



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
February 2, 2016	Please review before February 5 meeting
To	Deadline
ITAC's Rules and Policy Subcommittee and CSCAC's Unlimited Case and Complex Litigation Subcommittee	February 5, 2016
From	Contact
Tara Lundstrom, Attorney Legal Services	Tara Lundstrom 415-865-7650 phone tara.lundstrom@jud.ca.gov
Subject	
Phase II of the Rules Modernization Project: proposed rule amendments to titles 2 and 3	

Last week, a joint subcommittee meeting was held to discuss possible amendments to titles 2 and 3 of the California Rules of Court. As part of phase 2 of the Rules Modernization Project, the Information Technology Advisory Committee's Rules and Policy Subcommittee and the Civil and Small Claims Advisory Committee's Unlimited Case and Complex Litigation Subcommittee reviewed possible substantive changes to the rules that are intended to facilitate e-business, e-service, and e-filing.

The subcommittees will meet again on February 5, 2016, to continue their review of the proposed amendments. Several of the proposed amendments generated substantial discussion and were left for further consideration during the next meeting; others were not reviewed due to timing constraints. Staff have compiled materials for the February 5 meeting that contain additional analysis and discussion of those proposed amendments awaiting further review. The materials retain those amendments that the subcommittees agreed upon, as well as those that subcommittees have not yet had a chance to discuss. To facilitate the subcommittees' review of the materials, staff have highlighted in grey all proposed amendments intended for discussion

during the February 5 meeting (whether because they were set aside for further consideration or have not yet been discussed).

Subcommittees' Task

The subcommittees are tasked with reviewing the draft rule amendments and:

- Asking staff or group members for further information and analysis;
- Advising ITAC and CSCAC to recommend that all or part of the proposal be circulated for public comment during the spring rules cycle; or
- Rejecting the proposal.

Attachments

1. Revised draft amendments to titles 2 and 3 with explanatory drafter's notes
2. E-mail from Mr. Peter Glaessner

The California Rules of Court would be amended, effective January 1, 2017, to read as follows:

1 **Title 2. Trial Court Rules**

2
3 **Division 1. General Provisions**

4
5 * * *

6 **Chapter 2. Definitions and Scope of Rules**

7
8 **Rule 2.3. Definitions**

9
10 As used in the Trial Court Rules, unless the context or subject matter otherwise requires:

- 11
12 (1) “Court” means the superior court.
- 13
14 (2) “Papers” includes all documents, except exhibits and copies of exhibits, that are
15 offered for filing in any case, but does not include Judicial Council and local court
16 forms, records on appeal in limited civil cases, or briefs filed in appellate divisions.
17 Unless the context clearly provides otherwise, “papers” need not be in a tangible or
18 physical form but may be in an electronic form.
- 19
20 (3) “Written,” “writing,” “typewritten,” and “typewriting” include other methods of
21 printing letters and words equivalent in legibility to typewriting or printing from a
22 word processor.

23
24 **Division 2. Papers and Forms to Be Filed**

25
26 **Chapter 1. Papers**

27
28 **Rule 2.100. Form and format of papers presented for filing in the trial courts**

29
30 **(a) Preemption of local rules**

31
32 The Judicial Council has preempted local rules relating to the form and format of
33 papers to be filed in the trial courts. No trial court, or any division or branch of a
34 trial court, may enact or enforce any local rule concerning the form or format of
35 papers.

36
37 **(b) Rules prescribe form and format**

38
39 The rules in this chapter prescribe the form and format of papers to be filed in the
40 trial courts.

41

1 **(c) Electronic format of papers**

2
3 Papers that are submitted or filed electronically must meet the requirements in rule
4 2.256(b).

5
6 **Rule 2.102. One-sided paper**

7
8 When papers are not filed electronically, only one side of each page may be used.

9
10 **Rule 2.103. Size, quality, and color of papers**

11
12 All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on
13 opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound
14 weight.

15
16 **Rule 2.104. ~~Printing;~~ Font size; printing**

17
18 Unless otherwise specified in these rules, all papers filed must be prepared using a font
19 size not smaller than 12 points. All papers not filed electronically must be printed or
20 typewritten or be prepared by a photocopying or other duplication process that will
21 produce clear and permanent copies equally as legible as printing ~~in a font not smaller~~
22 ~~than 12 points.~~

23
24 **Rule 2.105. Font style**

25
26 The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

27
28 **Rule 2.106. Font color**

29
30 The font color must be black or blue-black.

31
32 **Rule 2.107. Margins**

33
34 The left margin of each page must be at least one inch from the left edge and the right
35 margin at least 1/2 inch from the right edge.

36
37 **Rule 2.108. Spacing and numbering of lines**

38
39 The spacing and numbering of lines on a page must be as follows:

- 40
41 (1) The lines on each page must be one and one-half spaced or double-spaced and
42 numbered consecutively.

- 1 (2) Descriptions of real property may be single-spaced.
2
3 (3) Footnotes, quotations, and printed forms of corporate surety bonds and
4 undertakings may be single-spaced and have unnumbered lines if they comply
5 generally with the space requirements of rule 2.111.
6
7 (4) Line numbers must be placed at the left margin and separated from the text by a
8 vertical column of space at least 1/5 inch wide or a single or double vertical line.
9 Each line number must be aligned with a line of type, or the line numbers must be
10 evenly spaced vertically on the page. Line numbers must be consecutively
11 numbered, beginning with the number 1 on each page. There must be at least three
12 line numbers for every vertical inch on the page.
13

14 **Rule 2.109. Page numbering**

15
16 Each page must be numbered consecutively at the bottom unless a rule provides
17 otherwise for a particular type of document. The page numbering for papers in electronic
18 form must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page
19 number need not appear on the first page.
20

21 ***DRAFTER'S NOTE:** See discussion for [rule 3.1113\(h\)](#).
22

23 **Rule 2.110. Footer**

24
25 (a) **Location**

26
27 Except for exhibits, each paper filed with the court must bear a footer in the bottom
28 margin of each page, placed below the page number and divided from the rest of
29 the document page by a printed line.
30

31 (b) **Contents**

32
33 The footer must contain the title of the paper (examples: "Complaint," "XYZ
34 Corp.'s Motion for Summary Judgment") or some clear and concise abbreviation.
35

36 (c) **Type Font size**

37
38 The title of the paper in the footer must be in at least 10-point type font.
39

40 **Rule 2.111. Format of first page**

41
42 The first page of each paper must be in the following form:
43

- 1 (1) In the space commencing 1 inch from the top of the page with line 1, to the left of
2 the center of the page, the name, office address or, if none, residence address or
3 mailing address (if different), telephone number, fax number and e-mail address (~~if~~
4 ~~available~~), and State Bar membership number of the attorney for the party in whose
5 behalf the paper is presented, or of the party if he or she is appearing in person. The
6 inclusion of a fax number or e-mail address on any document does not constitute
7 consent to service by fax or e-mail unless otherwise provided by law.
8
- 9 (2) In the first 2 inches of space between lines 1 and 7 to the right of the center of the
10 page, a blank space for the use of the clerk.
11
- 12 (3) On line 8, at or below 3 1/3 inches from the top of the page, the title of the court.
13
- 14 (4) Below the title of the court, in the space to the left of the center of the page, the title
15 of the case. In the title of the case on each initial complaint or cross-complaint, the
16 name of each party must commence on a separate line beginning at the left margin
17 of the page. On any subsequent pleading or paper, it is sufficient to provide a short
18 title of the case (1) stating the name of the first party on each side, with appropriate
19 indication of other parties, and (2) stating that a cross-action or cross-actions are
20 involved (e.g., “and Related Cross-action”), if applicable.
21
- 22 (5) To the right of and opposite the title, the number of the case.
23
- 24 (6) Below the number of the case, the nature of the paper and, on all complaints and
25 petitions, the character of the action or proceeding. In a case having multiple
26 parties, any answer, response, or opposition must specifically identify the
27 complaining, propounding, or moving party and the complaint, motion, or other
28 matter being answered or opposed.
29
- 30 (7) Below the nature of the paper or the character of the action or proceeding, the name
31 of the judge and department, if any, to which the case is assigned.
32
- 33 (8) Below the nature of the paper or the character of the action or proceeding, the word
34 “Referee:” followed by the name of the referee, on any paper filed in a case
35 pending before a referee appointed under Code of Civil Procedure section 638 or
36 639.
37
- 38 (9) On the complaint, petition, or application filed in a limited civil case, below the
39 character of the action or proceeding, the amount demanded in the complaint,
40 petition, or application, stated as follows: “Amount demanded exceeds \$10,000” or
41 “Amount demanded does not exceed \$10,000,” as required by Government Code
42 section 70613.
43

1 (10) In the caption of every pleading and every other paper filed in a limited civil case,
2 the words “Limited Civil Case,” as required by Code of Civil Procedure section
3 422.30(b).

4
5 (11) If a case is reclassified by an amended complaint, cross-complaint, amended cross-
6 complaint, or other pleading under Code of Civil Procedure section 403.020 or
7 403.030, the caption must indicate that the action or proceeding is reclassified by
8 this pleading. If a case is reclassified by stipulation under Code of Civil Procedure
9 section 403.050, the title of the stipulation must state that the action or proceeding
10 is reclassified by this stipulation. The caption or title must state that the case is a
11 limited civil case reclassified as an unlimited civil case, or an unlimited civil case
12 reclassified as a limited civil case, or other words to that effect.

