JUDICIAL COUNCIL
OF CALIFORNIA

www.courts.ca.gov/civilandsmallclaims.htm
civilandsmallclaims@jud.ca.gov
www.courts.ca.gov/itac.htm
itac@jud.ca.gov

UNLIMITED CASE AND COMPLEX LITIGATION SUBCOMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 26, 2016
12:10 PM – 1:30 PM
Teleconference

Advisory Body Members Present:	Justice Peter Siggins, Judge Ann Jones, Judge Kyle Brodie, Justice Louis Mauro, Mr. Don Willenburg, Judge Jackson Lucky, Mr. Peter Glaessner, Judge Michael Sacks, Judge Harold Kahn, Mr. William Chisum, Mr. Robert Olson, Ms. Victoria Brizuela, Judge David Chapman
Advisory Body Members Absent:	Professor Dorothy Glancy, Judge Julie Culver, Mr. Darrell Parker, Mr. Saul Bercovitch, Justice Victoria Chaney, Justice Elizabeth Grimes, Ms. Kristin Escalante, Ms. Twila White
Others Present:	Mr. Patrick O'Donnell, Ms. Tara Lundstrom, Ms. Susan McMullan

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:12 pm, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Rules Modernization Project (Phase 2) Rules Proposal: Proposed Amendments to Titles 2 and 3 of the California Rules of Court (Action Required)

Action: ***The subcommittees deferred voting on final recommendations until the next joint subcommittee meeting.***

Ms. Lundstrom introduced the proposal and led the subcommittee through a discussion of each of the proposed changes to titles 2 and of the California Rules of Court. The subcommittees discussed the proposed rule amendments on pages 3 to 39 of the meeting materials. They deferred discussion of the proposed amendments on pages 40 to 46 until the next joint subcommittee meeting on February 5, 2016. They also deferred voting on final recommendations until that meeting.

In reviewing the proposal, the subcommittees made the following changes:

1. In lieu of recommending new rule 2.101 that would specify that e-filed "papers" must the meet the electronic formatting requirements in rule 2.256(b), this requirement would be added to rule 2.100, which addresses the form and format of papers presented for filing in the trial courts.

2. The Invitation to Comment for this proposal would specifically request comment on whether the proposed amendment to rule 2.252 on paper courtesy copies might have the unintended effect of increasing, rather than decreasing, the amount of paper filed in the courts.
3. An Advisory Committee Comment would be added to rule 2.256 to clarify that court clerks may not reject a paper for filing if the font size changed slightly solely because a document in word processing format was converted to PDF.
4. The proposed amendment to rule 3.512 was withdrawn because Judicial Council staff currently does not have the necessary document management system to require electronic submission of documents in complex coordination proceedings.
5. The proposed amendment to rule 3.1110(c) would eliminate any reference to binding or submitting documents together; instead the first sentence would read: "Documents must be consecutively paginated."

A subcommittee member also expressed the following concerns and suggestions during the meeting:

1. Rule 2.251 currently requires that the proof of electronic service specify the time of e-service; however, the person filling out the proof of e-service would not know the exact time of e-service until after it occurred.
2. The proposal would require that "papers" be text searchable; however, practitioners refrain from converting documents in word processing format to PDF because of residual metadata.
3. The proposal should add cross-references to rule 2.551 in rule 2.575 to facilitate updating these rules in the future.

The subcommittees tasked Ms. Lundstrom with researching these concerns and suggestions and reporting back at the next joint subcommittee meeting.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:29 PM.

Approved by the advisory body on ____.

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UNLIMITED CASE AND COMPLEX LITIGATION SUBCOMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

February 5, 2016
12:10 PM – 1:00 PM
Teleconference

Advisory Body Members Present:	Justice Peter Siggins, Judge Ann Jones, Professor Dorothy Glancy, Judge Kyle Brodie, Mr. Don Willenburg, Judge David Chapman, Justice Elizabeth Grimes, Judge Harold Kahn, Ms. Twila White, Ms. Victoria Brizuela, Ms. Kristin Escalante, Mr. William Chisum
Advisory Body Members Absent:	Judge Julie Culver, Justice Louis Mauro, Judge Jackson Lucky, Mr. Darrell Parker, Justice Victoria Chaney, Mr. Peter Glaessner, Judge Michael Sacks, Mr. Robert Olson, Mr. Saul Bercovitch
Others Present:	Mr. Patrick O'Donnell, Ms. Tara Lundstrom, Ms. Susan McMullan

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:11 pm, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Rules Modernization Project (Phase 2) Rules Proposal: Proposed Amendments to Titles 2 and 3 of the California Rules of Court (Action Required)

Action: ***The subcommittees voted to recommend the proposal, as modified, to their respective advisory committees, the Information Technology Advisory Committee and the Civil and Small Claims Advisory Committee.***

Ms. Tara Lundstrom presented on the proposed rule amendments in the meeting materials that had either (1) been added since the joint subcommittee meeting on January 14, 2016, in response to concerns raised by the subcommittee members or (2) been deferred for review until the next joint subcommittee.

The subcommittee members reviewed and recommended the following changes to the proposal that had been made subsequent to the January 14 meeting.

