any document transmitted by a trial court to the reviewing court, including a notice  
27 or a clerk’s or reporter’s transcript; or  
28

29 (C) Any writing prepared by the reviewing court, including an opinion, an order, or a  
30 notice.  
31

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

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

41 (5) “Electronic notification” means the notification of a party or other person that a document  
42 is served by sending an electronic message to the electronic service address at or through  
43 which the party or other person has authorized electronic service, specifying the exact

1 name of the document served and providing a hyperlink at which the served document can  
2 be viewed and downloaded.

3  
4 (6) “Electronic service address” of a party means the electronic address at or through which  
5 the party has authorized electronic service.

6  
7 (7) An “electronic filer” is a party filing a document in electronic form directly with the court,  
8 by an agent, or through an electronic filing service provider.

9  
10 (8) “Electronic filing” is the electronic transmission to a court of a document in electronic  
11 form.

12  
13 (9) An “electronic filing service provider” is a person or entity that receives an electronic  
14 filing from a party for retransmission to the court or for electronic service on other parties,  
15 or both. In submission of filings, the electronic filing service provider does so on behalf of  
16 the electronic filer and not as an agent of the court.

17  
18  
19 Advisory Committee Comment  
20

21 The definition of “electronic service” has been amended to provide that a party may effectuate service  
22 not only by the electronic transmission of a document, but also by providing electronic notification of  
23 where a document served electronically may be located and downloaded. This amendment is intended to  
24 modify the rules on electronic service to expressly authorize electronic notification as a legally effective  
25 alternative means of service to electronic transmission. This rules amendment is consistent with the  
26 amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by  
27 electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on  
28 electronic service as understood by the appellate court in *Insys, Ltd. v. Applied Materials, Inc.* (2009)  
29 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only  
30 effective means of electronic service.

31  
32  
33 **Rule 8.71. Definitions**

34  
35 ~~As used in this article, unless the context otherwise requires:~~

36  
37 ~~(1) "The court" is the Court of Appeal, Second Appellate District.~~

38  
39 ~~(2) A document may be in paper or electronic form. A "document" is:~~

40  
41 ~~(A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or~~  
42 ~~a motion;~~  
43

1       ~~(B) Any document transmitted by a trial court to the reviewing court, including a notice or a~~  
2           ~~clerk's or reporter's transcript; or~~

3  
4       ~~(C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.~~

5  
6       ~~(3) An "electronic filer" is a party filing a document in electronic form directly with the court,~~  
7           ~~by an agent, or through an electronic filing service provider.~~

8  
9       ~~(4) "Electronic filing" is the electronic transmission of a document in electronic form to a court.~~

10  
11       ~~(5) An "electronic filing service provider" is a person or entity that receives an electronic filing~~  
12           ~~from a party for retransmission to the court. In submission of filings, the electronic filing~~  
13           ~~service provider does so on behalf of the electronic filer and not as an agent of the court.~~

14  
15       ~~(6) "Electronic service" is the electronic transmission of a document to a party's electronic~~  
16           ~~notification address, either directly or through an electronic filing service provider, for the~~  
17           ~~purpose of effecting service.~~

18  
19       ~~(7) "Electronic notification address" of a party means the electronic address at or through which~~  
20           ~~the party has authorized electronic service.~~

21  
22  
23       **Rule 8.80 8.71. Electronic service**

24  
25       **(a) Consent to electronic service**

26  
27       (1) When a ~~notice~~ document may be served by mail, express mail, overnight delivery, or  
28           fax transmission, electronic service of the ~~notice~~ document is permitted when  
29           authorized by these rules.

30  
31       (2) A party indicates that the party agrees to accept electronic service by:

32  
33       (A) ~~Filing and~~ Serving a notice on all parties that the party accepts electronic  
34           service and filing the notice with the court. The notice must include the  
35           electronic ~~notification~~ service address at which the party agrees to accept  
36           service; or

37  
38       (B) Electronically filing any document with the court. The act of electronic filing is  
39           evidence that the party agrees to accept service at the electronic ~~notification~~  
40           service address that the party has furnished to the court under rule 8.76(a)(4).

41  
42       (3) A party that has consented to electronic service under (2) and has used an electronic  
43           filing service provider to ~~file and~~ serve and file documents in a case consents to  
44           service on that electronic filing service provider as the designated agent for service

1 for the party in the case, until such time as the party designates a different agent for  
2 service.

