



JUDICIAL COUNCIL OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

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COURT TECHNOLOGY ADVISORY COMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

July 1, 2015
12:15 PM to 1:15 PM
Teleconference

Advisory Body Members Present: Hon. Peter J. Siggins, Chair; Prof. Dorothy Glancy, Vice Chair; Hon. Kyle S. Brodie; Hon. Julie R. Culver; Hon. Theodore C. Zayner; Mr. Don Willenburg

Advisory Body Members Absent: Hon. Louis R. Mauro

Others Present: Mr. Patrick O'Donnell, Ms. Tara Lundstrom, Mr. Courtney Tucker, Mr. Manny Floresca

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:15 p.m., and roll call was taken.

Approval of Minutes

The advisory body reviewed and approved the minutes of the March 17, 2015, Rules and Policy Subcommittee meeting.

Public Comment

No public comments were received.

DISCUSSION AND ACTION ITEM (ITEM 1)

Item 1

Remote Video Proceedings

The subcommittee reviewed the proposal to amend rule 4.220 and forms TR-500-INFO, TR-505, and TR-510. Ms. Lundstrom explained that additional amendments to the rule and revisions to the form had been recommended by the Traffic Advisory Committee to implement new rule 4.105, which was adopted by the Judicial Council on an urgency basis in June to address procedures for the deposit of bail in traffic infraction cases. The subcommittee's review of the proposal has been expedited because all implementing changes related to rule 4.105 must be in effect by September 15, 2015. This means that the proposal must go to the council during its August meeting.

Ms. Lundstrom reviewed all proposed changes to the rule and form with the subcommittee.

Ms. Lundstrom went over the public comments submitted in response to the Invitation to Comment, including comments from Commissioner Jeff Bird from the Superior Court of Fresno County in response to the proposed changes related to rule 4.105. The subcommittee decided to defer consideration of those comments to the Traffic Advisory Committee. It focused its review of the proposal on those changes related to RVP and technology issues.

The subcommittee recommended to CTAC that the Judicial Council adopt the amendments to rule 4.220 and revisions to the forms. Its recommendation was limited to changes in the rules and forms related to technology issues.

Item 2

Rules Modernization Phase 1

Public comments were received in response to the Invitation to Comment. Ms. Lundstrom asked the subcommittee for volunteers to participate in reviewing titles 2 and 3 during a meeting of the Rules Modernization Group on July 10, 2015. Judge Brodie and Justice Siggins volunteered.

Other business

There will be a meeting on August 5, 2015, to review the other rules proposals that were circulated for public comment, including the Rules Modernization Project proposal. This meeting will take place after proposed amendments to all titles have been reviewed by other advisory committees.

Judge Culver has agreed to become the lead in drafting the judicial branch privacy policy along with Professor Glancy, Judge Brodie, and Judge Zayner.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:45 p.m.

Approved by the advisory body on _____.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
July 31, 2015	Please review for August 5 meeting
To	Deadline
Members of CTAC's Rules and Policy Subcommittee	August 5, 2015
From	Contact
Patrick O'Donnell, Managing Attorney Tara Lundstrom, Attorney Legal Services	Tara Lundstrom 415-572-5701 phone tara.lundstrom@jud.ca.gov
Subject	
Update to the <i>Trial Court Records Manual</i> : Electronic Signature Standards and Guidelines	

Background

Both the Court Executives Advisory Committee (CEAC) and the Court Technology Advisory Committee (CTAC) have been tasked with proposing standards and guidelines governing electronic signatures by courts and judicial officers. These standards are to implement Government Code section 68150(g), which authorizes the use of electronic signatures by courts and judicial officers "in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section." The CEAC Records Management Subcommittee has developed proposed standards and guidelines for inclusion in the *Trial Court Records Manual* and recommended that they be circulated to the trial courts for comment. They are before CTAC's Rules and Policy Subcommittee to review and decide whether to recommend to CTAC that they be circulated for comment to the trial courts.

Discussion

Electronic signatures by courts and judicial officers are authorized under Government Code section 68150(g), which provides as follows:

Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology *in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section*. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(Italics added). Subdivision (g) was added to the Government Code, effective January 1, 2011, by Assembly Bill 1926.¹ (Stats. 2010; ch. 167.) The Judicial Council has not yet developed implementing procedures, standards, and guidelines. The standards and guidelines proposed by CEAC's Records Management Subcommittee are loosely modeled on the Uniform Electronic Transactions Act and New York State's Electronic Signatures and Records Act Guidelines.

