JUDICIAL COUNCIL
OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

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JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

March 16, 2015
3:00 PM – 5:00 PM

Teleconference

Advisory Body Members Present:	Hon. Louis Mauro, Chair; Hon. Peter Siggins; Ms. Kimberly Stewart; Mr. Joseph Lane; Mr. Frank McGuire; Mr. Don Willenburg
Advisory Body Members Absent:	Mr. Kevin Green
Others Present:	Mr. Patrick O'Donnell; Ms. Heather Anderson; Ms. Tara Lundstrom; Ms. Katherine Sher; and Ms. Julie Bagoye

OPEN SESSION

Call to Order and Roll Call
Justice Mauro called the meeting to order at 3:00 PM, and roll call was taken. He noted there were no public comments received prior to this meeting.

Approval of Minutes
The subcommittee reviewed and approved the minutes of the February 26, 2015 meeting of the Joint Appellate Technology Subcommittee (JATS), as amended.

Item 1
Rules Modernization Project
Discussion: Katherine Sher, Staff Attorney, Heather Anderson, Supervising Attorney and Patrick O'Donnell, Managing Attorney, Judicial Council staff, Legal Services

Justice Mauro noted that the Appellate Advisory Committee had approved the first set of proposed modernization amendments to the Title 8 rules, which had been discussed and approved by JATS at its February 26th meeting.

The subcommittee considered a second set of proposed modernization amendments, "Part II" of the proposed amendments to the Title 8 Rules, which pertain to chapters 3 through 11 in Division 1 and all of Division 2. The subcommittee approved the proposed amendments in Part II, with the modifications identified below, and recommended that they be circulated for public comment. The subcommittee modified the proposals in Part II as follows:

1. In rules 8.450 and 8.454, JATS did not adopt proposed amendments that would have changed the word "mailed" to the word "sent."

2. JATS changed the proposed amendments to 8.504(b)(4) and (b)(5) to require that a petition "…must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached."

3. In rule 8.610(c), in the phrase "bound together," JATS removed the comma.

4. In rule 8.843, JATS added language stating that when a trial court clerk is sending exhibits to the appellate division on an appeal of a limited civil case, and sending a list of those exhibits, two copies of the list of exhibits need only be sent if the list is not transmitted electronically.

5. In rule 8.224, JATS made a change parallel to that made in 8.843, applicable when a trial court sends exhibits to the Court of Appeal. (Rule 8.224 was originally considered with the Part I proposed amendments and initially left unchanged.)

6. In rule 8.870, JATS added language stating that when a trial court clerk is sending exhibits to the appellate division on an appeal in a misdemeanor case, and sending a list of those exhibits, two copies of the list of exhibits need only be sent if the list is not transmitted electronically.

7. In rule 8.921, JATS added language stating that when a trial court clerk is sending exhibits to the appellate division on an infraction appeal, and sending a list of those exhibits, two copies of the list of exhibits need only be sent if the list is not transmitted electronically.

Future action:

The next JATS meeting will be scheduled after conclusion of the public comment period for the three proposals that will be circulated. That meeting will include review of any public comments in order to develop recommendations to CTAC and AAC about whether to modify and recommend adoption of the proposals.

ADJOURNMENT

The meeting was adjourned at 4:00 PM.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 24, 2015

To
Members of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and Court Technology Advisory Committee

From
Katherine Sher, Attorney,
Legal Services Office

Heather Anderson, Supervising Attorney,
Legal Services Office

Subject
Consideration of public comments and further action on SPR15-03 – Access to Electronic Appellate Court Records

Action Requested
Please review for July 30 meeting

Deadline
July 30, 2015

Contact
Katherine Sher
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katherine.sher@jud.ca.gov

Heather Anderson
(415) 865-7691 phone
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Introduction

Earlier this year, on the recommendation of the Joint Appellate Technology Subcommittee (JATS), the Appellate Advisory Committee (AAC) and Court Technology Advisory Committee (CTAC) recommended circulating for comment new rules addressing public access to electronic appellate court records, proposed rules 8.80 to 8.85. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records, rules 2.500 to 2.507, with some changes recommended by JATS to reflect the practices and needs of the appellate courts. The Judicial Council's Rules and Projects Committee approved that recommendation, and the proposal was circulated for public comment between April 17, 2015 and June 17, 2015. A copy of the Invitation to Comment, with the text of the proposed new rules, is included in your meeting materials. This memo discusses the public comments received.

Public Comments

Comments from seven organizations were received, many of them lengthy and detailed with suggestions for specific changes. One commentator agreed with the proposal, three agreed if modified, two disagreed, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of all comments received (with one lengthy comment attached separately) and staff's proposed committee responses, is attached. The main substantive comments and staff's proposed responses are discussed below, but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully.**

Second District Court of Appeal Comment

The Second District Court of Appeal objects to the second sentence of the definition of "court record" in proposed rule 8.82 (1), which states that "The term does not include the personal notes or preliminary memoranda of justices, judges or other judicial branch personnel." The Second District Court of Appeal argues that the references to "personal notes" and "preliminary memoranda" in this sentence could be taken to mean that some "notes" and "memoranda" are included in the definition of "court records." The commentator further notes that the first sentence of the proposed definition adequately lists the documents that are court records and that the second, potentially confusing, sentence is not needed.

Staff recommends against making the commentator's suggested change. The sentence in question is taken directly from the definition of "court records" in rule 2.502(1), applicable to the trial courts, with the exception that the reference to "justices" was added. Staff is not aware of any trial courts facing demands for the release of memoranda, draft rulings, or comments on draft rulings based on the language of rule 2.502(1). Moreover, if the rule adopted for the appellate courts were to move forward expressly removing this sentence, the difference between the two rules might raise questions as to the interpretation of rule 2.502(1).

Courthouse News Service Comment

Courthouse News Service (CNS), a nationwide news service that focuses on court records, commented extensively from the perspective of a news organization needing frequent and timely access to court records for news-gathering purposes. CNS "found much to like" in the proposed rules, but raised concerns regarding proposed rule 8.85(b), which requires that if public access to electronic records is provided exclusively through a vendor, the contract must ensure that fees charged for access are reasonable.

General comments

CNS states generally that it is best if access to court records is provided directly rather than through a vendor. CNS suggests that access through a vendor raises issues as to control over access to the records and the fees charged for such access which can be avoided by a court providing access directly. CNS notes that many of the companies that provide e-filing services and access to electronic court records are part of larger organizations that also engage in news reporting activities, such as Thomson Reuters and LexisNexis. CNS states that a company that controls access to court records may gain an unfair advantage for its news reporting arm, which can instantly access the records without cost – while other news organizations get the information later, for a fee.

The proposed response to this general comment notes that it is unclear that the issue of vendor control of electronic access to records will be relevant in the appellate courts. The electronic records now available to the public from the appellate courts (such as dockets and limited case information) are available directly from the courts. Staff's understanding, from discussions with appellate court staff, is that the appellate courts intend to continue to provide access to electronic records directly rather than through a vendor.

With respect to the suggestion that additional subjects be added to the rules, the proposed committee response indicates that it is the committees' view that it is important that rules be put into effect governing access to electronic appellate court records now, so that there will be appropriate rules regarding public access to electronic records in effect as the appellate courts move towards more widespread use of e-filing. The experiences of the appellate courts with the implementation of the rules and of systems for public access to electronic records can be used to refine the rules in the future, perhaps as part of Phase Two of the Rules Modernization Project. However, at this point, revising the proposed rules as suggested by CNS would only lead to delay in the adoption of any rules at all.

Proposal for limiting vendor control

Citing standards in effect in Georgia and Tennessee for vendors providing e-filing services, as well as contracts used by the Superior Court of San Francisco County and the Superior Court of Los Angeles County, CNS suggests specific language to be added to proposed rule 8.85 to limit vendor control over public access to documents. CNS's proposed added language states that a contract with a vendor must provide that the vendor is "prohibited from reselling, recombining, reconfiguring or retaining any copies of the court's electronic records or any portion thereof" other than as needed to provide the public access services agreed upon.

Staff recommends against adding this language to the proposal. As noted above, from discussions with appellate court staff, it is our understanding that the appellate courts intend to continue to provide access to electronic records directly rather than through a vendor. Thus, the only vendor contract now in place or expected is for e-filing. Existing rule 8.75(c) provides that "All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use". Given that the appellate courts do not expect to use vendors to provide access to electronic records, and that in their current dealings with vendors to provide e-filing services the appellate courts maintain control over the documents, it seems unlikely that contracts for vendors to provide access to electronic appellate court records will inappropriately cede control over the records access systems. Should problems arise with vendor-provided systems for access in the future, adding requirements for agreements with vendors can be considered at that point.

Proposals regarding fees for access

CNS raises three concerns as to vendors charging fees for access to public records. First, CNS notes that if a fee is charged for remote access to electronic records over the Internet, there should also be a way to access records at the courthouse without charge. Second, so as to ensure that members of the public and the press can get timely access to records, CNS notes that if there is a fee charged for remote internet access to newly filed records, there should be a way to access those records on the day they are filed without a fee being charged. CNS notes that in two California trial courts, CNS has experienced the problem of newly filed records being uploaded after the court is closed for the day, so that these records are available online for a fee before they can be accessed for free at the courthouse the next day. Finally, CNS asks that fees for remote access be structured so that it remains affordable for frequent users of court records, such as members of the press.

CNS suggests two additions to proposed rule 8.85(b) to address these concerns. The first addition would state, as newly added 8.85(b)(1): "To the extent access to a court's electronic record is the exclusive means for the public to review that record, such access must be provided at no charge upon filing on public access terminals available at the courthouse." This proposed addition addresses both the issue of timely access and the concern that there be some means of public access to records without charge.

Staff recommends against making the suggested change. The proposed response notes that the language of proposed rule 8.85(b), as circulated for comment, was taken almost verbatim from the language of rule 2.506(b), applicable to electronic trial court records. Staff's view is that there are not differences in trial and appellate court structure or procedure that warrant differences in the trial and appellate rules on this point and so recommends staying with

language similar to the trial court rule at this point. Until the appellate courts have more experience with their own implementation of public access to electronic appellate court records, it is difficult to say what issues will arise and how best to address those issues.

CNS's second proposed addition on the subject of fees would add language requiring that there be some fee option to allow those who need frequent access to get it without incurring excessive costs. As noted in the proposed response, the proposed rule as circulated, using the language similar to that already in effect as to trial court records, requires that the contract with a vendor ensure that the fees imposed be reasonable. This requirement, as worded, applies equally to require that fees are reasonable for frequent users as it does to require that fees be reasonable generally. Thus, the suggested language does not appear to be necessary.

Comments of Orange County Bar Association and San Diego County Bar Association Regarding Proposed Rule 83(d)

The Orange County Bar Association (OCBA) notes that the title of rule 8.83 (d), "Remote electronic access allowed in extraordinary cases," has been changed from the title of the parallel trial court rule, 2.503(e), "Remote electronic access allowed in extraordinary criminal cases" and asks that the title be changed to correspond to the trial court rule. The San Diego County Bar Association (SDCBA) also addresses this rule, noting that, as circulated, it only applied to extraordinary criminal cases. SDCBA suggests adding language to the rule which would give an appellate court discretion to allow remote public access to records in other extraordinary cases

The intent of the committees in putting forward the proposed rule, as reflected in the Invitation to Comment, was that appellate courts be given broader discretion than trial courts to provide remote access to records not just in extraordinary criminal cases, but in other types of extraordinary cases as well. The proposed rule as circulated, however, inadvertently kept the word "criminal" in the first sentence of rule 8.83(d).

Staff recommends that the word "criminal" be deleted from the first sentence of proposed rule 8.83(d) as the rule moves forward, as originally intended and as reflected in the Invitation to Comment memorandum.

Alternatively, the committee may wish to discuss deferring this particular change so that an Invitation to Comment with the correct language of the rule can be circulated, to allow public comment on this significant change. Staff notes that both OCBA and SDCBA commented on the language of the proposed rule as attached to the Invitation to Comment, retaining the restriction to criminal cases. Other organizations or individuals may have concerns regarding the proposed expansion of discretion to allow remote access to records, but may have failed to comment because they did not know that the rule was proposed to be modified from the trial court rule.

Comments of Orange County Bar Association and State Bar of California Standing Committee on the Delivery of Legal Services Regarding Absence of Rule Similar to Rule 2.507

OCBA suggests that the proposed appellate rules should include a rule similar to trial court rule 2.507. That rule lists specific types of information that must be included and excluded from those electronic records that are made available remotely and in bulk. In the trial court rules, rule 2.507's list of information to be excluded from these records serves as a protection against the release of sensitive information. The comment of the State Bar Standing Committee on the Delivery of Legal Services (SCDLS) also addresses the topic of providing protection against the release of such information. SCDLS specific suggestion is that the protections under 8.83(d), requiring that certain information be redacted when records are made available remotely in extraordinary criminal cases, should be extended whenever electronic information is made available to the public.

As you may recall, prior to circulation of the proposed rules, JATS members discussed whether to include a rule similar to rule 2.507 in the proposed appellate rules. JATS recognized that the information that rule 2.507 requires to be included in electronic court calendars, indexes and registers of actions – to the extent the appellate courts have the information similar to that listed in rule 2.507(b) – is already included in appellate court online calendars and case dockets. Similarly, it was the view of JATS members that the information required to be excluded from electronic calendars, indexes and registers of actions is already excluded from online appellate court information. Thus, JATS did not believe the creation of an adapted version of rule 2.507 was necessary. However, given the concerns raised by OCBA and SCDLS, **JATS may wish to revisit whether a rule similar to rule 2.507 should be included in the appellate rules.** .

Please note, however, that while addition of an appellate court rule parallel to rule 2.507 might address part of SCDLS's concern, it would not fully address these concerns. A rule parallel to rule 2.507 would not, as suggested by SCDLS, apply the redaction requirement applicable when records in extraordinary cases are made available remotely to civil case records made available remotely on a case-by-case basis under proposed rule 8.83(b)(2). As is true in the trial courts, under the proposed appellate rules, civil case electronic records would be made available remotely without any express requirement for redaction of sensitive information from these records. Staff recommend against extending the redaction requirements of proposed rule 8.83(d)(2) in this set of proposed rules. Such an addition is a significant change to the system of rules which have been in use in the trial courts, and, if it is to be considered, staff's recommendation is that possible changes to both the appellate court rules and the trial court rules should be considered together and be circulated to allow public comment.

Other Orange County Bar Association Comments

The Orange County Bar Association (OCBA) made several other specific suggestions regarding the scope and language of the proposed rules:

- OCBA notes that the proposed rules do not cover electronic records in appeals to the superior court appellate divisions, which also do not appear to be covered by the rules regarding electronic records in the trial courts. Staff recommends that this be prioritized for future rule-making cycles, either as part of the ongoing Rules Modernization Project or as a separately promulgated proposed rule.