3  
4 **(b) Maintenance of electronic service lists**

5  
6 When the court orders or permits electronic filing in a case, it must maintain and make  
7 available electronically to the parties an electronic service list that contains the parties'  
8 current electronic ~~notification~~ service addresses, as provided by the parties that have filed  
9 electronically in the case.

10  
11 **(c) Service by the parties**

12  
13 (1) Notwithstanding (b), parties are responsible for electronic service on all other parties  
14 in the case. A party may serve documents electronically directly, by an agent, or  
15 through a designated electronic filing service provider.

16  
17 (2) A document may not be electronically served on a nonparty unless ~~otherwise~~  
18 provided by law or court order ~~the nonparty consents to electronic service or~~  
19 electronic service is otherwise provided for by law or court order.

20  
21 **(d) Change of electronic ~~notification~~ service address**

22  
23 (1) A party whose electronic ~~notification~~ service address changes while the appeal or  
24 original proceeding is pending must promptly file a notice of change of address  
25 electronically with the court and must serve this notice electronically on all other  
26 parties.

27  
28 (2) A party's election to contract with an electronic filing service provider to  
29 electronically file and serve documents or to receive electronic service of documents  
30 on the party's behalf does not relieve the party of its duties under (1).

31  
32 (3) An electronic ~~notification~~ service address is presumed valid for a party if the party  
33 files electronic documents with the court from that address and has not filed and  
34 served notice that the address is no longer valid.

35  
36 **(e) Reliability and integrity of documents served by electronic notification**

37  
38 A party that serves a document by means of electronic notification must:

39  
40 (1) Ensure that the documents served can be viewed and downloaded using the  
41 hyperlink provided;

1           (2) Preserve the document served without any change, alteration, or modification from  
2           the time the document is posted until the time the hyperlink is terminated; and

3  
4           (3) Maintain the hyperlink until the case is final.

5  
6   (e) ~~When service is complete~~

7  
8           (1) ~~Electronic service is complete at the time of transmission.~~

9  
10          (2) ~~Service that occurs after 11:59 p.m. is deemed to have occurred on the next court~~  
11          ~~day.~~

12  
13   (f) **Proof of service**

14  
15          (1) Proof of electronic service may be by any of the methods provided in Code of Civil  
16          Procedure section 1013a, except that the proof of service must state:

17  
18           (A) The electronic ~~notification~~ service address of the person making the service, in  
19           addition to that person's residence or business address;

20  
21           (B) The date and time of the electronic service, instead of the date and place of  
22           deposit in the mail;

23  
24           (C) The name and electronic ~~notification~~ service address of the person served, in  
25           place of that person's name and address as shown on the envelope; and

26  
27           (D) That the document was served electronically, in place of the statement that the  
28           envelope was sealed and deposited in the mail with postage fully prepaid.

29  
30          (2) Proof of electronic service may be in electronic form and may be filed electronically  
31          with the court.

32  
33          (3) The party filing the proof of electronic service must maintain the printed form of the  
34          document bearing the declarant's original signature and must make the document  
35          available for inspection and copying on the request of the court or any party to the  
36          action or proceeding in which it is filed, in the manner provided in rule 8.77(a).

37  
38   (g) \* \* \*

39  
40  
41 **Rule 8.73. Court order requiring electronic service or filing**

1   **(a) Court order**

2  
3       (1) The court may, on the motion of any party or on its own motion, ~~after finding~~  
4       provided that ~~such an~~ the order would not cause undue hardship or significant  
5       prejudice to any party, order all parties to:

6  
7           (A) Serve all documents electronically, except when personal service is required by  
8           statute or rule;

9  
10          (B) File all documents electronically; or

11  
12          (C) Serve and file all documents electronically, except when personal service is  
13          required by statute or rule.

14  
15       (2) The court will not:

16  
17           (A) Order a self-represented party to electronically serve or file documents;

18  
19           (B) Order a party to electronically serve or file documents if the party would be  
20           required to pay a fee to an electronic filing service provider to file or serve  
21           documents and the party objects to paying this fee in its opposition to the  
22           motion under (1); or

23  
24           (C) Order a trial court to electronically serve or file documents.

25  
26       (3) If the reviewing court proposes to make an order under (1) on its own motion, the  
27       court must mail notice to the parties. Any party may serve and file an opposition  
28       within 10 days after the notice is mailed or as the court specifies.