13
14 **Rule 2.112. Separate causes of action, counts, and defenses**

15
16 Each separately stated cause of action, count, or defense must specifically state:

- 17
18 (1) Its number (e.g., “first cause of action”);
19
20 (2) Its nature (e.g., “for fraud”);
21
22 (3) The party asserting it if more than one party is represented on the pleading (e.g.,
23 “by plaintiff Jones”); and
24
25 (4) The party or parties to whom it is directed (e.g., “against defendant Smith”).
26

27 **Rule 2.113. Binding**

28
29 Each paper not filed electronically must consist entirely of original pages without riders
30 and must be firmly bound together at the top.

31
32 **Rule 2.114. Exhibits**

33
34 Exhibits submitted with papers not filed electronically may be fastened to pages of the
35 specified size and, when prepared by a machine copying process, must be equal to
36 computer-processed materials in legibility and permanency of image. Exhibits submitted
37 with papers filed electronically must meet the requirements in rule 2.256(b), except for
38 subdivision (b)(3).

39
40 **Rule 2.115. Hole punching**

1 When papers are not filed electronically, each paper presented for filing must contain two
2 prepunched normal-sized holes, centered 2 1/2 inches apart and 5/8 inch from the top of
3 the paper.

4
5 **Rule 2.116. Changes on face of paper**

6
7 Any addition, deletion, or interlineation to a paper must be initialed by the clerk or judge
8 at the time of filing.

9
10 **Rule 2.117. Conformed copies of papers**

11
12 All copies of papers served must conform to the original papers filed, including the
13 numbering of lines, pagination, additions, deletions, and interlineations except that, with
14 the agreement of the other party, a party serving papers by nonelectronic means may
15 serve that other party with papers printed on both sides of the page.

16
17 **Rule 2.118. Acceptance of papers for filing**

18
19 **(a) Papers not in compliance**

20
21 The clerk of the court must not accept for filing or file any papers that do not
22 comply with the rules in this chapter, except the clerk must not reject a paper for
23 filing solely on the ground that:

- 24
25 (1) It is handwritten or hand-printed; or
26
27 (2) The handwriting or hand printing on the paper is in a color other than
28 black or blue-black; or
29
30 (3) The font size is not exactly 12 points on papers submitted electronically
31 in portable document format (PDF). Minimal variation in font size may
32 result from converting a document created using word processing
33 software to PDF format.

34
35 ***DRAFTER'S NOTES:** See [discussion below for rule 2.256\(b\)](#).

36
37 **(b) Absence of fax number or e-mail address**

38
39 The clerk must not reject a paper for filing solely on the ground that it does not
40 contain an attorney's or a party's fax number or e-mail address on the first page.

41
42 **(c) Filing of papers for good cause**

1 For good cause shown, the court may permit the filing of papers that do not comply
2 with the rules in this chapter.

3
4 **Rule 2.119. Exceptions for forms**

5
6 Except as provided elsewhere in the California Rules of Court, the rules in this chapter do
7 not apply to Judicial Council forms, local court forms, or forms for juvenile dependency
8 proceedings produced by the California State Department of Social Services Child
9 Welfare Systems Case Management System.

10
11 **Chapter 2. General Rules on Forms**

12
13 **Rule 2.130. Application**

14
15 The rules in this chapter apply to Judicial Council forms, local court forms, and all other
16 official forms to be filed in the trial courts. The rules apply to forms filed both in paper
17 form and electronically, unless otherwise specified.

18
19 **Rule 2.132. True copy certified**

20
21 A party or attorney who files a form certifies by filing the form that it is a true copy of the
22 form.

23
24 **Rule 2.133. Hole punching**

25
26 All forms not filed electronically must contain two prepunched normal-sized holes,
27 centered 2½ inches apart and ⅝ inch from the top of the form.

28
29 **Rule 2.134. Forms longer than one page**

30
31 **(a) Single side may be used**

32
33 If a form not filed electronically is longer than one page, the form may be printed
34 on sheets printed only on one side even if the original has two sides to a sheet.

35
36 **(b) Two-sided forms must be tumbled**

37
38 If a form not filed electronically is filed on a sheet printed on two sides, the reverse
39 side must be rotated 180 degrees (printed head to foot).

40
41 **(c) Multiple-page forms must be bound**

1 If a form not filed electronically is longer than one page, it must be firmly bound at
2 the top.

3
4 **Rule 2.135. Filing of handwritten or hand-printed forms**

5
6 The clerk must not reject for filing or refuse to file any Judicial Council or local court
7 form solely on the ground that:

- 8
9 (1) It is completed in handwritten or hand-printed characters; or
10
11 (2) The handwriting or hand-printing is a color other than blue-black or black.
12

13 **Rule 2.140. Judicial Council forms**

14
15 Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1.
16 Electronic Judicial Council forms must meet the requirements in rule 2.256(b), except for
17 subdivision (b)(3).
18

19 **Chapter 3. Other Forms**
20

21 **Rule 2.150. Authorization for computer-generated or typewritten forms for proof**
22 **of service of summons and complaint**

23
24 **(a) Computer-generated or typewritten forms; conditions**
25

26 Notwithstanding the adoption of mandatory form *Proof of Service of Summons*
27 (form POS-010), a form for proof of service of a summons and complaint prepared
28 entirely by word processor, typewriter, or similar process may be used for proof of
29 service in any applicable action or proceeding if the following conditions are met:
30

- 31 (1) The form complies with the rules in chapter 1 of this division except as
32 otherwise provided in this rule, but numbered lines are not required
33
34 (2) The left, right, and bottom margins of the proof of service must be at least 1/2
35 inch. The top margin must be at least 3/4 of an inch. The typeface must be
36 Times New Roman, Courier, Arial, or an equivalent typeface not smaller than
37 9 points. Text must be single-spaced and a blank line must precede each main
38 numbered item.
39
40 (3) The title and all the text of form POS-010 that is not accompanied by a check
41 box must be copied word for word except for any instructions, which need
42 not be copied. In addition, the optional text describing the particular method
43 of service used must be copied word for word, except that the check boxes

1 must not be copied. Any optional text not describing such service need not be
2 included.

- 3
- 4 (4) The Judicial Council number of the *Proof of Service of Summons* must be
5 typed as follows either in the left margin of the first page opposite the last
6 line of text or at the bottom of each page: “Judicial Council form POS-010.”
7
- 8 (5) The text of form POS-010 must be copied in the same order as it appears on
9 form POS-010 using the same item numbers. A declaration of diligence may
10 be attached to the proof of service or inserted as item 5b(5).
11
- 12 (6) Areas marked “For Court Use” must be copied in the same general locations
13 and occupy approximately the same amount of space as on form POS-010.
14
- 15 (7) The telephone number of the attorney or party must appear flush with the left
16 margin and below the attorney’s or party’s address.
17
- 18 (8) The name of the court must be flush with the left margin. The address of the
19 court is not required.
20
- 21 (9) Material that would have been entered onto form POS-010 must be entered
22 with each line indented 3 inches from the left margin.
23

24 **(b) Compliance with rule**
25

26 The act of filing a computer-generated or typewritten form under this rule
27 constitutes a certification by the party or attorney filing the form that it complies
28 with this rule and is a true and correct copy of the form to the extent required by
29 this rule.
30

31 * * *
32

33 **Division 4. Court Records**
34

35 **Rule 2.251. Electronic service**
36

37 **(a) Authorization for electronic service**
38

39 When a document may be served by mail, express mail, overnight delivery, or fax
40 transmission, the document may be served electronically under Code of Civil
41 Procedure section 1010.6 and the rules in this chapter.
42

1 **(b) Electronic service by consent of the parties**
2

3 (1) Electronic service may be established by consent of the parties in an action. A
4 party indicates that the party agrees to accept electronic service by:

5
6 (A) Serving a notice on all parties that the party accepts electronic service
7 and filing the notice with the court. The notice must include the
8 electronic service address at which the party agrees to accept service; or

9
10 (B) Electronically filing any document with the court. The act of electronic
11 filing is evidence that the party agrees to accept service at the electronic
12 service address the party has furnished to the court under rule
13 2.256(a)(4). This subparagraph (B) does not apply to self-represented
14 parties; they must affirmatively consent to electronic service under
15 subparagraph (A).
16

17 (2) A party that has consented to electronic service under (1) and has used an
18 electronic filing service provider to serve and file documents in a case
19 consents to service on that electronic filing service provider as the designated
20 agent for service for the party in the case, until such time as the party
21 designates a different agent for service.
22

23 **(c) Electronic service required by local rule or court order**
24

25 (1) A court may require parties to serve documents electronically in specified
26 actions by local rule or court order, as provided in Code of Civil Procedure
27 section 1010.6 and the rules in this chapter.
28

29 (2) Except when personal service is otherwise required by statute or rule, a party
30 that is required to file documents electronically in an action must also serve
31 documents and accept service of documents electronically from all other
32 parties, unless:
33

34 (A) The court orders otherwise, or
35

36 (B) The action includes parties that are not required to file or serve
37 documents electronically, including self-represented parties; those
38 parties are to be served by non-electronic methods unless they
39 affirmatively consent to electronic service.
40

41 (3) Each party that is required to serve and accept service of documents
42 electronically must provide all other parties in the action with its electronic

1 service address and must promptly notify all other parties and the court of
2 any changes under (f).