- OCBA asks for language to be added in a new rule 8.83(h) to match the trial court rule 2.503(i), encouraging the courts to make electronic records available at "public off-site locations." In the proposed appellate rules, this language was moved from the rule text into the proposed Advisory Committee Comment for rule 8.83. In its earlier discussions of the proposed new rules, JATS decided that this non-mandatory language was more appropriately the subject of a comment rather than being included in the proposed rule itself.

- OCBA points out that the proposed rules do not include a rule parallel to rule 2.505, applicable to contracts with vendors for the provision of public access to electronic records. Rule 2.505(a) requires that the vendor provide access and protect confidentiality as required by law or court order. Rule 2.505(b) further requires that the contract provide that the court owns the records and has the exclusive right to control their use. In discussions of these proposed rule prior to circulation, JATS recognized that the situation for the appellate courts contracting with vendors for records access services differs from that of the trial courts. While the fifty-eight trial courts might have many forms of contract and use many different vendors, the appellate courts will almost certainly all have the same contract with the same vendor, if a vendor is used at all, for access to records. However, in light of this comment, as well as the related issues regarding vendor control of records raised by Courthouse News Service, **JATS may wish to revisit the question** of including a rule parallel to rule 2.505 in the proposed rules.

Other San Diego County Bar Association Comments

In addition to its comments regarding proposed rule 83(d), the San Diego County Bar Association (SDCBA) recommends a few relatively minor changes:

- SDCBA suggests adding the word "electronic" before "court records" in proposed rule 8.81(b). As reflected in the proposed response, staff recommend against this addition. The language of rule 8.81(b) is taken directly from existing rule 2.501(e). Thus, if any change

were to be considered, changes to both the trial and appellate rules should be considered at the same time. In addition, the proposed rules, in some respects, discuss both electronic and non-electronic records.

- SDCBA suggests that e-mail addresses of parties, victims, witnesses and court personnel be included in the information required to be redacted from records to be made available online in extraordinary cases. As with many other aspects of the proposed appellate rules, the language at issue in rule 8.83(d)(2) is taken from the equivalent trial court rule, 2.503(e)(2). Making the change suggested by the SDCBA would thus result in the trial and appellate rules not being parallel on this point. In this case, however, staff recommends that this minor addition be made to the proposed rule, as a common sense update to the list of information to be protected. Staff also recommends that CTAC consider recommending a similar change to rule 2.503(e)(2) next year.

State Bar of California Committee on Appellate Courts and State Bar of California Standing Committee on the Delivery of Legal Services

The Committee on Appellate Courts (CAC) and the Standing Committee on the Delivery of Legal Services (SCDLS) raise similar concerns regarding whether the distinctions made in the proposed rules as to which records will be available remotely make sense in terms of either privacy protection or supporting the public's right to access public court records.

CAC notes that requiring courthouse access may impose a disproportionate burden on individuals in rural areas and those with limited financial resources, while failing to protect the privacy rights of litigants, as records will still be available to determined seekers of information. Moreover, CAC points out that the distinction between civil cases and other cases is not an adequate way to distinguish when records are likely to contain sensitive information. CAC asks that a more tailored approach to protecting particular information be considered.

Similarly, SCDLS questions whether the proposed rule "adequately balances interests in publicly available court records and interests in the protection of personal and private information," and asks for a more nuanced consideration of these issues before rules are put into effect.

In response, staff again notes that the proposed rules are based closely on the trial court rules regarding access to court records that have been in effect for many years. These initial proposed rules are intended to build on the experience of the trial courts. When JATS considered these issues during the development of this proposal, it specifically decided that the appellate rules should generally follow the model of the trial court rules. Staff's view is therefore that the rules should move forward using the trial court model and that, if changes are considered in terms of

what records should be available remotely, those changes should be simultaneously be considered for the trial and appellate rules.

In addition to stating its general concerns and the suggestion, discussed above, that the protections under 8.83(d), requiring that certain information be redacted when records are made available remotely in extraordinary criminal cases, should be extended whenever electronic information is made available to the public, SCDLS makes several other specific suggestions:

- SCDLS argues that the term "mental health proceedings" in proposed rule 8.83(c)(2)(D) is unclear. The proposed response notes that this has not, to the knowledge of the committees, been a problem for trial courts in implementing the parallel rule.

- SCDLS asks for an addition to proposed rule 8.85(b) to require that fees charged by a vendor "promote equitable public access while covering the cost of providing access". It is not clear that this new language would provide any protection beyond the proposed rule's requirement that the fees be "reasonable" and it would result in a lack of parallelism with the trial court rules on this topic. Staff therefore recommend against making this change.

Superior Court of San Diego County
The Superior Court of San Diego County agrees with the proposal and asks that the rule drafters remain mindful of the importance of protecting the confidentiality of confidential documents, such as those in juvenile cases.

Subcommittee Task

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

- Discuss the comments received and approve or modify staff's suggestions for responding to these comments, as reflected in the draft comment chart and this memo; and
- Discuss what recommendation to make to the advisory committees regarding adoption of the proposed rules.

Attachments
- Comment chart with proposed responses
- Invitation to Comment SPR15-03, *Appellate Procedure: Access to Electronic Appellate Court Records*, available at http://www.courts.ca.gov/documents/SPR15-03.pdf

SPR15-03

Appellate Procedure: Access to Electronic Appellate Court Records (adopt rules 8.80 to 8.85)

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

	Commentator	Position	Comment	[Proposed] Committee Response
1.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	NI	The Second Appellate District of the Court of Appeal has reviewed the materials, including the Invitations to Comment, forwarded to us by your message of April 20, 2015. The Second Appellate District has one comment on subdivision (1) of proposed rule 8.82. Subdivision (1) of proposed rule 8.82 provides: "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. *The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.* It is the view of the Second Appellate District that the second sentence of subdivision (1) of proposed rule 8.82, shown by italics, should be eliminated. The references to "personal notes" and "preliminary memoranda" in the second sentence suggest that some notes and some memoranda would be accessible. This would be undesirable in that draft opinions and comments on draft opinions obviously need to be protected from disclosure. Apart from this consideration, the second sentence should be eliminated since it serves no purpose. The first sentence of subdivision (1) of proposed rule 8.82 satisfactorily lists documents that should be and	The language of the sentence in question in proposed rule 8.82, subdivision (1), is taken directly from existing Rule 2.502, subdivision (1), pertaining to electronic access to trial court records, except that a references to "justices" has been added. This sentence is meant to clarify that these materials are not court records and therefore will not be subject to the rules regarding electronic access to court records. The language of rule 2.502 has not, to the committees' knowledge, posed difficulties for the trial courts with regard to determining what materials are available for public access, nor have private notes or memoranda been made publicly accessible. Moreover, differences in wording between the rule applicable to the trial courts and the rule applicable to the appellate courts might inadvertently create difficulties for the trial courts by calling into question the interpretation of what materials are meant to be included in "court records." The committees therefore recommend against making the language of the proposed rule for the appellate courts different from that of the existing rule for the trial courts.

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	Commentator	Position	Comment	[Proposed] Committee Response
			in fact are now accessible to the public. The second sentence is surplusage.	
2.	Courthouse News Service by Rachel E. Matteo-Boehm	AM	See full comment, attached. The central points of the comment are summarized below in numbered paragraphs for reference in reading the responses given. 1. Courthouse News Service (CNS) begins its comment by noting that that its experience is that electronic access is "best performed by the court itself" and that in its view, ideally, the rule would not allow for vendor controlled access. CNS asks that the proposed rules address the two main concerns raised by use of vendors: vendor control over the public court record and both the amount of, and the circumstance under which a fee may be charged.	1. As a preliminary matter, the committees note, in response to CNS's general concerns regarding the use of vendor services for access to electronic records, that the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to provide access to electronic records directly, as they do for paper records. With respect to the suggestion that the rules include additional provisions relating to vendors, the committee's view is that it is important to move forward now with adopting the proposed rules. Adoption of the proposed rules is critically important to provide standards for allowing appropriate access to electronic appellate court records. Courthouse News Service (CNS) raises issues which should be considered and addressed as the appellate courts move forward in implementing procedures for electronic access. However, under rule 10.22, substantive changes to the Rules of Court need to circulated for public comment before they may be recommended for adoption by the Judicial Council. Since these

	Commentator	Position	Comment	[Proposed] Committee Response
				subjects were not addressed in the proposal that was circulated for comment, rules addressing these subjects cannot be recommended for adoption at this time. The committee's view is that, consideration of the suggested changes should not hold up the adoption of the rules that were circulated. As the appellate courts, the public, CNS and other news services gain experience with the new rules and with new procedures for access to electronic appellate court records, the concerns raised by CNS can be considered in light of that experience, and the rules amended as needed. Indeed, the Court Technology Advisory Committee is leading a two-phase Rules Modernization Project, which in its second phase of substantive revision will offer an opportunity for comprehensive review of the rules governing access to electronic court records in both the trial courts and the appellate courts. The committees can consider CNS's suggestions as part of that comprehensive review.
			2. With regard to the issue of vendor control over access to public records, CNS notes the issues that arise when a vendor providing e-filing and e-access services to a court is also a part of a larger organization that engages in news reporting – for example, LexisNexis. These organizations may be able to use their access to and control over court records to gain a competitive advantage over other news organizations, because they have earlier access to information and can get it at no cost. CNS gives examples of standards and contracts used	2. The committees view is that the proposed addition is not necessary at this time. As noted above, the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website and, at the present time, the appellate courts expect to continue to provide access to electronic records directly, rather than through a vendor In addition, existing rule 8.75(c) provides that "All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has

	Commentator	Position	Comment	[Proposed] Committee Response
			by trial courts in California and by courts in other states to prevent e-filing and e-access vendors from using their position to gain such a competitive advantage, and proposes language that would prohibit a vendor from "reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records" except as called for by the agreement.	the exclusive right to control the system's use." The committees' view is that this provision is adequate to keep vendors from using their position for unfair advantage in the news reporting arena. If unforeseen issues arise with regard to vendors who provide public access to electronic court records, those issues can be addressed at a later point in time, with the benefit of real-world experience.
			3. With regard to the fee related issues, CNS asks for two specific additions to the proposed rule: First, a new rule 8.85 (b)(1) would require that courthouse access be available, upon filing,through public access terminals at the courthouse at no charge.	3. The committees note that the language of rule 8.85(b), as circulated, was taken almost verbatim from rule 2.506(b) regarding trial court records. That trial court rule does not contain the language relating to the timing of access and the provision of free access suggested by CNS. The committees' view is that there are not differences in trial and appellate court structure or procedure that warrant differences in the trial and appellate rules on these points Implementation of public access to electronic court records will be the best test of whether any changes to these rules are needed to address specific concerns. For now, the committees recommend against deviating from the language of the trial court rule as the model for the appellate court rules.
			4. Second, CNS proposes that rule 8.85(b)(2) be added to require that there be an option to allow frequent users of court records to access them without excessive cost.	4. The committees' view is that this concern is adequately addressed in the proposed language, again as taken almost verbatim from the trial court rule. Proposed rule 8.85(b) requires that a contract with a vendor to provide public access must ensure that the fees are reasonable. That language is broad and applies to frequent users as

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	Commentator	Position	Comment	[Proposed] Committee Response
				well as those who only more selectively need to access court records.
3.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	AM	1) The proposed rules do not appear to cover electronic records for small claims appeals & appeals of limited jurisdiction cases which are heard in the superior court [see Rule 8.81(a)]; those appeals are also not covered by the trial court rules found at Rules 2.500 - 2.507; those records must be addressed somewhere or a new set of rules adopted for them. (2) Rule 8.83 "Title" should be changed to "Remote electronic access allowed in extraordinary criminal cases" to match Rule 2.503(e) and to more accurately describe that subsection. (3) Language should be added under a new Rule 8.83(h) that matches existing Rule 2.503(i) concerning a requirement that the Courts should encourage the availability of electronic access "at public off-site locations"; no reason exists for downplaying this encouragement for appellate courts while keeping it for trial courts.	1) The committees appreciate this suggestion and intend to undertake consideration of rules to govern access to electronic records (as well as electronic filing) in the appellate divisions of superior courts as part of "Phase Two" of the ongoing Rules Modernization Project. 2) As noted in the Invitation to Comment, proposed rule 8.83(d) is intended to allow an appellate court discretion to provide remote access to additional court records not only in extraordinary criminal cases but in other extraordinary cases as well. However, the proposed rule was inadvertently circulated without striking the reference to "criminal" in the language borrowed from rule 2.503(e) to achieve this broader application. The committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d). 3) The language of rule 2.503(i) encouraging public off-site access is incorporated into the Advisory Committee Comment on proposed rule 8.83.

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	Commentator	Position	Comment	[Proposed] Committee Response
			(4) The language from existing Rule 2.505 concerning "Contracts with Vendors" should be included somewhere in these appellate court rules as no valid reason can exist for excluding these requirements for appellate court vendors. (5) Similar language from existing Rule 2.507 for trial courts must be added as may be modified for appellate court actions since as proposed there is no language about the "intent" of these rules, the "minimum contents" for certain court records, and the "excludable information" not allowed to be accessible through those electronic records (protections for both the courts and the parties/participants are required).	4) **Committee members: please discuss.** 5) **Committee members: please discuss, particularly the issue concerning "excludable information.".**
4.	San Diego County Bar Association, Appellate Practice Section by Victoria E. Fuller, Chair	AM	The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a few issues for further consideration.	

