



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date: July 16, 2021
Time: 10:30 a.m.
Public Call-in Number: 1-408-419-1715; **Meeting ID:** 677 551 487; **Participant Passcode:** 9064

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the March 1, 2021, Appellate Advisory Committee meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

Written Comment

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to aac@jud.ca.gov. Only written comments received by 10:30 a.m. on July 15, 2021, will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Item 1

Chair's Report

Update on items of interest, including a liaison report from ITAC.

Presenter: Hon. Louis Mauro

Item 2

Legislative Update

Update on legislation and budget items of interest.

Presenter: Ms. Kate Nitta

Item 3

Liaison Reports

Update on items of interest from other advisory committees and CJER.

Presenters: Hon. Michael A. Sachs, TCPJAC Liaison

Ms. Adetunji Olude, Judicial Council CJER Liaison

IV. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 5-10)

Item 4

Update Electronic Filing Rules to Permit Electronic Signatures and Make Minor Corrections (Action Required)

Review comments on proposal to amend rule 8.75 to allow use of electronic signatures on electronically filed documents in the appellate courts and amend rule 8.70 to add a definition of “electronic signature” and make minor corrections.

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Item 5

Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendere or Admission of Probation Violation (Action Required)

Review comments on proposal to amend rule 8.304 to modify the procedure for notices of appeal filed after a plea without a certificate of probable cause.

Presenters: Hon. Louis Mauro, Ms. Christy Simons

V. ADJOURNMENT

Adjourn



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

July 13, 2021

Action Requested

Please review for July 16 meeting

To

Members of the Appellate Advisory
Committee
Hon. Louis R. Mauro, Chair

Deadline

July 16, 2021

From

Rules Subcommittee of the Appellate
Advisory Committee

Contact

Christy Simons
415-865-7694 phone
christy.simons@jud.ca.gov

Subject

Proposal to amend rules 8.70 and 8.75 to
authorize electronic signatures

Introduction

Earlier this year, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The proposed amendments were based on recent amendments to the parallel trial court rules. The proposal would add to rule 8.70 a definition for electronic signature and update several other definitions. The proposed amendments to rule 8.75 would authorize the use of electronic signatures on electronic documents filed with the court and reorganize parts of the rule to improve clarity and eliminate redundancies.

The proposal was intended to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The Judicial Council's Rules Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 9, 2021 through May

21, 2021 as part of the regular spring cycle. A copy of the invitation to comment and the proposed amended rules as they circulated for public comment are included in your meeting materials.

This memorandum and the attached materials discuss the public comments received on the proposal and the Rules Subcommittee's recommendations regarding these comments. Prior to the committee meeting, members should review the memo, the comment chart with draft committee responses, and the draft amended rules which reflect the subcommittee's recommendations. attached draft Report to the Judicial Council, comment chart, and modified draft amended rules. On the memo, modifications proposed by the subcommittee are highlighted in blue; green highlight shows possible changes the subcommittee has not yet considered. On the rules document, proposed amendments circulated during the comment period are highlighted in yellow; modifications proposed by the subcommittee are highlighted in blue; and questions or choices are highlighted in green.

Comments and Issues to Consider

The committee received nine comments on this proposal. Six commenters, the California Department of Child Support Services, the Child Support Directors Association, a private law firm, the Orange County Bar Association (OCBA), the Superior Court of San Diego County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS), agreed with the proposal. The California Academy of Appellate Lawyers (CAAL), the Committee on Appellate Courts, Litigation Section, of the California Lawyers Association (CAC), and the Court of Appeal for the Third Appellate District (Third District) agreed with the proposal if modified. The full text of the comments received and staff's proposed committee responses are set out in the attached draft comment chart. *Based on comments received, the subcommittee recommends modifying the proposal for the reasons discussed below and at pages 4–5 of the draft Report to the Judicial Council.*

The comments unanimously support authorizing electronic signatures and clarifying the rules. The child support services organizations both described the positive impact these changes would have on their programs. Most of the commenters also submitted suggestions for clarifying and simplifying the language of the rules, including extensive suggestions from the CAAL and the CAC. The comments are summarized below.

The Rules Subcommittee reviewed and discussed the comments at its meeting on July 9, 2021. The overarching considerations were, on one hand, maintaining consistency with the trial court rules, and on the other, crafting updated rules that are clear, easy to apply, and reflect current practice. The proposed amendments that circulated were based closely on the parallel trial court rules developed by the Information Technology Advisory Committee that circulated for public comment in proposals over the last several years. The most recent of those amendments have been in place since January of 2020. However, several comments suggest changes to address confusing language and outdated procedures and improve organization. As discussed below, the

subcommittee recommends making several modifications based on the comments, and deferring more significant changes for a potential joint project with ITAC.

Definition of “electronic signature”

The CAAL expressed concern that the definition of “electronic signature” could be confusing to appellate practitioners. “For example, an appellate practitioner lacking a technical background will be unlikely to understand what is meant by rule 8.70(c)(10)’s definition of an ‘electronic signature’ as ‘an electronic sound, symbol, or process attached to or logically associated with an electronic record’—even if that definition is consistent with some industry standards.” The Third District questioned whether the definition of electronic signature should be modified to omit reference to an electronic sound. According to the court, “[i]t is unclear what an ‘electronic sound’ is or how it would be presented in court operations. At a minimum, an explanation should be provided. Alternatively, if it has no practical application for court operations, it should probably be removed from the definition.”

The definition of electronic signature in this proposal is modeled on the definition of electronic signature in trial court rule 2.257(a), which in turn was modeled on the definitions of electronic signature and electronic record in the Uniform Electronic Transactions Act (UETA) and Code of Civil Procedure section 1633.2.¹ California was the first state to adopt the UETA, a uniform act drafted by the Uniform Law Commission that established “the legal equivalence of electronic records and signatures with paper records and manually-signed signatures, removing barriers to electronic commerce.” Forty-seven other states and several territories have adopted it since then.² Staff is unaware of any complaints or confusion stemming from the trial court rule. The subcommittee recommends retaining “electronic sound” as part of the definition to maintain consistency with the trial court rule and the Civil Code.

Electronic filer’s electronic signature requirements satisfied by electronic filing

The CAAL pointed out that Rule 8 of the Supreme Court Rules Regarding Electronic Filing currently provides that “[u]se of a registered TrueFiling user’s username and password to electronically file a document is the equivalent of placing the registered user’s electronic signature on the document.” The subcommittee recommends adding a similar provision to rule 8.75 to provide assurance that an electronically filed document would comply with the rule’s electronic signature requirements.