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

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

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

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

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

20
21 **(f) Change of electronic service address**

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

27
28 (2) A party's election to contract with an electronic filing service provider to
29 electronically file and serve documents or to receive electronic service of
30 documents on the party's behalf does not relieve the party of its duties under
31 (1).

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

36
37 **(g) Reliability and integrity of documents served by electronic notification**

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

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

- 1 (2) Preserve the document served without any change, alteration, or modification
2 from the time the document is posted until the time the hyperlink is
3 terminated; and
4
5 (3) Maintain the hyperlink until either:
6
7 (A) All parties in the case have settled or the case has ended and the time
8 for appeals has expired; or
9
10 (B) If the party is no longer in the case, the party has provided notice to all
11 other parties that it is no longer in the case and that they have 60 days
12 to download any documents, and 60 days have passed after the notice
13 was given.
14

15 **(h) When service is complete**
16

- 17 (1) Electronic service of a document is complete at the time of the electronic
18 transmission of the document or at the time that the electronic notification of
19 service of the document is sent. If an electronic filing service provider is used
20 for service, the service is complete at the time that the electronic filing
21 service provider electronically transmits the document or sends electronic
22 notification of service.
23
24 (2) If a document is served electronically, any period of notice, or any right or
25 duty to act or respond within a specified period or on a date certain after
26 service of the document, is extended by two court days, unless otherwise
27 provided by a statute or a rule.
28
29 (3) The extension under (2) does not extend the time for filing:
30
31 (A) A notice of intent to move for a new trial;
32
33 (B) A notice of intent to move to vacate the judgment under Code of Civil
34 Procedure section 663a; or
35
36 (C) A notice of appeal.
37
38 (4) Service that occurs after the close of business is deemed to have occurred on
39 the next court day.
40
41
42

1 (i) **Proof of service**

2
3 (1) Proof of electronic service may be by any of the methods provided in Code of
4 Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

5
6 (A) The proof of electronic service does not need to state that the person
7 making the service is not a party to the case.

8
9 (B) The proof of electronic service must state:

10
11 (A~~1~~) The electronic service address of the person making the service,
12 in addition to that person's residence or business address;

13
14 (B~~2~~) The date ~~and time~~ of the electronic service, instead of the date
15 and place of deposit in the mail;

16
17 (C~~3~~) The name and electronic service address of the person served, in
18 place of that person's name and address as shown on the
19 envelope; and

20
21 (D~~4~~) That the document was served electronically, in place of the
22 statement that the envelope was sealed and deposited in the mail
23 with postage fully prepaid.

24
25 (2) Proof of electronic service may be in electronic form and may be filed
26 electronically with the court.

27
28 (3) Under rule 3.1300(c), proof of electronic service of the moving papers must
29 be filed at least five court days before the hearing.

30
31 (4) The party filing the proof of electronic service must maintain the printed
32 form of the document bearing the declarant's original signature and must
33 make the document available for inspection and copying on the request of the
34 court or any party to the action or proceeding in which it is filed, in the
35 manner provided in rule 2.257(a).

36
37 ***DRAFTER'S NOTE:** *During the last meeting, the subcommittee members did not assert*
38 *any concerns about proposed subdivision (i)(1)(A).¹ However, there was considerable*

¹ [Code of Civil Procedure section 1013a](#) requires that proof of service by mail be made by affidavit or certificate showing that the "the person making the service" is "not a party to the cause." However, [Code of Civil Procedure section 1010.6](#) allows for e-service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) ["Electronic service may be performed directly

1 *discussion on the current requirement that the proof of e-service state the time of e-*
2 *service (see subdivision (i)(1)(B)(2)).*

3
4 *Mr. Don Willenburg recommended eliminating the requirement that the proof of e-service*
5 *state the time of e-service. If the time of e-service were to become an issue—see, e.g.,*
6 *rule 2.251(h)(4) (“Service that occurs after the close of business is deemed to have*
7 *occurred on the next court day”)—there would be other evidence available to establish*
8 *the exact time of e-service. Otherwise, the current rule invites the person executing the*
9 *proof of e-service to perjure themselves because that person would not know exactly*
10 *when the document was e-served until after the fact.*

11
12 *Mr. Peter Glaessner recommended attaching a digital record of e-service received from*
13 *the Electronic Filing Service Provider (EFSP), in lieu of the proof of e-service provided in*
14 *the rule, to avoid disputes about when e-service occurred. In a subsequent e-mail to*
15 *staff, he withdrew this suggestion; however, he recommends adding a rule that would*
16 *require the e-filer to maintain the electronic confirmation sent by the court. (See attached*
17 *e-mail from Mr. Glaessner.)*

18
19 *Subsequent to the meeting, staff consulted with Jeff Karotin of One Legal, LLC, an*
20 *EFSP.² One Legal does not generate proofs of e-service. Instead, the person e-serving*
21 *the document creates the proof of e-service. The proof of e-service is usually part of the*
22 *document, not a separate document, and courts prefer this. Mr. Karotin noted that,*
23 *notwithstanding the rule, many proofs of e-service do not state the time of e-service for*
24 *the very reason identified by Mr. Willenburg: the person executing the proof of e-service*
25 *does not know exactly when the document will be served until after the fact and does not*
26 *wish to perjure themselves.*

27
28 *Mr. Karotin indicated that One Legal would not be opposed to generating the proof of e-*
29 *service if it were required by rule and if the proof of e-service confirmed only the*
30 *following information: (1) what electronic address the documents or notification*
31 *hyperlinks were sent to, (2) when they were sent, and (3) what the person submitting the*
32 *documents for e-service purported the documents to be. It would be too onerous for the*

by a party, by an agent of a party, including the party’s attorney, or through an electronic filing service provider,” underlining added].) In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to several exceptions. To implement section 1010.6(a)(1)(A), the proposed rule amendment would add another exception that would recognize that proof of electronic service need not state that the party making the service “is not a party to a cause.”

² *Staff attempted to contact other EFSPs, but due to the timing constraints were unable to reach others. Any EFSP wishing to be heard on this issue may submit written public comments in advance of the meeting.*

1 EFSP to verify the nature of the documents or whether the electronic address actually
2 belongs to a specific person.

3
4 Based on the input of the subcommittee members and Mr. Karotin, staff suggest
5 eliminating the requirement that the proof of e-service state the time of e-service. If any
6 questions arise regarding exactly when a document was e-served, other evidence would
7 be available to more precisely determine the time of e-service. At this time, staff would
8 suggest not amending the rules to require that the EFSP generate the proof of e-service.
9 Some parties may e-serve documents without using an EFSP, and the current rules
10 readily extend to both means of effecting e-service.

11
12 With respect to Mr. Glaessner's recommendation that the rules be amended to require
13 parties to retain the confirmation receipt from the court, staff would note the confirmation
14 receipt from the court is evidence of when the document was received by the court, not
15 when it is e-served. Although some EFSPs (like One Legal) simultaneously e-serve and
16 e-file documents, the time of e-service is not necessarily the same time that the
17 document is received by the court. It may be a best practice to maintain the confirmation
18 receipt sent from the court, as separate issues may arise regarding the effective date of
19 filing.³ However, staff do not suggest making this a requirement in the rules.

20
21 Similarly, it may be best practices to keep the confirmation receipt received from an
22 EFSP evidencing that a document has been e-served, e-filed, or both. However, staff
23 also do not suggest making this a requirement in the rules.

24
25 If for any reason the parties no longer have the confirmation receipt, information about
26 when the document was received by the court or other parties should be available from
27 the court or EFSP.

28
29 **(j) Electronic service by or on court**

- 30
31 (1) The court may electronically serve any notice, order, judgment, or other
32 document issued by the court in the same manner that parties may serve
33 documents by electronic service.
34

³ See, e.g., Cal. Rules of Court, rule 2.253(b)(7) ("Any document required to be electronically filed with the court under this subdivision that is received electronically after the close of business on any day is deemed to have been filed on the next court day, unless by local rule the court provides that any document required to be electronically filed with the court under this subdivision that is received electronically before midnight on a court day is deemed to have been filed on that court day, and any document received electronically after midnight is deemed filed on the next court day.").

1 (2) A document may be electronically served on a court if the court consents to
2 electronic service or electronic service is otherwise provided for by law or
3 court order. A court indicates that it agrees to accept electronic service by:
4

5 (A) Serving a notice on all parties that the court accepts electronic service.
6 The notice must include the electronic service address at which the
7 court agrees to accept service; or
8

9 (B) Adopting a local rule stating that the court accepts electronic service.
10 The rule must indicate where to obtain the electronic service address at
11 which the court agrees to accept service.
12

13 **Rule 2.252. General rules on electronic filing of documents**

14 (a) **In general**

15 A court may provide for electronic filing of documents in actions and proceedings
16 as provided under Code of Civil Procedure section 1010.6 and the rules in this
17 chapter.
18
19
20

21 (b) **Direct and indirect electronic filing**

22 Except as otherwise provided by law, a court may provide for the electronic filing
23 of documents directly with the court, indirectly through one or more approved
24 electronic filing service providers, or through a combination of direct and indirect
25 means.
26
27

28 (c) **Effect of document filed electronically**

29 (1) A document that the court or a party files electronically under the rules in this
30 chapter has the same legal effect as a document in paper form.
31
32

33 (2) Filing a document electronically does not alter any filing deadline.
34

35 (d) **Filing in paper form**

36 When it is not feasible for a party to convert a document to electronic form by
37 scanning, imaging, or another means, a court may allow that party to file the
38 document in paper form.
39
40

41 (e) **Original documents**

42

1 In a proceeding that requires the filing of an original document, an electronic filer
2 may file an electronic copy of a document if the original document is then filed
3 with the court within 10 calendar days.