29  
30   **(b)–(c) \* \* \***

31  
32  
33   **Rule 8.75. Contracts with electronic filing service providers**

34  
35   **(a) Right to contract**

36  
37       (1) The court may contract with one or more electronic filing service providers to  
38       furnish and maintain an electronic filing system for the court.

39  
40       (2) If the court contracts with an electronic filing service provider, the court may require  
41       electronic filers to transmit the documents to the provider.

1 (3) ~~If there is~~ the court contracts with a single an electronic service provider or the court  
2 has an in-house system, the ~~court~~ provider or system must accept filing from other  
3 electronic filing service providers to the extent ~~it~~ the provider or system is  
4 compatible with them.

5  
6 (b) \* \* \*

7  
8 (c) **Transmission of filing to court**

9  
10 An electronic filing service provider must promptly transmit any electronic filing and ~~the~~  
11 any applicable filing fee to the court.

12  
13 (d) **Confirmation of receipt and filing of document**

14  
15 (1) An electronic filing service provider must promptly send to an electronic filer its  
16 confirmation of the receipt of any document that the filer has transmitted to the  
17 provider for filing with the court.

18  
19 (2) The electronic filing service provider must send its confirmation to the filer's  
20 electronic ~~notification~~ service address and must indicate the date and time of receipt,  
21 in accordance with rule 8.79(a).

22  
23 (3) After reviewing the documents, the court must promptly transmit to the electronic  
24 filing service provider and the electronic filer the court's confirmation of filing or  
25 notice of rejection of filing, in accordance with rule 8.79.

26  
27 (e) \* \* \*

28  
29  
30 **Rule 8.76. Responsibilities of electronic filer**

31  
32 (a) **Conditions of filing**

33  
34 Each electronic filer ~~agrees to, and~~ must:

35  
36 (1) Comply with any court requirements designed to ensure the integrity of electronic  
37 filing and to protect sensitive personal information;

38  
39 (2) Furnish information that the court requires for case processing;

40  
41 (3) Take all reasonable steps to ensure that the filing does not contain computer code,  
42 including viruses, that might be harmful to the court's electronic filing system and to  
43 other users of that system;

- 1  
2 (4) Furnish one or more electronic ~~notification~~ service addresses, in the manner  
3 specified by the court, at which the electronic filer agrees to accept service; and  
4  
5 (5) Immediately provide the court and all parties with any change to the electronic filer's  
6 electronic ~~notification~~ service address.

7  
8 (b) \* \* \*

9  
10  
11 **Rule 8.79. Actions by court on receipt of electronic filing**

12  
13 (a) **Confirmation of receipt and filing of document**

14  
15 (1) *Confirmation of receipt*

16  
17 When the court receives an electronically submitted document, the court must  
18 promptly send the electronic filer confirmation of the court's receipt of the  
19 document, indicating the date and time of receipt. A document is considered received  
20 at the date and time the confirmation of receipt is created.

21  
22 (2) *Confirmation of filing*

23  
24 If the document received by the court under (1) complies with filing requirements,  
25 the court must promptly send the electronic filer confirmation that the document has  
26 been filed. The filing confirmation must indicate the date and time of filing and is  
27 proof that the document was filed on the date and at the time specified. The filing  
28 confirmation must also specify:

- 29  
30 (A) Any transaction number associated with the filing;  
31  
32 (B) The titles of the documents as filed by the court; and  
33  
34 (C) The fees assessed for the filing.

35  
36 (3) *Transmission of confirmations*

37  
38 The court must send receipt and filing confirmation to the electronic filer at the  
39 electronic ~~notification~~ service address that the filer furnished to the court under rule  
40 8.76(a)(4). The court must maintain a record of all receipt and filing confirmations.

41  
42 (4) *Filer responsible for verification*  
43



1 In the absence of the court’s confirmation of receipt and filing, there is no  
2 presumption that the court received and filed the document. The electronic filer is  
3 responsible for verifying that the court received and filed any document that the  
4 electronic filer submitted to the court electronically.

5  
6 **(b) \* \* \***

7  
8 **(c) Document ~~filed~~ received after close of business**

9  
10 A document that is ~~filed~~ received electronically ~~with~~ by the court after 11:59 p.m. is  
11 deemed to have been ~~filed~~ received on the next court day.

