



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 26, 2019

Action Requested

Please review before July 1 subcommittee meeting

To

Members of the Joint Appellate Technology Committee

Deadline

July 1, 2019

From

Eric Long,
 Attorney, Legal Services

Contact

Eric Long
 Attorney, Legal Services
 415-865-7691
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Subject

Appellate Procedure: Service Copy of a Petition for Review

Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal amending the appellate rule regarding petitions for review to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. The proposal was circulated for public comment as part of the regular spring comment cycle from April 8 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal without modification.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that “[t]he petition must also be served on the superior court clerk and the clerk/executive officer of the Court of Appeal.” This service requirement has existed in the rule since it was adopted in 2003. However, under California Rules of Court, rule 8.71 and rules 3

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Page 2

and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the existing rule. The proposal clarifies that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served, and in all instances, a copy of the petition must be served on the superior court clerk.

The proposal circulated for public comment amends rule 8.500(f)(1) as follows:

The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

As stated above, the two comments received were both in support of the proposal without modification.

Subcommittee Task

The subcommittee's task with respect to this proposal is to:

- Approve the proposal and drafts;
- Modify or reject the proposal and drafts; or
- Ask staff or subcommittee members for further information/analysis.

Attachments

1. Draft Report to the Judicial Council
2. Draft comment chart
3. Invitation to comment, SPR19-08



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Appellate Procedure: Service Copy of a Petition for Review

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.500

Effective Date

January 1, 2020

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Information Technology Advisory
Committee

Date of Report

June 26, 2019

Contact

Eric Long, 415-865-7691
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Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Christy Simons, 415-865-7694
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Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

Recommendation

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, add language to California Rules of Court, rule 8.500(f)(1) that requires a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

The text of the amended rule is attached at page 4.

Relevant Previous Council Action

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerks of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

Analysis/Rationale

Recognizing that the courts of appeal are automatically receiving copies of petitions for review when they are filed electronically this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically-filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the courts of appeal.

Policy implications

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

Comments

This proposal was circulated for public comment as part of the regular spring comment cycle from April 8 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

Alternatives considered

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

Fiscal and Operational Impacts

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

SPR19-08

**Appellate Procedure: Service Copy of a Petition for Review
(Amend Cal. Rules of Court, rule 8.500)**

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

	Commenter	Position	Comment	DRAFT Committees Responses
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter’s support for the proposal.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> •Does the proposal appropriately address the stated purpose? Yes. The committees also seek comments from courts on the following cost and implementation matters: •Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. •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? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working the counter in Appeals. Procedures would need to be revised to indicate the change. •Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. 	The committees note the commenter’s support for the proposal, and appreciate the commenter’s input on these questions.

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

SPR19-08

**Appellate Procedure: Service Copy of a Petition for Review
(Amend Cal. Rules of Court, rule 8.500)**

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

	Commenter	Position	Comment	DRAFT Committees Responses
			<ul style="list-style-type: none"> •How well would this proposal work in courts of different sizes? <i>Fine.</i> 	

DRAFT

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

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

INVITATION TO COMMENT SPR19-08

Title	Action Requested
Appellate Procedure: Service Copy of a Petition for Review	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.500	January 1, 2020
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kristi Morioka 916-643-7056 kristi.morioka@jud.ca.gov
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Hon. Louis R. Mauro, Vice-Chair	

Executive Summary and Origin

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This proposal originated from a suggestion submitted by an appellate court administrator.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that “[t]he petition must also be served on the superior court clerk and the

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

clerk/executive officer of the Court of Appeal.”¹ This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.² However, under rule 8.71 of the California Rules of Court and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its webpage, the Supreme Court provides this advisement:

Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

The Proposal

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer, and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

Alternatives Considered

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

¹ An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

² Rule 28 was renumbered as rule 8.500 in 2007.

Fiscal and Operational Impacts

This proposal should not have appreciable implementation costs, and should save court resources by eliminating duplicate electronic filings.

Request for Specific Comments

In addition to comments on the proposal as a whole, the committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The committees also seek 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, rule 8.500, at page 4

Rule 8.500 of the California Rules of Court would be amended, effective January 1, 2020, to read:

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Title 8. Appellate Rules

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

Chapter 9. Proceedings in the Supreme Court

Rule 8.500. Petition for review

(a)–(e) * * *

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)–(3) * * *

(g) * * *



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MEMORANDUM

Date

June 28, 2019

Action Requested

Please review before July 1 subcommittee meeting

To

Members of the Joint Appellate Technology Subcommittee

Deadline

July 1, 2019

From

Eric Long
Attorney, Legal Services

Contact

Eric Long
Attorney, Legal Services
415-865-7691 phone
eric.long@jud.ca.gov

Subject

Appellate Procedure: Uniform Formatting
Rules for Electronic Documents

Introduction

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal to amend rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, regarding formatting of electronic documents, to create uniform standards in the appellate courts. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 11–June 10, 2019 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials.) This memo discusses the background to this proposal and the public comments received on the proposal.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing formatting requirements for electronic documents and leaving the formatting requirements for paper

documents in place. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice. A more limited rules amendment project began in 2017, but that project was deferred. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The proposal that was circulated for public comment, a copy of which is included in your materials, would amend seven rules.

Public Comments & Staff Recommendations

In total, eighteen individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, four indicated that they agreed with the proposal if modified, six did not take a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules, and four indicated that they were against one specific provision of the proposal: the prohibition on Times New Roman font. Several comments were extensive, with responses to the questions asked by the committees and suggestions for modifying the proposal. A chart with the text of the comments received and staff's draft responses is attached.¹ The main issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so please review the draft comment chart carefully. Broadly speaking, the comments address three areas: (1) rule language, scope, and clarity, (2) technology, and (3) page layout and content. Also attached are drafts of the proposed rule amendments showing staff's suggested modifications. The suggested changes to the rule amendments are shown using **yellow highlighting**.

Rule language, scope, and clarity

Rule 8.40's exceptions and cross-references to other rules

Two commenters asked for clarity on rule 8.40(a), which addresses the form of filed documents. One noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the provision does not reference any specific exceptions. Another commenter indicated that subdivision (a) required compliance with "the relevant format provisions" of this rule and other rules, but that the rules are not entirely clear about which format provisions are relevant, requiring e-filers to discern which format provisions might be relevant to electronic filing.

¹ Two comment letters were annotated for space. A complete copy of the two letters is attached to the chart for the subcommittee's reference.

The proposal implements uniform formatting rules in already existing rules. As a result, subdivision (a) is entirely duplicative of several other rules. Under the circumstances, it is recommended that Rule 8.40 be amended to simply reflect cover requirements for paper documents, thereby eliminating confusing duplication of rules for electronic documents. Other options might include accepting rule 8.40(a) as proposed, repealing it in its entirety, making it more general, or expanding it to cross-reference specific exceptions and relevant format provisions. Staff notes that cross-references make future amendments more challenging. If the subcommittee desires to make the existing cross-references clearer, staff suggests changes to rules 8.74 and 8.204 that make the relevance of the cross-references easier to discern. Such possible changes to rules 8.74 and 8.204 are discussed in more detail below.

Rule 8.74's scope and complexity

Several commenters observed that, as written, rule 8.74(a) (format of electronic documents) applies to all electronic documents, and as a result it imposes formatting requirements on documents that are not prepared for original filing in a reviewing court. The commenters noted that such documents, including appendices, transcripts, trial exhibits, and other attachments, may already have margins, text, and line spacing that cannot, or should not, be reformatted to comply. The commenters suggest modifying the proposal to make clear that only certain parts of rule 8.74(a), namely subdivisions (1)-(7), apply to all documents filed electronically. Some of the more detailed comments addressed the complexity of rule 8.74, focusing on proposed subdivision (b)'s requirements for certain electronic documents and the cross-references to other rules in those provisions. The e-filing work group staff of the Supreme Court commented that the PDF format provision set out in rule 8.74(a)(1) requires e-filers to convert rather than scan documents to ensure text searchability, but that certain documents, including handwritten documents, forms, photographs, diagrams, etc., may not be amenable to being "converted" by a means other than scanning.

Based on these comments, staff proposes substantive and structural changes to rule 8.74. To address the concerns identified by the e-filing work group of the Supreme Court for some documents that can be filed electronically but which may not be converted to a text-searchable PDF, staff proposes adding the exception to subdivision (a)(1) suggested: "Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based."

Staff also proposes moving several subparts of subdivision (a) into a new subdivision (b), titled "Format requirements applicable to all documents prepared for original electronic filing in a reviewing court," and replicating the relevant format provisions contained in rule 8.204(b) to these electronic filing provisions. Subdivision (a) would continue to set out the format

requirements applicable to all electronic documents, as its title denotes: “Format requirements applicable to all electronic documents.” The new subdivision (b) would govern formatting of documents prepared for *original* electronic filing in the reviewing court, and would house five of the formatting provisions previously found in proposed subdivision (a). As modified, the rule would treat documents prepared for filing in the reviewing court differently from other documents. Staff also suggests including an advisory committee comment explaining subdivision (b)’s scope. Staff further suggests adding to rule 8.74 each of the relevant format provisions located in rule 8.204(b), and the relevant cover or first-page information required by rule 8.40(c). To accomplish this, staff proposes eliminating any cross-references and overlap between formatting rules for briefs among the three rules. By adding all relevant format provisions presently located in rules 8.40(c) and 8.204(b) to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs filed in paper form, the rules will more clearly provide the format requirements for electronic filings and paper filings. Finally, if the format requirements located in rules 8.40(c) and 8.204 are added to 8.74, staff proposes eliminating as unnecessary the introductory sentence of rule 8.204(b): “Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision,” and the references to electronic documents in rule 8.40. These changes are intended to eliminate overlap and inconsistencies between the three rules. Again, these suggested changes are in **yellow highlighting** in the attached rule document.

Suggested changes to rules outside the proposal

Two commenters noted that other rules related to electronic filing in Title 8 have not been amended. One commenter suggested updating all existing provisions, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new authorities (rule 8.254). Another commenter echoed the suggestion that the electronic service rules be updated. Neither commenter identified any specific inconsistencies or immediately necessary changes based on the proposal, but one commenter suggested that either rule 8.72 or rule 8.74 cross-reference rule 8.78’s electronic service provisions. (As discussed in more detail below, staff suggests technical amendments to rules 8.77 and 8.78 to update two existing cross-references to rule 8.74(a)(4), because that provision has been relocated to rule 8.72(b)(2).) The comment from e-filing work group staff of the Supreme Court also noted that the proposal does not amend rule 8.78(a)(2)(B)’s provision concerning consent to electronic service, even though the equivalent rule in the trial court rules, California Rules of Court, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent.

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, staff suggests that the committees retain these suggestions for future consideration. With respect

to the consent issue, staff proposes the committees consider amending rule 8.78 in the near term. As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, staff suggests that the committees consider additional changes if experience with electronic filing warrants amendments to these other rules. On the basis of these comments, however, the subcommittee may want to consider adding now a cross-reference to the e-service rule (rule 8.78) in either rule 8.72 or 8.74 if a cross-reference would potentially be helpful to electronic filers. Staff does not suggest the addition of a cross-reference to either rule because it would be beyond the scope of both provisions. However, the subcommittee may come up with other alternatives to this staff suggestion.