4
5 **(f) Application for waiver of court fees and costs**

6
7 The court may permit electronic filing of an application for waiver of court fees and
8 costs in any proceeding in which the court accepts electronic filings.

9
10 **(g) Orders and judgments**

11
12 The court may electronically file any notice, order, minute order, judgment, or
13 other document prepared by the court.

14
15 **(h) Proposed orders**

16
17 Proposed orders may be filed and submitted electronically as provided in rule
18 3.1312.

19
20 **(i) Paper courtesy copies**

21
22 A court may provide by local rule that electronic filers are required to submit paper
23 courtesy copies of an electronically filed document if a hearing is scheduled to take
24 place within two court days after the document is transmitted to the court.

25
26 ****DRAFTER'S NOTE:*** *This recommendation generated substantial discussion during the*
27 *last meeting. Mr. Glaessner commented that judges currently vary significantly on*
28 *whether they require paper courtesy copies. He thought that this proposed amendment*
29 *would be very helpful for private practitioners so long as the requirement is established*
30 *by local rule such as it applies to all departments in a superior court. Judge Brodie*
31 *agreed and noted that his court's website does not have the capacity to post the varying*
32 *courtesy copy requirements of individual judges.*

33
34 *Judge Jones expressed concern that this rule might hinder efforts to move courts to a*
35 *paperless case environment. Those judges who do not want paper courtesy copies*
36 *might nonetheless receive them because of a local rule, resulting in unnecessary waste;*
37 *and those who still insist on paper would not be encouraged to embrace electronic court*
38 *records.*

39
40 *To address these concerns, the subcommittees recommended including this proposed*
41 *amendment and adding a specific request for comment on this issue in the Invitation to*
42 *Comment.*

1 * * *

2
3 **Rule 2.256. Responsibilities of electronic filer**

4
5 **(a) Conditions of filing**

6 Each electronic filer must:

- 7
8
9 (1) Comply with any court requirements designed to ensure the integrity of
10 electronic filing and to protect sensitive personal information;
11
12 (2) Furnish information the court requires for case processing;
13
14 (3) Take all reasonable steps to ensure that the filing does not contain computer
15 code, including viruses, that might be harmful to the court's electronic filing
16 system and to other users of that system;
17
18 (4) Furnish one or more electronic service addresses, in the manner specified by
19 the court, at which the electronic filer agrees to accept service;
20
21 (5) Immediately provide the court and all parties with any change to the
22 electronic filer's electronic service address; and
23
24 (6) If the electronic filer uses an electronic filing service provider, provide the
25 electronic filing service provider with the electronic address at which the filer
26 is to be sent all documents and immediately notify the electronic filing
27 service provider of any change in that address.
28

29 **(b) Format of documents to be filed electronically**

30
31 A document that is filed electronically with the court must be in a format specified
32 by the court unless it cannot be created in that format. The format adopted by a
33 court must meet the following requirements:

- 34
35 (1) The software for creating and reading documents must be in the public
36 domain or generally available at a reasonable cost.
37
38 (2) The printing of documents must not result in the loss of document text,
39 format, or appearance.
40
41 (3) The document must be text searchable, unless it is an exhibit or Judicial
42 Council form.
43

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

5 ***DRAFTER'S NOTE:** *The proposal to require that electronic documents other than*
6 *exhibits and Judicial Council forms—namely, “papers”—be text searchable. Mr. Snorri*
7 *Ogata, the Chief Information Officer of the Superior Court of Los Angeles County, has*
8 *recommended this requirement be added to the rules because it would save the court*
9 *the cost of purchasing Optical Recognition (“OCR”) software and would avoid additional*
10 *delay in the time that documents are made available to judges after they are e-filed. The*
11 *e-filing requirements for the Superior Court of San Diego County provide that all e-filed*
12 *documents must be “in a text-searchable format, i.e., OCR.” (See, e.g., [Super. Ct. San](#)*
13 *[Diego County, Electronic Filing Requirements of the San Diego Superior Court – Civil](#)*
14 *[Division \(rev. Aug. 28, 2014\), p. 4.](#))*

15
16 *Although electronic “papers” are created using word processing software that may be*
17 *readily converted to text-searchable PDF, Mr. Bob Olson explained during the last*
18 *meeting that private practitioners currently print out and scan documents before e-filing*
19 *them for two reasons: (1) the font size changes slightly when a Word document is*
20 *converted to a PDF; and (2) sensitive metadata remains associated with the PDF after*
21 *conversion. Although scanned documents can be made text searchable using OCR*
22 *software, the resulting file is large and searchability may be imprecise depending on the*
23 *quality of the OCR process (e.g., the number “1” could be read as a “7” by the OCR*
24 *software).*

25
26 *During the last meeting, this proposed amendment generated substantial discussion.*
27 ***The subcommittee decided to recommend (1) that this rule amendment be***
28 ***circulated for public comment; (2) that an Advisory Committee Comment be added***
29 ***to clarify that the font size may vary slightly from the required 12 points if that***
30 ***variation is caused by the conversion process; and (3) that a specific request for***
31 ***comment on the metadata issue be added to the ITC. Since the meeting, staff***
32 ***researched the concerns raised by Mr. Olson.***

33
34 *Font size: [Adobe recognizes](#) that the font size may be slightly reduced or enlarged when*
35 *an Office document (e.g., Word, Excel, or Power Point) is converted to a PDF; for*
36 *example, an 11-point font may appear as a 10.98 or 11.04 points after conversion.*
37 *According to Judicial Council IT staff, it is possible to retain the same font size after*
38 *conversion by embedding the font in the PDF file; however, the process for doing this is*
39 *not straightforward.*

40
41 *Upon further reflection, staff suggests amending [rule 2.118\(a\) \(see above\)](#), in lieu of*
42 ***an Advisory Committee Comment.*** *Rule 2.118 states the conditions under which a*
43 *clerk may not reject a paper for filing. A new subdivision (a)(3) has been added to this*

1 proposal for the subcommittees' review: it provides that the clerk may not reject papers
2 for filing solely because "[t]he font size is not exactly 12 points on papers submitted
3 electronically in portable document format (PDF). Minimal variation in point size may
4 result from converting a document created using word processing software to PDF
5 format."

6
7 Metadata: Judicial Council IT staff confirmed that the metadata created by the word
8 processing software remains associated with the PDF after conversion. This metadata
9 may be quite sensitive as it includes previous track changes. Metadata may be scrubbed
10 by using Adobe Acrobat for a fee. Staff has not had time to research the availability of
11 any open source software solutions.

12
13 Staff also consulted on this issue with Mr. Karotkin of One Legal. One Legal
14 automatically scrubs metadata from all documents before they are e-served and e-filed;
15 there is no extra charge for this service. One Legal prefers that documents are
16 converted from word processing format to PDF, not scanned. Because scanned
17 documents have a large file size, it is costly for the EFSPs and the courts to maintain
18 them. Applying OCR to the scanned document to make it text searchable is both a costly
19 and time-consuming process for the courts and EFSPs and is imprecise.

20
21 Staff is presenting the above information about metadata for the subcommittees' review,
22 but does not suggest changing the subcommittees' recommendation that the proposed
23 amendment be included in the proposal with a specific request for comment on this
24 issue in the ITC.

25
26 Lastly, during the meeting, the subcommittees did not discuss whether to include **any**
27 **additional electronic formatting requirements** in the rules at this time; they may want
28 to consider this option further at the February 5 meeting. For example, some courts
29 require that all e-filed documents must be in PDF. ([Super. Ct. San Diego County,](#)
30 [Electronic Filing Requirements of the San Diego Superior Court – Probate Division \(rev.](#)
31 [Oct. 9, 2013\), p. 1](#); [Super. Ct Riverside County, e-Fax System Users Guide \(rev. Sept. 4,](#)
32 [2012\), p. 1](#).) The Superior Court of Orange County accepts documents in both PDF and
33 word processing format. ([Super. Ct. Orange County, E-Filing FAQs, supra](#) ["Documents
34 can be uploaded for eFiling as a PDF file or in a word processing format (e.g., Word,
35 WordPerfect, and several others . . .) that will be converted to a PDF file".])