1. The proposed amendments would remove the requirement in rule 2.251(i) that the time of electronic service be stated on the proof of electronic service. In speaking with electronic

filing service providers, Ms. Lundstrom had learned that practitioners often do not specify the time on the proof of electronic service because they do not know the exact time when they complete the proof of electronic service and do not wish to perjure themselves.

2. In lieu of an Advisory Committee Comment to rule 2.256, the proposal would amend rule 2.118 to specify that court clerks cannot reject papers for filing based on minimal variations in font size. Ms. Lundstrom confirmed with IT staff that it is common for the font size to change slightly when a document is converted from a word processing format to a PDF.

Based on further discussion, the subcommittees recommended the following additional changes to the proposed amendments in the meeting materials:

1. The proposed amendment to rule 2.118(a)(3) would provide that court clerks could not reject a PDF for filing solely because the font size is not the exact point size required in the rules.
2. The Invitation to Comment for this proposal would include a specific request for comments on whether the rules should be amended to require that exhibits be text searchable to the extent feasible.
3. The proposal would also recommend amending rule 3.1113(d) to specify that the caption page is not counted toward the page limit for memoranda.

The subcommittees then voted to recommend the proposed rule amendments, as modified, to their respective advisory committees.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:51 PM.

Approved by the advisory body on ____.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
July 7, 2016

To
Rules and Policy Subcommittee
Unlimited Case and Complex Litigation Subcommittee

From
Tara Lundstrom, Attorney
Criminal Justice Services

Subject
Rules Modernization Project rules proposal – Phase 2

Action Requested
Please review by July 12 meeting

Deadline
July 12, 2016

Contact
Tara Lundstrom
415-865-7995 phone
tara.lundstrom@jud.ca.gov

Background

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee ("ITAC") is leading the Rules Modernization Project, a multi-year effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with six other advisory committees, including the Civil and Small Claims Advisory Committee ("CSCAC").

The Rules Modernization Project is being carried out in two phases. Last year, ITAC, CSCAC, and the other advisory committees completed phase I—an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing e-filing and e-service and with e-business practices in general. This year, the

advisory committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder e-business practices.

This spring, ITAC and CSCAC recommended for circulation for public comment a rules proposal that would make substantive changes to the rules in titles 2 and 3 of the California Rules of Court. Eight comments were submitted in response to the Invitation to Comment. These comments will be reviewed and discussed during the joint subcommittee meeting on July 12. To facilitate the subcommittees' review, the attached materials include the proposed amendments with drafter's notes immediately following each proposed amendment that received public comment. The drafter's notes restate the public comments and any analysis by staff.

Next, this proposal will be reviewed by CSCAC during its July 28 meeting and by ITAC during its August 1 meeting for recommendation to the Rules and Projects Committee in September.

Subcommittees' Task

The subcommittees are tasked with reviewing the comments and:

- Advising ITAC and CSCAC to recommend that the Judicial Council adopt all or part of the proposal;
- Rejecting the proposal; or
- Asking staff or group members for further information and analysis.

Attachments

1. Proposed amendments to titles 2 and 3 with drafter's notes
2. Comment chart

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, and 3.1362 of the California Rules of Court would be amended, effective January 1, 2017, to read:

Title 2. Trial Court Rules

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

(a)–(b) * * *

(c) Electronic format of papers

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

Rule 2.103. Size, quality, and color of papers

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

Rule 2.104. ~~Printing; f~~ Font size; printing

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

Rule 2.105. Font style

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

Rule 2.109. Page numbering

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

DRAFTER'S NOTES: *The following comment was received in response to the proposed amendment to rule 2.109:*

- TCPJAC/CEAC Joint Rules Subcommittee: Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is

consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation.

It would require some additional work for clerks to determine whether the brief satisfies the page limitation requirements, but it might not require much. Clerks would have to subtract the number of preliminary pages from the number of pages of the body of the brief. This would require scrolling through the PDF to ascertain the page numbers where (1) the preliminary pages end and (2) the body of the brief ends. Arguably, this additional time might be offset by the time and confusion saved by judicial officers when referencing page numbers on the bench.

The subcommittees should decide whether to recommend revising the proposed amendment to rule 2.109 in light of the comment. In making that determination, the subcommittees may want to consider that earlier this month, the Joint Appellate Technology Subcommittee recommended the following language (with recent changes in bold) for appellate rule 8.74(b)(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.

Rule 2.110. Footer

(a)–(b) * * *

(c) ~~Type~~ Font size

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

Rule 2.111. Format of first page

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

(1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address ~~(if available)~~, and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2)–(11) * * *

DRAFTER'S NOTES: *No comments were received in response to the proposal to amend rule 2.111(1). However, one comment was received regarding rule 2.1111(7), which currently provides: "Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is assigned."*

- TCPJAC/CEAC Joint Rules Subcommittee: We suggest adding language to (7), as this information would be useful to the court: "(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is assigned, including the type of event, date and time."

This recommendation would appear to be outside of the scope of the rules proposal, as circulated. Because this recommendation does not require tech expertise, staff propose responding that the Civil and Small Claims Advisory Committee will take this recommendation under consideration in reviewing proposals next year.

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image. Exhibits submitted with papers filed electronically must meet the requirements in rule 2.256(b)(1) and (2).