¹ See Civ. Code section 1633.2, SB 820, Stats. 1999, Ch. 428, Sec. 1. Effective January 1, 2000.

² <https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034>

Two different types of electronic signature

As noted by several commenters, the proposed amendments contemplate two different types of “electronic signature.” Proposed amended rule 8.70(c)(10) defines “electronic signature” broadly as an “electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received or stored by electronic means.” (See Civ. Code, § 1633.2(h).) CAC opines that “[t]his definition would seem to include, for example, the simple electronic signatures often used in federal court (‘/s/’).

Rule 8.75(a)(1) and (b)(2)(B), however, limit an acceptable “electronic signature” to one with most of the features of a “digital signature” per Government Code section 16.5(a), or one that is “unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated.” CAC notes that this definition “seems to be limited to signatures obtained by sophisticated electronic-signature programs such as DocuSign. Under the proposed rules change, this more stringent type of electronic signature would be required for (1) documents signed under penalty of perjury (where filed by someone other than the signatory) and (2) documents with signatures from multiple parties, such as a stipulation.”

The subcommittee agrees that referring to both types of signature as “electronic signatures” is confusing, as is the reference to digital signatures without explanation in rule 8.75. The subcommittee suggests using a different term—secured electronic signature—for the more restricted type of electronic signature and removing the subdivision that mentions digital signatures. Although these modifications are a departure from the trial court rule, the clarifications they would provide is significant.

One option would be defining the more restricted type of electronic signature in a new subdivision (c)(11) of rule 8.70 as follows:

(c)(11) A “secured electronic signature” is a type of electronic signature that is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

This definition could then stand for the text in rule 8.75(a)(1) and (b)(2)(B). The portion with underline and strikethrough circulated for public comment; a new definition of “secured electronic signature” would replace that text.

(a)(1) ~~The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document. The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct. If the declarant is not the electronic filer, the declarant~~

must sign the document using a secured electronic signature [OR] the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated; or

(2)(B)(A)³ The party filing the document must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document and any copies of signed signature pages in the manner provided in (a)(3)–(5). The party or other person has parties or other persons have signed the document using a secured electronic signature [OR] an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.

The subcommittee does not recommend the term “digital signature” for the appellate rules because of the likelihood of confusion with the digital signature requirements contained in Government Code section 16.5. As CAC notes, the more restricted electronic signature in rule 8.75(a) and (b) includes most of the requirements for a digital signature used by a public entity as set forth in Government Code section 16.5(a). Several commenters indicated confusion over the inclusion in rule 8.75 of reference to a digital signature in subdivision (c) (modeled on trial court rule 2.257(d)) without a definition and providing only that a digital signature is not required. The subcommittee concluded that using a different term and defining it would improve the rules.

In addition, the CAAL recommends that the advisory committee comments be expanded “to provide non-technical guidance on what satisfies the electronic signature definition. For example, does the insertion into a document of an image of a person’s signature comply with the rule? Does the “/s/ [attorney name]” method used for electronic federal court filings comply? Must an attorney use one of the “secure electronic signature internet services” referenced in the proposal to comply?” The committee should discuss this suggestion.

Simplify the electronic signature requirement

The CAC contends that the second, more restricted electronic signature type (a “secured electronic signature”) is never necessary because attorneys receive electronic copies of filed documents through the TrueFiling system. This should eliminate “any realistic threat that anyone will file a document purporting to have the authorization of an attorney that has not actually authorized that filing.”

³ The green highlight reflects an organizational change suggested by another commenter. This provision in the rule circulated as rule 8.75(b)(2)(B); the commenter suggests flipping the order of (b)(2)(A) and (b)(2)(B).

For documents signed under penalty of perjury, an attorney whose electronic signature was not authorized will receive a copy of the filing and can take appropriate action. “For documents with multiple signatories the rules should instead require filers to certify that they have the express authorization to file the document on behalf of any attorneys who have signed it. So, for example, for stipulations among multiple parties, the rules should simply require the party filing the stipulation to include a statement on the filing that he/she/they received the other party’s consent to sign on the latter’s behalf.” The CAC notes that this “would effectively mirror a local rule of the Federal District Court for the Central District of California that has been widely and successfully adopted by litigants for party stipulations. That rule, C.D. Cal. L.R. 5-4.3.4(a)(2)(i), reads as follows:”

[T]he signatures of all signatories may be indicated on the document with an “/s/,” and the filer must attest on the signature page of the document that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing...

This would be a significant change from the proposal and the trial court rule. If the committee is interested in pursuing this suggestion, the subcommittee recommends working with ITAC to maintain consistency between trial court and appellate court rules.

Reorganize rule 8.75

The CAC believes that organizing proposed Rule 8.75 into categories based on whether a document must be signed under penalty of perjury creates confusion as to when the more stringent signature type is required.

Organizing the rule based on whether documents must be signed under penalty of perjury would have made sense if the more stringent signature type was only reserved for penalty-of-perjury situations. But Rule 8.75(b)(2) contemplates that when a document “requires the signatures of multiple parties,” it too must be signed with the more stringent signature even though it is not a document signed under penalty of perjury.

Thus, rather than organize the rule based on whether documents must be signed under penalty of perjury, the CAC recommends that the rule be organized based on when a “digital signature” is (or is not) required. So, for example, subsection (a) of Rule 8.75 might simply list the situations in which a “digital signature” is required (i.e., (1) documents signed under penalty of perjury where the filer is someone other than the declarant, (2) documents that require the signatures of multiple parties). Subsection (b) could then specify that for all other documents except those listed in subsection (a), a simple “electronic signature” will suffice.

Remove the references to “other persons”

The Third District recommends removing the references to “other persons” that have been added to several provisions in rules 8.70 and 8.75. The court points out that “other persons” is not

defined in the rules and could suggest that filings or submissions by non-parties are routinely allowed. “Currently, only two rules allow for filing of documents by non-parties, namely: rule 8.200(c) governing filing of amicus curiae briefs and rule 8.1120(a)(1) governing requests to publish. Any other submissions by non-parties are received or filed by permission of the court only. The addition of this language is too vague to be helpful and places an operational burden on the Clerk’s Office in dealing with filings submitted by “other persons.” The Third District cites as an example letters written by non-parties seeking to influence the process or outcome of a case. In the alternative, the Third District suggests defining the term “other persons” in rule 8.10.