Manual filings, paper copies, and sealed materials

One commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings might be helpful. A comment from the e-filing work group staff of the Supreme Court identified the potential need for additional clarity in the provision concerning sealed and confidential records. Specifically, the e-filing work group staff suggested amendments to proposed rule 8.74(b)(7) (rule 8.74(c)(7) in the attached rule document), offering more consistent terminology and expanding the provision to address both the filing of pages that have redactions and the filing of documents with multi-page omissions.

Staff suggests implementing the suggestions from the e-filing working group staff of the Supreme Court, with minor changes, as follows:

Sealed and confidential records: Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page must identify the type of pages omitted. Each omission page must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed document. The PDF counter for each omission page must match the page number of the page omitted from the publicly filed document. Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.

With respect to the bar association's comments concerning manual filings and courtesy paper copies, staff suggests retaining these comments for future consideration. If courts' experience with electronic filing warrants action, the committees could address these provisions in the future.

Technology

File-size restrictions

Several commenters questioned rule 8.74(a)(5)'s 25 megabytes filing-size restriction. Commenters asked whether the 300-page limit for certain appendices was necessary if it is possible for e-filers to prepare those volumes within the 25 megabytes file-size restriction. Commenters also questioned the wisdom of requiring manual filing for filings containing over five volumes, which are common in complex cases, when only one court has such a volume limitation in place.

Staff suggests that the committees maintain the 25 megabytes file-size restriction at this time. The principle reason staff does not propose deferring action on the file-size restriction is that the 25 megabytes limit is uniform across the state. Staff suggests, however, two minor changes to the related restrictions concerning page limits and multiple-volume filings. First, rather than impose a 300-page limit on certain electronic documents, staff suggests that the rule permit filers to exceed the 300-page limit contained in other rules as long as the file size is 25 megabytes or smaller. As drafted, the rule does not seem to permit this. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than five files. Staff suggests increasing this restriction to ten files, because the Appellate Court Case Management System (ACCMS) has capability for (1) a maximum of twenty-five documents per filings, and (2) a maximum of 250 megabytes per multiple-document filing. Under existing limits, increasing the restriction from five to ten files would relieve electronic filers of the burden of manual filing in more cases, and the multi-volume filing limit would not exceed the file-size restrictions currently in place.

Concerns have been raised about stating a file-size limit in rules when capacity may change. One alternate option for the subcommittee to consider would be to recommend that the file-size and related restrictions be delegated to the courts to address by local rule. The provision could provide: "An electronic filing may not be larger than the maximum file size imposed by local rule. A reviewing court must specify a maximum file size for each filing. The maximum file size is based on how much disk space it consumes and not the number of pages." Another alternative would be to add file-size restriction to the court's responsibilities in rule 8.71(a): "A court must have a published rule establishing an electronic file size limitation."

Staff recognizes that there are drawbacks to codifying technological parameters where technological changes outpace the Judicial Council's rule cycles. However, the driving purpose of this proposal is uniformity, and that goal would be lost if each court were permitted to impose unique file-size and manual filing provisions. Although filers suggested that an increased file size might be helpful, no commenter indicated that the existing 25 megabytes restriction was unworkable or regularly impacted their electronic filings.

Color component prohibition

Two commenters asked whether rule 8.74's prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. They emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment indicated that color components were not supported in ACCMS. Staff has confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, staff proposes moving the color component provision to subdivision (a), which is applicable to all electronic documents, and permitting color components as long as they do not exceed the file-size limit:

- (8) Color: An electronic document with any color component may be electronically filed or manually filed on electronic media, depending on its file size. An electronically filed document must not have color covers.

Although the color cover provisions of rule 8.40, as modified, would apply only to paper filings, staff suggests retaining the prohibition on color covers in the electronic document rule to avoid needlessly large file sizes due to color covers.

Another provision impacted by the color component restriction is rule 8.74(a)(6)'s manual filing provision. Based on the comments, staff suggests excising the reference to PowerPoint and "documents containing photographs or any color component" from the provision. The rule should still provide a format for photographs, because color photographs may require manual filing on electronic media if the file exceeds the 25MB file-size limit:

Electronic media files such as audio and video must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format. Photographs must be filed in .jpg, .png, .tif, or .pdf format.

Filing problems

One commenter requested that rule's 8.72's court responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address extensions of time in any notice of filing problems required by the provision. Staff suggests that the committees decline to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by the problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek relief from the court by appropriate motion. Staff suggests that the committees retain this comment for future consideration if experience supports reallocating the responsibility from the electronic filer to the courts.

Virus/harmful software requirement

One commenter protested that rule 8.72(b)'s "all reasonable steps" requirement for electronic filers was likely to cause confusion.² The commenter suggested that rule 8.72(b)(1) be rewritten to state that "[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

Based on this comment, staff suggests adding an advisory committee comment to rule 8.72 explaining that one way an electronic filer may take reasonable steps to ensure that a filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system is to use a commercial virus scan program. Staff does not advise adding a mental-state requirement to the provision. Staff also suggests that the advisory committee comment state that lack of intent is not sufficient to comply with the responsibilities of an electronic filer. As proposed, the advisory committee comment suggest that e-filers may provide a declaration to establish that reasonable steps were taken. The subcommittee should consider whether this portion of the comment is reasonably clear, or whether it should be modified or omitted from the advisory committee comment.

Hyperlinks

One commenter noted that rule 8.74(a)(12) encouraged the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendices. Some commenters, in response to the questions presented in the invitation to comment, indicated that "hyperlinks" might not be commonly understood, but one court commented that the term is sufficiently clear and does not warrant further explication.

Based on these comments, staff suggests amending the hyperlinks provision as follows:

Hyperlinks to legal authorities and appendices or exhibits are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and if the hyperlink is to a legal authority, it should be formatted to standard citation format as provided in the California Rules of Court.

With respect to defining the term hyperlink, the subcommittee could conclude that the term is sufficiently clear or could recommend an advisory committee comment defining hyperlinks.

² The relevant provision of rule 8.72 provides: "Each electronic filer must: (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system[.]"

Page Layout and Content

The proposed formatting rules address font, line spacing, page alignment, margins, page numbering, and bookmarking. As mentioned above, some commenters expressed concerns about how certain documents filed in the appellate courts could not be formatted in the manner set forth in rule 8.74. Staff therefore proposes addressing these issues by adding a subdivision and an advisory committee comment, as discussed in more detail above. With respect to documents prepared for original filing in reviewing courts, several commenters addressed font and page layout issues, including font style, font size, footnote size, emphasis, line spacing, page alignment, margins, page numbering, and bookmarks.

Font

As circulated for public comment, the proposed amendments to rule 8.74 require a proportionally-spaced serif font such as Century Schoolbook, and expressly prohibit use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two commenters questioned whether the prohibition on this particular font, which itself is a proportionally-spaced font, was necessary. Just one commenter supported the ban of Times New Roman. Based on these comments, staff suggests that the subcommittee recommend modifying the proposal to allow for use of Times New Roman, because it is an example of a proportionally-spaced serif font as required by the provision, but that the proposal's stated preference for Century Schoolbook remain in the rule.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter noted that 13-point Century Schoolbook font is "huge," and suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, staff does not recommend changing the rule based on these two comments concerning font size.

Several commenters requested that sans serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited due to their unreadability. To promote readability, staff recommends modifying rule 8.74 to permit use of sans-serif fonts in headings, subheadings, and captions, and prohibiting the use of all capitals in headings and subheadings and for emphasis.

Line Spacing

One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read with subdivision (b)(5) of rule 8.204, which defines single spaced as "six lines to a vertical inch." Line spacing, or leading, is a typography term that describes the distance between each line of text. Staff suggests that the rule be clarified by setting the line spacing requirement as

“1.5 spacing,” rather than “1-1/2 spacing,” because word processors use a decimal to define this line spacing. Other than this minor change, staff does not advise additional changes to the line-spacing rule for electronic documents at this time. As discussed above, staff suggests modifications to rules 8.74 and 8.204 that make these rules stand alone, which eliminates one of the inconsistencies identified by the commenter. The suggested changes remove some of the potential confusion as to whether a provision applies to paper or electronic documents. An alternate option would be to change the line spacing rule to allow some range because different word processors offer numerous ways to set line spacing. One option: “Lines of text must have line spacing of at least X percent of the font size but no more than 1.5 spaced.”

Page alignment

One commenter asked why rule 8.74 prohibits full page justification, and requested that the formatting rules allow for full justification with hyphenation. Staff suggests that the subcommittee adopt the requirement for left aligned text, without modification. The rule was taken from the Second Appellate District’s electronic formatting guidelines, which recognize that left aligned text is easier to read than justified text.

Margins

A commenter noted that Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program (TAP) might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, staff suggests that the formatting rules carve out documents not prepared for original filing in appellate courts so that the margin requirements for clerk’s and reporter’s transcripts are not directly implicated by rule 8.74’s margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. Staff also suggests modifying the rule to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The proposed 1-1/2 inch left and right margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. Staff suggests that the committees prioritize the readability and usability of a document over the default settings of Microsoft Word, which may be changed. Staff proposes that the committees reconsider the margin requirements for filings and transcripts after courts have more experience with mandatory electronic filing under the uniform rules or if technological changes warrant revision.

Page numbering

The proposed rules for pagination in rule 8.74(a)(2) are consistent with the pagination requirements set by local rules around the state. Despite the existing uniformity in practice, one commenter advocated for “traditional” page numbering (i.e., the use of Roman numerals for prefatory pages like tables of contents and tables of authorities) in electronic documents. According to the commenter, Roman numeral pagination for tables is superior to the all-Arabic consecutive page numbering that the courts currently require by local rule, because the pagination of the main document can be finalized before any tables are created. Staff suggests

that the subcommittee decline to allow for Roman numeral page numbering for tables and Arabic numbering for the body of the document. As one court commenter noted, consecutive, all-Arabic pagination allows the court and the parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of page numbers on a document that match an electronic page counter (which cannot be re-set to match the page number when different numbering systems are employed) justifies any burden on electronic filers imposed by the pagination requirement.

We are aware of the problem filers may face when they create tables of contents and authorities under this pagination rule. It has been suggested that once the tables are created, the tables change the pagination of the document, requiring the tables to be created a second time. It was suggested that tables be placed at the end of the document to avoid this problem. Staff recommends maintaining the status quo in this regard, as the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

Bookmarking

The comments concerning bookmarking were uniformly in favor of the requirement. Two commenters, however, suggested revisions. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions—where bookmarks might not be as helpful to readers. Another commenter requested that the rule make voluntary, instead of mandatory, the technical requirement that bookmarks be set to retain the reader’s selected zoom setting, because existing software requires several clicks to set each bookmark.

Staff suggests that the committees decline to change the provision for at least two reasons. First, attempting to draft an exception for shorter filings is likely to be simultaneously overinclusive and underinclusive, and in any event, fulfilling the bookmarking requirement for shorter documents will not be labor-intensive. Second, to fulfill their purpose, bookmarks must be user-friendly. If the zoom level requirement were merely voluntary, many e-filers will rely on default settings that do not preserve a reader’s preferred view. Although retaining a reader’s selected zoom setting for each bookmark will require e-filers to spend additional time formatting their filings, the utility to the reader outweighs the burdens placed on e-filers.

Implementation concerns

One comment from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) & Court Executives Advisory Committee (CEAC) expressed support for the proposal, but raised a concern about the proposal’s impact on court operations. JRS noted that the proposal requires local rule changes, and asked whether a six-month time

table, instead of three-months, is appropriate considering the local rule amendment process may be insufficient to accomplish the necessary changes. The subcommittee may want to consider whether three months is adequate. Notably, no courts of appeal answered the question—either affirmatively or negatively—in the invitation to comment.