Rule 2.118. Acceptance of papers for filing

(a) Papers not in compliance

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

(1) It is handwritten or hand-printed; ~~or~~

(2) The handwriting or hand printing on the paper is in a color other than black or blue-black~~.~~; or

(3) The font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF.

(b)–(c) * * *

DRAFTER'S NOTE: *The following comment was received in response to the proposal to amend rule 2.118:*

- Superior Court of Orange County's Judicial Assistance Group: The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed. In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (proposed Rules 2.109, 3.1110(c), and 3.1113(h)), whether the documents submitted is text searchable (proposed Rule 2.256(b)(3)), or whether the exhibit format requirements are followed (proposed Rule 3.1110(f)) . As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court.
  …
  The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to perform a text search on all electronic documents individually to ensure compliance.

This rules proposal would not alter the requirement under current rule 2.118 that clerks "must not accept for filing or file any papers that do not comply with the rules in this chapter." Rule 2.118 applies only to the rules in chapter 1 of title 2 of the California Rules of Court (i.e., rules 2.100–2.119.)

The Judicial Assistance Group is correct that the proposal would expand the list of formatting requirements that would make a filing subject to rejection under rule 2.118 to include: (1) text searchable papers (by way of the proposed cross reference to rule 2.256(b) in rule 2.100); and (2) page numbering of papers (proposed amendment to rule 2.109). However, the rules proposal would not alter the current requirement that clerks reject filings for failing to comply with the font size or style required by rules 2.104 and

2.105. In addition, rule 2.118 would not apply to the requirement that electronic exhibits be electronically bookmarked (proposed amendment to rule 3.1110(f)) or to page numbering of exhibits and memoranda (proposed amendments to rules 3.1110(c) and 3.1113(h)).

The subcommittees may want to consider adding other exemptions in rule 2.118 to lessen the burden on clerks. Alternatively, the subcommittees might consider recommending qualifying language to recognize that clerks must reject these filing, but only to the extent feasible.

Regarding the proposed exception for minimal variations in font size, it is true that clerks likely do not have the time to review all filings to assess whether the font size is correct (as is technically required under the current rules). Nevertheless, the amendment may promote e-filing; anecdotal evidence from practitioners suggests that some litigants have had documents rejected due to minor variations in font size caused by converting a document in word processing format into PDF. At the very least, the concern that a document might be rejected due to these variations has caused some practitioners to create PDFs by scanning. In order to encourage practitioners to create PDFs through conversion, not scanning, staff propose that the subcommittees recommend the proposed exception for minimal variations in font size.

Rule 2.140. Judicial Council forms

Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1. Electronic Judicial Council forms must meet the requirements in rule 2.256(b)(1) and (2).

Rule 2.251. Electronic service

(a)–(h) * * *

(i) Proof of service

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

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

(B) The proof of electronic service must state:

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

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

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

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

(2) * * *

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

(4) * * *

**(j) * * *

DRAFTER'S NOTE: *The following comment was received in response to the proposed amendment to rule 2.251(i):*

- Superior Court of Orange County's Judicial Assistance Group: For most documents, the time of service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states that "a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance . . . ." Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the language "and time", and adding ", if relevant to validity of service" or something like that.

The subcommittees previously recommended omitting the time because the person completing the proof of e-service would not know the exact time of e-service until filing. Staff learned from One Legal, an electronic filing service provider (EFSP), that the time is often omitted on proofs of e-service because people fear committing perjury. The Information Technology Advisory Committee has circulated a legislative proposal that

would amend Code of Civil Procedure section 1010.6 to make midnight the cut-off time for e-service. If this proposed legislation is enacted, the exact time of e-service would not be needed to determine the effective date of e-service. The proof of service would need state only the day of e-service.

However, there may be instances when the time of e-service is still relevant, as indicated in the above comment. The subcommittees should discuss whether to recommend that time be required on the proof of e-service, required only in certain instances, or never required on the proof of e-service. Because ITAC is separately reviewing a legislative proposal that would codify the proof of e-service rule in new Code of Civil Procedure section 1013b, ITAC's Rules and Policy Subcommittee will also discuss whether time should be required on the proof of e-service during its July 8 meeting.[1]

In addition, the following comment was received in response to the legislative proposal. It will also be reviewed by the Rules and Policy Subcommittee during its July 8 meeting. Staff will report back on that discussion during the joint subcommittee meeting to ensure that the statute and rule correspond.

- Mark W. Lomax, Attorney: (1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service--electronic transmission and electronic notification--proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used.

  (2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider. Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list." As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b.

Because EFSPs are effectively stepping into the shoes of the postal service for purposes of e-service, staff view including information about the EFSPs in the proof of e-service as unnecessary.

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[1] *The Civil and Small Claims Advisory Committee will have the opportunity to provide input on this legislative proposal during its July 28 meeting.*

Staff also view proposed section 1013b as being inclusive of e-service by both notification and transmission. Proposed section 1013b(a)(D)—like the proposed amendment to rule 2.251(i)(B)(4)—requires that the proof of e-service state "[t]hat the document was served electronically in place of the statement [required by 1013a] that the envelope was sealed and deposited in the mail with postage fully prepaid." This would appear to encompass e-service not only by transmission, but also notification, because electronic notification is defined in Code of Civil Procedure section 1010.6(a)(1)(C) as "the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded."