The proposed standards and guidelines include sections (1) describing their purpose and the underlying principles motivating the drafters; (2) providing definitions; (3) establishing the format for electronic signatures; (4) stating guidelines for ensuring that electronic signatures are executed or adopted with intent to sign, attributable to an authorized person, and capable of verification; (5) establishing how to execute electronic signatures under penalty of perjury; (6) establishing the legal effect of electronic signatures; (7) providing a list of acceptable security procedures; (8) stating the effect of the digitized signatures created by scanning the original signatures of judicial officers and courts; and (9) providing examples of court-created documents that may be electronically signed by a court or judicial officer.

In addition to these standards implementing Government Code section 68150(g), the proposed update to the *Trial Court Records Manual* includes a section outlining the various provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers. Lastly,

¹ This amendment was part of a broader reform of Government Code section 68150 in AB 1926 to authorize the creation and maintenance of electronic trial court records.

there is a section stating the effect of digitized signatures created by scanning paper documents submitted to the courts.

Coordination with the Court Executives Advisory Committee

Both CTAC and CEAC are responsible for developing the electronic signature standards and guidelines implementing Government Code section 6150(g). During its meeting on August 7, 2015, CEAC will review the proposed update and decide whether to recommend circulating it for comment to the trial courts. CTAC and the Judicial Council Technology Committee have scheduled time to review the proposed update during their August 18 and 20 meetings, respectively.

Subcommittee's Task

CTAC's Rules and Policy Subcommittee is tasked with analyzing this proposal and:

- Asking staff or subcommittee members for further information and analysis;
- Asking CTAC to recommend that the proposal, as drafted or as amended by the subcommittee, be circulated for comment to the trial courts; or
- Rejecting the proposal.

Attachments and Links

- Memorandum to the Presiding Judges and Court Executive Officers of the Superior Courts with attachment (proposed update to the *Trial Court Records Manual*)
- *Trial Court Records Manual* (rev. January 1, 2014), available at <http://www.courts.ca.gov/documents/trial-court-records-manual.pdf>



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MEMORANDUM

Date	Action Requested
July 31, 2015	Please review and submit any comments by e-mail to josely.yangco-fronda@jud.ca.gov
To	Deadline
Presiding Judges of the Superior Courts Court Executive Officers of the Superior Courts	[To be determined]
From	Contact
Court Executives Advisory Committee Ms. Mary Beth Todd, Chair Mr. Richard D. Feldstein, Vice-chair	Josely Yangco-Frona (415) 865-7626 josely.yangco-fronda@jud.ca.gov
Court Technology Advisory Committee Hon. Terence L. Bruiniers	
Subject	
<i>Trial Court Records Manual</i> : Proposed Electronic Signature Standards and Guidelines to Implement Government Code Section 68150(g)	

Executive Summary

The Court Executives Advisory Committee (CEAC) and the Court Technology Advisory Committee (CTAC) propose updating the *Trial Court Records Manual* to include new standards and guidelines that would govern the use of electronic signatures by trial courts and judicial officers. These standards and guidelines would implement Government Code section 68150(g), which authorizes electronic signatures by a court or judicial officer “in accordance with procedures, standards, and guidelines established by the Judicial Council.” The update would also include new sections in the *Trial Court Records Manual* that would (1) outline the various

provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers; and (2) state the effect of digitized signatures created by scanning paper court records.

Background

For over twenty years, Government Code section 68150(a) has authorized the preservation of trial court records in electronic form. (Stats. 1994; ch. 1030.) With the enactment of Assembly Bill 1926 in 2010, this provision was expanded to allow superior courts to create and maintain court records in electronic form. (Stats. 2010; ch. 167.) Electronic court records were to be subject to rules adopted by the Judicial Council establishing standards and guidelines for their creation, maintenance, reproduction, and preservation. (See Gov. Code, §§ 68150(a) and (c).) The Judicial Council sponsored AB 1926 to facilitate the transition by courts to paperless case environments.

Trial Court Records Manual

Effective January 1, 2011, the Judicial Council adopted rule 10.854 to implement AB 1926. This rule tasked Judicial Council staff—in collaboration with the trial court presiding judges and court executives—with preparing, maintaining, and distributing a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records, consistent with the Government Code and the rules of court and policies adopted by the council. The first version of this manual, known as the *Trial Court Records Manual*, was approved by the council at the same time that it adopted rule 10.854.

Judicial Council staff—in collaboration with the trial court presiding judges and court executives—is also responsible for periodically updating the *Trial Court Records Manual* to reflect changes in technology that affect the creation, maintenance, and retention of court records. (Cal. Rules of Court, rule 10.854(c).) Proposed changes must be made available for comment from the trial courts before the manual is updated or changed. (*Ibid.*) Since it was first issued, the council has twice updated the *Trial Court Records Manual*.