12  
13 **(d)–(e) \* \* \***



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____  DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____  JUDICIAL OFFICER: _____
<b>CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS</b>	DEPT.: _____

1.  The following party or  the attorney for:

- a.  plaintiff *(name):*
- b.  defendant *(name):*
- c.  petitioner *(name):*
- d.  respondent *(name):*
- e.  other *(describe):*

consents to electronic service of notices and documents in the above-captioned action.

2. The electronic service address of the person identified in item 1 is *(specify):*

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
------------	--------------

(Note: If you serve Consent to Electronic Service and Notice of Electronic Service Address by mail, you should use form POS-030, Proof of Service by First-Class Mail–Civil, instead of using this page.)

**PROOF OF ELECTRONIC SERVICE  
CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS**

1. I am at least 18 years old and not a party to this action.
  - a. My residence or business address is (specify):
  
  - b. My electronic service address is (specify):
  
2. I electronically served a copy of the *Consent to Electronic Service and Notice of Electronic Service Address* as follows:
  - a. Name of person served:
  
  - b. Electronic service address of person served:  
 On behalf of (name or names of parties represented, if person served is an attorney):
  
  - c. On (date):
  
  - d. At (time):

Electronic service of the *Consent to Electronic Service and Notice of Electronic Service Address* on additional persons is described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

 \_\_\_\_\_  
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>    TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	CASE NUMBER:  JUDICIAL OFFICER:
<b>NOTICE OF CHANGE OF ELECTRONIC SERVICE ADDRESS</b>	DEPT.:

1.  The following party or  the attorney for:
- a.  plaintiff *(name):*
  - b.  defendant *(name):*
  - c.  petitioner *(name):*
  - d.  respondent *(name):*
  - e.  other *(describe and name):*

is changing his or her electronic service address for electronic service of notices and documents in the above-captioned action.

2. The current electronic service address of the person identified in item 1 is *(specify):*
3. The new electronic service address of the person identified in item 1 is *(specify):*
4. All notices and documents regarding the action should be sent to the new electronic service address as of *(date):*

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
------------	--------------

**PROOF OF ELECTRONIC SERVICE  
NOTICE OF CHANGE OF ELECTRONIC SERVICE ADDRESS**

- 1. I am at least 18 years old and not a party to this action.
  - a. My residence or business address is *(specify)*:
  
  - b. My electronic service address is *(specify)*:
  
- 2. I electronically served a copy of the *Notice of Change of Electronic Service Address* as follows:
  - a. Name of person served:  
On behalf of *(name or names of parties represented, if person served is an attorney)*:
  
  - b. Electronic service address of person served:
  
  - c. On *(date)*:
  
  - d. At *(time)*:

Electronic service of the *Notice of Change of Electronic Service Address* on additional persons is described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

▶

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:  JUDICIAL OFFICER:
<b>PROOF OF ELECTRONIC SERVICE</b>	DEPT.:

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is *(specify):*

b. My electronic service address is *(specify):*

2. I electronically served the following documents *(exact titles):*

The documents served are listed in an attachment *(Form POS-050 (D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:

a. Name of person served:

On behalf of *(name or names of parties represented, if person served is an attorney):*

b. Electronic service address of person served:

c. On *(date):*

d. At *(time):*

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)





SHORT TITLE:	CASE NUMBER:
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**ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)**

*(This attachment is for use with form POS-050/EFS-050.)*

**NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:**

<u>Name of Person Served</u> <i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>	<u>Electronic Service Address</u>	<u>Date and Time of Electronic Service</u>
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____



**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	CompuLaw, LLC Los Angeles, CA By: Cheryl Siler, Court Rules Department Manager	AM	<p>I am writing on behalf of my employer, CompuLaw, LLC, with regard to the proposed changes to CRC 8.80 and how they relate to CRC 2.260(f).</p> <p><b><u>Rule 8.80 (renumbered as rule 8.71)</u></b> Specifically, our concern is with section (f) of CRC 8.80 entitled “When service is complete.” It appears that the language of this section is being revised so that it is consistent with the proposed language used in CRC 2.260(f). However, as proposed, CRC 8.80(f) is silent as to whether a party is entitled to extra time after service of a document by electronic means while CRC 2.260(f) explicitly states that parties are entitled to an extra two court days.</p> <p>In order to avoid any uncertainty as to whether parties in the appellate courts are entitled to extra time to respond or act after service of a document electronically, we suggest that CRC 8.80(f) be further revised to include the same language of CRC 2.260(f)(2). In other words, we recommend that CRC 8.80(f) be revised to mirror CRC 2.260(f), word for word. At the very least, the following language from CRC 2.260(f)(2) should be added to CRC 8.80(f):</p>	<p><b><u>Rule 8.80 (renumbered as rule 8.71)</u></b> The committee did not agree with this suggestion. The time for actions in the appellate rules is tied to filing, not to service. So the extension of time is not relevant; it was deliberately not included in rule 8.80 earlier.</p> <p>Indeed, the entire subdivision on “when service is complete” is not necessary at all in the appellate context. Because it is confusing to have such a subdivision, the committee recommends eliminating it from the appellate e-filing pilot program rules. The subdivision has not been included in amended rule 8.71 presented in this report.</p>