Rule 2.252. General rules on electronic filing of documents

(a)–(h) * * *

(i) Paper courtesy copies

A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.

***DRAFTER'S NOTE:** The Invitation to Comment specifically requested comment on whether the proposed rule on courtesy copies would hinder or promote efforts to move courts toward paperless case environments. The following comments were received in response:*

- Orange County Bar Association: The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents.
- State Bar Committee on the Administration of Justice: If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 ("A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.") would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).

- State Bar's Standing Committee on the Delivery of Legal Services: The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved.

- Superior Court of Orange County's Judicial Assistance Group: In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement.

  Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this.

- TCPJAC/CEAC Joint Rules Subcommittee: The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of "courtesy copies" has been left to judicial discretion or to direction provided by local rule. For example, many judges will require counsel to create a binder of motions in limine and related papers and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(l) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of "all filings generated by their motions in limine" and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule 2E (requiring courtesy copies of all motion papers except for motions in cases designated as "complex"); Alameda County Superior Court Rule 3.30 (for civil cases "[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard").) Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule 1012(b)(4) ("The court may by order require the delivery of paper courtesy copies of e-filed documents.); Monterey County Superior Court Rule 1.06E ("A judge may order a paper courtesy copy at any time, either printed or through electronic delivery").) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit "one courtesy paper copy of all

filed documents requiring Court review, action, or signature directly to the assigned Judge's department); Alameda County Superior Court Rule 1.85(i) (when a document is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard).)

It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of motions and their accompanying evidence.

It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions.

- Option 1: Delete proposed subsection (i) of Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in other contexts (i.e., it the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed).

- Option 2: Redraft the proposal to expressly allow the alternative of a local rule to require courtesy copies. We suggest the following language: "A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule."

The subcommittees should discuss whether to recommend the proposed rule on courtesy copies, as is or with modifications, or remove the proposed rule from this proposal.

Rule 2.256. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

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

(1)–(2) * * *

(3) The document must be text searchable, unless it is an exhibit or Judicial Council or local form.

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

***DRAFTER'S NOTE:** The following responses were submitted in response to the proposed amendment to rule 2.256(b)(3), which would require that e-filed documents be text searchable unless they are exhibits or forms:*

- State Bar's Standing Committee on the Delivery of Legal Services: The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all (which would be contrary to the proposal's general intent to promote e-filing).

The subcommittees should discuss whether to exempt self-represented litigants from the requirement that e-filed documents (except for exhibits and forms) be text searchable.

In addition, the Invitation to Comment specifically requested comment on the following question: "Should the rules require that electronic exhibits be text searchable to the extent feasible?" The following comments were received in response:

- Orange County Bar Association: We are hesitant to advocate requiring all exhibits be text searchable at this early juncture, but agreeable assuming "where feasible" language is used. The language "where feasible" gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable

but not mandatory. Costs to litigants to obtain the necessary software programing to ensure that its documents are text searchable should be assessed.

- State Bar Committee on the Administration of Justice: No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings originate as paper documents, which are often poorly reproduced. Scanning and applying Optical Character Recognition ("OCR") software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet. Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule.
- State Bar Standing Committee on the Delivery of Legal Services: Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable.
- Superior Court of Orange County Judicial Assistance Group: Yes.

The subcommittees should discuss whether to revise the proposal to require that exhibits be text searchable and, if so, whether self-represented litigants should be exempt from this requirement.

Rule 2.306. Service of papers by fax transmission

(a)–(g) * * *

(h) Proof of service by fax

Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013(a), except that:

(1) The ~~time,~~ date~~,~~ and sending fax machine telephone number must be used instead of the date and place of deposit in the mail;

(2)–(5) * * *

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1)–(2) * * *

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

(A) * * *

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

(4)–(5) * * *

(6) *Return of lodged record*

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

(c)–(d) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in ~~an~~ electronic form~~at~~, 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.

(2)–(4) * * *

(f) Custody of sealed records

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

(g)–(h) * * *

DRAFTER'S NOTE: *The following comments were received in response to the proposed amendments to rules 2.551, 2.577, and 3.1302 governing lodged records.*

- Superior Court of Orange County's Judicial Assistance Group: Rule 2.551(b)(6), Rule 2.577(d)(4), and Rule 3.1302(b) contemplate that the clerk "permanently delete" a document that has been filed, or offered for filing in certain situations, and send notice of the deletion.

  COMMENT on DESTRUCTION: In a typical electronic record environment it may not be possible to 'delete' a document, if 'delete' means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases may be stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee.

  Focusing on the intended outcome of 'destruction', is the issue one of access to the document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively 'destroyed'. This can be

accomplished with changes to document access codes, often referred to as security levels. Instead of stating “the clerk must . . . permanently delete”, the rules should say “the clerk must . . . eliminate public access to the document", or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g).

Finally, the ‘deletion’ of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge’s decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court.

More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example, in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of “if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records indefinitely”.

COMMENT on NOTICE OF DESTRUCTION: Sending a notice of document deletion seems unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record.