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

	Commentator	Position	Comment	[Proposed] Committee Response
			Our section approves of the new rules specifically addressing public access to electronic appellate court records. We understand that these proposed new rules are based on the existing rules addressing public access to electronic trial court records. We offer two minor revisions and suggest two substantive changes to the proposed rules:	
			• The first and second sentences of proposed Rule 8.8l (b), should be revised to include the word "electronic" before the term "court records":	The committees recommend against the suggested change to proposed rule 8.81(b). The language of the proposed rule as circulated is taken directly from rule 2.501(b). Moreover, in some places the proposed rules make reference to non-electronic court records.
			• Under Rule 8.81(d)(2), the information to be redacted from records to which the court allows remote public access should include the Email addresses of parties, victims, witnesses, and court personnel. This appears to be just an oversight in the proposed rule.	This appears to be a reference to proposed rule 8.83(d) (2). Again, the language of the proposed rule is taken directly from the parallel trial court rule, rule 2.503 (e). Here, however, the committees agree that adding e-mail addresses to the list of information to be redacted is a sensible change. To address this concern, the committees have revised their proposal, in proposed rule 8.83(d) (2), to change "addresses and phone numbers of parties, victims, witnesses and court personnel" to "addresses, <u>e-mail addresses</u> and phone numbers of parties, victims, witnesses and court personnel".
			• Substantively, it appears Rule 8.83(d) does	As noted above in the response to the comment by

	Commentator	Position	Comment	[Proposed] Committee Response
			not provide a procedure for the court to exercise its discretion. We suggest that the proposed rule include language stating that a motion may be presented. For example, the first sentence of Rule 8.83(d) could be revised to read (underscored language added): "Notwithstanding (c)(2)(E), by written motion or on the court's own motion, the presiding justice of the court ..." • Finally, Rule 8.83(d) should be revised to allow the presiding justice of the court, or a justice assigned by the presiding justice, to exercise discretion, subject to (e)(l), to permit remote electronic access by the public to all or a portion of the public court records in not only an individual criminal case under subdivision (c)(2)(E), but also in civil harassment proceedings, workplace violence prevention proceedings, and postsecondary school violence prevention proceedings addressed under (c)(2)(F), (G), and (H). The rationale for permitting remote access to criminal proceedings in high publicity cases applies with equal force to these quasi-criminal proceedings. In such an instance, the judicial officer should have the discretion, in a particular individual proceeding, to allow online public access.	the Orange County Bar Association, the proposed rule was intended to give the appellate court discretion to allow remote access in any of the case types listed, but the limitation to criminal cases was inadvertently left in the language of the rule as circulated from the parallel trial court rule used as a model for this rule. As noted above in response to the comments of the Orange County Bar Association, committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d)
5.	State Bar of California Committee on Appellate Courts by John Derrick, Chair	N	The Committee supports generally the principle of providing the public with "reasonable access" to appellate court records that are maintained in electronic form, but opposes the Rule's proposal to institute a bifurcated system wherein most	The committees appreciate the concerns raised by the Committee on Appellate Courts and are sensitive to the need to find an appropriate balance between the privacy rights of litigants and the public interest in making court records

	Commentator	Position	Comment	[Proposed] Committee Response
			civil records are made available remotely whereas records in other types of cases (notably criminal, juvenile, and family court matters) are limited to in-court access. The Committee believes that if the Court of Appeal or Supreme Court intends to make a judicial record publicly available, the California Rules of Court should not make certain types of records more difficult to access than others. Requiring the public to travel to a courthouse to access certain types of records threatens to impose a disproportionate burden on individuals in rural areas and those with the fewest financial resources. It also is a dubious strategy for protecting the privacy rights of litigants. While the rule makes it more tedious for the public to access a document in certain types of cases, it does nothing to actually prevent a motivated member of the public from accessing the underlying information. The Committee also notes that the rule's distinction between civil cases on the one hand, and criminal, juvenile, and family court matters on the other hand appears extremely overbroad. Certain criminal, juvenile, and family court matters include the filing of documents with sensitive information, but others do not. Likewise, civil matters also may involve the filing of sensitive personal information. Despite imposing greater access restrictions on certain types of matters, the rule does not appear narrowly tailored to the public interest in	accessible. As the appellate courts move towards modernization of their systems to allow more widespread e-filing of documents it is critical that guidelines be in place regarding access to electronic appellate court records. In creating the proposed rules on this subject, the committees looked to the rules already in place for the trial courts regarding access to electronic court records. These rules have proved over many years to provide a workable framework for the courts. The proposed rules for the appellate courts seek to build on the success of the rules for access to electronic court records in the trial courts, allowing for possible later amendment based on the experience of the public and the appellate courts with the implementation of these proposed rules. Although a general dividing line between access to electronic records in civil cases and access to electronic records in the other types of proceedings listed in proposed rule 8.83(c)(2) may be an imperfect means of balancing these interests, the proposed adoption of these rules is based on a record of workability in the trial courts. The committees' view is that if an alternate approach to establishing a dividing line is to be considered, it should be considered for both the trial and appellate rules at the same time. In the meantime, as noted in the responses above, the committees urge adoption of these rules to facilitate access to electronic access as the appellate courts modernize their records systems. Further changes can be made later, perhaps as part

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	Commentator	Position	Comment	[Proposed] Committee Response
			protecting individual privacy. It bears noting that although a 2002 report drafted for the Conference of Chief Justices on public access to judicial records contemplated that certain records might be made electronically available at the courthouse but not online, it cautioned that such a restriction should be limited to discrete categories of information such as identifying information for victims in criminal or domestic abuse cases, photographs of involuntary nudity, and medical records. *See* Nat'l Ctr. for State Courts, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts* 39-44 (2002). The Committee encourages the drafters of the rule to consider a more tailored approach like that contemplated by the CCJ report and/or to explore further alternative methods identified in the CCJ report for protecting private information, such as remote access by subscription. *See id*. at 41-42.	of the ongoing Rules Modernization Project, to refine the distinctions made as to which records can be accessed remotely and which not.

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	Commentator	Position	Comment	[Proposed] Committee Response
6.	State Bar of California Standing Committee on the Delivery of Legal Services by Maria C. Livingston, Chair	N	<u>Does the proposal appropriately address the stated purpose?</u> No. The proposal adds new rules on public access to appellate court records of the Supreme Court and Courts of Appeal. The rules attempt to balance providing the public with reasonable access to records, while also protecting privacy interests that may be compromised with unlimited remote access. Therefore, the rules distinguish between records that would be available remotely and at the courthouse, and records that would only be available at the courthouse. SCDLS recommends that the rules be redrafted with additional consideration and explanation of issues outlined in the additional specific comments below. Major issues include whether the rules adequately balance interests in publicly available court records and interests in the protection of personal and private information. In addition, some "line drawing" in the proposed rules, regarding the treatment of different categories of information, would benefit from additional clarification and explanation. **Additional Specific Comments** In general, SCDLS believes additional development may be needed to ensure that the rules more effectively attain the twin goals of	With regard to the general concern as to whether the distinction made in the proposed rules as to which records will be made available remotely strikes the correct balance between privacy concerns and access concerns, please see response to comment by the State Bar Committee on Appellate Courts.

	Commentator	Position	Comment	[Proposed] Committee Response
			providing for public access to court records and protecting individual privacy.	
			In proposed rule 8.83(c) (courthouse access only), a large number of terms are not defined by reference to statute or otherwise, including "mental health proceedings." The rule is thereby unclear. The lack of clarity may make it difficult for a court to follow, as well as for a litigant to predict how the records would be treated. For example, is a mental health disability discrimination case a "mental health proceeding"? The committee's rationale for selecting the particular proceedings that are exempt from remote access also appears unclear. Without such a rationale, the list contains some items that seem somewhat arbitrary.	With regard to the use of the term "mental health proceedings" in proposed rule 8.83(c)(1)(D), the committees note that this language is taken verbatim from the trial courts (in rule 2.503 (c)(4)) The committees are not aware that any difficulties have arisen in the trial courts with respect to the use of this term. The committees' view is that if a definition is to be considered, it should be considered for both the trial and appellate rules at the same time.
			As to proposed rule 8.83 generally, the Judicial Council may want to consider whether the protections of private information in subdivision (d) (extraordinary disclosure of criminal records) – requiring redaction of personal, financial and health information – should apply more broadly to <u>all</u> publicly available information in electronic case records. Consideration should also be given to whether such privacy protections should apply equally to information obtained remotely and at a courthouse. There is a risk that the court may underestimate the extent to which case-by-case access and courthouse-only access may nevertheless be subject to data mining, invasion	**Committee members: please discuss, in conjuction with discussion of Orange County Bar Association suggestion that the rules include a provision similar to rule 2.507 that addresses "excludable information** With regard to the proposed addition to rule 8.85(b), the language of this provision is taken almost verbatim from rule 2.506(b). That trial court rule does not contain the language suggested

	Commentator	Position	Comment	[Proposed] Committee Response
			of privacy, and bulk distribution. The court's rule against bulk distribution, alone, may be readily circumvented by simply transmitting one case at a time, and in any event if the rule is broken there may be no effective remedy for the person whose personal data was mined. To ensure equitable access by members of the public and to prevent unreasonable charges to the public by private contractors, the Judicial Council is encouraged to consider modifying Rule 8.85(b) as follows: To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable and promote equitable public access while covering the cost of providing access.	by the commentator. The committees' view is that there are not differences in trial and appellate court structure or procedure that warrant differences in the trial and appellate rules on this point If the rule is adopted, the appellate courts can later consider whether changes are needed, based on their experience in implementing the rule.
7.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	Our court would like to emphasize the need to make sure that confidential documents, such as juvenile cases, remain confidential. We recognize the proposal does address this, but wanted to make sure this requirement was at the forefront of the drafters' consideration when making any additional changes to this rule.	The committees appreciate the commentator's reminder with regard to the importance of maintaining the confidentiality of confidential documents.

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VIA HAND DELIVERY

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

Re: Comments of Courthouse News Service on Proposed Rules on Access to Electronic Appellate Court Records

Dear Sir/Madam:

On behalf of Courthouse News Service, we respectfully submit these comments and suggestions in response to the invitation to comment by the Judicial Council of California on the proposed rules related to Access to Electronic Appellate Court Records (SPR 15-03) ("Proposed Rules").

I. Introduction

Courthouse News Service is a nationwide news service that focuses on the court record, from the initial pleading through judgment and appeal. Its more than 3,000 subscribers include law firms in California and throughout the nation, as well as other media outlets, such as the Los Angeles Times and San Jose Mercury News, putting Courthouse News in the position of a pool reporter. On a national level, Courthouse News has a greater number of reporters covering courthouses than any other media outlet. Its web site, www.courthousenews.com, is updated daily with staff-written articles and columns and averages about 1 million readers per month. In recent months, Courthouse News has been credited as the source for stories by media outlets such as The Wall Street Journal, the Washington Post, and many others.

As a news service that focuses on the court record, Courthouse News is keenly interested in any proposed rules related to access to electronic court records, including appellate records. In reviewing the Proposed Rules, Courthouse News found much to like. However, it did identify one area of concern, namely, Proposed Rule of Court 8.85, which provides, in subsection (b), that "[t]o the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."

As a preliminary matter, it has been Courthouse News' experience that public access to court records is best performed by the court itself, rather than by a vendor. There are several reasons for this, but the most important are the practical control over the court record that a court loses when a vendor controls that record, coupled with the higher user fees for access that tend to be charged by vendors (who by their very nature are seeking to maximize their profits). To this end, ideally, the proposed rules would not allow for vendor-controlled access systems at all.

However, to the extent a decision is made to allow courts to make their electronic records available exclusively through a vendor, at the very least the rules should address the two main issues that make in-house public access the preferred option: (1) vendor control over the public court record; and (2) the amount of, and circumstances under which, a fee may be charged.

Courthouse News is aware that the Proposed Rules are in many respects similar to the Rules of Court already in place for access to electronic trial court records. *See* Rules of Court 2.500-2.507. The concerns noted below are not unique to appellate records, but rather are informed, in large part, by Courthouse News' experience over the years in accessing electronic trial court records, including in California under Rules 2.500-2.507.

II. Vendors As Electronic Public Access Providers

The scope of a vendor's permitted use of court records is a serious issue, and becomes even more important when a court's chosen vendor – or its affiliates – are also engaged in news reporting activities. For example, the vendors currently active in the court records space include Thomson Reuters Court Management Solutions, formerly LT Court Tech, which is part of one of the world's leading publishers of legal information through Thomson Reuters' Westlaw division; Journal Technologies, Inc., which represents the merger of three smaller case management vendors – Sustain Technologies, ISD Corporation and New Dawn – and is owned by the Daily Journal Corporation, publisher of legal newspapers in California and Arizona; and LexisNexis, also one of the world's leading publishers of legal information, including offerings such as alerts and trackers through its CourtLink division.

It is important to keep in mind that the nature of the media and news reporting has changed dramatically in recent years. Whereas reporting about the courts used to be the exclusive domain of traditional print and broadcast media outlets, media entities reporting news and information about the courts now include a variety of electronic publishers that can instantly transmit information to targeted audiences.[1] Accordingly, news reporting about the courts now includes not only more

[1] As recently noted in The Guardian, "News nuggets are back and new gatekeepers emerging as we hark back to the days of the SMS text alert." Emily Bell, *Apple Watch Highlights the Need for Shorter News As Screen Sizes Shrink*, The Guardian, April 26, 2015, *available at* http://www.theguardian.com/media/media-blog/2015/apr/26/apple-watch-shrinking-news-apps. Indeed, many traditional news organizations are keenly aware of the importance of finding ways to push news alerts and other breaking news products to

traditional in-depth reports about high-profile cases, but also summaries or alerts of what was filed in a given court on a given day or the latest developments in a case. These are often referred to euphemistically as "value-added services."

In those instances where a single private vendor acts as the electronic gatekeeper for the public court record – where copies of court records pass through or reside on the vendor's computer servers as part of a case management or e-filing system, or where the same vendor provides remote public access – that vendor also has priority access to the public court record. This control is valuable, especially for those vendors that also act as electronic publishers, because it gives them a virtually insurmountable advantage over their competitors in the news media in two ways: (1) timing and (2) cost.

With respect to timing, the chosen vendor will always be the first to receive the court records (including both the documents themselves and docket information about filings and case events), simply by virtue of its position with the court. Moreover, it receives those records in an electronically readable form that can be instantly analyzed and used to prepare and disseminate news reports to subscribers in a matter of minutes. Conversely, competing news entities must manually review these records (whether on paper or on a public access computer terminal), take notes, and create a news report, all of which takes time and means that the competing news entity is always "scooped" by the vendor. [2]

Similarly, with respect to cost, the vendor gets not only instantaneous access to court records, but access without charge, with those records delivered directly to the vendor's electronic doorstep. In contrast, competing media entities must either pay a fee to the very vendor they're competing with

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their audiences. For example, The New York Times, NBC News, Fox News, BBC News and The Guardian now all offer various alert products and options to their readers so they can stay abreast of breaking news – from emailed alerts to SMS messages to Twitter updates. As The Guardian explained, "It's an incredibly exciting time for news organisations to explore new and better ways to reach their audiences. And breaking news is the key editorial area where this is most important." Mario Andrade, *Extra! Extra! Rethinking the Guardian Breaking News Experience*, The Guardian, April 28, 2015, *available at* http://www.theguardian.com/info/developer-blog/2015/apr/28/extra-extra-rethinking-the-guardian-breaking-news-experience.

[2] More than ever, with the explosion of the Internet, "real-time reporting [has become] more prevalent." Peter Funt, *The Newswatch Never Stops – Nor Should It*, The Wall Street Journal, Jan. 21, 2011, at A13. "News outlets and individual reporters risk losing their relevance and their readerships if they fail to get stories up and out there in real-time." Elana Kirsh, *Untangling the Web: the 24-Minute News Cycle*, The Jerusalem Post, March 10, 2012, available at http://www.jpost.com/OnTheWeb/Article.aspx?id=286473. To "stand apart" in the competitive business of specialized news, one must "start[] earlier, writ[e] more and publish[] faster." Binyamin Appelbaum, *Joe Weisenthal vs. the 24-Hour News Cycle*, The New York Times, May 10, 2012, *available at* http://www.nytimes.com/2012/05/13/magazine/joe-weisenthal-vs-the-24-hour-news-cycle.html?pagewanted=all.

for remote access, or send a reporter to the courthouse on a continual basis to review newly e-filed records, a significant cost that the vendor does not have to bear.