**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>“If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of a document, is extended by two court days, unless otherwise provided by a statute or a rule.”</p>	
2.	<p>Orange County Bar Association Newport Beach By: Lei Lei Wang Ekvall, President</p>	AM	<p><b><u>Rule 2.260 (renumbered as rule 2.251)</u></b> In regard to rule 2.260(e), relating to the reliability and integrity of the documents available by hyperlink, subdivision (2) requires the serving party to maintain the hyperlink until all parties have settled and the time for appeals has expired. This places an unreasonable burden on the party serving the documents. If the party is dismissed or settles out of the case, its responsibility to maintain the links is ongoing – the obligation almost rises to the level of forcing the serving party to maintain a repository of documents. A better solution would be to require the serving party to maintain the link for a finite amount of time (i.e., 30 days) absent a written agreement between the parties to the contrary. This puts the onus on the recipient of the notice to download the document from the link and maintain the documents in its own files (either electronically, or printed, as the case may be). It would allow the parties to agree otherwise if,</p>	<p><b><u>Rule 2.260 (renumbered as rule 2.251)</u></b> The committee agreed in part. It did not agree that the period for maintaining a hyperlink should be significantly shortened in most cases. But it thought that there is merit to the argument that a party that is no longer in a case should not be obligated to maintain hyperlinks indefinitely. Hence, the committee recommends adding a new provision that will allow a party that is no longer in a case to notify other parties, informing them that they have 60 days to download documents. After that time has expired, the party may terminate the hyperlink. (See rule 2.251 (e)(3).)</p>

**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			for example, there is a large class action or qui tam case and one of the parties has a particular capability to maintain such a large repository of documents. The default should be a much shorter amount of time.	
3.	Sharah Reid Legal Research Attorney Superior Court of Orange County	AM	<p><b><u>Rule 2.252</u></b> Rule 2.252(e), which is a new subdivision on proposed orders, states:</p> <p>"(e) Proposed orders</p> <p>Proposed orders may be filed and submitted electronically as provided in rule 3.1312."</p> <p>I believe it should read "Proposed orders may be lodged or transmitted . . ." The reason why is that Proposed Orders are never filed until they become Final Orders.</p>	<p><b><u>Rule 2.252</u></b> The committee did not agree with this suggestion to change the language in rule 2.252. Under a separate proposal, rule 3.1312 would be amended to require a party filing documents electronically (1) to <i>file</i> a PDF version of a proposed order affixed to a cover sheet and also (2) to <i>submit</i> an editable version of the proposed order —so the language in subdivision (e) referring to "filed and submitted" is accurate if rule 3.1312 is amended as proposed.</p>
4.	State Bar of California’s Committee on Administration of Justice (CAJ) By: Saul Bercovitch, Legislative Counsel	AM	<p>CAJ supports this proposal in general, subject to the comments below.</p> <p><b><u>Rules 2.250 and 8.71</u></b> CAJ supports amending rules 2.250 and 8.71 to track the definitions of “electronic service,” “electronic transmission” and “electronic notification” in CCP § 1010.6(a), subject to some suggested modifications. Instead of</p>	<p><b><u>Rules 2.250 and 8.71</u></b> The committee agreed that the definitions of “electronic service,” “electronic transmission,” and “electronic notification” should each be defined separately in its own subpart. The revised definitions are located in rule 2.250(b)</p>