Technical amendments

If the subcommittee recommends the proposal with the suggested modifications, four rules—one originally addressed by the proposal (rule 8.204) and three other rules in Title 8 (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The changes to rule 8.40 makes cross-references in rules 8.46 and 8.204 to that rule's cover provisions inaccurate. Staff suggests minor changes to rules 8.46 and 8.204 to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for records in electronic format. Two additional technical amendments are necessary because of relocating the electronic filer responsibilities. Rules 8.77(a)(3) and 8.78(a)(2)(B) cross-reference the requirement that an electronic filer furnish electronic service addresses, which was moved into rule 8.72(b)(2) from rule 8.74(a)(4). These four technical changes are reflected in yellow highlighting in the attached draft rules.

Subcommittee Task

The subcommittee's task with respect to this proposal is to:

- Discuss the comments received on the proposal;
- Discuss and approve or modify staff suggestions for responding to the comments, as reflected in the draft comment chart and draft modifications to the rule amendments; and
- Discuss and resolve how to address the comments regarding the rules.

Attachments

1. Draft amendments to rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252
2. Draft comment chart
3. Invitation to comment, SPR19-07

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	Commenter	Position	Comment	DRAFT Committees Responses
1.	Jessica Coffin Butterick, Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	<p>I would agree with the new rules if modified. Please see my comments below.</p> <p>Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you’re banning it, but there are lots of terrible system fonts out there. If you’re going to ban TNR, please also ban Cambria, which is even worse, and will be people’s next choice if they don’t have Century Schoolbook installed on their machines.</p> <p>Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered “lines of text” that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the “1.5 lines” spacing option yields spacing of about 175% of point size, and many people seem to think that’s what 1.5 spacing means. (See explanation at https://practicaltypography.com/line-spacing.html) On its own, that doesn’t matter all that much, but it becomes a big problem if we’re supposed to</p>	<p>The committees thank the commenter and note the support for the proposal.</p> <p>The committees appreciate the commenter’s concerns. The committees decline to allow differing font sizes, or to ban additional proportional-spaced fonts. [For subcommittee discussion. Staff recommendation: Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman, but have preserved the rule’s preference for using a proportionally spaced serif font such as Century Schoolbook.]</p> <p>The committees agree that headings should be added to the list of things that may be single-spaced, and have made this change. [For discussion: Whether and how to address meaning of 1.5 line spacing.] To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have revised rule 8.74 to state its own formatting requirements, rather than referring to any formatting provisions in 8.204(b).</p>

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		<p>interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as “six lines to a vertical inch.” Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter’s document not attached to comment chart.]</p> <p>Or are we supposed to disregard rule 8.204(b)(5)? I can’t tell.</p> <ul style="list-style-type: none"> · Proposed rule 8.40(a) tells us we must comply with “relevant format provisions” of rule 8.204. This certainly seems relevant. · Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it’s impossible to do so. It’s possible to comply with rule 8.204(b)(5), even if it’s not advisable. · Proposed rule 8.74(b)(1) tells us we must comply with rule 8.204 “except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b) (2), (4), (5), and (6).” I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn’t comply with the 6-lines-per-vertical-inch definition 	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have revised the rule to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-reference between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been revised to apply only to documents filed in paper format, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p>
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		<p>of line spacing, the consequence is that we’ll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that’s better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule.</p> <p>Rule 8.74(a)(11) — Alignment Why can’t paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we’re going to regulate things like justification, while we’re at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.)</p> <p>Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you’re not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don’t. For example: “Electronic filers must still comply with rule 8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper</p>	<p>The committees thank the commenter for this input. The committees decline to add an allowance for justified alignment because left aligned text is easier to read than justified text. Based on this comment, the committees have added a prohibition on the use of all caps, either for emphasis or in headings.</p> <p>For subcommittee discussion. Staff proposal: The committees thank the commenter for this input. Based on this and other comments, the committees have revised rule 8.204 to clarify that subdivision (b) does not apply to electronic filings. The relevant requirements are now set out in rule 8.74.</p>
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			<p>filers.” I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does “including the provisions in rule 8.204(b)(2), (4), (5), and (6)” refer to the requirements electronic briefs must also comply with? Or, since there’s no comma after the word “format,” is that text part of the “except for” clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out.</p> <p>Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don’t need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don’t know what the relevant portions of rule 8.204 are.</p>	<p>Based on this and other comments, the committees have revised and eliminated the cross-reference between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been revised to apply only to documents filed in paper format, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p>
2.	<p>California Academy of Appellant Lawyers by John Taylor, Jr., President</p>	AM	<p>As the current president of the California Academy of Appellate Lawyers, I’m writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote</p>	<p>The committees thank the commenter, and note the California Academy of Appellant Lawyers’ support for the proposal.</p>

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		<p>the efficient and fair administration of justice at the appellate level. The Academy strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts’ technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing.</p> <p>1. File number/size limitation. Proposed rules 8.74(a)(5) & (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) “an electronic document consisting of more than five files” must be manually filed (in electronic form, but manually rather than e-filed).</p>	<p>The committees appreciate the commenter’s concern, and [For discussion. Staff proposal: have revised the manual filing requirement to not require manual filing or limitation of volume to 300 pages if it can satisfy the file-size limit. The committees also revised the manual filing requirement for multiple volume, changing the limit to ten rather than five. The committees will consider additional changes in the future if they are supported by technological changes.</p>
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		<p>In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file.</p> <p>Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.</p> <p>2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of “an electronic document with any color component.” While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests that the courts may not wish to discourage documents with color that can make the document more useful to the court.</p>	<p>The committees agree that color components may be helpful and persuasive in appellate filings, and have modified the proposal to allow for color components in electronic filings as long as they comply with the file-size limit.</p>
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		<p>The invitation to comment says that color “causes problems with ACCMS” (p. 4), but doesn’t explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary.</p> <p>3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.</p> <p>4. Paper copies We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other</p>	<p>No further response required.</p> <p>The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts’ experience with manual delivery of electronic media warrants additional action.</p> <p>The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings.</p>
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			<p>things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked.</p> <p>In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.</p>	<p>No response required.</p>
<p>3.</p>	<p>Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer</p>	<p>AM</p>	<p>In regard to: “Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.”</p> <p>Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be resolved on its own rather soon or does another technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed?</p> <p>In regard to: “Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that</p>	<p>The committees appreciate the commenter’s concern. Based on this and other comments, the committees have modified the proposal to allow for color components in electronic filings as long as they comply with the file-size limit.</p>

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			<p>amendments to those rules are not needed at this time.”</p> <p>Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk’s transcript assembly and therefore be in compliance of the rule.</p>	<p>The committees thank the commenter for this input. With respect to the commenter’s suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. The margin requirement of “at least 1-1/4 inches from the left edge,” set forth in 8.144(b)(2)(E), remains unchanged for clerk’s transcripts and reporter’s transcripts. The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk’s and reporter’s transcripts.</p> <p>To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74(a)(10), the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Default settings may change, and Microsoft Word is not</p>
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				the only word processing software that practitioners use to create electronic filings. Based on this and other comments, however, the committees have added a subdivision to rule 8.74 providing that the margin provision applies to documents prepared for original filing in the reviewing court, and not to documents like transcripts generated in the superior courts.
4.	Criminal Justice League Foundation by Kent Scheidegger, Legal Director and General Counsel	AM	<p>The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.</p> <p>Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.”</p> <p>* * *</p> <p>What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees considered but declined to allow for Roman numeral page numbering for tables and Arabic numbering for the body of the document. The proposal’s pagination requirement implements rules that already exists in California’s appellate courts. All six appellate districts and the Supreme Court use consecutive Arabic-numbering as set forth in rule 8.74(a)(2). The committees appreciate that numbering all pages, including preliminary pages like tables, in this manner may require additional preparation time, but consecutive pagination allows the court and the parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page</p>

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			<p>CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted: (2) <i>Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.</i></p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>numbers that match an electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.</p>
5.	Jeffrey Ehrlich Ehrlich Law Firm	AM	<p>I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA’s “Leap from E-filing” publication, which</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p>

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			<p>in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable.</p> <p>First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires.</p> <p>Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face.</p> <p>When I started in appellate practice, Horvitz & Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.</p>	<p>No further response required.</p> <p>The committees appreciate the commenter's input on this issue. Because PDFs retain the image quality of a printed document, all readers can display a PDF as intended. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but have added an allowance for sans serif type face in headings, subheadings, and captions.</p>
6.	Horvitz & Levy by Andrea Russi, Senior Counsel	A	<p>We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone.</p> <p>One suggestion:</p>	<p>The committees thank the commenter for this input and note the agreement with the proposal.</p>

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			<p>The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.</p>	<p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain this suggestion for future consideration. [For subcommittee discussion: whether to include a cross-reference to the e-service Rule, which may require revision in the near term.]</p>
7.	Hon. Jo-Lynne Lee, Superior Court of Alameda County	N	<p>I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don't understand the reason why it should be prohibited.</p> <p>Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.</p>	<p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p>
8.	Lynn Loschin, Senior Research Attorney Court of Appeal, Fourth Appellate District	AM	<p>As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes.</p> <p>Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than scrolling to the bottom of the page, saves a great</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees note the commenter's support for 8.74(a)(2)'s pagination requirements.</p>

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		<p>deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change.</p> <p>Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change.</p> <p>Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned.</p> <p>I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going.</p> <p>I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.</p>	<p>The committees note the commenter's support for 8.74(a)(3)'s bookmarking requirements, including retention of a reader's selected zoom setting.</p> <p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p> <p>Because PDFs retain the image quality of a printed document, all readers can display a PDF as intended—even on screens. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but have added an allowance for sans serif type face in headings, subheadings, and captions.</p> <p>See responses above.</p>
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9.	Steven Murray	N	<p>The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken.</p> <p>If any changes are needed (and I seriously doubt that), make them optional. Or better yet, as now, let each Division of the Court of Appeal or the Supreme Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.</p>	<p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. The committees decline, however, to allow font sizes other than 13 point.</p> <p>The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>
10.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	<p>The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing "unless these rules provide otherwise" but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the "exceptions" to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by</p>	<p>The committees thank the commenter and note the OCBA's support for the proposal. [For subcommittee discussion: amend or adopt rule 8.40 as proposed.]</p> <p>With respect to rule 8.44(c)'s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principle goal of this</p>

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			<p>allowing “by local rule” for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).</p>	<p>proposal. However, the requirement here applies only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings.</p> <p>With respect to amending additional rules in Title 8 that are applicable to electronic filing, service, signatures, and documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration</p>
11.	Daniel Repp	N	<p>I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.</p> <p>* * *</p> <p>(1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice</p> <p>I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements</p>	<p>The committees thank the commenter for this input. [Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.]</p> <p>No response required.</p>