- TCPJAC/CEAC Joint Rules Subcommittee: Rule 2.551(b)(6) Return of lodged record. It seems unnecessary and would create additional workload to, “send notice of deletion to the submitting party.” We suggest deleting this text or at least adding the word, “may”, before it to allow for the court’s ability to do this.

  We suggest deleting the language, “The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed.” Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, “If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing.”

This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file."

Rule 2.551(e)(1). In the last sentence, the phrase, "…clearly identify the record as sealed by court order on a specified date." may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.

The purpose of amending rule 2.551(b)(6) is to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records. It is not intended to change the basic underlying procedure in subdivision (b)(6) of the rule, which provides—in the event that a motion to seal is denied—for the return of the record to the moving party or, in the alternative, allows the moving party to notify the court that the record is to be filed (unsealed). This background may be helpful in evaluating several of the comments.

First, a commentator suggests that there is a problem with the proposal to provide that lodged electronic records may be "permanently delete[d]" as a substitute for "return[ing]" physical records. While there may be technical issues about the ability to completely "delete" all electronic documents, the crucial legal point is that the lodged materials record should be deleted or removed from the record. The proposed new language in (b)(6) ("permanently deleted the lodged record") seems to achieve this purpose. The subcommittee may want to consider whether alternatives such as "permanently eliminate…" or "permanently remove the lodged record" would be better. However, the commentator's proposed language (that "the clerk must . . . eliminate public access to the document") does not seem to go legally far enough: the purpose of (b)(6) is not just to make the lodged record unavailable to the public, but to remove it entirely from the court's record. Staff note that other provisions similarly require the permanent deletion of court records (e.g., the destruction of juvenile records under Welfare and Institutions Code section 826(a)), suggesting that case management systems are capable of permanently deleting court records.

Second, the commentators suggest that the provision requiring that the clerk send notice of the deletion to the moving party seems unnecessary. One commentator also suggests that the rule should be modified to state that, if the moving party notifies the clerk that

the lodged record is to be filed, the party shall resubmit the document for filing. To address these comments, it is useful to recall that a principal purpose of subdivision (b)(6) was to provide a procedure for handling a lodged record in the event that the court denied the motion to seal: in the paper world, either the lodged record would be returned or, if the movant notified the clerk within ten days, the record would be unsealed and filed. The new notice of deletion was intended to enable this process to be carried over into the electronic world. However, the comments suggest that the proposed revision may have inadvertently made the procedures for handling lodged records, after denial of a motion to seal, less clear than before.

For the sake of discussion, staff provides a possible alternative to the circulated version:

(Circulated version):

(6) *Return of lodged record*

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

(Alternative version):

(6) Return, deletion, or filing of lodged record

If the court denies the motion or application to seal, unless the moving party notifies the clerk that the lodged record is to be filed unsealed within 10 days or such other time as the court may order, the clerk must (i) return the lodged record to the submitting party if it is in paper form ~~and~~ or (ii) permanently delete the lodged record if it is in electronic form ~~must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ If the moving party notifies the court that the lodged record is to be unsealed and filed in a timely manner, the court must unseal and file the record.

This alternative version, it will be noted, preserves the terminology "deletes" regarding the treatment of the lodged record. If the subcommittee prefers another term, it could be used instead. Also, the alternative does not include the suggestion that the party must

"resubmit" the lodged record. Resubmission would seem burdensome on both the moving party and the court, and could potentially lead to errors. Instead, if the moving party notifies the court that the lodged record should be filed, the rule would provide that the court must unseal and file it. This is consistent with the current practices and procedures.

Third, one commentator objects to the provision in subdivision (e) of rule 2.251 that, if the court orders a record sealed and the record is in electronic format, the clerk must clearly identify the record as sealed by court order on a specified date. This provision is in the current rule and was not part of the proposal that was circulated; so it is outside the scope of the proposal.

Lastly, a commentator noted the issue of appellate review of the judge's decision to deny a motion to seal. This appears to be beyond the scope of the present rules proposal as it would affect both physical and electronic records (whether they are returned or deleted). And it would affect lodged records in not only civil, but also other types of cases. Any proposal addressing this issue should be developed in collaboration with the other advisory committees with subject matter expertise in these case types. Staff recommend referring this proposal for consideration next year.

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

(a) * * *

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

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

(c) * * *

(d) Procedure for lodging of petition for name change

(1)–(3) * * *

(4) If the court denies the application to seal, the clerk must either (i) return the lodged record if in paper form to the petitioner or (ii) permanently delete the

lodged record if in electronic form and send notice of the deletion to the petitioner. The clerk ~~and~~ must not place ~~it~~ the lodged record in the case file unless the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed.

(e) * * *

(f) Order

(1)–(2) * * *

(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)–(5) * * *

(g) Custody of sealed records

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

(h) * * *

DRAFTER'S NOTE: *In addition to the comments above on lodged records, the following comment was received in response to the proposed amendment to rule 2.577:*

- TCPJAC/CEAC Joint Rules Subcommittee: Rule 2.577(d)(4). As above, it seems unnecessary and would create additional workload to, "send notice of deletion to the petitioner." We suggest deleting this text or at least adding the word, "may", before it to allow for the court's ability to do this.

  We suggest deleting the language, "The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed." Since the document has been returned or deleted, this statement

is not necessary. Instead, we suggest the wording be changed to, “If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing.”