**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>defining the terms “electronic transmission” and “electronic notification” as subparts under the definition of “electronic service” (as in this proposal) CAJ believes it would be clearer to define each term separately in its own subdivision, to more faithfully track the definitions of those terms in CCP § 1010.6(a)(1)(A), (B), and (C), as currently proposed in SB 1274. CAJ also notes that the term “electronic transmission” is referred to in the definition of “electronic filing,” as well as the definition of “electronic service,” which further supports placing the definition of “electronic transmission” in its own subdivision. After reorganization to place the definitions of the three terms into separate subdivisions (6), (7) and (8), the proposed amendment to rules 2.250 and 8.71, shown with CAJ’s proposed modifications, would read:</p> <p>(6) “Electronic service” is <u>service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party’s attorney, through an electronic filing service provider, or by a court.</u></p>	<p>(2)-(4) and rule 8.70(d)(3)-(5).</p>

**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>(7) <u>“Electronic transmission” means the electronic transmission of a document to a party’s electronic notification address, either directly or through an electronic filing service provider, for the purpose of effecting service to the electronic service address at or through which the court, a party or other person has authorized electronic service.</u></p> <p>(8) <u>“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.</u></p> <p><b><u>Rule 2.252</u></b> Under this proposal, rule 2.252(b) would be amended to read as follows: “In a proceeding that requires the filing of an original document, an electronic filer may file <del>a scanned</del> <u>an electronic</u> copy of a document if the original document is then filed with the court within 10</p>	<p><b><u>Rule 2.252</u></b> Rule 2.252(b) addresses the filing of documents in situations where, under a statute or rule, a true original (for example, a signed or notarized version) is required. The rule provides that in such a cases, an electronic copy may be filed if the original is filed within 10 calendar days.</p>

**SPR10-22**

**Electronic Filing and Service: Electronic Service by Notice and Hyperlink** (amend Cal. Rules of Court, rules 2.250, 2.252–2.256, 2.259, 8.73, 8.75, 8.76, and 8.79; amend and renumber rules 2.260, 8.71, and 8.80 as rules 2.251, 8.70, and 8.71, respectively; repeal rules 2.251 and 8.71; and revise forms EFS-005, EFS-010, POS-050/EFS-050, and POS-050(P)/EFS-050(P))

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	Commentator	Position	Comment	Committee Response
			<p>calendar days.” CAJ believes this language is unclear, in light of the language in CCP § 1010.6 providing: “A document that is filed electronically shall have the same legal effect as an original paper document.” Rule 2.252 should be clarified, to explain the circumstances and type of document to which subdivision (b) is intended to refer.</p> <p><b><u>Rules 2.259 and 8.79</u></b></p> <p>CAJ supports changing the first two references from “filed” to “received” in subdivision (c), but believes the third reference should <u>not</u> be changed from “filed” to “received,” in order to clarify when the document is deemed filed.</p> <p>CAJ also notes that the proposal would change “with” to “by” in rule 2.259, but not in rule 8.79.</p> <p>With CAJ’s proposed modification, the amendment to rule 2.259 would read:</p> <p><b>(c) Document <del>filed</del> <u>received</u> after close of business</b></p> <p>A document that is <del>filed</del> <u>received</u> electronically <del>with</del> <u>by</u> the court</p>	<p>However, for most purposes, an electronic copy of a document that is filed has the same effect as a paper version of the same document. Thus, in these situations, no “original” (i.e., paper) version needs to be filed, as indicated in CCP § 1010.6 and rule 2.252(f)(1).</p> <p><b><u>Rules 2.259 and 8.79</u></b></p> <p>The original proposed language regarding “received” is correct and should be retained in all three places in each of the rules. The effect of this language is that, if a document is deemed “received” on the next court day, it is then also deemed filed on that day. (See rules 1.20(a) and 8.25(b)(1)).</p> <p>The CAJ is correct that in rule 8.79 “with” should be changed to “by” as in rule 2.259.</p>



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			<p>after the close of business is deemed to have been filed on the next court day.</p> <p>With CAJ’s proposed modification, the amendment to rule 8.79 would read:</p> <p><b>(c) Document <del>filed</del> <u>received</u> after close of business</b></p> <p>A document that is <del>filed</del> <u>received</u> electronically <del>with</del> <u>by</u> the court after 11:59 p.m. is deemed to have been filed on the next court day.</p> <p><b><u>Rule 2.260 (renumbered as rule 2.251) and rule 8.80 (renumbered as rule 8.71)</u></b></p> <p>1. With respect to the proposed addition of subdivision (c), CAJ believes that further clarification is needed on the issue of electronic service on a nonparty, particularly the question of what constitutes a nonparty’s “consent” to electronic service.</p> <p>2. CAJ opposes proposed subdivision (e), which appears to extend beyond the purpose of ensuring “the integrity of electronic service,” as</p>	<p><b><u>Rule 2.260 (renumbered as rule 2.251) and rule 8.80 (renumbered as rule 8.71)</u></b></p> <p>1. The committee thought that the provision is sufficiently clear and should be adopted at this time. However, if experience with the provision indicates more specificity is required, subdivision (c) can be amended in the future.</p> <p>2. The committee disagreed with some, but not all, of this comment. It thought that, for the integrity of service by notification, it was</p>