36 37 Chapter 3. Sealed Records

38
39 **Rule 2.550. Sealed records * * ***

40
41 **Rule 2.551. Procedures for filing records under seal**

1 **(a) Court approval required**

2
3 A record must not be filed under seal without a court order. The court must not
4 permit a record to be filed under seal based solely on the agreement or stipulation
5 of the parties.
6

7 **(b) Motion or application to seal a record**

8
9 (1) *Motion or application required*

10
11 A party requesting that a record be filed under seal must file a motion or an
12 application for an order sealing the record. The motion or application must be
13 accompanied by a memorandum and a declaration containing facts sufficient
14 to justify the sealing.
15

16 (2) *Service of motion or application*

17
18 A copy of the motion or application must be served on all parties that have
19 appeared in the case. Unless the court orders otherwise, any party that already
20 has access to the records to be placed under seal must be served with a
21 complete, unredacted version of all papers as well as a redacted version.
22 Other parties must be served with only the public redacted version. If a
23 party's attorney but not the party has access to the record, only the party's
24 attorney may be served with the complete, unredacted version.
25

26 (3) *Procedure for party not intending to file motion or application*

27
28 (A) A party that files or intends to file with the court, for the purposes of
29 adjudication or to use at trial, records produced in discovery that are
30 subject to a confidentiality agreement or protective order, and does not
31 intend to request to have the records sealed, must:
32

33 (i) Lodge the unredacted records subject to the confidentiality
34 agreement or protective order and any pleadings, memorandums,
35 declarations, and other documents that disclose the contents of
36 the records, in the manner stated in (d);
37

38 (ii) File copies of the documents in (i) that are redacted so that they
39 do not disclose the contents of the records that are subject to the
40 confidentiality agreement or protective order; and
41

42 (iii) Give written notice to the party that produced the records that the
43 records and the other documents lodged under (i) will be placed

1 in the public court file unless that party files a timely motion or
2 application to seal the records under this rule.

3
4 (B) If the party that produced the documents and was served with the notice
5 under (A)(iii) fails to file a motion or an application to seal the records
6 within 10 days or to obtain a court order extending the time to file such
7 a motion or an application, the clerk must promptly ~~remove~~ transfer all
8 the documents in (A)(i) from the envelope, container, or secure
9 electronic file ~~where they are located and place them in~~ to the public
10 file. If the party files a motion or an application to seal within 10 days
11 or such later time as the court has ordered, these documents are to
12 remain conditionally under seal until the court rules on the motion or
13 application and thereafter are to be filed as ordered by the court.

14
15 (4) *Lodging of record pending determination of motion or application*

16
17 The party requesting that a record be filed under seal must lodge it with the
18 court under (d) when the motion or application is made, unless good cause
19 exists for not lodging it or the record has previously been lodged under
20 (3)(A)(i). Pending the determination of the motion or application, the lodged
21 record will be conditionally under seal.

22
23 (5) *Redacted and unredacted versions*

24
25 If necessary to prevent disclosure, any motion or application, any opposition,
26 and any supporting documents must be filed in a public redacted version and
27 lodged in a complete, unredacted version conditionally under seal. The cover
28 of the redacted version must identify it as “Public—Redacts materials from
29 conditionally sealed record.” The cover of the unredacted version must
30 identify it as “May Not Be Examined Without Court Order—Contains
31 material from conditionally sealed record.”

32
33 (6) *Return of lodged record*

34
35 If the court denies the motion or application to seal, the clerk must either (i)
36 return the lodged record if in paper form to the submitting party and or (ii)
37 permanently delete the lodged record if in electronic form and send notice of
38 the deletion to the submitting party. The clerk must not place ~~it~~ the lodged
39 record in the case file unless that party notifies the clerk in writing that the
40 record is to be filed. Unless otherwise ordered by the court, the submitting
41 party must notify the clerk within 10 days after the order denying the motion
42 or application.

43

1 (c) **References to nonpublic material in public records**

2
3 A record filed publicly in the court must not disclose material contained in a record
4 that is sealed, conditionally under seal, or subject to a pending motion or an
5 application to seal.
6

7 (d) **Procedure for lodging of records**

8
9 (1) A record that may be filed under seal must be transmitted to the court in a
10 secure manner that preserves the confidentiality of the records to be lodged.
11 If the record is transmitted in paper form, it must be put in an envelope or
12 other appropriate container, sealed in the envelope or container, and lodged
13 with the court.
14

15 (2) The materials to be lodged under seal must be clearly identified as
16 “CONDITIONALLY UNDER SEAL.” If the materials are transmitted in
17 paper form, the envelope or container lodged with the court must be labeled
18 “CONDITIONALLY UNDER SEAL.”
19

20 (3) The party submitting the lodged record must affix to the electronic
21 transmission, the envelope, or the container a cover sheet that:
22

23 (A) Contains all the information required on a caption page under rule
24 2.111; and
25

26 (B) States that the enclosed record is subject to a motion or an application
27 to file the record under seal.
28

29 (4) On receipt of a record lodged under this rule, the clerk must endorse the
30 affixed cover sheet with the date of its receipt and must retain but not file the
31 record unless the court orders it filed.
32

33 (e) **Order**

34
35 (1) If the court grants an order sealing a record and if the sealed record is in
36 paper format, the clerk must substitute on the envelope or container for the
37 label required by (d)(2) a label prominently stating “SEALED BY ORDER
38 OF THE COURT ON (DATE),” and must replace the cover sheet required by
39 (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is
40 in an electronic format, the clerk must file the court’s order, ~~store~~ maintain
41 the record ordered sealed in a secure manner, and clearly identify the record
42 as sealed by court order on a specified date.
43

- 1 (2) The order must state whether—in addition to the sealed records the order
2 itself, the register of actions, any other court records, or any other records
3 relating to the case are to be sealed.
4
- 5 (3) The order must state whether any person other than the court is authorized to
6 inspect the sealed record.
7
- 8 (4) Unless the sealing order provides otherwise, it prohibits the parties from
9 disclosing the contents of any materials that have been sealed in anything that
10 is subsequently publicly filed.
11

12 **(f) Custody of sealed records**

13 Sealed records must be securely filed and kept separate from the public file in the
14 case. If the sealed records are in electronic form, appropriate access controls must
15 be established to ensure that only authorized persons may access the sealed records.
16

17

18 **(g) Custody of voluminous records**

19

20 If the records to be placed under seal are voluminous and are in the possession of a
21 public agency, the court may by written order direct the agency instead of the clerk
22 to maintain custody of the original records in a secure fashion. If the records are
23 requested by a reviewing court, the trial court must order the public agency to
24 deliver the records to the clerk for transmission to the reviewing court under these
25 rules.
26

27 **(h) Motion, application, or petition to unseal records**

- 28
- 29 (1) A sealed record must not be unsealed except on order of the court.
30
- 31 (2) A party or member of the public may move, apply, or petition, or the court on
32 its own motion may move, to unseal a record. Notice of any motion,
33 application, or petition to unseal must be filed and served on all parties in the
34 case. The motion, application, or petition and any opposition, reply, and
35 supporting documents must be filed in a public redacted version and a sealed
36 complete version if necessary to comply with (c).
37
- 38 (3) If the court proposes to order a record unsealed on its own motion, the court
39 must give notice to the parties stating the reason for unsealing the record.
40 Unless otherwise ordered by the court, any party may serve and file an
41 opposition within 10 days after the notice is provided and any other party
42 may file a response within 5 days after the filing of an opposition.
43

- 1 (4) In determining whether to unseal a record, the court must consider the
2 matters addressed in rule 2.550(c)-(e).
3
- 4 (5) The order unsealing a record must state whether the record is unsealed
5 entirely or in part. If the court's order unseals only part of the record or
6 unseals the record only as to certain persons, the order must specify the
7 particular records that are unsealed, the particular persons who may have
8 access to the record, or both. If, in addition to the records in the envelope,
9 container, or secure electronic file, the court has previously ordered the
10 sealing order, the register of actions, or any other court records relating to the
11 case to be sealed, the unsealing order must state whether these additional
12 records are unsealed.

13
14 * * *

15
16 **Chapter 5. Name Change Proceedings Under Address Confidentiality Program**

17
18 **Rule 2.575. Confidential information in name change proceedings under address**
19 **confidentiality program * * ***

20
21 **Rule 2.576. Access to name of the petitioner * * ***

22
23 **Rule 2.577. Procedures for filing confidential name change records under seal**

24
25 **(a) Court approval required**

26
27 Records in a name change proceeding may not be filed under seal without a court
28 order. A request by a confidential name change petitioner to file records under seal
29 may be made under the procedures in this chapter. A request by any other petitioner
30 to file records under seal must be made under rules 2.550-2.573.

31
32 **(b) Application to file records in confidential name change proceedings under seal**

33
34 An application by a confidential name change petitioner to file records under seal
35 must be filed at the time the petition for name change is submitted to the court. The
36 application must be made on the *Application to File Documents Under Seal in*
37 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
38 *Home)* (form NC-410) and be accompanied by a *Declaration in Support of*
39 *Application to File Documents Under Seal in Name Change Proceeding Under*
40 *Address Confidentiality Program (Safe at Home)* (form NC-420), containing facts
41 sufficient to justify the sealing.
42

1 (c) **Confidentiality**

2
3 The application to file under seal must be kept confidential by the court until the
4 court rules on it.
5

6 (d) **Procedure for lodging of petition for name change**

- 7
8 (1) The records that may be filed under seal must be lodged with the court. If
9 they are transmitted on paper, they must be placed in a sealed envelope. If
10 they are transmitted electronically, they must be transmitted to the court in a
11 secure manner that preserves the confidentiality of the documents to be
12 lodged.
13
14 (2) If the petitioner is transmitting the petition on paper, the petitioner must
15 complete and affix to the envelope a completed *Confidential Cover Sheet—*
16 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
17 *Home)* (form NC-400) and in the space under the title and case number mark
18 it “CONDITIONALLY UNDER SEAL.” If the petitioner is transmitting the
19 petition electronically, the first page of the electronic transmission must be a
20 completed *Confidential Cover Sheet—Name Change Proceeding Under*
21 *Address Confidentiality Program (Safe at Home)* (form NC-400) with the
22 space under the title and case number marked “CONDITIONALLY UNDER
23 SEAL.”
24
25 (3) On receipt of a petition lodged under this rule, the clerk must endorse the
26 cover sheet with the date of its receipt and must retain but not file the record
27 unless the court orders it filed.
28
29 (4) If the court denies the application to seal, the clerk must either (i) return the
30 lodged record if in paper form to the petitioner or (ii) permanently delete the
31 lodged record if in electronic form and send notice of the deletion to the
32 petitioner. The clerk and must not place ~~it~~ the lodged record in the case file
33 unless the petitioner notifies the clerk in writing within 10 days after the
34 order denying the application that the unsealed petition and related papers are
35 to be filed.
36