This change in wording also eliminates the problematic term, “in the case file,” when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical “case file.”

Rule 2.577(f)(3). As above, in the last sentence, the phrase, “…clearly identify the record as sealed by court order on a specified date.” may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, “…and clearly identify the record as sealed on the Register of Actions.” This makes it clear no document can or will be modified.

Title 3. Civil Rules

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(c) * * *

Rule 3.751. Electronic service

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

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased as provided by Code of Civil

Procedure section 1010.6. ~~by two days.~~ If service is in the manner provided by ~~mail~~ Code of Civil Procedure section 1013, the times prescribed in this rule are increased as provided by ~~five days~~ that section.

Rule 3.1110. General format

(a)–(b) * * *

(c) Pagination of documents

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

(d)–(e) * * *

(f) Format of exhibits

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

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

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

(4) Electronic exhibits must meet the requirements in rule 2.256(b)(1) and (2). Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(g) * * *

Advisory Committee Comment

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

DRAFTER'S NOTE: *The following comments were received in response to the proposed amendment to rule 3.1110(f)(4), which would require that exhibits be electronically bookmarked:*

- State Bar Committee on the Administration of Justice: Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction.

  There is another way in which bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service.

- State Bar Standing Committee on the Delivery of Legal Services: The rule (see Rule 3.1110(f)) should also not require that all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.

- Superior Court of Orange County Judicial Assistance Group: This is yet another example of the Judicial Council's unnecessary deference to self-represented litigants. Self-represented litigants are not necessarily incapable of complying

with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally.

Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.

If exhibits must be e-filed, bookmarked and text searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.

- TCPJAC/CEAC Joint Rules Subcommittee: The language in this section is too restrictive. We suggest a change in the second sentence from, "…electronic exhibits must include electronic bookmarks…" to "…electronic documents must include electronic bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein…"

The subcommittees should consider whether the exception for self-represented litigants to the electronic bookmarking requirement should be eliminated or whether it should be extended to others. It should also consider whether the Joint Rules Subcommittee's recommendation that the language of the proposed amendment be revised to state "electronic documents must include electronic bookmarks for each subsidiary document, such as each exhibit and each declaration contained therein."

Lastly, staff recommend against the phased-in approach suggested by the commentators. The proposed new provision on bookmarking exhibits provides general guidance to parties, avoids inconsistent practices, improves the quality of documents submitted to the courts, and appears workable. As discussed above, rule 2.118 does not require that clerks reject for filing documents that do not comply with rule 3.1110(f).

Rule 3.1113. Memorandum

(a)–(c) * * *

(d) Length of memorandum

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

(e)–(g) * * *

(h) Pagination of memorandum

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

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

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

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

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

(i) Copies of authorities

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

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged. ~~and~~ If in paper form, the copy must be tabbed or

separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) * * *

**(j)–(m) * * *

Rule 3.1302. Place and manner of filing

(a) * * *

(b) Requirements for lodged material

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

DRAFTER'S NOTE: *In addition to the comments above on lodged records, the following comment was received in response to the proposed amendment to rule 3.1302:*

- TCPJAC/CEAC Joint Rules Subcommittee: As above, it seems unnecessary and would create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "The clerk must send notice of deletion to the submitting party," or at least changing the word, "must" to "may".

Rule 3.1306. Evidence at hearing

(a)–(b) * * *

(c) Judicial notice

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

(1) Specify in writing the part of the court file sought to be judicially noticed; and

(2) Make arrangements with the clerk to have the file in the courtroom or electronically accessible to the court at the time of the hearing.

DRAFTER'S NOTE: *The following comment was received in response to the proposed amendment to rule 3.1306(c):*

- Judge David Chapman (on behalf of Judge Sharon Waters): In courts that have electronic access to all of its own files, there is no need for a party requesting judicial notice of the court's own records to "provide the court . . . with a copy of the material."

  (c)(2) as written makes no sense – how does someone "make arrangements to have a file electronically accessible"

  It is suggested beginning that sentence with "If the file is not electronically accessible to the court" so it would read: "If the file is not electronically accessible to the court , make arrangements with the clerk to have the file in the courtroom at the time of the hearing." An alternative would be "or confirm with the clerk that the file is electronically accessible to the court" so it would say "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."

The subcommittees should discuss whether to revise the proposed amendment as recommended by Judge Chapman.

Rule 3.1362. Motion to be relieved as counsel

(a)–(c) * * *

(d) Service

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

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

(~~1~~A) The service address is the current residence or business address of the client; or

(~~2~~B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current

address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(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) * * *

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	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Todd G. Friedland President	A	The proposal asks for specific comments. The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents. We are hesitant to advocate requiring all exhibits be text searchable at this early juncture, but agreeable assuming "where feasible" language is used. The language "where feasible" gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable but not mandatory. Costs to litigants to obtain the necessary software programing to ensure that its documents are text searchable should be assessed.	
2.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	NI	***Does the proposal appropriately address the stated purpose?*** Generally, yes. The stated purpose of the proposed amendments is "to promote electronic filing, electronic service, and modern e-business practices." Widespread consensus exists in the legal community that text-searchable and electronically bookmarked documents are easier to read and interact with on electronic media (including both computers and e-readers). Yet absent an accompanying mandate that litigants electronically file documents in all state courts, these particular amendments (text searchability and bookmarking) tend to *reflect* existing e-business practices more than they *promote* wider	