In short, giving a vendor that also engages in news reporting a preferential position with respect to access to the court record, whether as part of a case management, public access or e-filing system, is no different than telling the local newspaper that it can control the door to the courthouse and will always have a head start – at a lower cost – in reporting newsworthy new civil cases than all other media outlets.[3]

These concerns have come to fruition in other courts where publishers have control of one or more components of the court's computer system. A prime example is the Delaware Court of Chancery, which has an e-filing system built around what was formerly LexisNexis' File & Serve arm (which was acquired in 2012 by a third-party group and re-named File & ServeXpress). In a 2009 email blast advertising its "Reduced Pricing for Delaware Superior Court Documents" and its alert service – which, for a fee, provided instant notification when a lawsuit against a particular defendant had been filed – Lexis boasted, "Remember, File & Serve has these documents first because we are the Court's official e-filing provider." This notice was a clear exploitation of the vendor's unfair advantage, and in any instance where an e-filing or case management system vendor is also given control over public access, this inequality will always be a serious risk.

To address this risk, many state and local judicial entities are taking affirmative steps to ensure there are safety mechanisms in place, i.e., through court rules and/or contractual provisions, that limit what vendors who have access to electronic court records can do with court information and records that pass through their systems. As experience has shown, it is not enough for the contract to simply state that the court is the owner of its records and has the right to control their use, as existing Rules of Court currently require for contracts with vendors for trial court records. *See* Rule 2.505(b). Rather, the contract must make clear that the vendor may not use the court records for any purpose other than the service it is providing to the court. For example:

- Georgia's Statewide Minimum Standards for Electronic Filing, effective September 25, 2014 ("Georgia Minimum Standards"), provide that a vendor may be authorized to conduct e-

[3] It is fundamental that the government may not grant one media entity preferential access to the court record. *See Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d 1095 (C.D. Cal. 2003) (city violated First Amendment by giving television station exclusive access to an official city event while requiring other broadcasters to rely on a video feed); *accord, e.g., Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986) (trial court "erred in granting access [to discovery materials] to one media entity and not the other"); *American Broadcasting Cos., Inc. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) ("once there is ... participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable"); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976) ("All representatives of news organizations must not only be given equal access, but within reasonable limits, access with equal convenience to official news sources.").

filing only if the vendor "disclaims any ownership right in any electronic case or document or portion thereof, including any commercial right to resell, recombine, reconfigure or retain any database, document or portion thereof transmitted to or from the court." (§ 4(b))

- Tennessee Supreme Court Rule 46 prohibits e-filing vendors from "providing any fee-based services related to the e-filed documents." (Subsection B.4)

- A contract between the California Superior Court for the County of San Francisco and LexisNexis specifies that "Contractor shall not permit access to, release or distribute copies of case filings and document submissions retained in its system," except to the parties and Court users, and that "Contractor shall not provide access to or release Court records, official or unofficial, directly or indirectly, except as expressly authorized by the Court." (¶ 18)

- A contract between the California Superior Court for the County of Los Angeles and Journal Technologies, Inc., for case management services provides, "LASC Data shall be and remain the property of LASC and LASC shall retain exclusive rights and ownership thereto. The data of LASC shall not be used by Contractor for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents." (§ 20.10)

Copies of these standards, rules and contracts are enclosed for your reference.

As the foregoing demonstrates, more and more courts recognize the importance of ensuring that vendors may not use their preferential position with respect to the electronic court record to gain an unfair advantage in disseminating information about courts. With this in mind, Courthouse News respectfully suggests that Proposed Rule 8.85 be amended to add language similar to that used in the Georgia Minimum Standards, as follows:

Rule 8.85. Fees for electronic access

* * *

(c) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that the vendor is prohibited from reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records or any portion thereof, other than in connection with providing the public access services pursuant to the agreement.

III. Fees for Access

Whether access is provided by a vendor or the court itself, Courthouse News does not necessarily oppose charging a reasonable fee for the convenience of remote access over the Internet, so long as three concerns are addressed. *First*, to the extent a fee is charged for remote access over the Internet, there must also be some way for interested members of the press and public to access court records at the courthouse itself free of charge. *Second*, to the extent a fee is charged for remote access to newly filed court records, there should be some way for the press and public to review those records on the day they are filed without paying a fee. And *third*, any fee for remote access over the Internet should be structured in a way that makes it affordable to members of the press who have a legitimate and frequent need to access court records.

As currently drafted, the Proposed Rules fail to address these three concerns, and Courthouse News respectfully submits that the Proposed Rules should be amended accordingly.

First, as currently drafted, the rules allow a vendor to impose a fee for access to electronic records under all circumstances, even if that access is provided via a public access terminal at the courthouse itself, and even if those records are not available for review in paper form, such as an e-filed record. *See, e.g.*, Proposed Rules 8.85(b) ("To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."); 8.82(2) (defining "electronic record" as "a court record that requires the use of an electronic device to access," including, inter alia, e-filed records). While it is one thing to impose a fee to review records remotely over the Internet, respectfully, imposing a fee to simply look at a public court record, without any alternative for a free review, is presumptively unconstitutional.

Second, to the extent public access to electronic court records is provided free of charge via computer terminals at the courthouse, but for a fee over the Internet, care must be taken to avoid a situation in which records are available online for a fee before they may be reviewed free of charge at the courthouse itself, in effect imposing a fee for timely access to newly filed court records while only providing free-of-charge access on a delayed basis. This issue can arise if, for example, a court uploads newly filed electronic records after the courthouse has closed for the day, so that the only way to review newly filed court records on the same day they are filed is remotely over the Internet, with fees that can quickly add up. Indeed, this exact problem has arisen in at least two of California's trial courts. There are several ways to address this issue, including waiving any remote access fees for newly filed court records, such as those filed within the past 24 hours.

Third, to the extent that records can be viewed free of charge at the courthouse but a fee is assessed to review those same records remotely over the Internet, Courthouse News respectfully submits that the fee should be structured in a way that it does not become cost-prohibitive for journalists to perform their traditional role of reviewing newsworthy case records on a daily basis as they flow into the court. This problem arises when even seemingly modest fees are assessed to review

records on a per-document or per-page basis. While such fees may not impose an undue burden on members of the public who only need to see a few documents on an occasional basis, they quickly add up for news organizations such as Courthouse News that have a frequent and legitimate need to review court records, with the effect that paid online access can become cost-prohibitive. Such a result would seem to be contrary to public policy, which should ***encourage*** press review of court records. *See, e.g., Cox Broad. Co. v. Cohn*, 420 U.S. 469, 492 (1975) ("in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations").

There are a couple of different ways to address this concern. One way is to provide remote access to newly filed appellate court records free of charge. A second way is to offer a subscription-based fee for remote access, such as a reasonable monthly fee for unlimited remote access. Either set-up ensures that traditional free access at the courthouse continues, while giving journalists the ability to easily and conveniently access court records over the Internet so that they may provide information about new cases and case developments to the public.

With these three concerns in mind, Courthouse News urges the judiciary to amend the Proposed Rules as follows:

> Rule 8.85. Fees for electronic access
>
> * * *
>
> (b) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure any fees the vendor imposes for the costs of providing access are reasonable. In addition:
>
> > (1) To the extent access to a court's electronic record is the exclusive means for the public to review that record, such access must be provided at no charge upon filing on public access terminals available at the courthouse.[4]

[4] *See, e.g.*, Georgia Minimum Standards, No. 3(d), which provides, "The clerk ensures that electronic documents are publicly accessible upon filing for viewing at no charge on a public access terminal available at the courthouse during regular business hours." In addition, the Advisory Committee note to Proposed Rule 8.85(b) could clarify that in situations where the court is unable to provide electronic public access at the courthouse itself to court records filed late in the day because the court has closed its doors to the public for the day, but those records are available via remote access after hours, fees for remote access to those records will be waived for a period of time – for example, for 24 hours after filing, or until the court opens for business the following day.

(2) To the extent the vendor is permitted to impose a fee for the cost of providing access remotely over the Internet, there must be an option available to members of the public who have a frequent need to access records to do so without incurring excessive costs, such as through subscription-based fees.[5]

IV. Conclusion

Courthouse News greatly appreciates the consideration of its views on these matters. To the extent you have any questions, or would like to discuss these comments further, please do not hesitate to contact us.

Respectfully submitted,

Rachel E. Matteo-Boehm
On behalf of Courthouse News Service

cc: Courthouse News Service

[5] Alternatively, the instruction in suggested Proposed Rule 8.85(b)(2) could be provided as part of an Advisory Committee note to Proposed Rule 8.85.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR15-03

Title
Appellate Procedure: Access to Electronic Appellate Court Records

Action Requested
Review and submit comments by June 17, 2015

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rules 8.80–8.85

Proposed Effective Date
January 1, 2016

Proposed by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Contact
Heather Anderson, 415-865-7691
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Executive Summary and Origin

Based on a suggestion received from a justice of a Court of Appeal, the Appellate Advisory Committee and the Court Technology Advisory Committee are proposing new rules addressing public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records.

The Proposal

California Rules of Court, rules 2.500–2.507 address public access to electronic trial court records. These rules are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests. The rules address, among other things, what electronic trial court records may be made available remotely, what records may be made available only at the courthouse, what records can be made available in bulk, and what records may only be accessed on a case-by-case basis.

As more documents are electronically filed in the Courts of Appeal and Supreme Court and stored in electronic form, it is anticipated that questions will arise about public access to these electronic records. This proposal would establish a set of rules to addresses public access to electronic records of the Courts of Appeal and Supreme Court. The proposed appellate rules are based on the trial court rules, but have some substantive differences based primarily on differences in the nature of the records maintained by trial and appellate courts and in existing public access to these records. The proposed rules:

- Define "court records" to reflect the types of records maintained by the Courts of Appeal and Supreme Court and the fact that the Government Code section cited in the definition of trial court records does not apply to appellate courts (proposed rule 8.82);

- Reflect the fact that certain types of Court of Appeal and Supreme Court records, such as opinions, are already made available to the public on the California courts website. The proposed rules would provide for continued remote public access to those electronic appellate court records now made available to the public on this website (proposed rule 8.83(b));

- Would permit an appellate court to provide remote access to additional records not only in extraordinary criminal cases, but in other extraordinary cases as well (proposed rule 8.83(d));

- Reflect the fact that the public can search for Court of Appeal cases based on some criteria that are not available for searches of trial court records (proposed rule 8.83(e));

- Reflect the fact that electronic appellate court records will generally be made available through a centralized mechanism, such as the California courts website, rather than by each individual appellate court; and

- Do not set out requirements for the items that must be included in appellate court calendars and registers of actions or for items that must be excluded from these records. The committees considered such requirements unnecessary because the appellate court electronic calendars and registers of actions currently made available on the California courts website already generally comply with those aspects of the trial court rule that would be applicable to appellate court records.

There are additional, minor substantive differences between the proposed appellate rules and the existing trial court rules, such as replacing references to presiding judges with references to presiding justices and replacing references to statutes regarding trial court fees with statutes regarding appellate court fees. In addition, there are some differences in the structure of the proposed rules—such as in the placement of definitions and other provisions—and in wording that are not intended to be substantive.

Alternatives Considered

In developing these rules, the committees considered a variety of alternatives with respect to the scope and proposed language of individual rules. For example, the committees considered whether the rules should provide for remote access only to those types of electronic records that are remotely accessible under the trial court rules, but ultimately decided that the proposed rules should reflect and maintain the current remote access to additional appellate court records.

The committees also considered not proposing these rule amendments at all. However, the committee concluded that it would be helpful to both the public and the courts to clarify the scope of public access to electronic appellate court records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because it mandates access to those electronic appellate court records that are already currently being made available electronically and, like the trial court rules, provides for further access only to the extent feasible. The proposed rules should provide guidance with respect to electronic access to appellate court records, which may reduce questions about such access for litigants and thus costs associated with inquiries about this access for both litigants and the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.80–8.85, at pages 4–10

Rules 8.80–8.85 of the California Rules of Court would be adopted, effective January 1, 2016, to read:

Article 6. Public Access to Electronic Appellate Court Records

Rule 8.80. Statement of purpose

(a) Intent

The rules in this article are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests.

(b) Benefits of electronic access

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to appellate court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to appellate court records may also foster in the public a more comprehensive understanding of the appellate court system.

(c) No creation of rights

The rules in this article are not intended to give the public a right of access to any record that they are not otherwise entitled to access. The rules do not create any right of access to sealed or confidential records.

Advisory Committee Comment

The rules in this article acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the appellate courts. It is contemplated that the rules may be modified to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

Subdivision (c). Rules 8.45–8.47 govern sealed and confidential records in the appellate courts.

Rule 8.81. Application and scope

(a) Application

The rules in this article apply only to records of the Supreme Court and Courts of Appeal.

(b) Access by parties and attorneys

The rules in this article apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.

Rule 8.82. Definitions

As used in this article, the following definitions apply:

(1) "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.

(2) "Electronic record" is a court record that requires the use of an electronic device to access. The term includes both a record that has been filed electronically and an electronic copy or version of a record that was filed in paper form.

(3) "The public" means an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.

(4) "Electronic access" means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise specified in the rules in this article.

(5) Providing electronic access to electronic records "to the extent it is feasible to do so" means that electronic access must be provided to the extent the court determines it has the resources and technical capacity to do so.

(6) "Bulk distribution" means distribution of multiple electronic records that is not done on a case-by-case basis.

Rule 8.83. Public access

(a) General right of access

All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except sealed or confidential records.

(b) Electronic access required to extent feasible

(1) Electronic access, both remote and at the courthouse, will be provided to the following court records, except sealed or confidential records, to the extent it is feasible to do so:

(A) Dockets or registers of actions;

(B) Calendars;

(C) Opinions; and

(D) The following Supreme Court records:

i. Results from the most recent Supreme Court weekly conference;

ii. Party briefs in cases argued in the Supreme Court for at least the preceding 3 years;

iii. Supreme Court minutes from at least the preceding 3 years.

(2) If a court maintains records in civil cases in addition to those listed in (1) in electronic form, electronic access to these records, except those listed in (c), must be provided both remotely and at the courthouse, to the extent it is feasible to do so.