Electronic signatures by courts and judicial officers

As part of the effort to modernize the management of trial court records, AB 1926 also authorized the use of electronic signatures by courts and judicial officers. The bill added subdivision (g) to Government Code section 68150, which provides as follows:

Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology *in*

accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(Gov. Code, § 68150(g).) This proposal would implement Government Code section 68150(g) by updating the *Trial Court Records Manual* to include standards and guidelines for the use of electronic signatures by courts and judicial officers.

This year, the Legislature enacted AB 432, which will introduce new section 34 to the Code of Civil Procedure. Similar to Government Code section 68150(g), new Code of Civil Procedure section 34 will provide that electronic signatures by courts and judicial officers are as effective as original signatures. AB 432 also defines the term “electronic signature” in Code of Civil Procedure section 17(a)(3) as “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.”

The Proposal

This proposal would update the *Trial Court Records Manual* to implement Government Code section 68150(g) by adding a new section to the manual that would establish standards and guidelines governing the use of electronic signatures on court-created records. In addition, new sections would be added to (1) outline the various provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers and (2) state the effect of digitized signatures created by scanning paper court records.

Electronic signatures on court-created documents

A new section 6.2.1 would be added to the manual to establish standards and guidelines governing electronic signatures by the court and judicial officers. The proposed standards and guidelines are loosely modeled on the Uniform Electronic Transactions Act and New York State’s Electronic Signatures and Records Act Guidelines.

Purpose, drafting principles, and definitions. A new section 6.2.1.A would state the purpose of the standards and guidelines and list the principles that motivated the drafters. These principles include that the standards should not be more restrictive than those for traditional “wet”

signatures; that they should consider how the signature is being applied when setting the level of authentication required; that they should allow for flexibility in the method of applying and the appearance of the signature; and that they should, wherever possible, avoid requiring specific proprietary tools. A new section 6.2.1.B would provide definitions applicable to the standards and guidelines, including a definition for “electronic signature” that mirrors the definition that will be added by AB 432 to Civil Code of Procedure section 17.

Format of electronic signatures. The format of electronic signatures would be stated in new section 6.2.1.C. Electronic signatures could be in the form of (1) a digitalized image of the person’s signature, (2) an “/s/” followed by the person’s name, or (3) any other electronically created method of indicating with clarity the name of the person whose signature is being affixed to the document.

Guidelines governing intent, attribution, and verification. A new section 6.2.1.D would provide guidelines to ensure (1) that the signer intended to sign the document, (2) that the electronic signature is attributable to an authorized person, and (3) that the electronic signature can be verified. To demonstrate intent, it must be clear to a person, when presented with the opportunity to sign a document, that the person is being asked to sign the document electronically. To ensure that the signer is authorized to sign, the document must be presented for an electronic signature only to an authorized person or someone authorized to execute the signature on that person’s behalf. An electronic signature may be attributed to a person if it was the act of the person (or the act of someone authorized to sign on that person’s behalf), which may be shown in any manner, including the efficacy of the security procedure applied when the signature is executed or adopted. And lastly, the identity of the signer must be capable of verification. Courts would be instructed to retain any data relevant to verifying electronic signatures, such as the signer’s identity and the date and time that the signature is executed or adopted.

This section would also provide a “practice tip” to recommend that courts consider designing their business practices and technology systems—such as workflows, pop-up screens, and access and security procedures—to facilitate compliance with these guidelines.

Signatures under penalty of perjury. A new section 6.2.1.E would govern signatures required by law to be made under penalty of perjury. Electronic signatures would be made under penalty of perjury if the electronic record includes the electronic signature, all of the information as to which the declaration pertains, and a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

Legal effect of electronic signatures. As provided by Government Code section 68150(g) and Code of Civil Procedure section 34, a new section 6.2.1.F would state that electronic signatures by courts and judicial officers have the same effect as original signatures on paper documents.

Acceptable security procedures. Acceptable security procedures for identity verification would be addressed in a new section 6.2.1.G. This section would provide that all systems used in the capture, application, and storage of electronic signatures and documents are subject to the data and information security guidelines recommend in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts (Draft-May 27, 2015)*. This requirement would ensure that access is limited to authorized individuals and that original files and documents have not been altered or modified since they were created.