37 (e) **Consideration of application to file under seal**

38
39 The court may order that the record be filed under seal if it finds that all of the
40 following factors apply:
41

- 42 (1) There exists an overriding interest that overcomes the right of public access
43 to the record;

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- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed order to seal the record is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(f) Order

- (1) The order may be issued on *Order on Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-425).
- (2) Any order granting the application to seal must state whether the declaration in support of the application, the order itself, and any other record in the proceeding are to be sealed as well as the petition for name change.
- (3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY UNDER SEAL,” add a notation to that sheet prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and file the documents under seal. For petitions transmitted electronically, the clerk must file the court’s order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.
- (4) If the court grants the application to file under seal and issues an order under (e), the petition and any associated records may be filed under seal and ruled on by the court immediately.
- (5) The order must identify any person other than the court who is authorized to inspect the sealed records.

1 **(g) Custody of sealed records**

2
3 Sealed records must be securely filed and kept separate from the public file in the
4 case. If the sealed records are in electronic form, appropriate access controls must
5 be established to ensure that only authorized persons may access the sealed records.

6
7 **(h) Motion, application, or petition to unseal record**

- 8
9 (1) A sealed record may not be unsealed except by order of the court.
10
11 (2) Any member of the public seeking to unseal a record or a court proposing to
12 do so on its own motion must follow the procedures described in rule
13 2.551(h).
14

15 **DRAFTER'S NOTE: During the last meeting, Judge Lucky recommended adding cross*
16 *references to rule 2.551 (general procedures for filing records under seal) in rule 2.577*
17 *(procedures for filing confidential name change records under seal). The procedures*
18 *stated in rule 2.577 parallel those in rule 2.577, and adding the cross-references would*
19 *ensure that any additional amendments to these rules are easy to implement.*

20
21 *Subsequent to the meeting, staff explored this option. Although the rules parallel each*
22 *other, there are numerous minor differences in language and layout; adding the cross-*
23 *references does not appear to be a straightforward endeavor. Due to timing constraints,*
24 *staff did not have time to draft new language for rules 2.551 and 2.577 that would allow*
25 *for cross-references. If desired by the subcommittees, this could be added to rule*
26 *amendments considered next year.*

27
28
29 **Title 3. Civil Rules * * ***

30
31 **Division 3. Filing and Service * * ***

32
33 **Chapter 4. Miscellaneous**

34
35 **Rule 3.250. Limitations on the filing of papers**

36
37 **(a) Papers not to be filed**

38
39 The following papers, whether offered separately or as attachments to other
40 documents, may not be filed unless they are offered as relevant to the determination
41 of an issue in a law and motion proceeding or other hearing or are ordered filed for
42 good cause:
43

- 1 (1) Subpoena;
- 2
- 3 (2) Subpoena duces tecum;
- 4
- 5 (3) Deposition notice, and response;
- 6
- 7 (4) Notice to consumer or employee, and objection;
- 8
- 9 (5) Notice of intention to record testimony by audio or video tape;
- 10
- 11 (6) Notice of intention to take an oral deposition by telephone, videoconference,
- 12 or other remote electronic means;
- 13
- 14 (7) Agreement to set or extend time for deposition, agreement to extend time for
- 15 response to discovery requests, and notice of these agreements;
- 16
- 17 (8) Interrogatories, and responses or objections to interrogatories;
- 18
- 19 (9) Demand for production or inspection of documents, things, and places, and
- 20 responses or objections to demand;
- 21
- 22 (10) Request for admissions, and responses or objections to request;
- 23
- 24 (11) Agreement for physical and mental examinations;
- 25
- 26 (12) Demand for delivery of medical reports, and response;
- 27
- 28 (13) Demand for exchange of expert witnesses;
- 29
- 30 (14) Demand for production of discoverable reports and writings of expert
- 31 witnesses;
- 32
- 33 (15) List of expert witnesses whose opinion a party intends to offer in evidence at
- 34 trial and declaration;
- 35
- 36 (16) Statement that a party does not presently intend to offer the testimony of any
- 37 expert witness;
- 38
- 39 (17) Declaration for additional discovery;
- 40
- 41 (18) Stipulation to enlarge the scope of number of discovery requests from that
- 42 specified by statute, and notice of the stipulation;
- 43

- 1 (19) Demand for bill of particulars or an accounting, and response;
2
3 (20) Request for statement of damages, and response, unless it is accompanied by
4 a request to enter default and is the notice of special and general damages;
5
6 (21) Notice of deposit of jury fees;
7
8 (22) Notice to produce party, agent, or tangible things before a court, and
9 response; and
10
11 (23) Offer to compromise, unless accompanied by an original proof of acceptance
12 and a written judgment for the court's signature and entry of judgment.
13

14 **(b) Retaining originals of papers not filed**

- 15
16 (1) Unless the paper served is a response, the party who serves a paper listed in
17 (a) must retain the original with the original proof of service affixed. If
18 served electronically under rule 2.251, the proof of electronic service must
19 meet the requirements in rule 2.251(i).
20
21 (2) The original of a response must be served, and it must be retained by the
22 person upon whom it is served.
23
24 (3) An original must be retained under (1) or (2) in the paper or electronic form
25 in which it was created or received.
26
27
28 (4) All original papers must be retained until six months after final disposition of
29 the case, unless the court on motion of any party and for good cause shown
30 orders the original papers preserved for a longer period.
31

32 **(c) Papers defined**

33
34 As used in this rule, papers include printed forms furnished by the clerk, but do not
35 include notices filed and served by the clerk.
36

37 **Division 7. Civil Case Management * * ***

38
39 **Chapter 5. Management of Complex Cases**

40
41 **Rule 3.750. Initial case management conference * * ***
42

1 **Rule 3.751. Electronic service**

2
3 Parties may consent to electronic service, or the court may require electronic
4 service by local rule or court order, under rule 2.251. The court may provide in a
5 case management order that documents filed electronically in a central electronic
6 depository available to all parties are deemed served on all parties.

7
8 **Division 8. Alternative Dispute Resolution* * ***

9
10 **Chapter 2. Judicial Arbitration * * ***

11
12 **Rule 3.823. Rules of evidence at arbitration hearing**

13
14 **(a) Presence of arbitrator and parties**

15
16 All evidence must be taken in the presence of the arbitrator and all parties, except
17 where any of the parties has waived the right to be present or is absent after due
18 notice of the hearing.

19
20 **(b) Application of civil rules of evidence**

21
22 The rules of evidence governing civil cases apply to the conduct of the arbitration
23 hearing, except:

24
25 **(1) *Written reports and other documents***

26
27 Any party may offer written reports of any expert witness, medical records
28 and bills (including physiotherapy, nursing, and prescription bills),
29 documentary evidence of loss of income, property damage repair bills or
30 estimates, police reports concerning an accident that gave rise to the case,
31 other bills and invoices, purchase orders, checks, written contracts, and
32 similar documents prepared and maintained in the ordinary course of
33 business.

- 34
35 **(A)** The arbitrator must receive them in evidence if copies have been
36 delivered to all opposing parties at least 20 days before the hearing.
37
38 **(B)** Any other party may subpoena the author or custodian of the document
39 as a witness and examine the witness as if under cross-examination.
40
41 **(C)** Any repair estimate offered as an exhibit, and the copies delivered to
42 opposing parties, must be accompanied by:
43

- 1 (i) A statement indicating whether or not the property was repaired,
2 and, if it was, whether the estimated repairs were made in full or
3 in part; and
4
5 (ii) A copy of the receipted bill showing the items of repair made and
6 the amount paid.
7
8 (D) The arbitrator must not consider any opinion as to ultimate fault
9 expressed in a police report.

10
11 (2) *Witness statements*

12
13 The written statements of any other witness may be offered and must be
14 received in evidence if:

- 15
16 (A) They are made by declaration under penalty of perjury;
17
18 (B) Copies have been delivered to all opposing parties at least 20 days
19 before the hearing; and
20
21 (C) No opposing party has, at least 10 days before the hearing, delivered to
22 the proponent of the evidence a written demand that the witness be
23 produced in person to testify at the hearing. The arbitrator must
24 disregard any portion of a statement received under this rule that would
25 be inadmissible if the witness were testifying in person, but the
26 inclusion of inadmissible matter does not render the entire statement
27 inadmissible.
28

29 (3) *Depositions*

- 30
31 (A) The deposition of any witness may be offered by any party and must be
32 received in evidence, subject to objections available under Code of
33 Civil Procedure section 2025.410, notwithstanding that the deponent is
34 not “unavailable as a witness” within the meaning of Evidence Code
35 section 240 and no exceptional circumstances exist, if:
36
37 (i) The deposition was taken in the manner provided for by law or
38 by stipulation of the parties and within the time provided for in
39 these rules; and
40
41 (ii) Not less than 20 days before the hearing the proponent of the
42 deposition delivered to all opposing parties notice of intention to
43 offer the deposition in evidence.