(c) Courthouse electronic access only

If a court maintains the following records in electronic form, electronic access to these records must be provided at the courthouse, to the extent it is feasible to do so, but remote electronic access may not be provided to these records:

(1) Any reporter's transcript for which the reporter is entitled to receive a fee; and

(2) Records other than those listed in (b)(1) in the following proceedings:

(A) Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;

(B) Juvenile court proceedings;

(C) Guardianship or conservatorship proceedings;

(D) Mental health proceedings;

(E) Criminal proceedings;

(F) Civil harassment proceedings under Code of Civil Procedure section 527.6;

(G) Workplace violence prevention proceedings under Code of Civil Procedure section 527.8;

(H) Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;

(I) Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and

(J) Proceedings to compromise the claims of a minor or a person with a disability.

(d) Remote electronic access allowed in extraordinary cases

Notwithstanding (c)(2)(E), the presiding justice of the court, or a justice assigned by the presiding justice, may exercise discretion, subject to (e)(1), to permit remote electronic access by the public to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.

(1) In exercising discretion under (d), the justice should consider the relevant factors, such as:

(A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;

(B) The benefits to and burdens on the parties in allowing remote electronic access; and

(C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.

(2) The following information must be redacted from records to which the court allows remote access under (d): driver's license numbers; dates of birth; social security

numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. Subdivision (d)(2) does not apply to any document in the original court file; it applies only to documents that are made available by remote electronic access.

(3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's website. Any person may file comments with the court for consideration, but no hearing is required.

(4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's website and a copy sent to the Judicial Council.

(e) Access only on a case-by-case basis

With the exception of the records covered by (b)(1), electronic access to an electronic record may be granted only when the record is identified by the number of the case, the caption of the case, the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis.

(f) Bulk distribution

Bulk distribution may be provided only of the records covered by (b)(1).

(g) Records that become inaccessible

If an electronic record to which electronic access has been provided is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by a member of the public before the record became inaccessible.

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (b). Courts should encourage availability of electronic access to court records at public off-site locations.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committees recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committees also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding justice makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

Subdivisions (e) and (f). These subdivisions limit electronic access to records (other than the register, calendars, opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases to: Judicial Council Support, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.

Rule 8.84. Limitations and conditions

(a) Means of access

Electronic access to records required under this article must be provided by means of a network or software that is based on industry standards or is in the public domain.

(b) Official record

Unless electronically certified by the court, a court record available by electronic access is not the official record of the court.

(c) Conditions of use by persons accessing records

Electronic access to court records may be conditioned on:

(1) The user's consent to access the records only as instructed; and

(2) The user's consent to monitoring of access to its records.

The court must give notice of these conditions, in any manner it deems appropriate. Access may be denied to a member of the public for failure to comply with either of these conditions of use.

(d) Notices to persons accessing records

The court must give notice of the following information to members of the public accessing its records electronically, in any manner it deems appropriate:

(1) The identity of the court staff member to be contacted about the requirements for accessing the court's records electronically.

(2) That copyright and other proprietary rights may apply to information in a case file, absent an express grant of additional rights by the holder of the copyright or other proprietary right. This notice must advise the public that:

(A) Use of such information in a case file is permissible only to the extent permitted by law or court order; and

(B) Any use inconsistent with proprietary rights is prohibited.

(3) Whether electronic records are the official records of the court. The notice must describe the procedure and any fee required for obtaining a certified copy of an official record of the court.

(4) That any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

(e) Access policy

A privacy policy must be posted on the California Courts public-access website to inform members of the public accessing its electronic records of the information collected regarding access transactions and the uses that may be made of the collected information.

Rule 8.85. Fees for electronic access

(a) Court may impose fees for copies

The court may impose fees for the costs of providing copies of its electronic records, under Government Code section 68928.

(b) Fees of vendor must be reasonable

To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 22, 2015

To
Members of the Joint Appellate Technology Subcommittee

From
Heather Anderson, Supervising Attorney
Tara Lundstrom, Attorney
Legal Services

Subject
Public comments received in response to rules proposal to amend rule 8.71 (e-service)

Action Requested
Please review for July 30 meeting

Deadline
July 30, 2015

Contact
Tara Lundstrom
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Background

This spring, the Joint Appellate Technology Subcommittee (JATS) recommended to the Appellate Advisory Committee (AAC) and the Court Technology Advisory Committee (CTAC) that a rules proposal be circulated for public comment that would amend appellate rule 8.71 to authorize electronic service on consenting courts. The Rules and Policy Subcommittee (RPS) recommended a similar amendment to trial court rule 2.251. The combined rules proposal was recommended for circulation by AAC and CTAC. The Rules and Policy Committee (RUPRO) agreed and circulated the combined rules proposal for public comment during the spring rules cycle, with the comment period ending on June 17, 2015.

Before the subcommittee for its review is a draft report to the Judicial Council. The draft report recommends amending rules 2.51 and 8.71 to authorize electronic service on consenting courts. Attached to the draft report are the proposed amendments to rules 2.251 and 8.71 and a chart containing comments received in response to the Invitation to Comment and proposed responses.

Discussion

Nine comments were received in response to the Invitation to Comment. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts.

Four specific modifications were proposed by the commentators. All are discussed in the draft report and comment chart; only those relevant to rule 8.71 are discussed below.

First, Ms. Debbie Mochizuki, Supervising Attorney at the Fifth District Court of Appeal, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. Staff notes that the proposal to amend rule 8.71 would not appear to affect the validity of the oral agreement described in Ms. Mochizuki's comment. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. Under the definitions set out in the California Rules of Court, "'[l]ocal rule' means every any rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." (Cal. Rules of Court, rule 1.6(9).) A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on courts in adopting local rules of court, it would appear to be outside the scope of this rules proposal, as circulated, to amend either the existing definition of local rule or the existing requirements relating to adoption of such rules.

- During its July 30 meeting, JATS should discuss Ms. Mochizuki's objection and whether it is outside the scope of this rules proposal, as circulated.

Second, the San Diego Bar Association recommends using the term "consent" in lieu of "accepts" and "agrees to accept" in proposed new subdivision (j)(2) to rule 2.251 and

subdivision (g)(2) of rule 8.71. The bar association proposes amending new subdivision (g)(2) of rule 8.71 to read as follows:

(g) Electronic service by or on court

(1) * * *

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

(A) Serving a notice on all parties that the court ~~accepts~~ *consents to* electronic service. The notice must include the electronic service address at which the court ~~agrees to~~ *will* accept service; or

(B) Adopting a local rule stating that the court ~~accepts~~ *consents to* electronic service. The rule must indicate where to obtain the electronic service address at which the court ~~agrees to~~ *will* accept service.

In assessing the bar association's recommendation, JATS should consider that the language proposed in the circulated rules proposal for new subdivisions (j)(2) of rule 2.251 and (g)(2) mirrors the current language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71.[1] Rules 2.251(b)(1) and 8.71(a)(2) govern the consent by parties to electronic service and use the term "consent" and the phrase "agrees to accept" interchangeably. If JATS agrees with the bar association, it should consider also amending subdivision (a)(2) of rule 8.71 to ensure that the rule is internally consistent.

[1] Rule 8.71(a)(2) provides as follows;

(a) *Consent* to electronic service
(1) * * *
(2) A party indicates that the party *agrees to accept* electronic service by:
(A) Serving a notice on all parties that the party *accepts* electronic service and filing the notice with the court. The notice must include the electronic service address at which the party *agrees to accept* service; or
(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party *agrees to accept* service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).

(Italics added.)

- During its July 30 meeting, JATS should discuss whether to recommend amending rules 8.71(a)(2) and (g)(2) to replace references to "accept" and "agrees to accept" with "consent." If JATS decides to recommend this amendment, it should coordinate with RPS to ensure that rules 2.251(b)(1) and (j)(2) are amended consistent with rules 8.71(a)(2) and (g)(2).

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the superior courts within their district that accept electronic service and the e-mail addresses where those courts accept electronic service.

- During its July 30 meeting, JATS should discuss this recommendation and whether it is outside the scope of this rules proposal, as circulated.

The Subcommittee's Task

The subcommittee is tasked with reviewing the rules proposal to amend rule 8.71, including any public comments received in response to the proposed amendment to rule 8.71, and:

- Asking staff or group members for further information and analysis; or
- Advising AAC and CTAC to:
  - Recommend to RUPRO that all or part of the proposal be submitted to the Judicial Council for consideration during its October 27, 2015 meeting; or
  - Reject the proposal.

Attachment

- Draft report to the Judicial Council with attachments (comment chart with proposed responses and proposed amendments to rules 2.251 and 8.71)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251 and 8.71

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair
Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
July 22, 2015

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Executive Summary

The Appellate Advisory Committee (AAC) and the Court Technology Advisory Committee (CTAC) propose amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the rules regarding whether electronic service is authorized not only by, but also on, a court. This rules proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Recommendation

AAC and CTAC recommend that the Judicial Council, effective January 1, 2016, amend rules 2.251 and 8.71 of the California Rules of Court to:

1. Add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. Make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

Amended rules 2.251 and 8.71 are attached at pages 7–9.

Previous Council Action

The Judicial Council sponsored Senate Bill 367 in 1999. (Stats. 1999, ch. 514.) This legislation enacted Code of Civil Procedure section 1010.6, which authorizes the electronic filing and service of documents in the trial courts. It also directed the council to adopt uniform rules, consistent with the statute, for electronic filing and service. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for electronic filing and service. Relevant to this proposal, the rules provided that a trial court may electronically serve any notice, order, judgment, or other document prepared by the court in the same manner that parties may serve documents by electronic service.

The Judicial Council later co-sponsored SB 1274 (Stats. 2010, ch. 156), which amended Code of Civil Procedure section 1010.6 to recognize electronic service by a court of any notice, order, judgment, or other document. Although the bill introduced other substantive changes to the statute, this specific amendment placed the existing language in the rules into the statute for clarity.

The Judicial Council adopted rules, effective July 1, 2010, authorizing the Second District Court of Appeal to conduct a pilot project to test the use of electronic filing and service. Mirroring the provisions in the statute and trial court rules, these rules recognize electronic service by a court of any notice, order, opinion, or other document issued by the court. The scope of these appellate rules was extended, effective January 1, 2012, to all Courts of Appeal and to the California Supreme Court.

Rationale for Recommendation

Several California Rules of Court require that certain documents be served on the superior court. For example, rule 8.212(c)(1) requires that one copy of each brief in a civil appeal be served on the superior court clerk for delivery to the trial judge. Similar language also appears in rule 8.360 (briefs in felony appeals), rule 8.412 (briefs in juvenile appeals), and rule 8.630 (briefs in capital appeals). Rules 8.500 and 8.508, governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the court of appeal.

There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents "by any method permitted by the Code of Civil Procedure." Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define "electronic service" as service of a document "*on a party or other person*" (italics added); they do not expressly provide for service on a court.

Arguably, the term "other person" in these provisions could be interpreted to encompass courts. Rule 1.6(14) offers some support for this interpretation because it defines the term "person" as including "a corporation *or other legal entity* as well as a natural person." (Italics added.)

Nevertheless, Code of Civil Procedure section 1010.6 and rules 2.251 and 8.71 specifically address electronic service *by* a court without mentioning service *on* a court. This absence could be interpreted as indicating that the rules now only contemplate service by a court and do not contemplate service on a court.

This proposal would eliminate the ambiguity in the rules by expressly authorizing electronic service on a trial and appellate court with that court's consent. Electronic service may benefit the courts by improving efficiency because the clerk could forward the electronic copies to the trial judge by e-mail. It would also be more efficient for the parties in many cases.

Electronic service authorized on consenting courts

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order.[1] The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court's consent unless such service is provided for by law or court order.

Subparagraphs (A) and (B) of rules 2.251(j)(2) and 8.71(g)(2) would specify how a court indicates its agreement to accept electronic service. Subparagraph (A) is modeled on 2.251(b)(1)(A) and 8.71(a)(2)(A), which provide that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. New 2.251(j)(2)(A) and 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all the parties. Subparagraph (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating so.

[1] This rules proposal would relocate subdivision (c)(2) to new subdivision (a)(4), but would not amend its content.

Nonsubstantive amendments to rule 8.71

Additional amendments to rule 8.71(a) and (c) have been proposed. These nonsubstantive amendments make this rule more consistent with the language of trial court rule 2.251 and consolidate provisions relating to the authorization for electronic service in the appellate courts. The amendments would clarify that a document may be electronically served on a party or other person if electronic service is provided for by law or court order or if the party or person consents to this service. The amendments would also move the provision regarding service on a nonparty from subdivision (c) to subdivision (a).

Comments

This rules proposal was circulated for public comment, with the comment period ending on June 17, 2015. Nine comments were received in response. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts. Each of four specific modifications proposed by the commentators is discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended adding a new subpart (C) to rule 2.25(g)(3) that would provide as follows:

> The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.

CTAC declined to pursue the Civil Unit Managers' recommendation to amend subdivision (g) of rule 2.251. Rule 2.251(g) applies to all documents served by electronic notification and places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. Under rule 2.251(g)(3), the party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would effect a substantive rule change that is beyond the scope of this proposal and would require additional public comment.

In addition, CTAC declines to pursue this recommendation because the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

Second, Ms. Debbie Mochizuki, Supervising Attorney at the Fifth District Court of Appeal, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. The AAC is sensitive to Ms. Mochizuki's concern about disrupting the oral agreement described in her comment. Fortunately, the amendment to rule 8.71 would not appear to affect the validity of that oral agreement. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. AAC is sympathetic to the burden imposed on the appellate courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on appellate courts in adopting local rules of court, the AAC determined that it was outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption of such rules. Nevertheless, the committee may consider a proposal to lessen the burden on appellate courts in future rules cycles.

Third, the San Diego Bar Association recommended using the term "consent" in lieu of "accept" and "agrees to accept" in proposed new subdivision (j)(2) to rule 2.251 and subdivision (g)(2) of rule 8.71. The language in proposed new subdivision (j)(2) to rule 2.251 and subdivision (g)(2) of rule 8.71 mirrors subdivision (b)(1) of rule 2.251 and current subdivision (a)(2) of rule 8.71. Rules 2.251(b)(1) and 8.71(a)(2) govern the consent by parties to electronic service and use the term "consent" and the phrase "agrees to accept" interchangeably. [*This section will be updated depending on whether the committees decide to recommend amending rules 2.251(b)(1) and (j)(2) and 8.71(a)(2) and (g)(2) to replace references to "accept" and "agrees to accept" with "consent."]

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the superior courts within their district that accept electronic service and the e-mail addresses where

those courts accept electronic service. This recommendation was not pursued as it is outside the scope of this rules proposal.

Alternatives Considered

The committees considered not recommending any amendments to the rules. The rules may be interpreted to allow for electronic service on a court. The committees did not elect this alternative, however, because the rules are ambiguous and it may not be clear to all parties that courts can accept electronic service. The amendments to the rule would also clarify how a party may consent to electronic service.