The proposed addition of “other persons” in these rules is based on trial court rules, which were amended to include “other persons” based on Code of Civil Procedure section 1010.6. It is certainly the case that “other persons” who may properly file or submit electronic documents are more common in trial court proceedings than appellate court proceedings. However, as noted in the comments from CDCSS, filings or submissions by non-parties involved in juvenile cases on appeal are another example of “other persons” who may properly submit documents. The committee should consider whether the term “other persons” should be deleted or defined or otherwise limited in scope. Note rule 1.6, which is applicable to all courts: “ ‘Person’ includes a corporation or other legal entity as well as a natural person.”

Procedure for verifying signatures are authorized on documents with multiple signatories

The proposal included a request in the invitation to comment for specific comments as to whether the procedure described in proposed rule 8.75(b)(2)(A) regarding documents with multiple signatures, such as stipulations, comports with current practice. This question was presented because several committee members remarked that this aspect of the trial court rule, which requires opposing counsel to sign the stipulation manually and send it back, and for the filer to retain hard copies, is outdated. The OCBA agreed. “Current practice regarding such documents is often for the parties’ counsel to email each other regarding a stipulation. Once the parties’ counsel agree to the substance and language of the stipulation, the filing party’s counsel will inquire whether he/she has permission from the opposing party’s counsel to “electronically sign” on the opposing counsel’s behalf. Opposing counsel will respond via email confirming the filing party’s counsel has permission. The filing party’s counsel will then use a simple “/s/ Opposing Counsel” on the signature line, representing to the Court that both parties’ counsel have agreed to the stipulation.” The procedure in Rule 8.75(b)(2)(A) would still require the Opposing Counsel to either sign the stipulation manually and send it back, or sign it via electronic signature with a digital certificate.” The OCBA also objected to the alternative enhanced signature requirements (which it refers to as an “electronic signature with a digital certificate”) on the basis that that any doubts about whether opposing counsel authorized the electronic signature can be resolved by producing the email correspondence authorizing the filing.

The CAC provided similar comments in support of minimizing the use or reliance on wet signatures and hard copies. These comments are consistent with recent discussion in the

subcommittee regarding current practice. Members questioned amending a rule with outdated procedures for the sake of consistency with a trial court rule when this is an opportunity to craft a better rule. Once again, if the committee wishes to pursue aligning the rule with current practice, it may be best to work together with ITAC so that trial court and appellate court rules provide the same procedure.

Revise heading for rule 8.75(c)

The San Diego superior court suggested that the heading for rule 8.75(c) (formerly (d)) be revised for clarity as shown in blue:

~~(d)~~(c) Digital signatures not required

If this subdivision is retained, the committee should consider this modification, but note that it is not consistent with the trial court rule.

Change “sole control” to “sole authority”

The JRS notes that proposed amended rule 8.75(a)(1) for documents signed under penalty of perjury requires the electronic signature to be under the “sole control” of the declarant. “This may present an implementation challenge, as many attorneys give signing authority to other attorneys on a case, as well as personnel. Similarly, many litigants give their attorneys signing authority.” The JRS suggested changing the language from “sole control” to “sole authority” as a more feasible and efficient option.

The relevant portion of the rule showing the proposed change in blue is below.

(a) Documents signed under penalty of perjury

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

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

The committee should discuss whether to recommend this change.

Correct grammar

Finally, the CAAL suggests an edit to maintain parallel structure. Rule 8.75(b)(2)(B) would be amended as follows:

The ~~party or other person has~~ parties or other persons have signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.

Committee Task

The committee's task is to consider the comments received, discuss the draft rule amendments and any modifications based on the comments, and approve or modify the subcommittee's suggestions for responding to these comments. The committee may:

- Recommend that the proposal be submitted to the Rules Committee as currently drafted or as amended; or
- Recommend that the proposal not move forward; or
- Request additional information or research from committee members or staff.

Attachments

1. Draft amended rules with modifications based on comments
2. Comment chart with draft committee responses
3. Invitation to Comment

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

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

2
3 **(a) Application**

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

8
9 **(b) Construction**

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

13
14 **(c) Definitions**

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

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

19
20 (2) A “document” is:

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

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

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

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

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

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

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

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

(6) “Electronic service address” ~~of a party~~ means the electronic address at or through which ~~the a party~~ or other person has authorized electronic service.

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

(8) “Electronic filing” is the electronic transmission to a court of a document in electronic form for filing. Electronic filing refers to the activity of filing by the electronic filer and does not include the court’s actions upon receipt of the document for filing, including processing and review of the document and its entry into the court’s records.

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

(10) An “electronic signature” is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

(11) A “secured electronic signature” is a type of electronic signature that is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

[Could also use the term “modified digital signature” or “verified electronic signature.”]

Advisory Committee Comment

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

1 **Subdivision (c)(3).** The definition of “electronic service” has been amended to provide that a
2 party may effectuate service not only by the electronic transmission of a document, but also by
3 providing electronic notification of where a document served electronically may be located and
4 downloaded. This amendment is intended to ~~modify the rules on electronic service to~~ expressly
5 authorize electronic notification as a ~~legally effective~~ an alternative means of service ~~to electronic~~
6 ~~transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure
7 section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See
8 Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as
9 understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170
10 Cal.App.4th 1129, which interpreted the rules as authorizing only electronic transmission as ~~the~~
11 ~~only~~ an effective means of electronic service.

12
13 **Subdivision (c)(10).** The definition of electronic signature is based on the definition in the
14 Uniform Electronic Transactions Act, Civil Code section 1633.2.

15
16 **Subdivision (c)(11).** The definition of secured electronic signature is based on several
17 requirements of a “digital signature” set forth in Government Code section 16.5(a), specifically
18 the requirements stated in section 16.5(a)(1)-(4). The section 16.5(a)(5) requirement of
19 conformance to regulations adopted by the Secretary of State does not apply to secured electronic
20 signatures.

21
22 [Could also use the term “modified digital signature” or “verified electronic signature.”]

23
24 **Rule 8.75. Requirements for signatures on documents**

25
26 **(a)** Use of a registered TrueFiling user’s username and password to electronically file a
27 document is the equivalent of placing the registered user’s electronic signature on
28 the document.

29
30 [CAAL suggests adding rule 8 of the Cal. Supreme Court’s electronic filing rules. Does
31 this provision work as part of the rule or should it be an advisory committee comment?
32 Should it identify TrueFiling as the electronic filing service provider?]