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	Commentator	Position	Comment	Committee Response
			adoption of these practices. PDF writers are built into most word processors, and they are simpler and more cost effective than printing documents and scanning them (which creates much larger file sizes). The efficiencies built into the technology itself therefore already promote electronic filing and service. What the rules will do, however, is render electronic media more accessible to judicial officers, who in turn may be more inclined to mandate electronic filing or service than they would have previously. To this extent, the rules appear to promote the stated purpose. Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as	

	Commentator	Position	Comment	Committee Response
			noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction. There is another way in which bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service. ***Should the rules require that electronic exhibits be text searchable to the extent feasible?***	

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			No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings originate as paper documents, which are often poorly reproduced. Scanning and applying Optical Character Recognition ("OCR") software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet. Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character	

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			recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule. ***Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF?*** **Yes.** ***Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software?*** **They should not.** ***Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?*** **Mitigation likely is not necessary.** There should be no concerns about document metadata being carried into electronic documents that are saved as PDFs. When a document is saved as a PDF, the PDF writer (e.g., Acrobat) strips the document's metadata (including tracked changes) from the document and does not transfer any underlying document properties to the PDF. (CAJ uses Acrobat as a continuing example, but different PDF writers	

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			should work the same way.) Acrobat *will* create new creation-date and author metadata for the PDF itself, and Acrobat takes that data from the computer on which the document is saved as a PDF. But this data should not reveal sensitive underlying document information, and it is possible to use a data scrubber to remove that data in the rare event that it does contain sensitive information. The one scenario litigants should be careful about is document redaction. Most PDF writers do not automatically burn in redactions (i.e., remove the underlying text). But in recent years, Adobe has modified its software to prompt users to burn in redactions, rendering the process user-friendly. Of note, federal courts nationwide mandate e-filing, and many federal courts specifically require that documents be submitted in PDF format. *E.g.*, N.D. Cal. L. R. 5-1(e) (2) ("Documents filed electronically must be submitted in PDF format. Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to PDF format."); C.D. Cal. L. R. 5-4.3.1	

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			("Documents filed electronically must be submitted in PDF. . . . PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED."). Anecdotal evidence suggests that unintentionally retained metadata has not been an issue in federal court filings, although some courts have online FAQs that guide litigants through these issues. *E.g.*, https://www.cacd.uscourts.gov/e-filing/faq/pdf-related%20questions (Central District of California); http://www.cand.uscourts.gov/pages/946 (Northern District of California). ***Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?*** If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 ("A judge may request that electronic filers submit paper courtesy copies of an	

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			electronically filed document.") would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).	
3.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	AM	• Does the proposal appropriately address the stated purpose? Yes. • Should the rules require that electronic exhibits be text searchable to the extent feasible? Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable. • Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?	The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services. *For discussion: Should the proposal be revised to require that exhibits be text searchable to the extent feasible?

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			Yes to first question. SCDLS has no comments about the remaining questions. • Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved. **Additional Comments** The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all (which would be contrary to the proposal's general intent to promote e-filing). The rule (see Rule 3.1110(f)) should also not require that	

	Commentator	Position	Comment	Committee Response
			all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.	
4.	Superior Court of Orange County Judicial Assistance Group Sheri A. Bull Program Coordinator	NI	**GENERAL COMMENTS** **REJECTION OF DOCUMENTS OFFERED FOR FILING FOR NON-COMPLIANCE WITH FORM AND FORMAT RULES – PAGE NUMBERING, SEARCHABLE TEXT, AND BOOKMARKING EXHIBITS** *COMMENT*: The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand	

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			written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed. In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (**proposed Rules 2.109**, **3.1110(c)**, and **3.1113(h)**), whether the documents submitted is text searchable (**proposed Rule 2.256(b)(3)**), or whether the exhibit format requirements are followed (**proposed Rule 3.1110(f)**) . As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court. **PERMANENTLY DELETING RECORDS IN ELECTRONIC ENVIRONMENT** *PROPOSAL*: **Rule 2.551(b)(6)**, **Rule 2.577(d)(4)**, and **Rule 3.1302(b)** contemplate that the clerk "permanently delete" a document that has been filed, or offered for filing in certain situations, and send notice of the	

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			deletion. *COMMENT on DESTRUCTION:* In a typical electronic record environment it may not be possible to 'delete' a document, if 'delete' means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases maybe stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee. Focusing on the intended outcome of 'destruction', is the issue one of access to the document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively 'destroyed'. This can be accomplished with changes to document access codes, often referred to as security levels. Instead of stating "the clerk must . . . permanently delete", the rules should say "the	

	Commentator	Position	Comment	Committee Response
			clerk must . . . eliminate public access to the document", or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g). Finally, the 'deletion' of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge's decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court. More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example, in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of "if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records	