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		<p>of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far. * * *</p> <p>Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison). (5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them</p> <p>I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done. * * *</p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the</p>	<p>No response required.</p> <p>The committees appreciate the commenter's input. The committees decline to allow sans serif fonts in body and footnote text because of its more limited readability. However, the committees have added an allowance for sans serif type face in headings, subheadings, and captions.</p>
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			proposal. Certain portions of the comment therefore are not included in this chart.]	
12.	San Diego County Bar Association by Heather Guereña, Chair, Appellate Practice Section	AM	<p>The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section has the following comments about those proposed changes:</p> <p>General Comments: The Invitation to Comment requested comments on these two general topics.</p> <p>1. Does the proposal appropriately address the stated purposes?</p> <p>The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also</p>	<p>The committees thank the commentator for this input and notes the Appellate Practice Section of the San Diego County Bar Association’s agreement with the proposal if modified.</p> <p>The committees appreciate this feedback.</p>

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		<p>expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts’ experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they understand that these changes are designed to ease reading on electronic reading devices.</p> <p>Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself.</p> <p>2. Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? The terms “omission page” and “hyperlink” in particular may not be well-known to all electronic filers, especially those who have limited experience</p>	<p>The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council’s Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers and court personnel. CJER does not organize or provide education for practitioners.</p> <p>The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. [For subcommittee discussion: define further “hyperlink” or leave alone.]</p>
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		<p>to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section’s comments to specific proposed rule changes.</p> <p>Specific Comments: The Appellate Practice Section’s specific comments to the proposed rule changes are as follows: Rule 8.40 No comments. Rule 8.44 No comments. Rule 8.71(a) No comments.</p> <p>Rule 8.72 Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.</p> <p>Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also</p>	<p>No response required.</p> <p>The committees thank the commenter for this input.</p> <p>The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice</p>
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		<p>state something like: “Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended.”</p> <p>Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires each filer to “take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.” This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that “Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”</p> <p>Rule 8.74 Rule 8.74(a): The title to proposed Rule 8.74(a) is “Format requirements applicable to all electronic</p>	<p>of the problem, to seek appropriate relief from the court.</p> <p>The committees thank the commenter for this input. The committees decline to add a mental-state requirement to this provision. Based on this comment, however, the committees have added an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.</p>
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		<p>documents.” Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to “Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court.”</p> <p>Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, “All bookmarks must be set to retain the reader’s selected zoom setting.” This requirement is not likely to be understood by all users, especially those without experience with electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as “custom” and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to “inherit zoom.” Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting</p>	<p>The committees agree with the commenter that, as drafted and circulated for comment, rule 8.74 unintentionally encompassed documents that are not prepared for original electronic filing. Based on this and other comments, the committees have made changes to the proposal, carving out documents like appendices, exhibits, and transcripts. The committees also have included an advisory committee comment to make this requirement clearer.</p> <p>The committees appreciate the commenter’s input on this proposal. The committees will recommend that courts publish instructions on how to comply with this requirement.</p>
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		<p>for each bookmark, each such change requires a number of “clicks” to accomplish the change.</p> <p>The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of “inherit zoom” either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as “To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document.”</p> <p>Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below. Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color</p>	<p>The committees appreciate the commenter’s input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. [For subcommittee discussion: Appellate Practice Section’s request that the Judicial Council request third parties make changes to their products] The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the bookmarking view voluntary.</p>
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		<p>components as follows: “Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format.”</p> <p>Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a “proportionally spaced serif face” font. The only example given of an acceptable font is “Century Schoolbook,” and the only example given of a prohibited font is “Times New Roman.” The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing</p>	<p>Based on this and other comments, the committees have revised this provision.</p> <p>Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>
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		<p>courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules.</p> <p>Rule 8.74(a)(12): This rule may cause some confusion as written. Because “hyperlink” is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified.</p> <p>Also, it has been the experience of some members of the Appellate Practice Section that commercially available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked.</p>	<p>Based on this and other comments, the committees have clarified the provision relating to hyperlinks. [For subcommittee discussion: define further “hyperlink” or leave alone.]</p> <p>The committees acknowledge the suggestion concerning vendors of hyperlink software and will forward it to appropriate Judicial Council staff for consideration. [For subcommittee discussion: Appellate Practice Section’s request that the Judicial Council request third parties make changes to their products.]</p>
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-07

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252)**

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

		<p>Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be determined once the cost of any such software is known.</p> <p>Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary.</p> <p>This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as “volumes no larger than 25 megabytes.” The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if</p>	<p>Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for color components. Under the revised provisions, manual filing will be required only when the filing exceeds the file size requirements.</p>
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SPR19-07

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252)**

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		<p>the purpose of this rule is to limit the size of files by limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5).</p> <p>At present, it appears that only the Third Appellate District restricts filers' ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents.</p> <p>Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not</p>	<p>No response required.</p> <p>The committees thank the commenter for this input. Based on this comment and others, the committees have revised the rule to clarify the line-spacing requirements of 8.74, and to</p>
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SPR19-07

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252)**

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		<p>seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): “Except for cover pages, tables, or indices prepared for an appellate court, . . .” In addition, for each of 8.74(b)(3) and (5), the phrase “must comply with this rule” should be changed to “must comply with parts (a)(1) through (a)(7) of this rule . . .” If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6).</p> <p>Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page.</p> <p>Rule 8.204 No comment.</p>	<p>eliminate the cross-reference between rule 8.74 and rule 8.204(b). Subdivision (b) of rule 8.204 has been revised to apply only to documents filed in paper format, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p> <p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.</p> <p>The committees thank the commenter for this input. To the extent the commenter seeks</p>
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**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
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All comments are verbatim unless indicated by an asterisk (*).

			Rule 8.252 No comment.	additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.
13.	Superior Court of Los Angeles County	A	<p>Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts.</p> <p>Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents.</p> <ul style="list-style-type: none"> • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), 	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question. [For subcommittee discussion: define further “hyperlink” or leave alone.]</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

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**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
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			<p>revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements include training for staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted.</p> <ul style="list-style-type: none"> • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed. 	<p>The committees appreciate the commenter’s input on this question.</p>
14.	<p>Superior Court of San Diego County by Mike Roddy, Executive Officer</p>	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? No. • Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown. • 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? 	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question. [For subcommittee discussion: define further “hyperlink” or leave alone.]</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

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

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			<p>Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be very minimal training for staff. Possible need to adopt procedures for non-compliance.</p> <ul style="list-style-type: none"> • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes. No additional comments. 	<p>The committees appreciate the commenter’s input on this question.</p>
15.	Supreme Court of California by e-filing working group staff	NI	<p>Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07</p> <p>1) Rule 8.74(a)(1), requirement to “convert” paper documents: The description of the proposed rule states, “To ensure text searchability, the proposal requires a filer to ‘convert’ a paper document to electronic form, <i>rather than scanning a printed document.</i>” (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being “converted” by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for</p>	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have revised rule 8.74 to create an exception to the PDF conversion provision, as suggested by the commenter, for the types of documents mentioned.</p>

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

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Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252)

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		<p>which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g., having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows:</p> <p>If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. <u>Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based.</u> The printing of an electronic document must not. . . .</p> <p>2) Rule 8.74(b)(7), additional requirements for sealed and confidential records: The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In</p>	<p>Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.</p>
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Appellate Procedure: Uniform Formatting Rules for Electronic Documents

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		<p>order to maintain the same page numbering in the two versions of the document, there should be an “omission page” for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows.</p> <p>Proposed Rule 8.74(b)(7) as revised:</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are <u>sealed or confidential</u> or under seal must be filed separately.</p>	
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**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
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All comments are verbatim unless indicated by an asterisk (*).

		<p>from publicly filed records. If one or more pages are omitted from a source document<u>publicly filed record</u> and filed separately as a sealed or confidential record, an omission page <u>or pages</u> must be inserted in the source document<u>publicly filed record</u> at the location of the omitted page or pages. The omission page(s) must identify<u>provide a title for the type of page(s) omitted; that does not disclose the substance of the page(s).</u> The omission page(s) must be paginated consecutively with the rest of the source document, it<u>publicly filed record</u>, must be bookmarked, and it must be listed in any indexes included in the source document<u>publicly filed record</u>. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed <u>sealed or confidential or sealed</u> records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p>3) Rule 8.78(a)(2)(B), consent to electronic service: The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 & 9, available at https://jcc.legistar.com/View.ashx?M=F&ID=66120)</p>	<p>The committees appreciate the suggested revisions submitted by the e-filing working group staff, and have adopted most of them.</p> <p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain this comment for consideration in the near term.</p>
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**Appellate Procedure: Uniform Formatting Rules for Electronic Documents
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			01&GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3) Must or should rule 8.78(a)(2)(B) be similarly revised?	
16.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS)	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Requires development of local rules and/or forms. <p>The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.</p>	The committees appreciate the commenter’s input and note JRS’s support for the proposal. [For subcommittee discussion: JRS is concerned that the revision of local rules will require more time to implement than the January 2020, effective date for proposal.]
17.	Kristin Traicoff Law Office of Kristin Traicoff	AM	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: “Each electronic document must include...” It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be	The committees thank the commenter for providing input on this proposal. The proposal’s bookmarking requirements apply to documents with certain components. The requirements of 8.74(a)(3) are intended to aid the reader of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks justifies any burden on filers imposed by this requirement.

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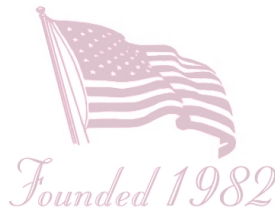
(Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252)

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

			<p>effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.</p>	
18.	Norm Vance	N	<p>The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?</p>	<p>The committees thank the commenter for providing input on this proposal. [Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.]</p>

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

Criminal Justice Legal Foundation



June 6, 2019

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Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Via Electronic Mail

Re: Invitation to Comment SPR19-07, Appellate Procedure:
Uniform Formatting Rules for Electronic Documents

Judicial Council:

The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.

Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.” There are two ways to achieve that match. The proposal oddly *forbids* the superior method and *requires* the inferior method. No reason is given for this inversion. None is apparent. The lack of a reason suggests that it is the product of simple ignorance.

For good reasons, lawyers and book publishers have traditionally begun the Arabic numbering of pages (1, 2, ...) on the first page of text and numbered preliminary pages, such as tables of contents and authorities, with Roman numerals (i, ii, iii, ...). However, programs that create PDF documents will number the pages with sequential Arabic numbers from cover to end unless directed otherwise. This mismatch is inconvenient for the reader. Hence, many courts have issued rules to prevent the mismatch. They have generally required numbering the pages to match the PDF numbers rather than the other way around. I have never seen an explanation for forbidding numbering the PDF

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document in the traditional manner. I suspect that many of the courts that have issued such rules are simply unaware that it can be done.

Numbering the pages of a PDF file in the traditional way is quite easily done with Adobe Acrobat. CJLF has been numbering its electronic briefs this way for years in courts that allow it. See, for example, our brief in *Virginia House of Delegates v. Bethune-Hill*, No. 18-281, <http://cjlif.org/program/briefs/VAHouse.pdf> in the United States Supreme Court. The high court itself numbers the recent PDF versions of the bound volumes of its reports this way. See, for example, 569 U.S., <https://www.supremecourt.gov/opinions/boundvolumes/569BV.pdf>.

The traditional numbering has conveniences for both the reader and the author. The reader can easily skip to the first page of text simply by entering “1” in the page number box at the top of either the full Adobe Acrobat or the free Adobe Reader. The proposed rule requires electronic bookmarks, which can also be used for this purpose of course, but just entering “1” may be more convenient, particularly if the bookmark panel is not yet open.