In addition, this section would recognize both real-time digitized signatures and system-applied signatures as acceptable procedures for verifying identity. Real-time digitized signatures would be defined as graphical images of a handwritten signature, where the signature is captured by means of a digital pen, pad, or other device that converts the physical act of signing into a digital representation of the signature and applies that digital representation to a document, transaction, or database entry. User authentication for real-time digitized signatures would be similar to the authentication of traditional “wet” signatures.

System-applied signatures would be defined as electronic signatures applied to documents, transactions, or databases through the use of a computer, software, or application following an affirmative action (e.g., clicking on a check box) by the signer or someone authorized to act on his or her behalf. Four methods of user identification would be recognized for system-applied electronic signatures: (1) password or PIN, where the user is authenticated through a password or PIN either tied directly to the application of the signature or used to gain access to the computer application, database, or network; (2) symmetric cryptography, where the user is authenticated using a cryptographic key that is known to the system and the signer; (3) asymmetric cryptography (digital certificates), where the user is authenticated using both public and private keys; and (4) biometrics, where the user is authenticated using biometrics such as voice, fingerprint, or retina.

Scanned signatures. A new section 6.2.1.H would be added to address digitized signatures that are created when courts convert their paper records into electronic records by scanning. This section would provide that the digitized signatures of judicial officers and courts created by scanning have the same validity and the same legal force and effect, as their original signatures.

Examples of court-created documents that may be electronically signed. A new section 6.2.1.I would provide a list of various court documents that may be signed electronically by a court or judicial officer. The list would be provided for illustrative purposes only and would not be intended to suggest that a signature is required on any of the identified documents, unless a signature is otherwise mandated by statute or rule. Examples provided would include judgments, orders after hearings, minute orders, notices, abstracts of judgment, arrest and search warrants, and certificates of service, among others.

Electronic signatures on documents submitted to the courts

A new section 6.2.2 would be added to the *Trial Court Records Manual* to address the statutes and rules that authorize electronic signatures on documents submitted to the courts by attorneys, parties, and law enforcement officers. This legal authority would include (1) Code of Civil Procedure section 1010.6 and rule 2.257, which govern the use of electronic signatures on electronically filed documents in civil cases; (2) Penal Code sections 817 and 1526, which provide the procedures required to authorize the electronic signatures of law enforcement officers on probable cause declarations for arrest and search warrants; and (3) Penal Code section 959.1, which authorizes the digitized facsimile of a defendant's signature on Notices to Appear issued in traffic and criminal cases for infraction and misdemeanor violations.

Signatures on scanned documents

This proposal would also add a new section 6.2.3 to address digitized signatures that are created when courts convert their paper records into electronic records by scanning. This section would provide that these digitized signatures have the same validity and the same legal force and effect, as the original signatures. It would largely duplicate the language proposed for section 6.2.1.H that is specific to the scanned signatures of judicial officers and courts. This language is duplicated here to clarify that it also applies to electronic signatures on documents submitted to the courts.

Alternatives Considered

Because Government Code section 68150(g) requires that the Judicial Council establish implementing standards and guidelines, CEAC and CTAC did not consider alternatives to this proposal to adopt these standards and guidelines as part of the *Trial Court Records Manual*.

Implementation Requirements, Costs, and Operational Impacts

Potentially significant costs could be incurred by individual courts in implementing this proposal as they might be required to procure new technology systems and equipment for capturing the electronic signatures of judicial officers and court officials. These initial costs, however, may be outweighed by the cost savings and efficiency gains that would be realized by allowing judicial officers and courts to use electronic signatures. Because implementation is voluntary, each court would determine if the benefits outweigh the costs in deciding whether to use electronic signatures on court-generated documents. Updating the manual, which is in electronic format and posted online, would result in only minimal costs to the branch.

Request for Specific Comments

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

- Does the proposal appropriately address 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.
- Do any of the proposed standards need further clarification? If so, please describe how they should be revised.
- Are there any effective practices related to electronic signatures that are currently in use by the courts that are not covered by the proposed standards? If so, please describe these practices.

Attachments and Links

1. Proposed update to the *Trial Court Records Manual* at pages 8–19
2. *Trial Court Records Manual* (rev. January 1, 2014), available at <http://www.courts.ca.gov/documents/trial-court-records-manual.pdf>

2. Statutes and Rules of Court Governing Trial Court Records Management

* * *

2.1.1 Signatures on Electronically Created Court Documents

Government Code section [68150\(g\)](#) provides that any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, or similar document issued by a trial court or judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology. ~~Future versions of this manual will contain procedures, standards, or guidelines for signing, subscribing, and verifying court documents by electronic means.~~ Section 6.2.1 of this manual provides standards and guidelines for signing, subscribing, and verifying court documents by electronic means.