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			indefinitely". *COMMENT on NOTICE OF DESTRUCTION:* Sending a notice of document deletion seems unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record. **ELECTRONIC PROOF OF SERVICE – REMOVING TIME OF SERVICE** *PROPOSAL: Rule 2.251(i)* . . . . *(B) The proof of electronic service must state:* . . . . *(B) (2) The date and time of the electronic service, instead of the date and place of deposit in the mail;* . . . . *COMMENT:* For most documents, the time of	

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			service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states that "a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance . . . ." Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the language "and time", and adding ", if relevant to validity of service" or something like that. **EXEMPTION FOR SELF-REPRESENTED PARTY** *PROPOSAL*: Proposed **Rule 3.1110(f)(4)** exempts self-represented parties from book marking exhibits. *COMMENT*: This is yet another example of the Judicial Council's unnecessary deference to self-represented litigants. Self-represented	

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			litigants are not necessarily incapable of complying with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally. **INVITATION TO COMMENT SPR16-25 SPECIFIC COMMENTS** Does the proposal appropriately address the stated purpose? ☐ Should the rules require that electronic exhibits be text searchable to the extent feasible? *YES* ☐ Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR	

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			software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? *While PDF is, on one sense, a proprietary format, it is now so ubiquitous that it is reasonable to require its use. There are also so many programs, many free, for producing PDFs and addressing metadata issues that it is not burdensome to require its use.* ☐ Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? *In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement.* *Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this.* The advisory committees also seek comments from *courts* on the following cost and implementation matters:	

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			☐ Would the proposal provide cost savings? If so please quantify. *The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to perform a text search on all electronic documents individually to ensure compliance.* *Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.* ☐ What would the implementation requirements be for courts? For example, training staff (please identify position and	

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			expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. *Courts would need time to work with eFiling applications to ensure they support new guidelines. Courts will also need time to communicate with justice partners, the public, as well as training for staff and judges.* *We would like clarification whether the implementation of amendments to the CRC would apply to Family Law and Juvenile case types or if there are any limitations or discretion by our court that can be specified.* *We need about 6 months to implement training and procedure updates to get staff familiar with PDF capabilities, text searchable guidelines, and what staff should be looking for when accepting or rejecting documents due to formatting errors.* ☐ Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Not if it is expected that attorneys would fully comply and clerks would be able to check for compliance after only two months' notice.*	

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			While we support text searchable documents, the public still needs education regarding how to create one. Orange County still receives a high volume of non-text searchable electronic documents even though it is a less efficient process for the parties involved. A phased in approach seems more pragmatic, where in the first year the filings would not be rejected. During that time, courts could notify parties that future filings that are not text searchable would be rejected. *If exhibits must be e-filed, bookmarked and text searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.* *This concern would be more easily mitigated if Electronic Filing Service Providers and/or courts apply data scrubbing software.*	
5.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	
6.	TCPJAC/CEAC Joint Rules	AM	Suggested Modifications:	

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	Subcommittee		**Rule 2.109. Page numbering** Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation. **Rule 2.111. Format of first page** We suggest adding language to (7), as this information would be useful to the court: "(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is ~~assigned.~~ **assigned, including the type of event, date and time.**" **Rule 2.252(i) Paper Courtesy Copies** The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of "courtesy copies" has been left to judicial discretion or to direction provided by local rule. For example,	

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			many judges will require counsel to create a binder of motions in limine and related papers and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(l) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of "all filings generated by their motions in limine" and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule 2E (requiring courtesy copies of all motion papers except for motions in cases designated as "complex"); Alameda County Superior Court Rule 3.30 (for civil cases "[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard").)	

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	Commentator	Position	Comment	Committee Response
			Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule 1012(b)(4) ("The court may by order require the delivery of paper courtesy copies of e-filed documents."); Monterey County Superior Court Rule 1.06E ("A judge may order a paper courtesy copy at any time, either printed or through electronic delivery").) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit "one courtesy paper copy of all filed documents requiring Court review, action, or signature directly to the assigned Judge's department); Alameda County Superior Court Rule 1.85(i) (when a document is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard).)	

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			It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of motions and their accompanying evidence. It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions. (1) Delete proposed subsection (i) of	

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			Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in other contexts (i.e., it the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed). (2) Redraft the proposal to expressly allow the alternative of a local rule to require courtesy copies. We suggest the following language: "A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule."	

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	Commentator	Position	Comment	Committee Response
			Rule 2.551(b)(6) Return of lodged record It seems unnecessary and would create additional workload to, "**send notice of deletion to the submitting party.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this. We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical	

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	Commentator	Position	Comment	Committee Response
			"case file." **Rule 2.551(e)(1)** In the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified. **Rule 2.577(d)(4)** As above, it seems unnecessary and would create additional workload to, "**send notice of deletion to the petitioner.**" We suggest	

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	Commentator	Position	Comment	Committee Response
			deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this. We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file."	

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			Rule 2.577(f)(3) As above, in the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified. **Rule 3.1110(f) Format of Exhibits (4)** The language in this section is too restrictive. We suggest a change in the second sentence from, **"…electronic exhibits must include electronic bookmarks…"** to **"…electronic**	

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	Commentator	Position	Comment	Committee Response
			documents must include electronic bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein…" **Rule 3.1302(b)** As above, it seems unnecessary and would create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "**The clerk must send notice of deletion to the submitting party,**" or at least changing the word, **"must"** to **"may"**.	

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