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34 **(a)(b) Documents signed under penalty of perjury**

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36 If ~~When~~ a document to be filed electronically must be signed under penalty of
37 perjury, the ~~following procedure applies~~ document is deemed to have been signed
38 by the declarant if filed electronically, provided that either of the following
39 conditions is satisfied:

- 40
41 (1) ~~The document is deemed signed by the declarant if, before filing, the~~
42 ~~declarant has signed a printed form of the document.~~ The declarant has

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

1 signed the document using an electronic signature and declares under penalty
2 of perjury under the laws of the State of California that the information
3 submitted is true and correct. If the declarant is not the electronic filer, [the
4 declarant must sign the document using a secured electronic signature OR]
5 the electronic signature must be unique to the declarant, capable of
6 verification, under the sole control of the declarant, and linked to data such
7 that, if the data are changed, the electronic signature is invalidated; or
8

9 (2) The declarant, before filing, has physically signed a printed form of the
10 document. By electronically filing the document, the electronic filer certifies
11 that ~~(1) has been complied with and that~~ the original signed document is
12 available for inspection and copying at the request of the court or any other
13 party. In the event this second method of submitting documents electronically
14 under penalty of perjury is used, the following conditions apply:
15

16 ~~(3)~~(A) At any time after the electronic version of the document is filed,
17 any other party may serve a demand for production of the original
18 signed document. The demand must be served on all other parties but
19 need not be filed with the court.
20

21 ~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party
22 or other person on whom the demand is made must make the original
23 signed document available for inspection and copying by all other
24 parties.
25

26 ~~(5)~~(C) At any time after the electronic version of the document is filed,
27 the court may order the ~~filing party~~ electronic filer to produce the
28 original signed document ~~in court~~ for inspection and copying by the
29 court. The order must specify the date, time, and place for the
30 production and must be served on all parties.
31

32 ~~(b)~~(c) **Documents not signed under penalty of perjury**
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34 (1) If a document does not require a signature under penalty of perjury, the
35 document is deemed signed by the party ~~if the document is filed~~
36 electronically electronic filer.
37

38 ~~(e)~~ **Documents requiring signatures of multiple parties**
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40 (2) When a document to be filed electronically, such as a stipulation, requires the
41 signatures of multiple parties persons, ~~the following procedure applies~~ the

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

1 document is deemed to have been signed by those persons if filed
2 electronically, provided that either of the following procedures is satisfied:

3
4 (1)(A)(B) ~~The party filing the document~~ electronic filer must obtain ~~has~~
5 obtained all the signatures of all parties either in the form of an original
6 signature on a printed form of the document or in the form of a copy of
7 the signed signature page of the document. The electronic filer must
8 maintain the original signed document and any copies of signed
9 signature pages and must make them available for inspection and
10 copying as provided in (a)(2)(B). The court and any other party may
11 demand production of the original signed document and any copies of
12 signed signature pages as provided in (a)(2)(A)–(C). By electronically
13 filing the document, the electronic filer indicates that all parties persons
14 whose signatures appear on it have signed the document and that the
15 filer has possession of the signatures of all parties those persons in a
16 form permitted by this rule in his or her possession.; or

17
18 (2)(B)(A) ~~The party filing the document must maintain the original signed~~
19 ~~document and any copies of signed signature pages and must make~~
20 ~~them available for inspection and copying as provided in (a)(2). The~~
21 ~~court and any other party may demand production of the original signed~~
22 ~~document and any copies of signed signature pages in the manner~~
23 ~~provided in (a)(3)–(5). The party or other person has parties or other~~
24 ~~persons have signed the document using [a secured electronic signature~~
25 ~~OR] an electronic signature and that electronic signature is unique to~~
26 ~~the person using it, capable of verification, under the sole control of the~~
27 ~~person using it, and linked to data such that, if the data are changed, the~~
28 ~~electronic signature is invalidated.~~

29
30 [Question to AAC: flip the order of (b)(2)(A) and (B) to keep the same order as in (a)(1)
31 and (2)? Suggestion from JRS.]

32
33 **(d)(c) Digital signature**

34
35 A party or other person is not required to use a digital signature on an electronically
36 filed document.

37
38 [Question to AAC: delete this subdivision if “secured electronic signature” is defined in
39 rule 8.70(c)(11) and used in rule 8.75?]

40
41 **(e)(d) Judicial signatures**

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

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

3
4 **Advisory Committee Comment**

5
6 The requirements for electronic signatures that are compliant with the rule do not impair the
7 power of the courts to resolve disputes about the validity of a signature.

8
9 A secured electronic signature is an electronic signature that is unique to the person using
10 it, capable of verification, under the sole control of the person using it, and linked to data
11 such that, if the data are changed, the electronic signature is invalidated.

12
13 [Add this comment if the term “secured electronic signature” is used?]

14
15 Subdivision (c). Rule 8.70 defines “electronic signature” but not “digital signature.” A digital
16 signature is a type of electronic signature as defined in Government Code section 16.5(d). (Civ.
17 Code, § 1633.2(h).)

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
1.	California Academy of Appellate Lawyers By Rochelle Wilcox Chair, Rules Committee	AM	<p>The California Academy of Appellate Lawyers (CAAL) is an election-only organization of approximately 100 members devoted to excellence in appellate practice. The CAAL has active committees devoted to amicus curiae participation and input on appellate rule changes, and seeks to improve appellate practice and access to justice in the California appellate courts.</p> <p>The CAAL supports proposal SPR21-01 and agrees that the option to use electronic signatures provides litigants with a potentially faster and more convenient way to obtain needed signatures on documents to be filed in the appellate courts, which is important and relevant during the coronavirus pandemic and in the future event of similar public emergencies.</p> <p>The CAAL also supports the goal of updating the rules governing electronic signatures in the appellate courts to provide clarity and consistency with the trial court rules. However, the CAAL is concerned that the incorporation of the definition of an “electronic signature” that is currently used in the trial court rules will be potentially confusing to appellate practitioners. For example, an appellate practitioner lacking a technical background will be unlikely to understand what is meant by rule 8.70(c)(10)’s definition of an “ ‘electronic signature’ ” as “an electronic sound, symbol, or process attached to or logically associated with an electronic record”—even if that definition is consistent</p>	<p>The committee thanks the commenter for submitting this feedback.</p> <p>The committee notes the commenter’s support for the proposal.</p> <p>The committee notes the commenter’s concern with the use of technical language in several proposed amendments to the rules. As indicated in the invitation to comment, the language is based on recent amendments to the trial court rules. One goal of the rules modernization project has been to maintain consistency between the trial court rules and the appellate rules to the extent it is appropriate. The committee is unaware of any issues for trial court practitioners, but will retain these comments and consider further amendments if it appears that appellate practitioners find the language confusing.</p> <p>[Does the committee agree? Should any of the identified provisions be modified?]</p>