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			<p>required by CCP § 1010.6(d), as proposed in SB 1274. CAJ questions the placement in the “Electronic service” rule of a provision to maintain hyperlinks to documents filed through an electronic service provider, and questions whether the burden properly rests with the party for maintaining those hyperlinks. CAJ further notes that the requirement to maintain the hyperlink “until all parties in the case have settled or the case has ended and the time for appeals has expired” appears to place a burden on parties to maintain the hyperlink to an electronically served document for a longer period of time than parties are currently required to retain a document following service of that document by non-electronic means.</p>	<p>important to have a specified length of time for maintaining hyperlinks. It also thought the responsibility for maintaining the hyperlink was appropriately on the party using the hyperlink for service, though the hyperlink could be made available through an electronic service provider. But it agreed that there was merit to the argument that the rule might require a party to maintain a hyperlink longer than is appropriate. In particular, it thought that a party that is no longer in a case should not be obligated to maintain hyperlinks indefinitely. Hence, it recommends adding a new provision to the trial court rule that will allow a party that is no longer in a case to notify other parties, informing them that they have 60 days to download documents. After that time has expired, the party may terminate the hyperlink. (See rule 2.251(e) (3)(B.)</p>
5.	Superior Court of Los Angeles County	AM	<p>The Los Angeles Superior Court Civil &amp; Small Claims Committee defers to the following comments of Judge Carl J. West, who is the court’s expert on electronic filing and service.</p> <p><u>General Comments on Chapter 2-Filing and Service by Electronic Means</u></p> <p>a. The rules tend to conflate e-filing and e-service in a number of places. In view of the fact that many courts will not have the</p>	<p><u>General Comments on Chapter 2-Filing and Service by Electronic Means</u></p> <p>a. Regarding the organization of the rules, there is merit to the judge’s suggestion for reordering the rules on e-service and e-filing. In SB 1274, the</p>

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			<p>infrastructure or capability to offer e-filing for several years, it may be appropriate to separate the provisions relating to e-filing from the provisions relating to e-service.</p> <p>While e-service orders are routinely entered in class actions, complex cases, and consolidated cases, and groups of cases under Rule 2.253, it is likely that in the future parties will elect e-service in more routine cases even though e-filing may not be an option. Clarifying the manner in which e-service providers may be used, and addressing service issues unique to the use of a web-based e-service provider seems appropriate.</p> <p>b. In cases where a web-based e-service provider is used, the service provider generally maintains the service list and proofs of service indicate service only on the e-service provider. Accordingly, the Proof of Electronic Service form should contain a provision that permits service on the e-service provider without requiring the identification of all parties served and their email addresses. This is most</p>	<p>companion legislation, the statutory provisions relating to electronic service have been separated out from the provisions on e-filing and relocated from the middle to the beginning of Code of Civil Procedure section 1010.6. Applying this same approach in the rules, the rules on service—currently 2.260 and 8.80—have been relocated to the beginning of the chapter or article right after the definitions and been renumbered as rules 251 and 8.71.</p> <p>The judge’s additional comments about the need to clarify the manner in which electronic filing service providers may be used and to address service issues unique to web-based service providers are beyond the scope of the present proposal. In the future, more detailed suggestions about these matters may be solicited and addressed in subsequent amendments to the rules.</p> <p>b. The revised form provides for service on the “electronic service address” of a party. This may be the party’s e-mail address, but it may also be the electronic address of an electronic service provider if the party has so designated. (See amended rule 2.250(b)(5)(the “electronic service address” of a party “means the electronic address at or through which the party has authorized</p>