The primary convenience, though, is for the authors. The final preparation of a brief is sometimes hectic with a deadline approaching. Although the tables appear first in the brief, they are created after the text. The text is generally written and paginated first, often with internal cross-references to page numbers, at a time when the number of preliminary pages is unknown. The tables refer to page numbers in the text, but the creation of the tables forces changes in the page numbers to which they refer, causing a “chicken and egg” problem. This additional complication in the sometimes stressful “home stretch” of brief preparation would seem to require a substantial justification.

What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of *any* reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.

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CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted:

(2) Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. *This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match.* The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

Thank you for your consideration of this suggestion.

Very truly yours,



Kent S. Scheidegger

KSS:iha

Daniel Repp
1001 Los Molinos Way
Sacramento, CA 95864

June 10, 2019

To: invitations@jud.ca.gov

In re: Comments on SPR-19-07

Dear Gentle Person,

I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.

Abstract

Times New Roman *is* readable. The law offices I've worked in use it exclusively, and I actually find it somewhat jarring to see anything but Times New Roman (or Courier) in a pleading or a ruling. I once helped prepare a brief (using Times New Roman) that was filed in the Third District Court of Appeal, and that District issued its opinion using Times New Roman. (What a coincidence that Justice Mauro from the Third District is proposing this rule!)

We never gave any thought over whether to use a font other than Times New Roman, and we would have scratched our heads if we were forced to use something *other* than Times New Roman. (We were conscientious enough to check the briefing requirements under the local rules and the California Rules and would have honored any such requirement).

The Part of the Rule With Which I Disagree

“Font: The font style must be a proportionally spaced serif face, such as Century Schoolbook. Do not use Times New Roman. Font size must be 13-point, including in footnotes.” (Proposed Rule 8.74(a)(8); underline added.)

The Committee's Question

Does the proposal appropriately address the stated purpose?

My Answer and Comments in Support of That Answer to the Committee's Question

As I'm sure you've already guessed, my answer is no.

Reasons Why I Disagree

- (1) *There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice*

I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far.

One could argue that there's a lack of uniformity, because not all Districts have the same rule (it's the Second District versus all others who have yet to venture an opinion) regarding font style (proportional or not-proportional), but, again, I think the portion of the rule banning Times New Roman is a step too far, and is simply the latest incursion in what can only be described as a kind of culture war over font choice in the legal profession (that I want no part of).

- (2) *Whether One Uses Times New Roman (or Something Else) in a Brief Should Not Be Important So Long as You're Not Writing the Brief in Your Own Sloppy, Unreadable Handwriting*

Readability is the proffered reason for requiring a proportionally spaced serif font like Century Schoolbook but, again, Times New Roman is readable.

I mean this in the best way possible: it really shouldn't matter whether you're using a proportional or non-proportionally spaced serif font in an appellate brief so long as a type-written font is being used. Objectively, both are readable. (Much more readable than the handwriting of some lawyers!) Remember, it could always be worse. *(Can you imagine reading a brief in Lucida Handwriting? I can imagine a pro per thinking it would be.)*

- (3) *Readability is More Than Just One Font*

A readable document is more than just one font. I've found that creating space between lines (one and a half or double), making regular paragraph indentations (to avoid the one, big, never-ending paragraph), increasing font size (to 14-point), and using left-aligned justification ("ragged right") does more for readability in pleadings by avoiding sameness and monotony than the use of a font ever could on its own.

That's the problem with proportionally spaced mono-type fonts: they come off as monotonous. Each letter takes up the same amount of width as all the others, which means you have a font that essentially offers no kind

of diversity in word length beyond the length of the word itself. If you justify the line spacing, it becomes even more uninviting because that indescribable feeling of sameness just increases all the more.

(4) *What's Convenient For a Few Should Not Come at the Expense of What's Suitable for Everyone Else*

Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on *their* eyes).

At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).

(5) *People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them*

I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.

(6) *Aren't The Merits of the Case More Important? (Warning: Unkind Remark About Matthew Butterick Appears Below.)*

There are simply more important things to worry about. Like meeting deadlines. Or deciding how to frame the case in a way that's sympathetic to your client without getting called a liar. Or resisting the urge to write that opposing counsel "has decided to go slumming" because they've cited a federal case from the United States District Court in Mississippi even though the case is being litigated in Superior Court here in California and concerns an issue of state law (FEHA). Again, the merits of the case are what's important, not whether you're using Times New Roman.

And I know I'm going to piss somebody off by saying this, but in the interest of honesty I'm just going to say it: Matthew Butterick is a professional menace to those of us who do not want to be judged by the kind of font we use. For every person like Butterick who exalts typography, there's a philistine like me who just doesn't see the difference and wants to avoid getting dragged into it because the workload is more than enough to keep busy.

///

(7) *Typography Guru Matthew Butterick Agrees That Times New Roman is Readable Even Though He Seems to Hate It*

On the subject of Times New Roman, Butterick has admitted that “[o]bjectively, there's nothing wrong with Times New Roman”. This hasn't stopped Butterick from dismissing the font with the kind of presumptuous disdain that drives me nuts whenever I see it. “To look at Times New Roman,” says Butterick, “is to gaze into the void.” It's simply over-the-top.)

I apologize for being mean to Butterick (a man whom I've never met), but typography isn't where all the ink needs to be spilled. It's stressful enough just to meet deadlines in the legal profession without needing to worry about the kind of font you're using.

Conclusion

Please don't ban the use of Times New Roman. It's been around forever and some people swear by it. At the end of the day, the font that's most readable is a matter of taste and opinion.

Thank you for permitting members of the legal community to offer comment.

Yours sincerely,

Daniel Repp,
Lincoln Law School of Sacramento
Class of 2018, Co-Salutatorian

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 8.40. ~~Form of filed documents~~Cover requirements for paper documents**

2
3 **(a) ~~Form of electronic documents~~**

4
5 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~
6 ~~be either produced on a computer or typewritten and must comply with the relevant~~
7 ~~provisions of rule 8.204(b).~~

8
9 ~~Under rule 8.71(a), a document filed in a reviewing court must be in electronic~~
10 ~~form unless these rules provide otherwise. An electronic document must comply~~
11 ~~with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.~~

12
13 **~~(b) Form and~~Cover color of paper documents**

14
15 ~~(1) To the extent these rules authorize the filing of a paper document in a~~
16 ~~reviewing court, the document must comply with the relevant format~~
17 ~~provisions of this rule and rules 8.144 and 8.204.~~

18
19 ~~(1)(2)(1)~~ As far as practicable, the covers of briefs and petitions filed in paper form
20 must be in the following colors:

21

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

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(2)(3)(2) In appeals under rule 8.216, the cover of a combined respondent’s brief and appellant’s opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent’s brief filed in paper form must be tan.

(3)(4)(3) A paper brief or petition not conforming to ~~(1)~~ or **(2a)** or **(3b)** must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

1 **(eb) Cover information for electronic and paper documents**

2
3 (1)–(2) * * *

4
5 ~~(3) The covers of electronic documents must also comply with the provisions of~~
6 ~~rule 8.74.~~

7
8 **Rule 8.44. Number of copies of filed documents**

9
10 **(a)–(b) * * ***

11
12 **(c) Electronic copies of paper documents**

13
14 A court that permits electronic filing will specify any requirements regarding
15 electronically filed documents in the electronic filing requirements published under
16 rule 8.74. ~~In addition,~~ Even when filing a paper document is permissible, a court
17 may provide by local rule for the submission of an electronic copy of a document
18 ~~that is not electronically filed~~ the paper document either in addition to the copies of
19 the document required to be filed under (a) or (b) or as a substitute for one or more
20 of these copies. The local rule must ~~specify the format of the electronic copy and~~
21 provide for an exception if it would cause undue hardship for a party to submit an
22 electronic copy.

23
24 **Rule 8.46. Sealed records**

25
26 **(a)–(c) * * ***

27
28 **(d) Record not filed in the trial court; motion or application to file under seal**

29
30 (1)–(2) * * *

31
32 (3) To lodge a record, the party must transmit the record to the court in a secure
33 manner that preserves the confidentiality of the record to be lodged. The
34 record must be transmitted separate from the rest of a clerk’s or reporter’s
35 transcript, appendix, supporting documents, or other records sent to the
36 reviewing court with a cover sheet that complies with rule ~~8.40(e)~~8.40(b) if
37 the record is in paper format or rule 8.74(a)(9) if the record is in electronic
38 format, and labels the contents as “CONDITIONALLY UNDER SEAL.” If
39 the record is in paper format, it must be placed in a sealed envelope or other
40 appropriate sealed container.

41
42 **(e)–(g) * * ***

1 **Rule 8.71. Electronic filing**

2
3 **(a) Mandatory electronic filing**

4
5 Except as otherwise provided by these rules, the Supreme Court Rules Regarding
6 Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all
7 parties are required to file all documents electronically in the reviewing court.
8

9 **(b)–(g) * * ***

10
11 **Rule 8.72. Responsibilities of court and electronic filer**

12
13 **(a) ~~Publication of electronic filing requirements~~ Responsibilities of court**

14
15 (1) The court will publish, in both electronic and print formats, the court’s
16 electronic filing requirements.
17

18 **~~(b) Problems with electronic filing~~**

19 (2) If the court is aware of a problem that impedes or precludes electronic filing,
20 it must promptly take reasonable steps to provide notice of the problem.
21

22 **(b) Responsibilities of electronic filer**

23
24 Each electronic filer must:

25
26 (1) Take all reasonable steps to ensure that the filing does not contain computer
27 code, including viruses, that might be harmful to the court’s electronic filing
28 system and to other users of that system;

29
30 (2) Furnish one or more electronic service addresses, in the manner specified by
31 the court, at which the electronic filer agrees to accept service; and
32

33 (3) Immediately provide the court and all parties with any change to the
34 electronic filer’s electronic service address.
35

36 **Advisory Committee Comment**

37
38 **Subdivision (b)(1).** One example of a reasonable step an electronic filer may take is to use a
39 commercial virus scanning program. An electronic filer may establish such efforts by filing a
40 declaration naming the program, version, and the date of its most recent update, and that,
41 according to the program, the electronic filing is free of viruses. Compliance with this subdivision
42 requires more than an absence of intent to harm the court’s electronic filing system or other users’
43 systems.