1
2 (B) The opposing party, upon receiving the notice, may subpoena the
3 deponent and, at the discretion of the arbitrator, either the deposition
4 may be excluded from evidence or the deposition may be admitted and
5 the deponent may be further cross-examined by the subpoenaing party.
6 These limitations are not applicable to a deposition admissible under
7 the terms of Code of Civil Procedure section 2025.620.
8

9 **(c) Subpoenas**

10
11 (1) *Compelling witnesses to appear*
12

13 The attendance of witnesses at arbitration hearings may be compelled
14 through the issuance of subpoenas as provided in the Code of Civil
15 Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It
16 is the duty of the party requesting the subpoena to modify the form of
17 subpoena so as to show that the appearance is before an arbitrator and to give
18 the time and place set for the arbitration hearing.
19

20 (2) *Adjournment or continuances*
21

22 At the discretion of the arbitrator, nonappearance of a properly subpoenaed
23 witness may be a ground for an adjournment or continuance of the hearing.
24

25 (3) *Contempt*
26

27 If any witness properly served with a subpoena fails to appear at the
28 arbitration hearing or, having appeared, refuses to be sworn or to answer,
29 proceedings to compel compliance with the subpoena on penalty of contempt
30 may be had before the superior court as provided in Code of Civil Procedure
31 section 1991 for other instances of refusal to appear and answer before an
32 officer or commissioner out of court.
33

34 **(d) Delivery of documents**
35

36 For purposes of this rule, “delivery” of a document or notice may be accomplished
37 manually, by electronic means under Code of Civil Procedure section 1010.6 and
38 rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section
39 1013. If service is by electronic means, the times prescribed in this rule for delivery
40 of documents, notices, and demands are increased as provided by Code of Civil
41 Procedure section 1010.6. by two days. If service is in the manner provided by mail
42 Code of Civil Procedure section 1013, the times prescribed in this rule are
43 increased as provided by five days that section.

1
2 **Division 11. Law and Motion* * ***

3
4 **Chapter 2. Format of Motion Papers**

5
6 **Rule 3.1110. General format**

7
8 **(a) Notice of motion**

9
10 A notice of motion must state in the opening paragraph the nature of the order
11 being sought and the grounds for issuance of the order.

12
13 **(b) Date of hearing and other information**

14
15 The first page of each paper must specify immediately below the number of the
16 case:

- 17
18 (1) The date, time, and location, if ascertainable, of any scheduled hearing and
19 the name of the hearing judge, if ascertainable;
20
21 (2) The nature or title of any attached document other than an exhibit;
22
23 (3) The date of filing of the action; and
24
25 (4) The trial date, if set.

26
27 **(c) Pagination of documents**

28
29 Documents bound together must be consecutively paginated. If the document is
30 filed electronically, the page numbering must begin with the first page and use
31 only Arabic numerals (e.g., 1, 2, 3). The page number need not appear on the first
32 page.

33
34 ***DRAFTER'S NOTE:** See discussion for [rule 3.1113\(h\)](#).

35
36 **(d) Reference to previously filed papers**

37
38 Any paper previously filed must be referred to by date of execution and title.

39
40 **(e) Binding**

41

1 For motions filed on paper, all pages of each document and exhibit must be
2 attached together at the top by a method that permits pages to be easily turned and
3 the entire content of each page to be read.
4

5 **(f) Format of exhibits**
6

7 (1) An index of exhibits must be provided. The index must briefly describe the
8 exhibit and identify the exhibit number or letter and page number.
9

10 (2) Pages from a single deposition must be designated as a single exhibit.
11

12 (3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard
13 paper or plastic tabs extending below the bottom of the page, bearing the
14 exhibit designation. An index to exhibits must be provided. Pages from a
15 single deposition and associated exhibits must be designated as a single
16 exhibit.
17

18 (4) Electronic exhibits must meet the requirements in rule 2.256(b), except for
19 subdivision (b)(3). Unless they are submitted by a self-represented party,
20 electronic exhibits must include electronic bookmarks with links to the first
21 page of each exhibit and with bookmark titles that identify the exhibit
22 number or letter and briefly describe the exhibit.
23

24 **Advisory Committee Comment**
25

26 **Subdivision (f)(4).** Under current technology, software programs that allow users to apply
27 electronic bookmarks to electronic documents are available for free.
28

29 ****DRAFTER'S NOTE:*** Several courts require that exhibits have electronic bookmarks.
30 The e-filing requirements for the Superior Court of San Diego County provide that e-filed
31 motions containing exhibits must be bookmarked. ([Super. Ct. San Diego County,](#)
32 [Electronic Filing Requirements of the San Diego Superior Court – Civil Division \(rev.](#)
33 [Aug. 28, 2014\), p. 4.](#)) The court cites to current rule 3.1110(f)'s tabbing requirement as
34 support for this requirement.
35

36 Last year during phase 1 of the Rules Modernization Project, CSCAC and the
37 Information Technology Advisory Committee decided to table a proposed amendment
38 that would have limited the tabbing requirement in rule 3.1110(f) to exhibits in paper
39 form. The advisory committees decided not to pursue the amendment in deference to
40 the Superior Court of San Diego County, which requested that the rule remain
41 untouched until the advisory committees were ready to consider electronic formatting
42 requirements for exhibits.
43

1 The Superior Court of Orange County also requires electronic bookmarking. (See, e.g.,
2 [Super. Ct. Orange County, E-Filing FAQs, supra](#) ["All electronically filed law and motion
3 documents must have exhibits tabbed"].) As the court explains, "[b]ookmarking of
4 documents is extremely important as it aids legal research attorneys and judicial officers
5 in their review of documents submitted electronically." (Ibid.) In addition, Mr. Ogata has
6 indicated that the Superior Court of Los Angeles County would be interested in requiring
7 electronic bookmarks.

8
9 Staff suggest amending the rule to provide that any e-filer who is not a self-represented
10 litigant must add electronic bookmarks to exhibits. The electronic bookmark feature is
11 available with Adobe Acrobat DC, which costs \$25 per month to access or \$449 to
12 download the software. Electronic bookmarks may also be added to PDFs using free
13 open source software, such as [SkySof's PDF Bookmarks](#) and [JPdf Bookmarks](#).

14
15 **(g) Translation of exhibits**

16
17 Exhibits written in a foreign language must be accompanied by an English
18 translation, certified under oath by a qualified interpreter.

19 * * *

20
21 **Rule 3.1113. Memorandum**

22
23 **(a) Memorandum in support of motion**

24
25 A party filing a motion, except for a motion listed in rule 3.1114, must serve and file a
26 supporting memorandum. The court may construe the absence of a memorandum as an
27 admission that the motion or special demurrer is not meritorious and cause for its denial
28 and, in the case of a demurrer, as a waiver of all grounds not supported.

29
30 **(b) Contents of memorandum**

31
32 The memorandum must contain a statement of facts, a concise statement of the law,
33 evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks
34 cited in support of the position advanced.

35
36 **(c) Case citation format**

37
38 A case citation must include the official report volume and page number and year of
39 decision. The court must not require any other form of citation.

40
41 **(d) Length of memorandum**

1 Except in a summary judgment or summary adjudication motion, no opening or
2 responding memorandum may exceed 15 pages. In a summary judgment or summary
3 adjudication motion, no opening or responding memorandum may exceed 20 pages. No
4 reply or closing memorandum may exceed 10 pages. The page limit does not include
5 exhibits, declarations, attachments, the table of contents, the table of authorities, or the
6 proof of service.

7
8 **(e) Application to file longer memorandum**

9
10 A party may apply to the court ex parte but with written notice of the application to the
11 other parties, at least 24 hours before the memorandum is due, for permission to file a
12 longer memorandum. The application must state reasons why the argument cannot be
13 made within the stated limit.

14
15 **(f) Format of longer memorandum**

16
17 A memorandum that exceeds 10 pages must include a table of contents and a table of
18 authorities. A memorandum that exceeds 15 pages must also include an opening
19 summary of argument.

20
21 **(g) Effect of filing an oversized memorandum**

22
23 A memorandum that exceeds the page limits of these rules must be filed and considered
24 in the same manner as a late-filed paper.