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			<p>appropriate in cases with large numbers of parties where all are subject to an Order for Electronic Service and are required to register with the e-service provider.</p> <p><u>Specific comments:</u></p> <p><b>1. Rule 2.253</b></p> <p>a. Subparagraph (a)(2) has the potential to place a significant burden on court staff in cases with multiple parties. It is not uncommon to have a significant number of individual parties in construction defect, mass tort, and insurance coverage cases. Requiring the court to serve notice of its intent to enter an e-service order is not practical. A more practical approach is to require that any order requiring e-service in a case contain a provision that allows a party objecting to the order on a claim of hardship to request exemption. An example of such a provision would be as follows:</p> <p>“Any party appearing after [date of order], shall have fifteen days from their initial appearance to lodge any objections to this Order and to seek exemption. A copy of this Order shall be served upon any newly appearing party with the initiating pleadings. Exemptions may be granted in the discretion of the Court if it appears that a</p>	<p>electronic service.”) So the form does not need to be further modified.</p> <p><u>Responses to specific comments:</u></p> <p><b>1. Rule 2.253</b></p> <p>a. The committee recommends that rule 2.253(a) be modified to authorize a procedure similar to what the judge proposed. A new subdivision (a)(3) has been added for this purpose. The committee did not think it necessary to add such a provision to the appellate rules because new parties will generally not be added at that stage in the proceedings.</p>

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			<p>party would suffer undue hardship or significant prejudice.”</p> <p>b.Subparagraph (b)(2) implies that the Court must send confirmation of filing to all parties. Is this intended to require confirmation of e-service as well? Again, generally the e-service provider or the e-filing provider will provide notice to all registered with the service. Some acknowledgment of this practice should be included to avoid placing unnecessary burdens on the court staff. This is another reason that perhaps e-filing rules should be distinguished from e-service rules.</p> <p>2. <b><u>Rule 2.255</u></b></p> <p>a. This rule should clarify that contracts with providers are required only for e-filing services.</p> <p>b. The courts do not have contracts with web-based e-service providers and do not incur any cost associated with e-service providers.</p>	<p>b. Changes to subdivision (b)(2) are beyond the scope of the present proposal, which did not suggest amending that subdivision. Also, this existing subdivision is not intended to imply that the court must send confirmation to all parties—only that that the court <i>may</i> include in its order that, when it provides confirmation of filing, that confirmation constitutes service of the filing if the filed document is available electronically. Rather than imposing a burden on the court, this provision may simplify the court’s and other parties’ task of serving all parties with a filed-endorsed copy of the court’s order.</p> <p>2. <b><u>Rule 2.255</u></b></p> <p>a.-b. These suggestions appear to be beyond the scope of the proposal that was circulated for comment. It also not clear that it is necessary to put such information in the rule.</p>

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			<p>3. <b><u>Rule 2.260 (renumbered as rule 2.251)</u></b></p> <p>a. There should be an exception to the requirements of this rule for electronic service pursuant to an order entered under rule 2.253.</p> <p>b. Generally electronic service lists are maintained by the web-based e-service provider; there should be an exception to the requirement that the court maintain electronic service lists when an e-service provider is designated by court order to provide e-service in a case.</p> <p>c. Subparagraph (g) should be modified to recognize the common practice of using web-based e-service providers that provide verification of the information that this subsection requires to be included in the proof</p>	<p>3. <b><u>Rule 2.260 (renumbered as rule 2.251)</u></b></p> <p>a. This suggestion is beyond the scope of the current rules proposal that was circulated for comment. If there is a need to change the service rules to reflect electronic service ordered by the court, this subject warrants more extensive review and consideration. In the future, more detailed suggestions about these matters may be solicited and addressed in subsequent amendments to the rules.</p> <p>b. This suggestion is beyond the scope of the proposal that was circulated for comment. Again, if there is a need to change the service rules to reflect electronic service through electronic filing service providers, this subject warrants more extensive review and consideration. In the future, more detailed suggestions about these matters may be solicited and addressed in subsequent amendments to the rules.</p> <p>c. This proposal is beyond the scope of the proposal that was circulated for comment. If there is a need to change the service rules to reflect electronic service through electronic filing service providers, this subject warrants more extensive</p>

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			of service. Perhaps a provision allowing confirmation of transmission to the web-based e-service provider in cases where the Court has designated such a provider for e-service would be appropriate.	review and consideration. In the future, more detailed suggestions about these matters may be solicited and addressed in subsequent amendments to the rules.
6.	Superior Court of San Diego County By: Michael Roddy, Executive Officer	A	No specific comment.	No specific response required.