* * *

6. Creation, Storage, Maintenance, and Security of Records

* * *

6.2 Electronic Signatures: Standards and Guidelines

6.2.1. Electronic Signatures on Court-Created Records

A. Purpose

This section provides standards and guidelines for the creation of electronic signatures by judicial officers and the superior courts. These standards and guidelines implement [Government Code section 68150\(g\)](#), which provides that any notice, order, judgment, decree, decision, ruling opinion, memorandum, warrant, certificate of service, or similar document issued by a court or a judicial officer may be signed, subscribed, or verified using computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council.

The following principles guided the drafters in preparing these standards and guidelines:

- Electronic signature standards should provide appropriate requirements and should generally not be more restrictive than standards for traditional ‘wet’ signatures.
- Electronic signature standards should consider how the signature is being applied when setting the level of authentication required.
- Electronic signature standards should allow for flexibility in the method of applying and the appearance of the signature.

- Electronic signature standards, wherever possible, should avoid requiring specific proprietary tools. Instead the standards should present attributes of acceptable authentication tools and encourage leveraging security within other business critical systems.

B. Definitions

As used in these standards and guidelines, the following definitions apply:

- **Electronic** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- **Electronic court record** means a court record created, generated, sent, communicated, received, or stored by electronic means.
- **Electronic signature** means an electronic sound, symbol, or process attached to or logically associated with an electronic court record and executed or adopted by a person with the intent to sign the electronic court record. (Code of Civ. Proc., § 17.)
- **Person** includes judicial officers, court clerks, deputy court clerks, and others authorized to sign documents issued by a judicial officer or a court.
- **Record** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- **Security procedure** means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

C. Format of Signatures

Unless otherwise prescribed in a statute or rule, an electronic signature may be in the form of:

- A digitalized image of the person's signature;
- An /s/ followed by the person's name; or
- Any other electronically created method of indicating with clarity the name of the person whose signature is being affixed to the document.

All such signatures, to be legally effective, must satisfy the requirements stated in this section.

D. Electronic Signatures Must Be Executed or Adopted with an Intent to Sign, Attributable to an Authorized Person, and Capable of Verification

The following guidelines apply to electronic signatures executed or adopted by a judicial officer or the court:

- When a person is presented with the opportunity to sign a document electronically, it must be clear to the person that he or she is being asked to sign the document electronically. This demonstrates that the person in fact intended to sign the document. (See Code of Civ. Proc., § 17 [electronic signatures must be “executed or adopted with the intent to sign”].)
- When a document is to be signed electronically, it must be presented only to an authorized person or to someone authorized to execute the signature on the person’s behalf.
- An electronic signature is attributed to a person if it was the act of that person (or the act of someone authorized to execute or adopt the signature on that person’s behalf), which may be shown in any manner, including by showing the efficacy of any security procedure applied when the signature was executed or adopted.
- The identity of the person who executed or adopted the electronic signature must be capable of verification. If a document is signed electronically, the court should retain any data relevant to verifying the signature, such as the identity of the person who executed or adopted the signature and the date and time that the signature was executed or adopted.

Practice Tip: Courts should consider designing business practices and technology systems—such as workflows, pop-up screens, and access and security procedures—to facilitate compliance with these guidelines.

E. Signatures Under Penalty of Perjury

If a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes:

- The electronic signature;
- All of the information as to which the declaration pertains; and
- A declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

F. Legal Effect

Unless otherwise specifically provided by law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, or similar documents that are signed, subscribed, or verified by using a computer or other technological means shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a court official or judicial officer. (Gov. Code, § 68150(g); see also Code of Civ. Proc., § 34 [“An electronic signature . . . by a court or judicial officer shall be as effective as an original signature”].)

A signature may not be denied legal effect or enforceability solely because it is in electronic form. The legal effect of an electronic signature is determined from the context and circumstances surrounding its creation, execution, or adoption, and otherwise as provided by law.

G. Acceptable Security Procedures for Verification of Identity When Applying Electronic Signature

The acceptable procedures for verifying the identity of persons executing electronic signatures are varied and are subject to change as the technology in this area is developing quickly. Certain guidelines can be applied at this time to determine whether electronic signatures are verifiable.

First, all systems used in the capture, application, and storage of electronic media, including any electronic signatures or electronic documents, are subject to data and information security guidelines as recommended in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts (Draft-May 27, 2015)*. This requirement ensures that access to any electronic signature, electronically signed document, or the tools and mechanisms for applying an electronic signature is limited to authorized individuals and that original files and documents have not been altered or modified since they were created.