Implementation Requirements, Costs, and Operational Impacts

Under this proposed rule, implementation of electronic service on a court would generally be voluntary; each court would determine whether to consent to electronic service. For those courts that chose to implement such service, the rule would require the court either to adopt a local rule or to provide notice in individual cases. These courts would also have to establish and monitor an e-mail account to receive documents served by the parties on the court. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh these implementation costs. Potential efficiencies for the courts include being able to forward copies of briefs by e-mail to judges. The proposed amendment might also provide cost-savings for the parties because they would not have to pay the costs incurred by physical filing, including any copying, transportation, and mailing expenses.

Attachments

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 7–9
2. Comment chart, at pages 10–14

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts
Amend Cal. Rules of Court, rules 2.251 and 8.71
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	***PROPOSED*** Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	The California Department of Child Support Services (DCSS) appreciates the opportunity to provide input, express our ideas, and experiences with respect to the proposal identified above. DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.	DCSS's support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2. 2. Recommendation: Amend California Rules of Court 2.251(g) The Court agrees with the proposal. However, the Court respectfully requests that the Judicial Council consider amending California Rules of Court 2.251(g) in the following ways: a. Add letter (C) after 2.251(g)(3)(B): "(C) The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions."	The Civil Unit Managers' support is noted. CTAC declines to pursue the recommendation to amend subdivision (g) of rule 2.251. This subdivision applies to all documents served by electronic notification. It places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. The party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink is a substantive change to the rule that is beyond the scope of this proposal and would require

	Commentator	Position	Comment	***PROPOSED*** Committee Response
				additional public comment. It may be considered by CTAC in the future. In addition, the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records, but the recommendation may be considered by CTAC in the future.
			3. Request for Specific Comments a. Does the proposal appropriately address the stated purpose? The Court believes that this proposal addresses the intended purpose. Amending the Rules of Court will clarify when and how the Court may be served in the specific examples mentioned in the proposal. b. Would the proposal provide cost savings? If the Court elects to allow electronic service, an email inbox will need to be established to enable review of incoming service to the court. While the process functionality will be established, this won't necessarily be a cost savings for some courts.	The Civil Managers Unit's comments are noted. The proposed rule amendment leaves it in the court's discretion whether to accept electronic service of documents on the court. In making this decision, each court may consider whether the costs outweigh the benefits.

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts
Amend Cal. Rules of Court, rules 2.251 and 8.71
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	***PROPOSED*** Committee Response
3.	Debbie Mochizuki, Supervising Attorney, Fifth Appellate District Court of Appeal	AM	The proposed language of rule 8.71(g)(2) appears too restrictive in terms of how a court may indicate that it agrees to accept electronic service. For example, our appellate court has implemented mandatory e-filing. To maximize efficiencies to be gained with e-filing in the appellate court, our court reached out to the CEOs of the superior courts in our district and secured their oral agreement to accept electronic service of our orders and opinions. Neither of the options in rule 8.71(g)(2) as proposed take our approach into account. As the court of appeal is not a party, serving the notice described in rule 8.71(g)(2)(A) would not work for us. Also, the adoption of a local rule of court appears an unnecessary and time consuming requirement given that the superior court is simply giving its consent to receiving electronic service and it is NOT mandating electronic service. A local rule of court is ordinarily used to notice an additional requirement that a local court will impose over and above the state rules of court. It seems a court should be able to announce its willingness to accept electronic service in whatever manner it deems fit provided it includes the electronic service address at which it agrees to accept service.	AAC notes Ms. Mochizuki's concerns, but concludes that this rules proposal would not impact the type of agreement identified in her comment. The scope of the proposed rule amendment is narrow in that it only applies to service on a court. Because rule 8.267(a) only requires that the Court of Appeal clerk *send* the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g) would not apply. The oral agreement described in the comment would remain valid regardless of whether the council adopts this rules proposal. AAC is sympathetic to the burden imposed on courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on courts in adopting local rules of court, the committees conclude that it is outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption

	Commentator	Position	Comment	***PROPOSED*** Committee Response
				of such rules.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comments provided.	The Orange County Bar Association's support is noted.
5.	San Diego Bar Association Appellate Practice Session by Victoria E. Fuller, Chair	AM	We agree with the Appellate Advisory Committee's conclusion that there is some ambiguity as to whether the current rules authorize electronic service on a court. We also agree that the proposed revisions attempt to remove that ambiguity by expressly stating that electronic service on consenting courts is allowed under Rules 2.251 and 8.71. Express codification reduces doubt, removes uncertainty, and is a good thing. But we suggest a slight linguistic revision to maintain consistency within the proposed change. If the intention of the proposed change is to make it clear that electronic service on "consenting" courts is permitted, then the proposed changes should incorporate that expressly throughout. The current proposal uses language that varies between "consent," "indicates that it agrees" and "accept," which may lead to confusion among some practitioners. We therefore suggest the following revisions to proposed Rules 2.251(j)(2) and 8.71(g)(2), which address the manner in which a court consents to electronic service:	The San Diego Bar Association's comments are noted. The language proposed for new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71 mirrors the language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71, which govern consent by parties to electronic service. Rules 2.251(b)(1) and 8.71(a)(2) use the term "consent" and the phrase "agrees to accept" interchangeably. **The committees should discuss whether to incorporate the suggestion from the San Diego Bar Association into this rules proposal. Doing so would require amending not only new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71, but also subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71. This rules proposal does not currently contemplate amending rules 2.251(b)(1) or 8.71(a)(2), but it could be modified

	Commentator	Position	Comment	***PROPOSED*** Committee Response
			(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court ~~indicates that it agrees~~ [consents] ~~to accept~~ service by: (A) Serving notice on all parties that the court ~~accepts~~ [consents to] electronic service. The notice must include the electronic service address at which the court ~~agrees to~~ [will] accept service; or (B) Adopting a local rule stating that the court ~~accepts~~ [consents to] electronic service. The rule must indicate where to obtain the electronic service address at which the court ~~agrees to~~ [will] accept service.	without recirculating for public comment, so long as the committees conclude that the amendments to rules 2.251(b)(1) and 8.71(a)(2) are either (1) nonsubstantive technical changes or corrections, or (2) are minor substantive changes that are unlikely to create controversy. (See Cal. Rules of Court, rule 10.22(d)(2).)
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	The Committee supports this proposal, with a recommendation for implementation. In response to the specific requests for comments, the Committee believes that electronic service on the courts would unquestionably save time and costs for litigants in terms of printing and mailing service copies of briefs and other filings. The cost savings could be especially meaningful for the State, in aggregate, in criminal appeals handled by appointed attorneys, in which the State currently reimburses the attorneys for printing and mailing costs for service copies.	The Committee on Appellate Court's (CAC) support is noted.

	Commentator	Position	Comment	***PROPOSED*** Committee Response
			In terms of implementation, the Committee recommends encouraging both superior courts and the Courts of Appeal to include information about electronic service on their websites. It would be particularly helpful for litigants to have the Court of Appeal websites in each District keep a current list of the superior courts in that District that accept electronic service, along with the individual email address for those courts, to indicate where documents should be served.	CTAC and AAC decline to pursue the CAC's recommendation because it is beyond the scope of this rules proposal. However, the committees may consider this recommendation in the future.
7.	Superior Court of Los Angeles County	A	No specific comments provided.	The superior court's support is noted.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost savings? Cost savings to the court of appeal on paper costs and minimal time savings for trial court appeals staff who would email the trial judge versus the current process of forwarding a hard copy.	The superior court's comments are noted.
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS agrees that implementation of electronic service on a court needs to remain voluntary. The proposed language concerning a court's consent to electronic service provides additional clarity for the court. The proposed process for implementation of electronic service appears to be a very simple approach. The JRS concluded that this proposal will not lead to any significant implementation costs.	The subcommittee's support is noted.

Rule 2.251 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 2.251. Electronic service

(a)–(i) * * *

(j) Electronic service by or on court

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

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

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

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

Rule 8.71 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 8.71. Electronic service

(a) ~~Consent to~~ Authorization for electronic service

(1) ~~When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic service of the document is permitted under these rules.~~ A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

(B) If the recipient agrees to accept electronic services as provided by these rules and the ~~When a~~ document ~~may be~~ is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission~~, electronic service of the document is permitted when authorized by these rules~~.

(2)–(3) * * *

(4) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(b) Maintenance of electronic service lists

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

(c) Service by the parties

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

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

(d)–(f) * * *

(g) Electronic service by or on court

(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

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

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

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

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 23, 2015

To
Members of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Court Technology Advisory Committee

From
Katherine Sher, Attorney,
Legal Services Office

Tara Lundstrom, Attorney,
Legal Services Office

Subject
Consideration of public comments and further action on SPR15-32 -- Phase One of the Rules Modernization Project (Title 8, Appellate Rules)

Action Requested
Please review for July 30 meeting

Deadline
July 30, 2015

Contact
Katherine Sher
(415) 865-8031 phone
katherine.sher@jud.ca.gov

Tara Lundstrom
(415) 865-8031 phone
tara.lundstrom@jud.ca.gov

Introduction

Earlier this year, the Appellate Advisory Committee (AAC) reviewed proposed changes to the Title 8 Appellate Rules as part of Phase One of the Rules Modernization Project led by the Court Technology Advisory Committee. The AAC recommended circulating for public comment numerous proposed non-substantive changes to the Title 8 rules intended to make the rules consistent with modern practices such as e-filing. The Title 8 changes were part of the overall Phase One modernization changes proposed, with proposed changes to Titles 2,3,4,5 and 7 reviewed and recommended by the appropriate committees. The Judicial Council's Rules and Projects Committee approved the recommendations for circulation of the Phase One proposal, and the proposal was circulated for public comment between April 16, 2015 and June 17, 2015.

(A copy of the invitation to comment memo, and the proposed changes to Title 8 as circulated for comment, are included in your meeting materials.) This memo discusses the public comments received on the proposed changes to the Title 8 rules.

Public Comments

The full comment chart, showing the comments received as to all Phase One changes (including those to other Titles) is attached.

Comment to proposed changes to Title 8

Only one comment was received specifically responding to the proposed changes to the Title 8 rules, rather than the changes generally or the changes to other Titles. The Committee on the Administration of Justice of the State Bar of California noted, as to rules 8.122, 8.144, 8.336 and 8.838 that it is important to consider the impact of the proposed changes on indigent appellate litigants, particularly incarcerated appellants and others who do not have access to computers. The rules cited add provisions expressly allowing for all or the part of the record on appeal to be in electronic format (rules 8.144 and 8.838) and make modifications to clarify application of the rules if the clerk's transcript or reporter's transcript is in electronic format (in rules 8.144 and 8.838 as well as rules 8.122 and 8.336).

The comment points to a potential problem in adopting new provisions that expressly allow for all or part of the record to be in electronic format: appellate courts, pursuant to these new provisions, might adopt local rules mandating that part or all of the record be in electronic format without creating an exception for litigants without access to computers. Existing rule 8.73(a)(2)(A) provides an exception for indigent self-represented litigants with regard to electronic filing and service, stating that a court will not order a self-represented party to electronically serve or file documents. However, the creation and transmission of the record to the parties and the reviewing court do not fall under this provision. The trial court's transmission of the record to the reviewing court and the appellant (under rule 8.150 for the Courts of Appeal and the Supreme Court, and under rule 8.840 (b) for the appellate divisions of the Superior Courts) is not "filing" or "serving" by a party as referenced in rule 8.73(a)(2)(A).

Staff therefore recommend that JATS consider whether to withdraw the proposed amendments to 8.144 and 8.838 that expressly allow all or part of the record to be in electronic format (but not the other proposed changes in these rules), as well as the proposed additional comment to rule 8.122 which is based on the proposed change in rule 8.144. These proposals could then be revised to include exceptions for indigent appellate litigants similar to those included in rule 8.73, and re-circulated for comment with these changes. By withdrawing the provisions as currently proposed and waiting to put forward a rule that establishes an exception for indigent appellate litigants, the Judicial Council may be able to ensure that the appellate courts and

appellate divisions more consistently include protections for the rights of indigent or incarcerated litigants who do not have access to computers.

Staff note that the concern regarding indigent litigants does not apply to the proposed change to rule 8.336. That change simply clarifies that certain rule requirements, such as binding and photocopying, only apply to a reporter's transcript in paper form. Nothing in the proposed change to rule 8.336 in any way mandates, or allows appellate courts to mandate, the use of reporter's transcripts in electronic form. (Please note that the existing rule requires the reporter to provide a "computer-readable" copy of the transcript to the Court of Appeal and any party "on request," if the trial court does not order otherwise.)

Comments applicable to proposed changes to multiple Titles, including Title 8

Two comments were received that apply to the Title 8 rules as well as other rules.

The State Bar Committee on Administrative Justice recommends that the term "file-stamped" be retained, rather than, as proposed throughout the rules, changing it to "filed-endorsed." The Modernization of Rules Group considered this suggestion at its July 10th meeting and recommends that the change to "filed-endorsed" be kept in the proposed changes.

The State Bar Committee on Appellate Courts notes that sooner rather than later, consideration be given to defining the terms "electronic form" and "electronic format." (Staff notes that in the Title 8 rules, for the most part "not in paper form" is used instead of "electronic form.") The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee also urge the adoption of electronic form and formatting rules in the near future.

Subcommittee Task

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

- Discuss the comments received on or applicable to the proposed Title 8 changes; and
- Approve or modify staff's suggestions for responding to these comments.

Attachments

- Comment chart with proposed responses
- Invitation to Comment SPR15-32, *Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing and E-Service*, memorandum and proposed amendments to rules 8.122, 8.144, 8.336 and 8.838 (version circulated for public comment) only. The Invitation to Comment with the proposed amendments to all Titles is available at http://www.courts.ca.gov/documents/SPR15-32.pdf .

SPR15-32

Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	***PROPOSED Committee Response**
1.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	AM	See comments on specific provisions below.	See responses to comments below.
2.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	A	DCSS supports modernizing and increasing efficiencies with our justice partners including the proposed technical amendments to address language in the rules that is incompatible with the current statutes and rules governing e-filing, e-service, and e-business processes in general. Overall, the proposed changes meet the business needs of DCSS. See comments on specific provisions below.	DCSS's support is noted.
3.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	Position on proposal: Agree with the proposed changes with the following recommendation noted below.	See responses to comments below.
4.	Law Office of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No specific comment.	No response required.
5.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	AM	CAJ supports this proposal in general, but has the following comments. See comments on specific provisions below.	CAJ's support is noted.
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	NI	See comments on specific provisions below.	See responses to comments below.