1
2 **Rule 8.74. Responsibilities of electronic filer Format of electronic documents**

3
4 **(a) — ~~Conditions of filing~~**

5 Each electronic filer must:

- 6
7
8 (1) ~~Comply with any court requirements designed to ensure the integrity of~~
9 ~~electronic filing and to protect sensitive personal information;~~
10
11 (2) ~~Furnish information that the court requires for case processing;~~
12
13 (3) ~~Take all reasonable steps to ensure that the filing does not contain computer~~
14 ~~code, including viruses, that might be harmful to the court's electronic filing~~
15 ~~system and to other users of that system;~~
16
17 (4) ~~Furnish one or more electronic service addresses, in the manner specified by~~
18 ~~the court, at which the electronic filer agrees to accept service; and~~
19
20 (5) ~~Immediately provide the court and all parties with any change to the electronic~~
21 ~~filer's electronic service address.~~
22

23 **(b) — ~~Format of documents to be filed electronically~~**

- 24
25 (1) ~~A document that is filed electronically with the court must be in a format~~
26 ~~specified by the court unless it cannot be created in that format.~~
27
28 (2) ~~The format adopted by a court must meet the following minimum~~
29 ~~requirements:~~
30
31 (A) ~~The format must be text searchable while maintaining original document~~
32 ~~formatting.~~
33
34 (B) ~~The software for creating and reading documents must be in the public~~
35 ~~domain or generally available at a reasonable cost.~~
36
37 (C) ~~The printing of documents must not result in the loss of document text,~~
38 ~~format, or appearance.~~
39
40 (3) ~~The page numbering of a document filed electronically must begin with the~~
41 ~~first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,~~
42 ~~3). The page number may be suppressed and need not appear on the cover~~
43 ~~page.~~

1
2 (4) ~~If a document is filed electronically under the rules in this article and cannot be~~
3 ~~formatted to be consistent with a formatting rule elsewhere in the California~~
4 ~~Rules of Court, the rules in this article prevail.~~
5

6 **(a) Format requirements applicable to all electronic documents**
7

8 (1) Text-searchable portable document format: Electronic documents must be in
9 text-searchable portable document format (PDF) while maintaining the
10 original document formatting. An electronic filer is not required to use a
11 specific vendor, technology, or software for creation of a searchable format
12 document, unless the electronic filer agrees to such use. The software for
13 creating and reading electronic documents must be in the public domain or
14 generally available at a reasonable cost. If an electronic filer must file a
15 document that the electronic filer possesses only in paper format, the
16 electronic filer must convert the document to an electronic document by a
17 means that complies with this rule. Use of a scanned image of a paper
18 document is not a permitted means of conversion unless the document cannot
19 practicably be converted into a text-searchable file, for example, if the
20 document is entirely or substantially handwritten, a photograph, or a graphic
21 such as a chart or diagram that is not primarily text-based. The printing of an
22 electronic document must not result in the loss of document text, format, or
23 appearance. It is the electronic filer's responsibility to ensure that any
24 document filed is complete and readable.
25

26 (2) Pagination: The electronic page counter for the electronic document must
27 match the page number for each page of the document. The page numbering
28 of a document filed electronically must begin with the first page or cover
29 page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may
30 not contain more than one numbering system; for example, they may not
31 contain Roman numerals for the table of contents and Arabic numerals for
32 the body of the document. The page number for the cover page may be
33 suppressed and need not appear on the cover page. When a document is filed
34 in both paper and electronic formats, the pagination in both versions must
35 comply with this subparagraph.
36

37 (3) Bookmarking: An electronic bookmark is a descriptive text link that appears
38 in the bookmarks panel of an electronic document. Each electronic document
39 must include an electronic bookmark to each heading, subheading, and to the
40 first page of any component of the document, including any table of contents,
41 table of authorities, petition, verification, memorandum, declaration,
42 certificate of word count, certificate of interested entities or persons, proof of
43 service, exhibit, or attachment. Each electronic bookmark must briefly

1 describe the item to which it is linked. For example, an electronic bookmark
2 to a heading must provide the text of the heading, and an electronic
3 bookmark to an exhibit or attachment must include the letter or number of the
4 exhibit or attachment and a brief description of the exhibit or attachment. An
5 electronic appendix must have bookmarks to the indexes and to the first page
6 of each separate exhibit or attachment. Exhibits or attachments within an
7 exhibit or attachment must be bookmarked. All bookmarks must be set to
8 retain the reader's selected zoom setting.
9

10 (4) *Protection of sensitive information:* Electronic filers must comply with rules
11 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive
12 information, except for those requirements exclusively applicable to paper
13 format.
14

15 (5) *Size and multiple files:* An electronic filing may not be larger than 25
16 megabytes. This rule does not change the limitations on word count or
17 number of pages otherwise established by the California Rules of Court for
18 documents filed in the court. **Unless Notwithstanding provisions to the**
19 **contrary in the California Rules of Court imposing a 300-page limit applies to**
20 **the volumes of an electronic on certain** documents (see, e.g., rules
21 8.124(d)(1), 8.144(b)(6)), a file may exceed 300 pages so long as it does not
22 exceed 25 megabytes. If a document exceeds the 25-megabyte file-size
23 limitation, the electronic filer must submit the document in more than one
24 file, with each file 25 megabytes or less. The first file must include a master
25 chronological and alphabetical index stating the contents for all files. Each
26 file must have a cover page setting forth (a) the file number for that file, (b)
27 the total number of files for that document, and (c) the page numbers
28 contained in that file. (For example: File 1 of 4, pp. 1–400.) In addition, each
29 file must be paginated consecutively across all files in the document,
30 including the cover pages for each file. (For example, if the first file ends on
31 page 400, the cover of the second file must be page 401.) If a multiple-file
32 document is submitted to the court in both electronic and paper formats, the
33 cover pages for each file must be included in the paper documents.
34

35 (6) *Manual Filing:*
36

37 (A) When an electronic filer seeks to file an electronic document consisting
38 of more than **five ten** files, or when the document cannot or should not
39 be electronically filed in multiple files, or when electronically filing the
40 document would cause undue hardship, the document must not be
41 electronically filed but must be manually filed with the court on
42 electronic media such as a flash drive, DVD, or compact disc (CD).
43 When an electronic filer files one or more documents on electronic

1 media such as a flash drive, DVD, or CD with the court, the electronic
2 filer must electronically file, on the same day, a “manual filing
3 notification” notifying the court and the parties that one or more
4 documents have been filed on electronic media, explaining the reason
5 for the manual filing. The electronic media must be served on the
6 parties in accordance with the requirements for service of paper
7 documents. To the extent practicable, each document or file on the
8 electronic media must comply with the format requirements of this rule.

9
10 (B) Electronic media files such as audio, and video, or PowerPoint, and
11 documents containing photographs or any color component, must be
12 manually filed. Audio files must be filed in .wav or mp3 format. Video
13 files must be filed in .avi or mp4 format. Photographs must be filed in
14 .jpg, .png, .tif, or .pdf format.

15
16 (7) Page size: All documents must have a page size of 8-1/2 by 11 inches.

17
18 (8) No eColor: Notwithstanding provisions to the contrary in the California
19 Rules of Court, aAn electronic document with any color component may not
20 be electronically filed or .It must be manually filed on electronic media,
21 depending on its file size. An electronically filed document must not have
22 color covers, color signatures, or other color components absent leave of
23 court. This requirement does not apply to the auto-color feature of hyperlinks.

24
25 (9) Cover or first-page information:

26
27 (A) Except as provided in (B), the cover-or first page if there is no cover-of
28 every electronic document filed in a reviewing court must include the
29 name, mailing address, telephone number, fax number (if available), e-
30 mail address (if available), and California State Bar number of each
31 attorney filing or joining in the document, or of the party if he or she is
32 unrepresented. The inclusion of a fax number or e-mail address on any
33 electronic document does not constitute consent to service by fax or e-
34 mail unless otherwise provided by law.

35
36 (B) If more than one attorney from a law firm, corporation, or public law
37 office is representing one party and is joining in the document, the
38 name and State Bar number of each attorney joining in the electronic
39 document must be provided on the cover. The law firm, corporation, or
40 public law office representing each party must designate one attorney to
41 receive notices and other communication in the case from the court by
42 placing an asterisk before that attorney’s name on the cover and must
43 provide the contact information specified under (A) for that attorney.

1 Contact information for the other attorneys from the same law firm,
2 corporation, or public law office is not required but may be provided.

3
4 **(b) Format requirements applicable to all documents prepared for original**
5 **electronic filing in a reviewing court.**

6
7 **(81) Font:** The font style must be a proportionally spaced serif face, such as
8 Century Schoolbook is preferred. A sans-serif type face may be used for
9 headings, subheadings, and captions. Do not use Times New Roman. Font
10 size must be 13-point, including in footnotes. For emphasis, italics or
11 boldface may be used or the text may be underscored. Case names must be
12 italicized or underscored. Do not use all capitals (i.e., ALL CAPS) for
13 emphasis or in headings and subheadings.

14
15 **(92) Spacing:** Lines of text must be 1-1/2.5 spaced. Footnotes, headings,
16 subheadings, and quotations may be single-spaced. The lines of text must be
17 unnumbered.

18
19 **(103) Margins:** The margins must be set at 1-1/2 inches on all sides on the left and
20 right and 1 inch on the top and bottom. Quotations may be block-indented.

21
22 **(114) Alignment:** Paragraphs must be left-aligned, not justified.

23
24 **(125) Hyperlinks:** Hyperlinks to legal authorities and appendices or exhibits are
25 encouraged but not required. However, if an electronic filer elects to include
26 hyperlinks in a document, the hyperlink must be active as of the date of filing
27 and if the hyperlink is to a legal authority, it should be formatted to standard
28 citation format as provided in the California Rules of Court.

29
30 **(13) No color:** Notwithstanding provisions to the contrary in the California Rules
31 of Court, an electronic document with any color component may not be
32 electronically filed. It must be manually filed on electronic media. An
33 electronically filed document must not have color covers, color signatures, or
34 other color components absent leave of court. This requirement does not
35 apply to the auto-color feature of hyperlinks.

36
37 **(bc) Additional format requirements for certain electronic documents**

38
39 (1) **Brief:** In addition to compliance with this rule, an electronic brief must also
40 comply with the contents and length requirements set forth in rule 8.204,
41 except for the requirements exclusively applicable to paper format including
42 the provisions in rule 8.204(b)(2), (4), (5), and (6)(a) and (c). The brief need

1 not be signed. In addition to providing the cover information required by rule
2 8.40(e), †The cover must state:

3
4 (A) The title of the brief;

5
6 (B) The title, trial court number, and Court of Appeal number of the case;

7
8 (C) The names of the trial court and each participating trial judge;

9
10 (D) The name of the party that each attorney on the brief represents.

11
12 (2) Request for judicial notice or request or motion supported by documents:
13 When seeking judicial notice of documents or when a request or motion is
14 supported by documents, the electronic filer must attach the documents to the
15 request or motion. The request or motion and its attachments must comply
16 with this rule.

17
18 (3) Appendix: The format of an appendix must comply with this rule, rule
19 8.124(d), and rule 8.144 pertaining to clerk's transcripts.

20
21 (4) Agreed statement and settled statement: The format for an agreed statement
22 or a settled statement must comply with this rule and rules 8.144 and
23 8.124(d).

24
25 (5) Reporter's transcript and clerk's transcript: The format for an electronic
26 reporter's transcript must comply with Code of Civil Procedure section 271
27 and rule 8.144. The format for an electronic clerk's transcript must comply
28 with this rule and rule 8.144.

29
30 (6) Exhibits: Electronic exhibits must be submitted in volumes no larger than 25
31 megabytes, rather than as individual documents.

32
33 (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records
34 that are sealed or confidential or under seal must be filed separately from
35 publicly filed records. If one or more pages are omitted from a source
36 document record and filed separately as a sealed or confidential record, an
37 omission page or pages must be inserted in the source document publicly filed
38 record at the location of the omitted page or pages. The omission page must
39 identify the type of pages omitted. The Each omission page must be
40 paginated consecutively with the rest of the source document publicly filed
41 record, # must be bookmarked, and # must be listed in any indexes included
42 in the source document publicly filed document. The PDF counter for the
43 each omission page must match the page number of the omission page

1 omitted from the publicly filed document. Separately filed sealed or
2 confidential or sealed records must comply with this rule and rules 8.45, 8.46,
3 and 8.47.

4
5 **(ed) Rejection of an electronic filing for noncompliance; exemptions**

6
7 The court will reject an electronic filing if it does not comply with the requirements
8 of this rule. However, if the requirements of this rule cause undue hardship or
9 significant prejudice to any electronic filer, the electronic filer may file a motion for
10 an exemption from the requirements of this rule.