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Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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	Commenter	Position	Comment	Draft Committee Response
			<p>with some industry standard. Nor will the average practitioner understand what is meant by rule 8.75(a)(1)'s proposed requirement that "the electronic signature must be . . . linked to data such that, if the data are changed, the electronic signature is invalid." (See also proposed rule 8.75(b)(2)(B) [containing similar language].) Adding further confusion is rule 8.75(c)'s statement that a "party or other person is not required to use a digital signature on an electronically filed document." A new proposed Advisory Committee Comment to rule 8.75 suggests there is some difference between an "electronic signature" and a "digital signature," but fails to explain what that difference is.</p> <p>The CAAL recommends that the Advisory Committee Comments be expanded to provide non-technical guidance on what satisfies the newly added electronic signature definition. For example, does the insertion into a document of an image of a person's signature comply with the rule? Does the "/s/ [attorney name]" method used for electronic federal court filings comply? Must an attorney use one of the "secure electronic signature internet services" referenced in the proposal to comply? What is meant by the requirement that the electronic signature be "linked to data such that, if the data are changed, the electronic signature is invalid"? And how is an "electronic" signature different than a "digital" signature? A practitioner reading the rule should not be obliged to search the internet or do other research in order to</p>	<p>[Should digital signature be further clarified or removed from the rule?]</p> <p>[Does the committee agree with expanding the advisory committee comments? If so, which provisions in the rules should be clarified?]</p>

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Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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	Commenter	Position	Comment	Draft Committee Response
			<p>understand these requirements and what is intended or permitted. The Advisory Committee Comments should either directly address these questions, or refer practitioners to a source (or sources) containing the answers.</p> <p>The CAAL notes that Rule 8 of the Supreme Court Rules Regarding Electronic Filing currently provides that “[u]se of a registered TrueFiling user’s username and password to electronically file a document is the equivalent of placing the registered user’s electronic signature on the document.” The CAAL recommends that an identical provision be included with the other amendments to rule 8.75. Such inclusion would provide assurance to practitioners that, regardless of their understanding of the rule’s other technical requirements, a document filed through the TrueFiling system will be in compliance with the rule’s electronic signature requirements.</p> <p>The CAAL offers two other minor suggestions: 1. Rule 8.75(b)(2) pertains to documents that require the signatures of multiple parties. To preserve parallelism, subdivision (b)(2)(B) might be modified as follows: The <u>party parties</u> or other <u>person persons</u> has <u>have</u> signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.</p>	<p>[Incorporate this provision?]</p> <p>The committee agrees with this point of grammar and has modified this subdivision.</p>

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Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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			2. Page 2 of proposal SPR21-01 refers to the definitions in “rule 2.250(c),” but likely intended to cite rule 2.250(b), as that rule has no subdivision (c).	The committee notes this typographical error.
2.	California Department of Child Support Services By John Ziegler Attorney III	A	<p>The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Below please find specific feedback regarding provisions of the rules with potential impacts to the Department and its stakeholders.</p> <p>REQUEST FOR SPECIFIC COMMENTS:</p> <p>1) Does the proposal appropriately address the stated purpose? Please see the general comment, below.</p> <p>2) Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)? Please see the general comment, below.</p> <p>3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided. If yes, please describe. See general comment, below.</p> <p>GENERAL COMMENTS:</p> <p>The proposal appropriately addresses the stated purpose and would positively impact the statewide child support program. First, by</p>	<p>The committee appreciates the commenter’s feedback on this proposal.</p> <p>See below.</p> <p>See below.</p> <p>See below.</p> <p>The committee notes the commenter’s support for the proposal and appreciates the feedback on how</p>

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			<p>allowing electronic signatures on documents filed electronically in the appellate courts, the proposal recognizes the increased viability of electronic signatures in an era where business practices have increasingly become remote, and the physical presence of the signatories is less common, and often discouraged. This viability is particularly enhanced in appellate matters where there are more than two parties, as is frequently the case with child support-related appeals. Second, with the exception of certain organizational differences, the proposed changes to rules 8.70 and 8.75 align them with the parallel trial court rules, so the proposal promotes consistency between the forums. Lastly, the proposed changes add requisite clarity for situations when even non-parties must e-file documents in a pending appeal, which occasionally arise within the child support context. Altogether, the Department supports the proposal.</p> <p>Regarding the definition of “electronic signature,” while the Department does not have a strong opinion concerning the matter, the “Definitions” section under rule 8.70(c) is seemingly the most appropriate place to include it. Having a single rule articulating the definitions of terms used throughout the applicable article is generally desirable because it creates an obvious first place to search for definitions of terms, particularly for filers who are otherwise unfamiliar with the pertinent rules. Though filers more accustomed to the</p>	<p>the rule amendments would positively impact the statewide child support program.</p> <p>No response required.</p>

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			<p>parallel trial court rules may expect to see the definition included in rule 8.75 just as it is included in rule 2.257(a), the next most conspicuous place to locate it would likely be within the rule that provides the definitions applicable to e-filing in appellate proceedings, so any resulting confusion would presumably be short-lived.</p> <p>Lastly, in appellate proceedings, the Department is represented by the Department of Justice, Office of the Attorney General. Since the Department does not itself practice before appellate courts, the Department has no comment on the third Request for Specific Comments.</p>	<p>No response required.</p>
3.	<p>California Lawyers Association; Committee on Appellate Courts, Litigation Section By Erin Smith Chair</p> <p>Saul Bercovitch Director of Governmental Affairs</p>	AM	<p>The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association (“CAC”) submits the following comments on proposed Amended California Rule of Court, rules 8.70 and 8.75.</p> <p>The CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As elaborated below, the CAC agrees with the purpose behind the rule change—that signature rules should evolve to accommodate rapid changes in the practice of law. By allowing parties to affix electronic signatures for certain submissions to the Court of Appeal, the Appellate Advisory Committee’s (“AAC”) proposed rules change</p>	<p>The committee thanks the commenter for providing feedback on this proposal.</p> <p>The committee notes the commenter’s support for updating electronic filing rules to provide for electronic signatures.</p>