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

SPR15-32

Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	***PROPOSED Committee Response**
7.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	A	No specific comment.	No response required.
8.	Superior Court of Riverside County by Marita Ford	A	No specific comment.	No response required.
9.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	NI	See comments on specific provisions below.	See responses to comments below.
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	See comments on specific provisions below.	See responses to comments below.
11.	TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee	A	The subcommittees agree that the proposed rule changes are necessary to begin facilitating an e-business environment in the trial courts. The subcommittees determined that the proposal will result in additional training, which requires the commitment of staff time and court resources.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's support is noted. The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's comment is noted. To the extent that this rules proposal, as circulated, recommends only technical, non-substantive changes to the rules, CTAC and CSCAC anticipate that training should not be too burdensome for the courts and would be otherwise necessary as courts modernize by adopting e-filing, e-service, and e-business practices already authorized by relevant statutes and rules.

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

SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin
All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	***PROPOSED Committee Response**
			The subcommittees would like to note that it would be helpful if CTAC would, in the future, consider whether filing parties should be required to bookmark electronic exhibits or attachments submitted with electronic documents filed with the courts. See comments on specific provisions below.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's recommendation is noted. It will be considered next year during phase II of the Rules Modernization Project.

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	***PROPOSED Committee Response**
12.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	This proposal would replace references to "file-stamped" with "filed-endorsed" throughout the rules. CAJ recommends retaining the term "file-stamped." The term "filed-endorsed" is unclear, and does not correspond to the way documents are actually file-stamped by clerks in various California courts, which do not appear to use the terminology "filed-endorsed."	CTAC, CSCAC, and AAC note CAJ's objection. However, they recommend retaining the proposal to change all references to "file-stamped" to "filed-endorsed" because the term "filed-endorsed" is used in relation to both paper and electronic documents and is generally understood and used by the courts, including those that have not converted to a paperless case management system.
13.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	The Committee notes that "electronic form" and "electronic format" are used in the appellate rules as well as other rules. The Committee believes that more experience by both litigants and the courts may be needed before those terms are defined, but recommends that consideration be given to defining those terms sooner rather than later.	CTAC and CSCAC note the CAC's recommendation to define electronic form and formatting in the trial and appellate rules in the future. This recommendation will be considered next year during phase II of the Rules Modernization Project.
14.	Superior Court of Sacramento County by Elaine Flores, Administrative	Please note that many of the comments on SPR15-16 are "global":	

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

SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	***PROPOSED Committee Response**
	Services Officer II, Communications – Court Executive Office	• Consistency with the use of singular v. plural – i.e., we prefer "party" to "parties" • Over use of the word "also" • Consistency when identifying JC forms – i.e., we prefer stating "form FL-xxx" v. "FL-xxx" • Use of old language "child visitation" or "visitation" v. new language "parenting time" [*General comment made in response to three Invitations to Comment, including SPR15-32]	CTAC and CSCAC decline the suggestions regarding the use of the words "also" and "parties." The comments referring to Judicial Council forms and to the terms "visitation" and "parenting time" do not apply to SPR15-32.

	Title Two—Trial Court Rules		
	Commentator	**Comment**	****PROPOSED Committee Response****
15.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	That said, DCSS would encourage the Judicial Council to review California Rules of Court, Rule 2.257 as part of its ongoing modernization effort. The current retention requirements of Rule 2.257 pose three problems, two of which may require statutory changes to California Code of Civil Procedure section 1010.6. First, the absence of directions regarding the amount of time original signatures must be retained encourages divergent practices. Second, the rule imposes burdens on individuals in excess of that imposed on the court since the court need not maintain originals indefinitely under Government Code section 68152. Third, the rule does not provide parties with the option to electronically store signed documents as the court is permitted to do under Government Code section 68150.	CTAC and CSAC decline to pursue DCSS's recommendation; it is outside the scope of this rules proposal, as circulated, because it involves substantive, non-technical changes to the rules. It may be considered by the committees during phase II of the Rules Modernization Project. CTAC and CSCAC agree that changing the retention requirements in rule 2.257(a) may require amending Code of Civil Procedure section 1010.6(b)(2)(B), which requires maintaining "the printed form of the document bearing the original signatures" where any electronically filed documents are signed under penalty of perjury.

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

16.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page In addition to the proposed rule 2.111(3) change, the Court respectfully requests that the Judicial Council amend California Rule of Court 2.111(1) by deleting the words "if available" in the first sentence and replacing them with "if available and / or required if submitting electronically". Thus, the sentence would read as follows: "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 / or required if submitting electronically), 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 Court believes that this change would result in the Court's ability to capture accurate data for eService because it would require every e-filer to provide the Court with its email address. Currently, there is no requirement to have email addresses placed on the document. Further, there is no mechanism to have email addresses placed on the document. Modifying the language in this rule falls in line with the Judicial Council's objective of modernizing rules to facilitate e-business practices as well as e-filing.	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page CTAC and CSCAC decline to pursue this recommendation. Under rule 2.111(1), an e-mail address may be provided on the first page, if available, as a convenience to the court and parties. However, this email address is not necessarily the electronic service address. Parties consent to permissive electronic service by filing form EFS-500, *Consent to Electronic Service and Notice of Electronic Service Address*, which requires that the party specify his or her electronic service address. During phase II of the Rules Modernization Project, the committees may consider possible rules proposals that would assist the court in capturing the electronic service address where electronic service is mandatory.
17.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative	<u>Rule 2.3(3)</u> CAJ opposes removing references to "typewritten" and "typewriting" from rule 2.3(3), rule 2.104, and 2.150, and	<u>Rule 2.3(3)</u> CTAC and CSCAC agree. Both of CAJ's suggestions are incorporated into the proposed

	Counsel	the word "typewriter" from rule 2.150. Typewriters provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors. CAJ also recommends that "printing on a word processor" be changed in this rule to "printing from a word processor." As amended, rule 2.3(3) would state: "Written," "writing," "typewritten," and "typewriting" include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor. <u>Rule 2.105</u> CAJ recommends that the rule be edited to state: "The font must be essentially equivalent in terms of its simplicity and legibility to Courier, Times New Roman, or Arial."	amendment of rule 2.3(3). <u>Rule 2.105</u> CTAC and CSCAC decline to pursue this suggested language as outside the scope of this rules proposal, as circulated. They note that the language in rule 2.105 specifying that the font be "essentially equivalent" was included to allow for use of Helvetica, which is proprietary and could not be directly named.

	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
18.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	The wording of the proposed modification to California Rule of Court, rule 3.1300(c) should track the language of rules 2.253(b)(7) and 2.259(c) to refer to the document as being "received by the court" instead of "filed."	This rules proposal, as circulated, does not contemplate modifying subdivision (c) of rule 3.1300. However, CTAC and CSCAC agree that the proposed language in subdivision (e) of rule 3.1300 should be modified by replacing "filed" with "received by the court."

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	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
		In addition, do all three of these rules contradict the language of Code of Civil Procedure section 1010.6 subdivision (b)(3)? "Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier." (Id.) The statute does not authorize a local court rule to allow a later filing.	Code of Civil Procedure section 1010.6(b)(3) governs for cases involving *permissive* electronic filing. Under subdivisions (f) and (g) of section 1010.6, *mandatory* electronic filing rules are exempt from complying with subdivision (b)(3). CTAC and CSCAC recommend additional language to clarify that the proposed amendment to rule 3.1300(e) only applies to mandatory electronic filing. To address the concerns of Ms. Brandes-Gibbs, the proposed amendment to rule 3.1300(e) would be revised as follows: (e). "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."
19.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rule 3.1302 As proposed, this rule would create an unnecessary procedure for a clerk to "return" a digital copy of lodged material. The rule should be edited to state: "Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. After determination of the matter, the clerk may	Rule 3.1302 CSCAC declines to pursue CAJ's recommendation. The group foresees that potential issues may arise with lodged materials that are protected by copyright or trademark. By instructing clerks only to delete the lodged materials, litigants would not receive notice when courts no longer

	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
		mail the material back to the party lodging it. If the material was lodged electronically, the clerk may delete it." Rule 3.1304 CAJ recommends that this rule be edited to state: "The clerk must post both on the court's website and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing."	have the materials. Rule 3.1304 CTAC and CSCAC decline to pursue this recommendation because it would narrow the scope of the proposed rule amendment. By requiring courts to post the schedules "electronically," the proposed amendment is intended to encompass posting the schedules not only on court websites, but also by other electronic means.
20.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	We would recommend not encouraging inconsistency throughout the State. [*Comment provided in response to proposed amendment to rule 3.1300(e): "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day."]	CTAC and CSCAC decline to pursue this recommendation at this time because it falls outside of the scope of this rules proposal, as circulated. The proposed amendment to rule 3.1300(e) is a technical, non-substantive amendment that brings this rule into line with rule 2.259(c). The committees may consider the court's suggestion during phase II of the Rules Modernization Project.
21.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	Our court objects to the amendment that seeks to limit application of the tabbing requirement contained in California Rule of Court 3.1110 (f) to motions filed in paper unless a similar requirement can be added that would apply bookmarking, or something similar, to electronically filed documents. Our court utilizes that rule to require litigants to	CTAC and CSCAC note the court's objection and agree that it is prudent to wait until phase II to amend rule 3.1110(f). Postponing this amendment for further consideration during phase II will allow the court to continue relying on this rule in requiring that parties bookmark electronic

	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
		bookmark their e-file motions, which is the equivalent to tabbing, so that documents filed with a motion are able to be located easily. We have found without the ability to require bookmarking to locate documents and exhibits filed within a motion, attempting to navigate a 100+ page summary judgment filing or anything similar thereto can be almost impossible. We recommend language be added to subsection (f) of the rule that states: "For motions filed electronically, court's may adopt, via there E-file procedures, a requirement that exhibits be bookmarked or similarly identified in place of physically tabbing the documents."	documents. The court's specific recommendation for an electronic bookmarking rule will be considered next year during phase II of the Rules Modernization Project.
22.	TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee	Suggested modification The subcommittees propose one amendment to the proposal. Given the extensive nature of the changes in this proposal, the subcommittee members solicited input from a number of court executive officers whose courts could be impacted by the proposed changes. This input is a contributing factor to the modification that is proposed here. The subcommittees recommend that the new provisions contained in Rule 3.1300(e) should read as follows (see highlighted text): **(e) Computation of time** A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is	Suggested modification CTAC and CSCAC agree that the proposed amendment to rule 3.1300(e) should be revised to clarify that electronically filed papers are initially "received," not "filed." As discussed above in response to Ms. Brandes-Gibbs comment, the proposed amendment has been changed to track the language in rule 2.259(c). CTAC and CSCAC decline the suggested language as unnecessary. The proposed amendment to rule 3.1300(e) cross-references rule 2.259(c), which provides in relevant part: "This provision concerns only the effective date of filing. Any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record." **(e) Computation of time**

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	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
		deemed filed on that court day if, after review by the clerk, it is accepted for filing.	A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."

	Title Eight—Appellate Rules		
	Commentator	**Comment**	**Committee Response**
23	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rules 8.122, 8.144 and 8.336, and 8.838 CAJ urges consideration regarding the potential impact of these proposed changes on indigent appellate litigants, including, in particular, incarcerated appellants and individuals who do not have access to computers.	

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15-32

Title
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service

Proposed Rules, Forms, Standards, or Statutes
Amend titles 2, 3, 4, 5, 7, and 8 (Cal. Rules of Court, rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 7.802, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.122–8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.803, 8.804, 8.806, 8.814, 8.821–8.824, 8.832–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018); and adopt rules 2.10, 7.802, and 8.11

Proposed by
Court Technology Advisory Committee
Hon. Terence L. Bruiniers

Action Requested
Review and submit comments by June 17, 2015

Proposed Effective Date
January 1, 2016

Contact
Tara Lundstrom, 415-865-7650
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Executive Summary and Origin

The Court Technology Advisory Committee (CTAC) proposes to amend various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court. This proposal would introduce minor, non-substantive amendments to the rules in order to facilitate modern e-business practices, e-filing, and e-service. The Civil and Small Claims Advisory Committee, the Traffic Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Appellate Advisory Committee also recommend the amendments to the rules in their respective subject matter areas.

Background

Recognizing that courts are swiftly proceeding to a paperless world, CTAC is leading the Rules Modernization Project, a collaborative 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, CTAC is coordinating with five other advisory committees with relevant subject matter expertise.

The Rules Modernization Project is being carried out in two phases. This rules proposal marks the culmination of phase 1: an initial round of technical rule amendments to address language in the rules that is incompatible with the current statutes and rules governing e-filing and e-service and with e-business practices in general. Next year, CTAC will undertake phase 2, which will involve a more in-depth examination of any statutes and rules that may hinder e-business practices.

The Proposal

This proposal would make minor, technical amendments to the rules in titles 2, 3, 4, 5, 7, and 8.

Proposed amendments to title 2

The proposed amendments to title 2 would:

- Define "papers" as including not only papers in a tangible or physical form, but also in an electronic form (see amended rule 2.3(2));
- Strike references to "typewriter," "typewriting," and "typewritten" (see amended rules 2.3(3) and 2.150(a));[1]

[1] Rule 2.3(3) currently defines "written," "writing," "typewritten," and "typewriting" as "includ[ing] other methods equivalent in legibility to typewriting." In striking references to "typewritten" and "typewriting" in rule 2.3(3), the Civil and Small Claims Advisory Committee proposed revising the rule as follows: "'Written' and 'writing' include other methods of printing letters and words equivalent in legibility to printing on a word processor." Alternatively, the rule could allow for legibility equivalent "to computer word processing." CTAC's Rules and Policy Subcommittee subsequently considered alternate language based on its concern that the reference to word processors may quickly become outdated. The subcommittee proposed defining "written" and "writing" as "includ[ing] any method of legibly printing or displaying letters and words." The committee requests comments on the proposed amendments to this rule.

- Add a new rule defining the scope of the trial court rules to include documents filed both on paper and electronically (see proposed new rule 2.10);
- Amend language to clarify when certain formatting rules apply to electronic documents (see amended rules 2.103, 2.104, 2.105, 2.106, 2.107, 2.108(4)), 2.111(3), 2.113, 2.114, 2.115, and 2.117), electronic forms (see amended rules 2.133 and 2.134(a)–(c), 2.150), and jury instructions filed electronically (see amended rule 2.1055(b)(4));
- Extend the application of the general rules on forms in chapter 2 to forms filed electronically (see amended rule 2.130);
- Amend the definition of "record" to apply to records filed or lodged electronically (see amended rule 2.550(b)(1));
- Amend the rule for filing records under seal to recognize that records and notices may be transmitted electronically and kept by the court in electronic form (see amended rule 2.551);[2]
- Amend the rule for filing confidential name change records under seal to recognize that petitions may be transmitted electronically (see amended rule 2.577(d) and (f));
- Amend the rules governing motions to withdraw stipulations to court-appointed temporary judges to allow the moving party to provide copies of the motion to the presiding and temporary judge by electronic means (see amended rules 2.816(e)(3) and 2.831(f)); and
- Allow electronic service on the Attorney General of copies of a judgment and notice of judgment declaring a state statute or regulation unconstitutional (see amended rule 2.1100).