11
12 **(de) This rule prevails over other formatting rules**

13
14 If a document is filed electronically and cannot be formatted to be consistent with a
15 formatting provision elsewhere in the California Rules of Court, the provisions of
16 this rule prevail.

17
18 **Advisory Committee Comment**

19
20 **Subdivision (a)(3).** An electronic bookmark’s brief description of the item to which it is linked
21 should enable the reader to easily identify the item. For example, if a declaration is attached to a
22 document, the bookmark to the declaration might say “Robert Smith Declaration,” and if a
23 complaint is attached to a document as an exhibit, the bookmark to the complaint might say
24 “Exhibit A, First Amended Complaint filed 8/12/17.”

25
26 **Subdivision (b).** Subdivision (b) governs documents prepared for original electronic filing in a
27 reviewing court, and recognizes that certain documents like exhibits may not be conformed to the
28 requirements of this provision.

29
30 **Subdivision (bc)(7).** In identifying the type of pages omitted, the omission page might say, for
31 example, “probation report” or “Marsden hearing transcript.”

32
33 **Rule 8.77. Actions by court on receipt of electronic filing**

34
35 **(a) * * ***

36
37 (1) * * *

38
39 (2) * * *

40
41 (3) *Transmission of confirmations*

42
43 The court must arrange to send receipt and filing confirmation to the

1 electronic filer at the electronic service address that the filer furnished to the
2 court under rule 8.74(a)(4)8.72(b)(2). The court or the electronic filing
3 service provider must maintain a record of all receipt and filing
4 confirmations.

5
6 (4) * * *

7
8 **Rule 8.78. Electronic service**

9
10 (a) * * *

11
12 (1) * * *

13
14 (2) * * *

15
16 (A) * * *

17
18 (B) Electronically filing any document with the court. The act of electronic
19 filing shall be deemed to show that the party agrees to accept service at
20 the electronic service address that the party has furnished to the court
21 under rule 8.74(a)(4)8.72(b)(2), unless the party serves a notice on all
22 parties and files the notice with the court that the party does not accept
23 electronic service and chooses instead to be served paper copies at an
24 address specified in the notice.

25
26 (3) * * *

27
28 (b)-(g) * * *

29
30 **Rule 8.204. Contents and form of briefs**

31
32 (a) * * *

33
34 (b) **Form of briefs filed in paper form**

35
36 Briefs filed in electronic form must comply with the formatting provisions in rule
37 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

38
39 (1)-(9) * * *

40
41 (10) If filed in paper form, the cover must be in the color prescribed by rule
42 8.40(ba). In addition to providing the cover information required by rule
43 8.40(eb), the cover must state:

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- (A) The title of the brief;
- (B) The title, trial court number, and Court of Appeal number of the case;
- (C) The names of the trial court and each participating trial judge;
- (D) The name of the party that each attorney on the brief represents.

(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1)–(2) * * *

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1. The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted, an electronic copy,~~ or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR19-07

Title	Action Requested
Appellate Procedure: Uniform Formatting Rules for Electronic Documents	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252	January 1, 2020
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kristi Morioka, Attorney 916-643-7056 phone kristi.morioka@jud.ca.gov
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Hon. Louis R. Mauro, Vice-Chair	Christy Simons, Attorney 415-865-7694 phone christy.simons@jud.ca.gov

Executive Summary

To provide consistency and clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose revising California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts. The rules currently provide some formatting requirements for electronic documents, but they do not include various local rule requirements such as bookmarking. Moreover, local rules around the state differ in their requirements and scope. By establishing uniform, comprehensive rules for all appellate courts, this proposal will ease the burden on filers caused by differing format rules. This project initially focused on rules for exhibits and bookmarking, but was expanded in scope to include other formatting requirements. It originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing the formatting

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

requirements for electronic documents. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice.

A more limited rules amendment project began in 2017, but was deferred; the current proposal is expanded in scope. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The Proposal

Though this proposal recommends amendments to seven rules, most of the amendments are to rule 8.74. That rule currently sets forth responsibilities of electronic filers but also establishes certain minimum format requirements for electronic documents. This proposal would remove the filer responsibility provisions from rule 8.74 and add them to the court responsibility provisions in rule 8.72, and significantly expand the format provisions in rule 8.74. As expanded, rule 8.74 would establish the specific formatting requirements currently articulated in local rules, such as standards for cover pages, pagination, and bookmarks.

Rule 8.40. Form of filed documents

Rule 8.40 governs the form of filed documents. The current rule provides that filed documents may be produced on a computer or be typewritten.

The proposed amendments would create different subdivisions for electronic and paper documents, would reference the formatting rules applicable to those different types of documents, and would clarify that certain unchanged formatting requirements only apply to paper. The rule would be amended to provide that e-filing is mandatory unless an exemption applies.

Rule 8.44. Number of copies of filed documents

Rule 8.44 sets forth the rules for paper copies in the California Supreme Court and the Courts of Appeal, and in subdivision (c) addresses electronic copies. Among other things, it refers to a court that “permits” electronic filing, and it requires a local rule specifying the format of an electronic copy. Because e-filing is now mandatory, and the format of electronic documents is addressed in proposed rule 8.74, the proposal deletes those outdated references.

Rule 8.71. Electronic filing

Rule 8.71 imposes mandatory e-filing, but it allows for various exemptions, including those established by local rule. The proposal would delete the reference to exemption by local rule, and add the Supreme Court Rules Regarding Electronic Filing in subdivision (a), as follows: “Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all parties are required to file all documents electronically in the reviewing court.”

Rule 8.72. Responsibilities of the court

Rule 8.72 sets forth the e-filing responsibilities of a court. The proposal takes the provisions for the responsibilities of electronic filers from current rule 8.74 and moves them to rule 8.72 in a new subdivision (b), thereby combining the responsibilities of court and filer into a single rule, and leaving rule 8.74 to address format. The proposal also deletes current rule subdivisions 8.72(b)(1) and (b)(2) as no longer needed.

Rule 8.74. Responsibilities of electronic filer

The proposal amends rule 8.74 to establish uniform formatting rules for electronic documents filed with the appellate courts and proposes to change the title of the section accordingly. Rule 8.74(a) currently establishes the responsibilities of an electronic filer. As previously discussed, this proposal moves the content of subdivision (a) to rule 8.72. Current rule 8.74(b) authorizes appellate courts to establish requirements for electronic documents, but it sets forth certain minimum format standards such as text searchability. The proposal retains some of the existing language, moves it to a new proposed subdivision (a), and significantly expands the formatting requirements by drawing from the best practices developed among the appellate courts through their local rules.

The expanded formatting rules address topics such as bookmarking, protection of sensitive information, file size, manual filing, font, spacing, margins, hyperlinks, and color. The proposal adds a new subdivision (b) to address specific formatting requirements for briefs, requests for judicial notice, appendices, agreed statements and settled statements, reporter's transcripts, clerk's transcripts, exhibits, and sealed and confidential records. Subdivision (c) provides that a court will reject an electronic filing if the formatting rules are not followed and provides that an electronic filer can file a motion for an exemption. Newly proposed subdivision (d) of rule 8.74 provides that this rule prevails over other formatting provisions if they are in conflict.

Proposed rule 8.74(a)(1) references portable document format (PDF), a file format used to present and exchange documents reliably, independent of software, hardware, or operating system. Existing California Supreme Court and Courts of Appeal local rules require documents to be in "text-searchable PDF." To ensure text searchability, the proposal requires a filer to "convert" a paper document to electronic form, rather than scanning a printed document.

The rules for pagination in proposed subdivision (a)(2) are consistent with the local rule pagination requirements around the state.

Proposed subdivision (a)(3) defines an electronic bookmark and includes requirements for bookmarking specified parts of a document. A new advisory committee comment provides examples of what is intended by the requirement that the bookmark contain a brief description of the item to which it is linked.

Proposed subdivision (a)(4) requires protection of sensitive information found in other rules, namely, rules 1.201, 8.45, 8.46, 8.47, and 8.401.

Proposed subdivision (a)(5) sets a file-size limit of 25 megabytes. The 25-megabyte limit is the current capacity of a file in the Appellate Court Case Management System (ACCMS).

Proposed subdivision (a)(6) describes manual filing of oversized documents or documents that otherwise cannot be electronically filed. The proposal permits the filer to file a flash drive, DVD, or compact disc (CD) with the court and then give notice of the filing. The term DVD is considered sufficiently descriptive that it is not spelled out, but the term CD is spelled out for clarity. The file types for video, audio, and photographs are based on local rules and the current capacity at the courts.

Proposed subdivision (a)(7) specifies that the page size for all electronic documents must be 8-1/2 by 11 inches.

Proposed subdivision (a)(8) describes the font type and font size for electronic documents. It requires a serif font such as Century Schoolbook. The suggestion comes from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability.

Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.

Proposed rule 8.74(b) addresses specific format requirements for certain documents. Proposed rule 8.74(b) does not repeat the general formatting rules when discussing the specific documents.

Rule 8.204. Contents and form of briefs

Rule 8.204 explains the requirements for briefs filed in the Courts of Appeal. There is only one amendment in this rule. The proposed amendment explains that briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in rule 8.204(b).

Rule 8.252. Judicial notice; filings and evidence on appeal

Rule 8.252 establishes the procedure for seeking judicial notice of a matter. The proposed amendment would require the moving party to attach to the motion a copy of the matter to be noticed or an explanation why it is not practicable to do so. In addition, the proposed amendment would specify that the motion with attachments must comply with rule 8.74 if filed in electronic form.

Proposed rule 8.252(c)(3) is reorganized to reflect the presumption of electronic filing unless an exemption applies.

Alternatives Considered

The committee considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The revised rules will provide uniform

guidance to litigants and practitioners, and will give the appellate courts time to amend their local rules accordingly.

Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.

Fiscal and Operational Impacts

The proposed changes are intended to make electronic formatting rules consistent in the appellate courts. The committees anticipate efforts will be needed to amend local rules to make them consistent with these proposals.

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?
- Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”?

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 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, at pages 6–15

Rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 Rule 8.40. Form of filed documents

3 (a) Form of electronic documents

5 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~
 6 ~~be either produced on a computer or typewritten and must comply with the relevant~~
 7 ~~provisions of rule 8.204(b).~~

9 Under rule 8.71(a), a document filed in a reviewing court must be in electronic
 10 form unless these rules provide otherwise. An electronic document must comply
 11 with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.

13 (b) Form and cover color of paper documents

15 (1) To the extent these rules authorize the filing of a paper document in a reviewing
 16 court, the document must comply with the relevant format provisions of this
 17 rule and rules 8.144 and 8.204.

19 ~~(1)~~(2) As far as practicable, the covers of briefs and petitions filed in paper form
 20 must be in the following colors:

Appellant’s opening brief or appendix	Green
Respondent’s brief or appendix	Yellow
Appellant’s reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

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(2)(3) In appeals under rule 8.216, the cover of a combined respondent’s brief and appellant’s opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent’s brief filed in paper form must be tan.

(3)(4) A paper brief or petition not conforming to ~~(1) or (2)~~ or (3) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

1 (c) **Cover information for electronic and paper documents**

2
3 (1)–(2) * * *

4
5 (3) The covers of electronic documents must also comply with the provisions of
6 rule 8.74.