Second, currently acceptable procedures for verification of electronic signatures include the following:

1. Real-time digitized electronic signatures

A digitized signature is a graphical image of a handwritten signature. The signature is captured by means of a digital pen, pad, or other device that converts the physical act of signing into a digital representation of the signature and applies that digital representation to the document, transaction, or database entry.

User authentication before the application of the digitized signature should be similar to authentication methods used when a physical handwritten signature is applied to a hard copy or traditional paper document.

2. System-applied electronic signatures

A system-applied electronic signature is an electronic signature that is applied to a document, transaction or database through use of a computer, software, or application following affirmative action by the individual or a person authorized to act on the person's behalf. The affirmative action could include, for example, the requirement that the signer click on an "OK" box or similar act.

User authentication for applying a system-applied electronic signature may be obtained through one of the following methods:

- **Password or PIN** - The user is authenticated through a password or PIN to gain access to the computer application, database, or network. Alternatively or in addition, the user is authenticated through a password or PIN tied directly to the application of the signature.
- **Symmetric Cryptography** – The user is authenticated using a cryptographic key that is known to the system and the individual signing the document. This is often done via a single use password that is randomly generated.
- **Asymmetric Cryptography (Digital Certificates)** – The user is authenticated using both private and public keys. This is the most secure method of user authentication and should be considered when applying signatures made under penalty of perjury.
- **Biometrics** – The user is authenticated using biometrics, including but not limited to voice, fingerprint, or retina.

The method selected should take into consideration business requirements, cost, and relative risk and consequence of a breach. Courts should document and adopt security procedures for authentication before the implementation of a system-applied electronic signature.

H. Judicial Signatures on Scanned Documents

Government Code section 68150(a) authorizes the preservation and maintenance of trial court records in electronic form. Under this provision, trial courts may convert their paper records to electronic form by scanning. The act of scanning an original signature results in a digitized signature. The digitized signature of a court or judicial officer created by scanning shall have the same validity, and the same legal force and effect, as the original signature.

I. Examples of Court-Created Documents that May Be Electronically Signed by a Judicial Officer or Clerk

The following is a list of various court-created documents that may be signed electronically by a judge or clerk under [Government Code 68150\(g\)](#). This list is provided for illustrative purposes only. It is not intended to suggest that a signature is required on these documents, unless a signature is otherwise mandated by statute or rule.

- Judgments
- Deferred entry of judgment
- Orders after hearings
- Minute orders
- Exemplification of records
- Probable cause determinations
- Arrest warrants
- Abstracts of judgment
- Summons
- Notices
- Fee waivers granted by statute
- Certificate of mailing
- Clerk's declarations
- Entry of judgment

- Search warrants
- Bench warrants
- Protective orders
- Letters for probate
- Writs of attachment
- Writs of possession
- Writs of execution
- Lis pendens
- Notices of intent to dispose of exhibits
- Certification of records
- Clerk's certificate of service
- Felony abstract of judgment
- Notice of cost of electronic recording
- Letters for probate
- Elisors

6.2.2. Electronic Signatures on Documents Submitted to the Courts

A. Purpose

The purpose of this section is to provide guidance on the signatures that appear on documents that are submitted electronically to the courts. For such signatures, there is currently no equivalent to the comprehensive authorization for the use of electronic signatures that exists for the signatures of judicial officers and court clerks under [Government Code section 68150\(g\)](#) and Code of Civil Procedure section 34. There are, however, various statutes and rules on signatures on electronically submitted documents that apply to particular types of proceedings.

B. Signatures on Documents Filed Electronically in Civil Cases

The statutes and rules on e-filing in civil cases include specific provisions on signatures. [Code of Civil Procedure section 1010.6\(b\)\(2\)](#) provides:

(A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

Similarly, the California Rules of Court have a specific rule on the requirement for signatures on documents filed electronically with the court. [Rule 2.257](#) provides:

(a) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury, the following applies:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

(c) Documents requiring signatures of opposing parties

When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the following procedure applies:

- (1) The party filing the document must obtain the signatures of all parties on a printed form of the document.
- (2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document in the manner provided in (a)(3)-(5).

(3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

(d) Digital signature

A party is not required to use a digital signature on an electronically filed document.

(e) Judicial signatures

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

C. Signatures on Documents in Criminal and Traffic Cases

In criminal and traffic proceedings, the Legislature has authorized the use of electronic or digital signatures in particular types of matters.