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			<p>will promote efficiency and ease administrative burdens for attorneys and staff.</p> <p>But the CAC is concerned that the proposed language will cause confusion and uncertainty for practitioners, self-represented litigants, and legal assistants. The proposed language is likely to increase the number of inquiries and non-compliant submissions to the court, exacerbating appellate courts’ already burdensome workload. In the comments below, the CAC offers suggestions on achieving greater clarity.</p> <p>Stated Purpose of Amending Rules 8.70 and 8.75</p> <p>The CAC shares the AAC’s goal to liberalize the use of electronic signatures in appellate court submissions. In federal practice, the typewritten signature with the backslash has proliferated for documents submitted through the ECF system, and correspondingly, the “wet ink signature” has fallen into disuse. The advent of sophisticated electronic-signature programs such as DocuSign, with their added security features, have also changed consumer practices more broadly. Important legal documents, such as loan applications and real estate purchase agreements, are now routinely executed by way of an electronic signature.</p> <p>Even before 2020, these technological innovations have resulted in more remote work, including by attorneys. That trend was catalyzed</p>	<p>The committee notes the commenter’s concerns that the proposed language will cause confusion and uncertainty.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>by the COVID-19 pandemic, as California attorneys and their staff have largely shifted to working from home. Experts have predicted that remote and hybrid work arrangements will continue to grow going forward. Working from home presents a new set of logistical challenges. As members of the CAC can attest, the requirement to “retain a printed form of the document with the original signature” for electronically filed documents signed under penalty of perjury creates administrative burdens, particularly as the signatory and the legal assistant may both be working from home. The CAC therefore fully supports any rule that eschews requiring the physical presence of the signer or an exchange of mailed paper documents.</p> <p>But the CAC has concerns that the proposed rules do not go far enough in liberalizing the use of electronic signatures. Specifically, rather than stringent requirements on the form of electronic signature, the CAC recommends that the rules allow parties to use more streamlined electronic signatures (e.g., the typewritten “/s/” signature popular in federal court), as there is little risk of fraudulent signatures being used in appellate practice. Alternatively, if more stringent signature requirements are to be included for certain documents, the CAC has some concerns about the specific language proposed and provides suggestions on ways to achieve greater clarity in the proposed rules.</p>	<p>The committee notes the commenter’s support for minimizing the use of manually-signed signatures and hard copies.</p> <p>[Does the committee agree with easing the electronic signature requirements?]</p>

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			<p>Recommended Changes to Proposed Rules 8.70 and 8.75</p> <p>A. The CAC recommends a simple electronic signature requirement for all documents</p> <p>Proposed Rules 8.70 and 8.75 contemplate two different types of “electronic signature.” Proposed Rule 8.70(c)(10) defines an “electronic signature” broadly as “electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received or stored by electronic means” per Civil Code section 1633.2(h). This definition would seem to include, for example, the simple electronic signatures often used in federal court (“/s”).</p> <p>But Rule 8.75(a)(1) and (b)(2)(B) limit an acceptable “electronic signature” to a “digital signature” per Government Code section 16.5(a), or one that is “unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated.” This definition would seem to be limited to signatures obtained by sophisticated electronic-signature programs such as DocuSign. Under the proposed rules change, this more stringent type of electronic signature would be required for (1) documents signed under penalty of perjury (where filed by</p>	<p>The committee agrees that the proposed amendments describe two different types of electronic signature. The committee has added a definition for the more restricted type to rule 8.70 and uses that term in rule 8.75. [Does the committee agree?]</p> <p>In one important way, the electronic signature required in rule 8.75(a)(1) and (b)(2)(B) differs from a digital signature under Government Code section 16.5(a). Rule 8.75 does not include the requirement that a digital signature must conform to regulations adopted by the Secretary of State. (Govt. Code, § 16.5(a)(5).) To avoid confusion, the committee developed a different term for the more restricted type of electronic signature. [Does the committee agree?]</p>

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Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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			<p>someone other the signatory) and (2) documents with signatures from multiple parties, such as a stipulation.</p> <p>But the CAC doubts the second, more stringent signature type (a “digital signature”) is truly necessary in <i>any</i> scenario. In particular, the fact that attorneys receive electronic copies of documents filed through the TrueFiling system eliminates any realistic threat that anyone will file a document purporting to have the authorization of an attorney that has not actually authorized that filing.</p> <p>For example, a party who files a stipulation bearing the purported electronic “signature” of other parties will invariably have some other evidence (e.g., email correspondence) showing that the other parties indeed authorized the filing. By contrast, any attorney who receives an electronic copy of a stipulation they did not authorize but which nonetheless bears their electronic signature could (and would) immediately raise this issue with the court.</p> <p>Nor is it realistic to expect that an attorney’s staff will file documents in which the attorney purported to sign under penalty of perjury without securing the attorney’s express authorization to do so. And even if this did occur, the attorney—having again received notice of the unauthorized filing through TrueFiling—would be able to take corrective action.</p>	<p>[Does the committee agree?]</p> <p>[Should signature requirements be less stringent in light of other evidence of authorization?]</p>

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			<p>Thus, rather than require a signature with increased verification requirements, the CAC proposes that the rules instead require filers to certify that they have the express authorization to file the document on behalf of any attorneys who have signed thereto.</p> <p>So, for example, for stipulations among multiple parties, the rules should simply require the party filing the stipulation to include a statement on the filing that he/she/they received the other party’s consent to sign on the latter’s behalf. This would effectively mirror a local rule of the Federal District Court for the Central District of California that has been widely and successfully adopted by litigants for party stipulations. That rule, C.D. Cal. L.R. 5-4.3.4(a)(2)(i), reads as follows:</p> <p>[T]he signatures of all signatories may be indicated on the document with an “/s/,” and the filer must attest on the signature page of the document that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing...</p> <p>In other words, the burdens on self-represented litigants, attorneys, and litigation assistant would be eased if the party filing a stipulation may simply: (1) obtain consent from the other party that the latter has agreed to a stipulation; and (2) attest that such consent was obtained. Stipulations in appellate courts typically involve</p>	<p>The committee notes the suggested alternative procedure.</p>