7
8 **Rule 8.44. Number of copies of filed documents**

9
10 (a)–(b) * * *

11
12 (c) **Electronic copies of paper documents**

13
14 ~~A court that permits electronic filing will specify any requirements regarding~~
15 ~~electronically filed documents in the electronic filing requirements published under~~
16 ~~rule 8.74. In addition, Even when filing a paper document is permissible, a court~~
17 ~~may provide by local rule for the submission of an electronic copy of a document~~
18 ~~that is not electronically filed the paper document either in addition to the copies of~~
19 ~~the document required to be filed under (a) or (b) or as a substitute for one or more~~
20 ~~of these copies. The local rule must ~~specify the format of the electronic copy and~~~~
21 ~~provide for an exception if it would cause undue hardship for a party to submit an~~
22 ~~electronic copy.~~

23
24 **Rule 8.71. Electronic filing**

25
26 (a) **Mandatory electronic filing**

27
28 Except as otherwise provided by these rules, the Supreme Court Rules Regarding
29 Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all
30 parties are required to file all documents electronically in the reviewing court.

31
32 (b)–(g) * * *

33
34 **Rule 8.72. Responsibilities of court and electronic filer**

35
36 (a) ~~Publication of electronic filing requirements~~ **Responsibilities of court**

37
38 (1) The court will publish, in both electronic and print formats, the court’s
39 electronic filing requirements.

40
41 (b) ~~Problems with electronic filing~~

42 (2) If the court is aware of a problem that impedes or precludes electronic filing,
43 it must promptly take reasonable steps to provide notice of the problem.

1
2 **(b) Responsibilities of electronic filer**

3
4 Each electronic filer must:

- 5
6 (1) Take all reasonable steps to ensure that the filing does not contain computer
7 code, including viruses, that might be harmful to the court’s electronic filing
8 system and to other users of that system;
9
10 (2) Furnish one or more electronic service addresses, in the manner specified by
11 the court, at which the electronic filer agrees to accept service; and
12
13 (3) Immediately provide the court and all parties with any change to the
14 electronic filer’s electronic service address.

15
16 **Rule 8.74. Responsibilities of electronic filer Format of electronic documents**

17
18 ~~**(a) Conditions of filing**~~

19
20 ~~Each electronic filer must:~~

- 21
22 ~~(1) Comply with any court requirements designed to ensure the integrity of~~
23 ~~electronic filing and to protect sensitive personal information;~~
24
25 ~~(2) Furnish information that the court requires for case processing;~~
26
27 ~~(3) Take all reasonable steps to ensure that the filing does not contain computer~~
28 ~~code, including viruses, that might be harmful to the court's electronic filing~~
29 ~~system and to other users of that system;~~
30
31 ~~(4) Furnish one or more electronic service addresses, in the manner specified by~~
32 ~~the court, at which the electronic filer agrees to accept service; and~~
33
34 ~~(5) Immediately provide the court and all parties with any change to the electronic~~
35 ~~filer's electronic service address.~~

36
37 ~~**(b) Format of documents to be filed electronically**~~

- 38
39 ~~(1) A document that is filed electronically with the court must be in a format~~
40 ~~specified by the court unless it cannot be created in that format.~~
41
42 ~~(2) The format adopted by a court must meet the following minimum~~
43 ~~requirements:~~

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

(a) Format requirements applicable to all electronic documents

(1) *Text-searchable portable document format:* Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer’s responsibility to ensure that any document filed is complete and readable.

(2) *Pagination:* The electronic page counter for the electronic document must match the page number for each page of the document. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; for example, they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed

1 in both paper and electronic formats, the pagination in both versions must
2 comply with this subparagraph.

3
4 (3) *Bookmarking:* An electronic bookmark is a descriptive text link that appears
5 in the bookmarks panel of an electronic document. Each electronic document
6 must include an electronic bookmark to each heading, subheading, and to the
7 first page of any component of the document, including any table of contents,
8 table of authorities, petition, verification, memorandum, declaration,
9 certificate of word count, certificate of interested entities or persons, proof of
10 service, exhibit, or attachment. Each electronic bookmark must briefly
11 describe the item to which it is linked. For example, an electronic bookmark
12 to a heading must provide the text of the heading, and an electronic
13 bookmark to an exhibit or attachment must include the letter or number of the
14 exhibit or attachment and a brief description of the exhibit or attachment. An
15 electronic appendix must have bookmarks to the indexes and to the first page
16 of each separate exhibit or attachment. Exhibits or attachments within an
17 exhibit or attachment must be bookmarked. All bookmarks must be set to
18 retain the reader's selected zoom setting.

19
20 (4) *Protection of sensitive information:* Electronic filers must comply with rules
21 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive
22 information, except for those requirements exclusively applicable to paper
23 format.

24
25 (5) *Size and multiple files:* An electronic filing may not be larger than 25
26 megabytes. This rule does not change the limitations on word count or
27 number of pages otherwise established by the California Rules of Court for
28 documents filed in the court. Unless a 300-page limit applies to the volumes
29 of an electronic document (see, e.g., rules 8.124(d)(1), 8.144(b)(6)), a file
30 may exceed 300 pages so long as it does not exceed 25 megabytes. If a
31 document exceeds the 25-megabyte file-size limitation, the electronic filer
32 must submit the document in more than one file, with each file 25 megabytes
33 or less. The first file must include a master chronological and alphabetical
34 index stating the contents for all files. Each file must have a cover page
35 setting forth (a) the file number for that file, (b) the total number of files for
36 that document, and (c) the page numbers contained in that file. (For example:
37 File 1 of 4, pp. 1–400.) In addition, each file must be paginated consecutively
38 across all files in the document, including the cover pages for each file. (For
39 example, if the first file ends on page 400, the cover of the second file must
40 be page 401.) If a multiple-file document is submitted to the court in both
41 electronic and paper formats, the cover pages for each file must be included
42 in the paper documents.

43

- 1 (6) Manual Filing:
2
- 3 (A) When an electronic filer seeks to file an electronic document consisting
4 of more than five files, or when the document cannot or should not be
5 electronically filed in multiple files, or when electronically filing the
6 document would cause undue hardship, the document must not be
7 electronically filed but must be manually filed with the court on
8 electronic media such as a flash drive, DVD, or compact disc (CD).
9 When an electronic filer files one or more documents on electronic
10 media such as a flash drive, DVD, or CD with the court, the electronic
11 filer must electronically file, on the same day, a “manual filing
12 notification” notifying the court and the parties that one or more
13 documents have been filed on electronic media, explaining the reason
14 for the manual filing. The electronic media must be served on the
15 parties in accordance with the requirements for service of paper
16 documents. To the extent practicable, each document or file on the
17 electronic media must comply with the format requirements of this rule.
18
- 19 (B) Electronic media files such as audio, video, or PowerPoint, and
20 documents containing photographs or any color component, must be
21 manually filed. Audio files must be filed in .wav or mp3 format. Video
22 files must be filed in .avi or mp4 format. Photographs must be filed in
23 .jpg, .png, .tif, or .pdf format.
24
- 25 (7) Page size: All documents must have a page size of 8-1/2 by 11 inches.
26
- 27 (8) Font: The font style must be a proportionally spaced serif face, such as
28 Century Schoolbook. Do not use Times New Roman. Font size must be 13-
29 point, including in footnotes.
30
- 31 (9) Spacing: Lines of text must be 1-1/2 spaced. Footnotes and quotations may
32 be single-spaced.
33
- 34 (10) Margins: The margins must be set at 1-1/2 inches on all sides.
35
- 36 (11) Alignment: Paragraphs must be left-aligned, not justified.
37
- 38 (12) Hyperlinks: Hyperlinks are encouraged but not required. However, if an
39 electronic filer elects to include hyperlinks in a document, the hyperlink must
40 be active as of the date of filing and should be formatted to standard citation
41 format as provided in the California Rules of Court.
42

1 (13) No color: Notwithstanding provisions to the contrary in the California Rules
2 of Court, an electronic document with any color component may not be
3 electronically filed. It must be manually filed on electronic media. An
4 electronically filed document must not have color covers, color signatures, or
5 other color components absent leave of court. This requirement does not
6 apply to the auto-color feature of hyperlinks.

7
8 **(b) Additional format requirements for certain electronic documents**

- 9
10 (1) Brief: In addition to compliance with this rule, an electronic brief must also
11 comply with the requirements set forth in rule 8.204, except for the
12 requirements exclusively applicable to paper format including the provisions
13 in rule 8.204(b)(2), (4), (5), and (6).
14
- 15 (2) Request for judicial notice or request or motion supported by documents:
16 When seeking judicial notice of documents or when a request or motion is
17 supported by documents, the electronic filer must attach the documents to the
18 request or motion. The request or motion and its attachments must comply
19 with this rule.
20
- 21 (3) Appendix: The format of an appendix must comply with this rule, rule
22 8.124(d), and rule 8.144 pertaining to clerk's transcripts.
23
- 24 (4) Agreed statement and settled statement: The format for an agreed statement
25 or a settled statement must comply with this rule and rules 8.144 and
26 8.124(d).
27
- 28 (5) Reporter's transcript and clerk's transcript: The format for an electronic
29 reporter's transcript must comply with Code of Civil Procedure section 271
30 and rule 8.144. The format for an electronic clerk's transcript must comply
31 with this rule and rule 8.144.
32
- 33 (6) Exhibits: Electronic exhibits must be submitted in volumes no larger than 25
34 megabytes, rather than as individual documents.
35
- 36 (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records
37 that are confidential or under seal must be filed separately. If one or more
38 pages are omitted from a source document and filed separately as a sealed or
39 confidential record, an omission page must be inserted in the source
40 document at the location of the omitted page or pages. The omission page
41 must identify the type of pages omitted. The omission page must be
42 paginated consecutively with the rest of the source document, it must be
43 bookmarked, and it must be listed in any indexes included in the source

document. The PDF counter for the omission page must match the page number of the omission page. Separately filed confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.

(c) Rejection of an electronic filing for noncompliance; exemptions

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

(d) This rule prevails over other formatting rules

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

Advisory Committee Comment

Subdivision (a)(3). An electronic bookmark’s brief description of the item to which it is linked should enable the reader to easily identify the item. For example, if a declaration is attached to a document, the bookmark to the declaration might say “Robert Smith Declaration,” and if a complaint is attached to a document as an exhibit, the bookmark to the complaint might say “Exhibit A, First Amended Complaint filed 8/12/17.”

Subdivision (b)(7). In identifying the type of pages omitted, the omission page might say, for example, “probation report” or “Marsden hearing transcript.”

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

(1)–(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

1 **(a) Judicial notice**

2
3 (1)–(2) * * *

4
5 (3) If the matter to be noticed is not in the record, the party must ~~serve and file a~~
6 ~~copy with the motion or explain~~ attach to the motion a copy of the matter to
7 be noticed or an explanation of why it is not practicable to do so. The pages
8 ~~of the copy of the matter or matters to be judicially noticed must be~~
9 ~~consecutively numbered, beginning with the number 1. The motion with~~
10 attachments must comply with rule 8.74 if filed in electronic form.
11

12 **(b) * * ***

13
14 **(c) Evidence on appeal**

15
16 (1)–(2) * * *

17
18 (3) For documentary evidence, a party may offer ~~the original, a certified copy, a~~
19 ~~photocopy, or, in a case in which electronic filing is permitted, an electronic~~
20 ~~copy, or if filed in paper form, the original, a certified copy, or a photocopy.~~
21 The court may admit the document into evidence without a hearing.