1. Probable Cause Declarations for Warrants for Arrest

[Penal Code section 817](#) addresses the procedures to be used when a peace officer submits a declaration of probable cause to obtain a warrant of arrest before criminal charges are filed.¹ These warrants are sometimes called *Ramey* warrants, referring to *People v. Ramey* (1976) 16 Cal.3d 263. (*Goodwin v. Superior Court* (2001) 90 Cal.App.4th 215, 218.) Penal Code section 817 requires the peace officer to submit a sworn statement made in writing in support of the warrant of probable cause. (Pen. Code, § 817(b).) As an alternative under Penal Code section 817(c)(2), the magistrate may take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, and the following conditions are met:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

¹ Penal Code section 817 does not apply to bench warrants or warrants for arrest that are sought via a criminal complaint. (Pen. Code, § 817(b); see also *id.*, §§ 740, 813.)

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant,² he or she shall:

- (i) Cause the warrant, supporting declarations, and attachments to be subsequently printed if those documents are received by electronic mail or computer server.
- (ii) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.
- (iii) Note on the warrant the exact date and time of the issuance of the warrant.
- (iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

2. Probable Cause Declarations for Search Warrants: Penal Code Section 1526(b)

[The text below will need to be modified if AB 39 is enacted.]

Before issuing a search warrant, the magistrate must take the officer's affidavit in writing and cause the affidavit to be subscribed by the affiant. (Pen. Code, § 1526(a); see *Powelson v. Superior Court* (1970) 9 Cal.App.3d 357, 360–361.) As an alternative to this written affidavit, [Penal Code section 1526\(b\)\(2\)](#) authorizes the magistrate to take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, telephone and electronic mail, or telephone and computer server, and if the following conditions are met:

² The magistrate may issue the warrant, if and only if, he or she is satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described in the declaration has committed the offense. (Pen. Code, § 817(a)(1).)

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

(i) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

(ii) Note on the warrant the exact date and time of the issuance of the warrant.

(iii) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The duplicate original warrant and any affidavits or attachments in support thereof shall be returned as provided in Penal Code section 1534.

3. Electronic Signatures on Notices to Appear

[Vehicle Code section 40500](#) addresses Notice to Appear for traffic violations and requires that the arresting officer prepare in triplicate a written notice to appear in court. (Veh. Code, § 40500(a); *id.* § 40600(a) [similar provisions].) The arresting officer must deliver a copy to the arrested person, a copy to the court, and a copy to the commissioner, chief of police, sheriff or other superior officer of the arresting officer. (*Id.*, §§ 40500(d), 40506.) A Notice to Appear may also be issued for non-traffic infraction and misdemeanor offenses. (Pen. Code, §§ 853.5, 853.6.)

[Penal Code section 959.1\(d\)](#) authorizes a court to receive and file an electronically transmitted Notice to Appear issued on a form approved by the Judicial Council if the following conditions are met:

- (1) The notice to appear is issued and transmitted by a law enforcement agency pursuant to specified Penal Code or Vehicle Code sections;
- (2) The court has all of the following:
 - (A) The ability to receive the notice to appear in electronic format.
 - (B) The facility to electronically store an electronic copy and the data elements of the notice to appear for the statutory period of record retention.
 - (C) The ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved.
- (3) The issuing agency has the ability to reproduce the notice to appear in physical form upon demand and payment of any costs involved.
- (4) The notice to appear that is received under subdivision (d) is deemed to have been filed when it has been accepted by the court and is in the form approved by the Judicial Council.
- (5) If transmitted in electronic form, the notice to appear is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. A notice to appear filed electronically under subdivision (d) need not be subscribed by the citing officer. An electronically submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration.

853.9

A Judicial Council Notice to Appear form that is issued when a person is arrested for misdemeanor or infraction violations of the Vehicle Code or for nontraffic misdemeanors or infractions serves as a complaint. (Veh. Code § 40500(b); Pen. Code, § 853.9(b).) Under [rule 4.103 of the California Rules of Court](#), the Judicial Council has approved the following types of Notice to Appear forms:

Form TR-115	Automated Traffic Enforcement System Notice to Appear
Form TR-130	Traffic/Nontraffic Notice to Appear
Form TR-120	Nontraffic Notice to Appear

Form TR-106
Form TR-108

Continuation of Notice to Appear
Continuation of Citation

Form TR-130 is used for both electronic and handwritten citations. (See www.courts.ca.gov/documents/trinst.pdf; Cal. Rules of Court, rule 4.103.)