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			<p>routine requests such as extensions of time to file a brief, and it would promote efficiency and cost-savings to minimize signature requirements. The experience of attorneys practicing before the Central District of California has shown this rule to work. And to guard against misrepresentations or foul play, the attestation requirement provides a strong deterrent for licensed attorneys.</p> <p>B. If digital signatures will be required in certain scenarios, the CAC recommends a reorganization of Proposed Rules 8.70 and 8.75 .</p> <p>The CAC perceives two ambiguities in the proposed versions of Rules 8.70 and 8.75 rule that could be cured by changes to the organizational structure of the rules.</p> <p>First, as noted above, the rules seem to contemplate two different types of “electronic signature.” The first type (defined in Rule 8.70(c)(1)) follows the definition of “electronic signature” in the Uniform Electronic Transactions Act, Civil Code section 1633.2(h). The second type (defined in 8.75(a)(1) and (b)(2)(B)) follows the requirements of a “digital signature” in Government Code section 16.5(a). As noted in the proposed Advisory Committee comment: “Rule 8.70 defines ‘electronic signature’ but not ‘digital signature.’ A digital signature is a type of electronic signature as</p>	<p>See response above.</p>

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			<p>defined in Government Code section 16.5(d). (Civ. Code, § 1633.2(h).)”</p> <p>The CAC believes it may be confusing to refer to both types of signatures as “electronic signatures” when their requirements vary so significantly. In addition, as proposed to be amended, the rules would define “electronic signature” and use but not define the term “digital signature” in Rule 8.75(c). Adding to potential confusion, Rule 8.75(c) would say: “A party or other person is not required to use a digital signature on an electronically filed document.” Because “digital signature” is not defined, it is not clear what is not required. Moreover, the proposed language in Rule 8.75(a)(1) and (b)(2)(B) follows the statutory requirements of a “digital signature” under Government Code section 16.5(a), and that type of electronic signature would be required under the specified circumstances.</p> <p>To the extent the rules will require different standards of signature verification depending on the document, the CAC would propose that the rules refer to these signatures by different names—such as an “electronic signature” or “digital signature”—and define <i>both</i> terms. Thus, for example, signatures that need not meet the requirements set forth in Rule 8.75(a)(1) and (b)(2)(B) would be called “electronic signatures,” while the signatures that must satisfy Rule 8.75(a)(1) and (b)(2)(B) would be called “digital signatures.” This change would</p>	<p>The committee has removed rule 8.75(c). The rules no longer refer to digital signatures.</p> <p>The committee agrees with referring to the two different types of electronic signature with different names and has modified the proposal accordingly.</p>

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			<p>also require the removal of Rule 8.75(c), for the reasons discussed above.</p> <p>By offering separate definitions for each respective signature type, Rule 8.75 could then simply use the defined term for each signature type without having to repeat the definition of the acceptable signature type on each occasion where a signature type is discussed. Among other things, this would facilitate better organization of Rule 8.75, as discussed immediately below.</p> <p>Second, and relatedly, the CAC believes that organizing proposed Rule 8.75 into categories based on whether a document must be signed under penalty of perjury creates confusion as to when the more stringent signature type is required.</p> <p>Organizing the rule based on whether documents must be signed under penalty of perjury would have made sense if the more stringent signature type was only reserved for penalty-of-perjury situations. But Rule 8.75(b)(2) contemplates that when a document “requires the signatures of multiple parties,” it too must be signed with the more stringent signature even though it is not a document signed under penalty of perjury.</p> <p>Thus, rather than organize the rule based on whether documents must be signed under penalty of perjury, the CAC recommends that</p>	<p>The committee agrees and has made this modification.</p> <p>This suggestion exceeds the scope of the proposal, but the committee will retain it for future consideration.</p> <p>See response above.</p> <p>See response above.</p>

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			<p>the rule be organized based on when a “digital signature” is (or is not) required. So, for example, subsection (a) of Rule 8.75 might simply list the situations in which a “digital signature” is required (i.e., (1) documents signed under penalty of perjury where the filer is someone other than the declarant, (2) documents that require the signatures of multiple parties). Subsection (b) could then specify that for all other documents except those listed in subsection (a), a simple “electronic signature” will suffice.</p> <p>Organizing the rule in this fashion would be easy and intuitive if the rules used different names for the two signature types contemplated by the proposed versions of Rule 8.70(c)(10), and Rule 8.75 (a)(1) and (b)(2)(B) (i.e., “electronic” versus “digital” signatures). Accordingly, creating labels for the two different signature types contemplated by the rules—and then organizing Rule 8.75 based on when the two different signature requirements apply—would significantly enhance the clarity of the rules as a whole.</p>	<p>See response above.</p>
4.	<p>Child Support Directors Association Judicial Council Forms Committee By Lisa Saporito Chair</p>	A	<p>The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSA), our judicial partner, and our case participants. Specific feedback related to the provisions of the proposed legislation with potential impacts</p>	<p>The committee appreciates the commenter’s feedback on the proposal.</p>

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			<p>to the LCSA and its stakeholders is set forth below.</p> <p><u>REQUEST FOR SPECIFIC COMMENTS:</u></p> <p>1) Does the proposal appropriately address the stated purpose? Yes. The proposed revision to California Rules of Court rules 8.70 and 8.75 appropriately address its purpose to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents by changing the rules to allow electronic signatures and to simplify the appellate procedures.</p> <p>2) Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as a new subdivision (a)? The electronic signature definition logically is placed in rule 8.70(c) along with the other definitions. Although this does not exactly mirror the recent changes to the trial court rules, it does make sense. That said, we do believe that the definition could have been appropriately placed in either rule 8.70(c) or rule 8.75 as a new subdivision (a).</p> <p>3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe. The proposal is not inconsistent</p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p>