25
26 **(h) Pagination of memorandum**

27
28 ~~(1) The pages of a memorandum in electronic form must be numbered~~
29 ~~consecutively beginning with the first page and using only Arabic numerals~~
30 ~~(e.g., 1, 2, 3). The page number need not appear on the first page.~~

31
32 ~~(2) Notwithstanding any other rule, a memorandum in paper form that includes a~~
33 ~~table of contents and a table of authorities must be paginated as follows:~~

34
35 ~~(1A) The caption page or pages must not be numbered;~~

36
37 ~~(2B) The pages of the tables must be numbered consecutively using lower-~~
38 ~~case roman numerals starting on the first page of the tables; and~~

39
40 ~~(3C) The pages of the text must be numbered consecutively using Arabic~~
41 ~~numerals starting on the first page of the text.~~

1 ***DRAFTER'S NOTE:** *Judicial officers and research attorneys find it easier to navigate*
2 *electronic filings if the page number in the footer matches the page number of the*
3 *electronic document. Similar language appears in the local rules adopted by several*
4 *appellate courts for e-filing. (See, e.g., [Ct. App., Third Dist., Local Rules, rule 5\(b\)\(2\),](#)*
5 *[Format; Pagination; Ct. App., Sixth Dist., Local Rules, rule 2\(b\)\(3\), Format; Pagination of](#)*
6 *[Documents.](#)) Staff have suggested amending rules 2.109 (pagination for “papers”), rule*
7 *3.1110(c) (pagination for motion documents), and rule 3.1113(h) (pagination for motion*
8 *memoranda).*

9
10 *During the last meeting, there was considerable discussion on the issue of pagination. In*
11 *discussing rule 2.109, Mr. Bill Chisum suggested that the proposed rule amendment*
12 *would make it harder for attorneys to calculate whether their papers and motions satisfy*
13 *page limits. He also brought the subcommittees’ attention to rule 3.1113(h), which*
14 *addresses pagination for memorandums filed with motions and which currently requires*
15 *(1) that the caption page not be numbered, (2) that the table of authorities be numbered*
16 *consecutively using lower-case roman numerals, and (3) that the pages of the text be*
17 *numbered consecutively using Arabic numerals.*

18
19 *Several subcommittee members appreciated the simplicity and logic of the proposed*
20 *amendments. Several recommended that it be applied to papers and motions filed not*
21 *only in electronic, but also in paper form, to avoid inconsistencies.*

22
23 *For further discussion during the February 5 meeting, staff have kept the proposed*
24 *amendments to rules 2.109, 3.1110(c), and 3.1113(h), but have modified them to apply*
25 *to both paper and electronic “papers,” documents, and memoranda.*

26
27 **(i) Copies of authorities**

28
29 (1) A judge may require that if any authority other than California cases, statutes,
30 constitutional provisions, or state or local rules is cited, a copy of the
31 authority must be lodged with the papers that cite the authority. and If in
32 paper form, the authority must be tabbed or separated as required by rule
33 3.1110(f)(3). If in electronic form, the authority must be electronically
34 bookmarked as required by rule 3.1110(f)(4).

35
36 (2) If a California case is cited before the time it is published in the advance
37 sheets of the Official Reports, the party must include the title, case number,
38 date of decision, and, if from the Court of Appeal, district of the Court of
39 Appeal in which the case was decided. A judge may require that a copy of
40 that case must be lodged, and If in paper form, the copy must be tabbed or
41 separated as required by rule 3.1110(f)(3). If in electronic form, the copy
42 must be electronically bookmarked as required by rule 3.1110(f)(4).

1 (3) Upon the request of a party to the action, any party citing any authority other
2 than California cases, statutes, constitutional provisions, or state or local rules
3 must promptly provide a copy of such authority to the requesting party.
4

5 **(j) Attachments**

6
7 To the extent practicable, all supporting memorandums and declarations must be attached
8 to the notice of motion.
9

10 **(k) Exhibit references**

11
12 All references to exhibits or declarations in supporting or opposing papers must reference
13 the number or letter of the exhibit, the specific page, and, if applicable, the paragraph or
14 line number.
15

16 **(l) Requests for judicial notice**

17
18 Any request for judicial notice must be made in a separate document listing the specific
19 items for which notice is requested and must comply with rule 3.1306(c).
20

21 **(m) Proposed orders or judgments**

22
23 If a proposed order or judgment is submitted, it must be lodged and served with the
24 moving papers but must not be attached to them. The requirements for proposed
25 orders, including the requirements for submitting proposed orders by electronic
26 means, are stated in rule 3.1312.
27

28 * * *

29
30 **Chapter 5. Noticed Motions**

31
32 * * *

33 **Rule 3.1302. Place and manner of filing**

34
35 **(a) Papers filed in clerk's office**

36
37 Unless otherwise provided by local rule or specified in a court's protocol for
38 electronic filing, all papers relating to a law and motion proceeding must be filed in
39 the clerk's office.
40

41 **(b) Requirements for lodged material**

42

1 Material lodged physically with the clerk must be accompanied by an addressed
2 envelope with sufficient postage for mailing the material. Material lodged
3 electronically must clearly specify the electronic address to which ~~the materials~~
4 ~~may be returned~~ a notice of deletion may be sent. After determination of the matter,
5 the clerk may mail or send the material if in paper form back to the party lodging it.
6 If the lodged material is in electronic form, the clerk may permanently delete it.
7 The clerk must send notice of the deletion to the party who lodged the material.

8
9 * * *

10 **Rule 3.1306. Evidence at hearing**

11
12 **(a) Restrictions on oral testimony**

13
14 Evidence received at a law and motion hearing must be by declaration or request
15 for judicial notice without testimony or cross-examination, unless the court orders
16 otherwise for good cause shown.

17
18 **(b) Request to present oral testimony**

19
20 A party seeking permission to introduce oral evidence, except for oral evidence in
21 rebuttal to oral evidence presented by the other party, must file, no later than three
22 court days before the hearing, a written statement stating the nature and extent of
23 the evidence proposed to be introduced and a reasonable time estimate for the
24 hearing. When the statement is filed less than five court days before the hearing, the
25 filing party must serve a copy on the other parties in a manner to assure delivery to
26 the other parties no later than two days before the hearing.

27
28 **(c) Judicial notice**

29
30 A party requesting judicial notice of material under Evidence Code sections 452 or
31 453 must provide the court and each party with a copy of the material. If the
32 material is part of a file in the court in which the matter is being heard, the party
33 must:

- 34
35 (1) Specify in writing the part of the court file sought to be judicially noticed;
36 and
37
38 (2) Make arrangements with the clerk to have the file in the courtroom or
39 electronically accessible to the court at the time of the hearing.

40
41 **Chapter 6. Particular Montions * * ***
42

1 **Article 6. Miscellaneous Motions**

2 * * *

3
4
5 **Rule 3.1362. Motion to be relieved as counsel**

6
7 **(a) Notice**

8
9 A notice of motion and motion to be relieved as counsel under Code of Civil
10 Procedure section 284(2) must be directed to the client and must be made on the
11 *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (form MC-051).
12

13 **(b) Memorandum**

14
15 Notwithstanding any other rule of court, no memorandum is required to be filed or
16 served with a motion to be relieved as counsel.
17

18 **(c) Declaration**

19
20 The motion to be relieved as counsel must be accompanied by a declaration on the
21 *Declaration in Support of Attorney’s Motion to Be Relieved as Counsel—Civil*
22 (form MC-052). The declaration must state in general terms and without
23 compromising the confidentiality of the attorney-client relationship why a motion
24 under Code of Civil Procedure section 284(2) is brought instead of filing a consent
25 under Code of Civil Procedure section 284(1).
26

27 **(d) Service**

28
29 The notice of motion and motion, the declaration, and the proposed order must be
30 served on the client and on all other parties who have appeared in the case. The
31 notice may be by personal service, electronic service, or mail.
32

33 (1) If the notice is served on the client by mail under Code of Civil Procedure
34 section 1013, it must be accompanied by a declaration stating facts showing
35 that either:

36
37 ~~(A)~~ The service address is the current residence or business address of the
38 client; or

39
40 ~~(B)~~ The service address is the last known residence or business address of
41 the client and the attorney has been unable to locate a more current
42 address after making reasonable efforts to do so within 30 days before
43 the filing of the motion to be relieved.

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(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client’s current electronic service address.

As used in this rule, “current” means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client’s last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

(e) Order

The proposed order relieving counsel must be prepared on the *Order Granting Attorney’s Motion to Be Relieved as Counsel—Civil* (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

Lundstrom, Tara

From: Peter Glaessner [PGlaessner@aghwlaw.com]
Sent: Wednesday, January 27, 2016 10:05 AM
To: Lundstrom, Tara
Subject: E-filing - Further Comments

Hello Tara,

I was on the call yesterday and one of those with comments. I had to drop off at 1:00 for another call. I also wanted to discuss the e-filing process in state court with my legal secretary (who e-files daily in SF Superior Court and elsewhere).

A few comments on issues raised yesterday, following my discussion with her, and my own review of e-filed documents on a couple of our cases:

- 1) There is a court-generated email confirmation when a document has been accepted for e-filing, but until the confirmation comes from the court all the e-filer has done is submit the document for filing. Thus, to attach a proof of service to a pleading and state that e-filing and service has occurred is erroneous. It should probably say "submitted" on the proof of service OR the e-filer can sign a proof of service and file/serve it separately AFTER the pleading has been filed. (The latter is probably not what anyone wants to do, but I do think the e-filer should not be stating the document has been filed/served before a digital confirmation is returned from the court.)
- 2) As far as my idea of attaching the electronic confirmation from the court, I withdraw the suggestion it be attached to the proof of service, but do think there should be a rule requiring that the court's electronic confirmation be maintained/preserved by the party filing/serving, in case there is any dispute about the date/time it was done. (Both date/time appear on the court-generated e-mail confirmations.)
- 3) There are lawyers/law firms that are not registered for e-filing in various counties, and this creates situations in which we e-file with the court, but must still paper serve opposing counsel with the pleadings that have been e-filed. (I was unaware of this, but my secretary says this is quite common). Thus, when the proposed rule discusses e-filing replacing other methods of service, that is not the reality of what occurring.

Thank you for your work on this and welcome any questions. I do not have the list serve of this entire working group from the two committees, so I am sending this to you, but please circulate as you deem appropriate.

Peter



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