Proposed amendments to title 3

The proposed amendments to title 3 would:

- Insert an e-service exception to the duties associated with maintaining and updating the list of parties and their addresses (see amended rule 3.254(a) and (b));
- Amend language in the rules to recognize e-filing and e-service (see amended rules 3.524(a)(2), 3.544(a), 3.670(h)(1)(B), 3.815(b)(2)–(3), 3.823(d), 3.827(b), 3.1010(b)(1), 3.1109(a), 3.1300(a), 3.1302(a), 3.1320(c), 3.1326, 3.1327(a) and (c), 3.1330, 3.1340(b), 3.1346, 3.1347(a) and (c), 3.1350(e),[3] 3.1351(a) and (c), 3.1700(a)(1) and (b)(1), 3.1900, and 3.2107(a)–(b));

[2] The proposed amendments to rule 2.551 on filing sealed records in the trial courts, unlike most of the other proposed rule amendments, are not solely technical and non-substantive. However, they are closely based on the recent amendments to rule 8.46 that changed the appellate rule on sealed records to reflect modern business practices. It should be noted that CTAC's Rules and Policy Subcommittee voted to use the present tense ("has access") in rule 2.551(b)(2), instead of the past tense ("had access") used in rule 8.46. The committee requests comments on this proposed amendment.

[3] CTAC's Rules and Policy Subcommittee voted to remove the reference to separately stapling documents in rule 3.1350(e). The subcommittee recommended instead that subdivision (e) refer to "separate documents" since this would indicate that the documents must be filed separately with the court whether filed in paper or electronic form. The committee requests comments on the proposed amendment to this rule.

- Establish that the times prescribed in the rule governing evidence at arbitration hearings are increased by two days where service is accomplished by electronic means (see amended rule 3.823(d));
- Require that appointed referees provide their e-mail addresses (see amended rule 3.931(b));
- Correct a cross-reference to the appellate court rules (see amended rule 3.1109(c));
- Clarify when certain formatting rules apply to motion papers filed electronically (see amended rules 3.1110(e)–(f) and 3.1113(i)(1)–(2) and (m));
- Require that ex parte applications state the e-mail addresses of attorneys or parties (see amended rule 3.1202(a));
- Recognize that rule 2.259(c) applies to motion papers filed electronically (see amended rule 3.1300(e));
- Require that any materials lodged electronically specify an electronic address to which they may be returned and allow the clerk to return them by electronic means (see amended rule 3.1302(b));
- Require the clerk to post electronically a general schedule for law and motion hearings (see amended rule 3.1304(a));
- Authorize a court to require that a party submitting written objections provide the proposed order accompanying the objections in electronic form (see amended rule 3.1354(c)); and
- Recognize that the court may electronically sign written judgments (see amended rule 3.1590(*l*).

Proposed amendments to title 4

The proposed amendment to title 4 would:

- Allow courts to e-mail copies of countywide bail and penalty schedules to the Judicial Council (see amended rule 4.102).

Proposed amendments to title 5

The proposed amendments to title 5 would:

- Delete references to the back side of a summons (see amended rules 5.50(b) and (c)(1)–(2) and 5.91);
- Allow court employees to notify parties of deficiencies in their paperwork by any means approved by the court (see amended rule 5.83(d)(5));
- Replace references to "videotapes" (see amended rules 5.215(d)(5) and 5.242(k)(4)(G)); and
- Add a definition for "software" (see amended rule 5.275(g).)

Proposed amendments to title 7
The proposed amendment to title 7 would:

- Clarify that Code of Civil Procedure section 1010.6 and rules 2.250 to 2.261 apply in contested probate proceedings (see new rule 7.802).

Proposed amendments to title 8
The proposed amendments to title 8 would:

- Add definitions of "attach or attachment," "copy or copies," "cover," and "written or writing" to clarify their application to electronically filed documents (see amended rules 8.10 and 8.803);
- Add a new rule (proposed rule 8.11) and amend another rule (8.800(b)) to clarify that the rules are intended to apply to documents filed and served electronically;
- Replace references to "mail" with "send" throughout;
- Replace references to "file-stamped" with "filed-endorsed" throughout;
- Clarify that requirements for numbers of copies of documents and for the colors of covers of documents apply only to documents filed on paper (see amended rules 8.40 and 8.44);
- Add language requiring that all confidential or sealed documents must be transmitted in a secure manner, clarifying that this requirement applies to documents transmitted electronically (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g));
- Add language stating that all or part of the record on appeal, including a clerk's transcript, a record of administrative proceedings, or a copy of a reporter's transcript may be in electronic format (see amended rules 8.123, 8.124, 8.130, 8.144, and 8.838);
- Clarify which requirements about form apply to electronically filed records, briefs, supporting documents, or petitions (see amended rules 8.144, 8.204, 8.486, 8.504, 8.610, 8.824, 8.838, 8.883, 8.928, and 8.931);
- Replace references to "type," "typeface," "type style" and "type size" with "font" "font style" and "font size" (see amended rules 8.204, 8.883, and 8.928 and the amended advisory committee comment to rule 8.204);
- Expand advisory committee comments to note that the recoverable costs to notarize, serve, mail, and file documents are intended to include fees charged by electronic service providers for filing or service (see amended comments to rules 8. 278 and 8.891);
- Clarify when requirements for multiple copies to be filed or served only apply to paper documents (see amended rules 8.44, 8.144(c), 8.346(c), 8.380(c), 8.385(b), 8.386(b), 8.495(a), 8.540(b), 8.548(d), 8.630(g), 8.843(d), 8.870(d), 8.921(d), and 8.1018(c));
- Correct a typographical error (see amended rule 8.474(b));
- Clarify that the record and exhibits need only be returned to a lower court if they were transmitted in paper form (see amended rules 8.224, 8.512(a), 8.843(e), 8.870(e), 8.890(b), 8.921(e) and 8.1018(d));
- Clarify that signatures on electronically filed documents must comply with rule 8.77 (see amended rule 8.804 and amended rule 8.882(b)); and
- Amend two advisory committee comments to add provisions that the clerk's transcripts may be in electronic form (see comments to rules 8.122 and 8.832).

Alternatives Considered

As an alternative to making technical changes at this time, CTAC considered deferring action and proposing a single rules proposal that would include both substantive and technical changes to the rules at a later date. One benefit of this approach would be to increase the project's overall efficiency by reviewing and ultimately implementing all changes at the same time. By dividing the work into technical and substantive phases, however, the council would be able modernize the rules, to the extent possible, on a more responsive timeline for those courts that are already implementing e-filing and e-service and adopting e-business practices.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal does not introduce substantive changes to the rules, CTAC does not anticipate that the rule would incur any new costs or require implementation. To the extent that the proposal clarifies existing law, it would facilitate e-business, e-filing, and e-service in the trial and appellate courts and provide cost-efficiencies.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Specific comments are invited on rules 2.3(3), 2.105, 2.551(b)(2), and 3.1350(e).
- Specific comments are also invited on the term "filed-endorsed."

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

- Would the proposal provide cost savings?
- What would the implementation requirements be for courts?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments

1. Cal. Rules of Court, amendments to title 2, at pages 7–16
2. Cal. Rules of Court, amendments to title 3, at pages 17–30
3. Cal. Rules of Court, amendments to title 4, at page 31
4. Cal. Rules of Court, amendments to title 5, at pages 32–35
5. Cal. Rules of Court, amendments to title 7, at pages 36
6. Cal. Rules of Court, amendments to title 8, at pages 37–93

Rule 8.122. Clerk's transcript

(a)–(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c). The provisions of this rule, together with rule 8.144, allow the clerk's transcript to be in electronic form, when permitted under the reviewing court's local rules.

Under subdivision (c)(2), a clerk who sends a notice under subdivision (c)(1) must include a certificate stating the date on which the clerk sent it. This provision is intended to establish the date when the 10-day period for depositing the cost of the clerk's transcript under this rule begins to run.

The superior court will make the determination on any application to waive the fees for preparing, certifying, copying, and transmitting the clerk's transcript.

Subdivision (d). * * *

Rule 8.123. Record of administrative proceedings

(a)–(b) * * *

(c) Transmittal to the reviewing court

Except as provided in (d), if any administrative record is designated by a party, the superior court clerk must transmit the original administrative record, or electronic administrative record, with any clerk's or reporter's transcript sent to the reviewing court under rule 8.150. If the appellant has elected under rule 8.121 to use neither a clerk's transcript nor a reporter's transcript, the superior court clerk must transmit any administrative record designated by a party to the reviewing court no later than 45 days after the respondent files a designation under (b)(2) or the time for filing it expires, whichever first occurs.

(d)–(e) * * *

Rule 8.124. Appendixes

(a)–(b) * * *

(c) Document or exhibit held by other party

(a) Motion to use settled statement

(1)–(2) * * *

(3) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk sends ~~mails~~, or a party serves, the order of denial.

(b) Time to file; contents of statement

(1) Within 30 days after the superior court clerk sends ~~mails~~, or a party serves, an order granting a motion to use a settled statement, the appellant must serve and file in superior court a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.

(2)–(5) * * *

(c) * * *

Rule 8.140. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party in writing ~~by mail~~ that it must do the act specified in the notice within 15 days after the notice is sent ~~mailed~~, and that if it fails to comply, the reviewing court may impose one of the following sanctions:

(1)–(2) * * *

(b)–(c) * * *

Rule 8.144. Form of the record

(a) Paper and format

(1) Where the local rules of the reviewing court so allow, all or part of the record may be in electronic format.

~~(1)~~(2) In the clerk's and reporter's transcripts:

(A) All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight;

(B)–(D) * * *

(E) The margin must be at least 1¼ inches from the left edge ~~on the bound side of the page~~.

~~(2)~~(3) If filed in paper form, in the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1¼ inches on each edge.

~~(3)~~(4) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

~~(4)~~(5) The clerk's and reporter's transcripts must comply with rules 8.45–8.47 relating to sealed and confidential records.

(b) Indexes

Except as provided in rule 8.45, at the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2)–(3) * * *

(d)–(f) * * *

Advisory Committee Comment

Subdivisions (a) and (b). Subdivisions (a)(~~1~~5) and (b)~~(1)~~ refer to special requirements concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special requirements regarding references to sealed and confidential records in the alphabetical and chronological indexes to clerk's and reporter's transcripts.

Rule 8.147. Record in multiple or later appeals in same case

(a) * * *

(b) Later appeal

In an appeal in which the parties are using either a clerk's transcript under rule 8.122 or a reporter's transcript under rule 8.130:

(1) A party wanting to incorporate by reference all or parts of a record in a prior appeal in the same case must specify those parts in its designation of the record.

(A) The prior appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume, where applicable, and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified in a separate section at the end of the designation of the record.

(B)–(C) * * *

(2) * * *

Rule 8.150. Filing the record

(a) * * *

(b) Reviewing court clerk's duties

On receiving the record, the reviewing court clerk must promptly file the original and send ~~mail~~ notice of the filing date to the parties.

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) * * *

(d) Reporter's transcript

(1)–(3) * * *

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and combined ~~bound~~ with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(5) * * *

(e)–(h) * * *

Rule 8.344. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 8.134, but the appellant must file an original and, if the statement is filed in paper form, three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 8.346. Settled statement

(a)–(b) * * *

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and, if the statement is filed in paper form, three copies of the settled statement.

Rule 8.360. Briefs by parties and amici curiae

(a)–(b) * * *

(a)–(c) * * *

(d) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant ~~by mail~~ in writing if any portion of the designated proceedings was not officially electronically recorded or cannot be transcribed. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the appellant must file a new election notifying the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the appellant elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use.

(A)–(C) * * *

Rule 8.838. Form of the record

(a) Paper and format

(1) Where the local rules for the appellate division so allow, all or part of the record may be in electronic format.

(2) Except as otherwise provided in this rule, clerk's and reporter's transcripts must comply with the paper and format requirements of rule 8.144(a).

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2)–(3) * * *

Rule 8.840. Completion and filing of the record

(a) * * * *

(b) Filing the record

When the record is complete, the trial court clerk must promptly send the original to the appellate division and send to the appellant and respondent copies of any certified statement on appeal and any copies of transcripts or official electronic recordings that they have purchased. The appellate division clerk must promptly file the original and ~~mail~~ send notice of the filing date to the parties.

Rule 8.842. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.843. Transmitting exhibits

(a)–(c) * * *

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent~~. The trial court clerk must also send a list of the

2015 California Rules of Court

Rule 2.505. Contracts with vendors

(a) Contract must provide access consistent with rules

The court's contract with a vendor to provide public access to its electronic records must be consistent with the rules in this chapter and must require the vendor to provide public access to court records and to protect the confidentiality of court records as required by law or by court order.

(Subd (a) amended and lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

(b) Contract must provide that court owns the records

Any contract between the court and a vendor to provide public access to the court's electronic records must provide that the court is the owner of these records and has the exclusive right to control their use.

(Subd (b) amended and lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

Rule 2.505 amended and renumbered effective January 1, 2007; adopted as rule 2075 effective July 1, 2002.

2015 California Rules of Court

Rule 2.507. Electronic access to court calendars, indexes, and registers of actions

(a) Intent

This rule specifies information to be included in and excluded from the court calendars, indexes, and registers of actions to which public access is available by electronic means under rule 2.503(b). To the extent it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means in accordance with this rule.

(Subd (a) amended effective January 1, 2007.)

(b) Minimum contents for electronically accessible court calendars, indexes, and registers of actions

(1) The electronic court calendar must include:

(A) Date of court calendar;

(B) Time of calendared event;

(C) Court department number;

(D) Case number; and

(E) Case title (unless made confidential by law).

(2) The electronic index must include:

(A) Case title (unless made confidential by law);

(B) Party names (unless made confidential by law);

(C) Party type;

(D) Date on which the case was filed; and

(E) Case number.

(3) The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include:

(A) Date case commenced;

(B) Case number;

(C) Case type;

(D) Case title (unless made confidential by law);

(E) Party names (unless made confidential by law);

(F) Party type;

(G) Date of each activity; and

(H) Description of each activity.

(Subd (b) amended effective January 1, 2007.)

(c) Information that must be excluded from court calendars, indexes, and registers of actions

The following information must be excluded from a court's electronic calendar, index, and register of actions:

(1) Social security number;

(2) Any financial information;

(3) Arrest warrant information;

(4) Search warrant information;

(5) Victim information;

(6) Witness information;

(7) Ethnicity;

(8) Age;

(9) Gender;

(10) Government-issued identification card numbers (i.e., military);

(11) Driver's license number; and

(12) Date of birth.

(Subd (c) amended effective January 1, 2007.)

Rule 2.507 amended and renumbered effective January 1, 2007; adopted as rule 2077 effective July 1, 2003.

2015 California Rules of Court

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