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	Commenter	Position	Comment	Draft Committee Response
			<p>with current practices for validating signatures and preserving evidence.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed legislation.</p>	<p>No further response required.</p>
5.	<p>Court of Appeal, Third Appellate District By Colette M. Bruggman Assistant Clerk/Executive Officer</p>	AM	<p>Rule 8.70 Rule 8.70(c)(10) defines an electronic signature as “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.” It appears this language is from the ESIGN Act of 2000. It is unclear what an “electronic sound” is or how it would be presented in court operations. At a minimum, an explanation should be provided. Alternatively, if it has no practical application for court operations, it should probably be removed from the definition.</p> <p>Rules 8.70 and 8.75 The proposals for rules 8.70 and 8.75 include adding the language “other persons” to the scope of the rules to account for others who may be involved in a case but are not parties. “Other persons” is not defined anywhere in the rules of court and does not appear to be consistent with the current language of the rules. The addition of this language makes it appear that filings or submissions by non-parties is routine; however,</p>	<p>The committee notes the commenter’s support for the proposal if modified.</p> <p>To maintain consistency with the trial court rules and Civil Code section 1633.2, and because the committee is aware of no confusion caused by this provision in the parallel trial court rule, the committee declines to make the suggested change</p> <p>[Response?]</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
			<p>filings or submissions by non-parties are not routinely allowed. Currently, only two rules allow for filing of documents by non-parties, namely: rule 8.200(c) governing filing of amicus curiae briefs and rule 8.1120(a)(1) governing requests to publish. Any other submissions by non-parties are received or filed by permission of the court only. The addition of this language is too vague to be helpful and places an operational burden on the Clerk’s Office in dealing with filings submitted by “other persons.”</p> <p>As an example, from time to time we get what I will refer to as a “lobbying effort,” wherein non-parties write to us to try to influence the process or outcome of a case. In one case, we received 21 letters from victims in a criminal case, requesting the case be fast-tracked. Adding “other persons” to the rules makes it appear that submissions such as these are properly received or filed in a case. They are not proper submissions, and it is up to the discretion of the court how these submissions will be handled. Sometimes they will be received, but more often, they will be returned.</p> <p>Suggestions: Remove the language “other persons” from these rules. Add a definition of “other persons” to rule 8.10 that limits who “other persons” are for purposes of submitting documents in a case as proscribed in the rules of court.</p>	

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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	Commenter	Position	Comment	Draft Committee Response
6.	Meechan, Rosenthal & Karpilow, P.C. By Rebecca Slay Paralegal	A	Yes! Let's make it easier for individuals to access their rights!!!	The committee notes the commenter's support for the proposal.
7.	Orange County Bar Association By Larisa M. Dinsmoor President	A	<p>The OCBA provides the following responses to the Request for Specific Comments:</p> <ol style="list-style-type: none">1. The proposal addresses the stated purpose.2. The definition of "electronic signature" should remain in Section 8.70.3. The procedure described in proposed rule 8.75(b)(2)(A) regarding documents with multiple signatures, such as stipulations, does not comport with current practice. Current practice regarding such documents is often for the parties' counsel to email each other regarding a stipulation. Once the parties' counsel agree to the substance and language of the stipulation, the filing party's counsel will inquire whether he/she has permission from the opposing party's counsel to "electronically sign" on the opposing counsel's behalf. Opposing counsel will respond via email confirming the filing party's counsel has permission. The filing party's counsel will then use a simple "/s/ Opposing Counsel" on the signature line, representing to the Court that both parties' counsel have agreed to the stipulation. The procedure in Rule 8.75(b)(2)(A) would still require the Opposing Counsel to either sign the stipulation manually and send it back, or sign it via electronic signature with a	<p>The committee notes the commenter's support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p> <p>The committee appreciates this feedback. To maintain consistency with the trial court rules, the committee will consult with the Information Technology Advisory Committee to further discuss amending the procedure.</p>

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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	Commenter	Position	Comment	Draft Committee Response
			digital certificate. This is a more onerous process than is used in the trial court. Further, any doubts about whether the opposing counsel authorized the electronic signature by the filing party’s counsel can be resolved by simple production of the email correspondence authorizing the filing.	
8.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a) The definition of “electronic signature” should remain as presented within rule 8.70(c). In addition, it is recommended that the following subdivision header in rule 8.75 be revised for clarity as follows: (d)(c) Digital signature not required • Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe? Yes. It is the practice of the appeals staff to check for signatures for cases in which electronic filing is currently permitted in San Diego Superior Court (unlimited civil, probate, limited civil up to certification of the appeal record, and family). 	<p>The committee notes the commenter’s support for the proposal and appreciates the responses to the request for specific comments.</p> <p>No response required.</p> <p>The committee has removed this subdivision from the rule.</p> <p>No further response required.</p>

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
			<ul style="list-style-type: none"> • Would the proposal provide cost savings? If so, please quantify. No. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Staff in the business office would need to be trained. It is difficult to quantify the amount of training, but it should not be overwhelming. The information would need to be incorporated into written procedures. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, for areas that already accept e-filing. • How well would this proposal work in courts of different sizes? There should be no disparate impact between courts of different sizes. 	<p>No further response required.</p> <p>The committee appreciates this feedback on implementation requirements for the court.</p> <p>No further response required.</p> <p>No further response required.</p>
9.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) On behalf of: Trial Court Presiding Judges Advisory Committee (TCPJAC) and	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.). There is a potential for 	The committee appreciates these comments regarding the impact of the proposal on court operations.

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

Commenter	Position	Comment	Draft Committee Response
<p>Court Executives Advisory Committee (CEAC)</p>		<p>impact to automated systems in adapting/modifying existing configurations.</p> <ul style="list-style-type: none"> • Results in additional training, which requires the commitment of staff time and court resources. Potential for some training around requirements of the new rules as proposed but not significant. <p>Request for Specific Comments Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • 8.75(a)(1) defines the use of electronic signatures, and (a)(2) deals with wet signatures. However, 8.75(b)(2)(A) provides further requirements for wet signatures, and (b)(2)(B) with electronic signatures. Although the stated purpose is satisfied with these proposed revisions, the change in ordering of the provisions between the two subsections may lead to confusion. • 8.75(a)(1) requires the signature to be under the “sole control” of the declarant. This may present an implementation challenge, as many attorneys give signing authority to other attorneys on a case, as well as personnel. Similarly, many litigants give their attorneys signing authority. Suggest “sole authority” may be a more feasible and efficient option allowing the signator to authorize the esigning. <p>Should the definition of “electronic signature” be added to rule 8.70(c) as</p>	<p>No further response required.</p> <p>The committee has made this modification.</p> <p>[Note to committee: Change “sole control” to “sole authority?]</p>

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
			<p>presented, or to rule 8.75 as new subdivision (a)?</p> <ul style="list-style-type: none"> • 8.70 is helpful to set the standard. <p>Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them?</p> <ul style="list-style-type: none"> • Yes. <p>Would the proposal provide cost savings?</p> <ul style="list-style-type: none"> • Yes, for the litigants filing, who spend substantial time securing appropriate originals. <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> • Yes. <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> • Assuming case management impact question is not substantial, this should work well. 	<p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-__

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

Executive Summary and Origin

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

Background

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

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

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

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

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

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

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

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

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

The Proposal

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

Rule 8.70

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

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

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

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

Rule 8.75

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

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

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

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

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

Alternatives Considered

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

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

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

Fiscal and Operational Impacts

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

Request for Specific Comments

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

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

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

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

Attachments and Links

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