6.2.3. Signatures on Scanned Documents

Government Code section 68150(a) authorizes the preservation and maintenance of trial court records in electronic form. Under this provision, trial courts may convert their paper records to electronic form by scanning. The act of scanning an original signature results in a digitized signature. This digitized signature shall have the same validity, and the same legal force and effect, as the original signature. This section applies generally to electronic signatures by parties and others on documents submitted to the courts, in addition to electronic signatures by judicial officers and courts (which are also addressed above in the standards and guidelines implementing Government Code section 68150(g).)

DRAFT



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
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MEMORANDUM

Date	Action Requested
July 31, 2015	Please review for your August 5 meeting
To	Deadline
Members of the Rules and Policy Subcommittee	August 5, 2015
From	Contact
Patrick O'Donnell, Managing Attorney Tara Lundstrom, Attorney Legal Services	Tara Lundstrom 415-865-7650 phone tara.lundstrom@jud.ca.gov
Subject	
Phase I of the Rules Modernization Project	

Background

This year, the Court Technology Advisory Committee (CTAC) is carrying out phase I of the Rules Modernization Project, in collaboration with the five other advisory committees. This endeavor consists of proposing technical, non-substantive changes to the California Rules of Court to facilitate electronic filing, electronic service, and modern business practices.

Proposed amendments to titles 2, 3, 4, 5, 7, and 8 were circulated for public comment this spring, with the public comment period ending on June 17, 2015. Eleven commentators submitted comments in response to the Invitation to Comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

The Rules and Policy Subcommittee (RPS) will be reviewing the comments and proposed amendments related to titles 2, 3, 4, 5, and 7. These proposed amendments include any changes

recommended by the advisory committees in response to the public comments. They have been recommended by the Civil and Small Claims Advisory Committee, the Traffic Law Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate Law Advisory Committee. Attached for the subcommittee's review is a draft report to the Judicial Council that includes a comment chart (with responses recommended by the Civil and Small Claims Advisory Committee) and proposed amendments to titles 2, 3, 4, 5, and 7.

The Appellate Advisory Committee and CTAC's Joint Appellate Technology Subcommittee are still in the process of reviewing the comments to the proposed amendments to title 8. Once they have finished, their recommended amendments and proposed responses to the comments will be included in draft report to the Judicial Council to be considered by CTAC.

Subcommittee's task

For the meeting on August 5, 2015, the subcommittee is tasked with reviewing the draft council report and:

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

Attachment

- Draft report to the Judicial Council with attachments (proposed amendments to titles 2, 3, 4, 5, and 7, and comment chart with responses recommended by CSCAC)



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	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
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service	
Rules, Forms, Standards, or Statutes Affected	Recommended by
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, 8.123, 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, 8.833–8.835, 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,	Court Technology Advisory Committee Hon. Terence L. Bruiniers
	Agenda Item Type Action Required
	Effective Date January 1, 2016
	Date of Report July 31, 2015
	Contact Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov

Executive Summary

The Court Technology Advisory Committee proposes amending various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court. This proposal introduces minor, non-substantive amendments to the rules in order to facilitate electronic filing, electronic service, and modern business practices. 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.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2016

1. 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, 8.123, 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, 8.833–8.835, 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
2. Adopt rules 2.10, 7.802, and 8.11.

The text of the new and amended rules is attached at pages 12–98.

Previous Council Action

Over the past twenty years, the Judicial Council has regularly taken action to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320).

In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first on a project pilot basis in the Second District Court of Appeal in 2010 and then to all appellate courts in 2012.

Rationale for Recommendation

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 has coordinated 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 I: an initial round of technical rule amendments to address language in the rules that is incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. Next year, CTAC and the other advisory committees will undertake phase II, which will involve a more in-depth examination of any statutes and rules that may hinder e-business practices.

This proposal makes various technical amendments to the rules in titles 2, 3, 4, 5, 7, and 8.

Amendments to title 2

The amendments to title 2 will:¹

- 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));
- Add a new rule defining the scope of the trial court rules to include documents filed both on paper and electronically (see new rule 2.10);
- Amend language to clarify when certain form and 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

¹ These amendments have been recommended by the Court Technology Advisory Committee (CTAC) and the Civil and Small Claims Advisory Committee (CSCAC).

- 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).

Amendments to title 3

The amendments to title 3 will:³

- Insert an electronic 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 electronic filing and 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), 3.1351(a) and (c), 3.1700(a)(1) and (b)(1), 3.1900, and 3.2107(a)–(b));
- 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) 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 rules 2.253(b)(7) and 2.259(c) apply to motion papers that are required to be 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));

² The amendments to rule 2.551 on filing sealed records in the trial courts, unlike most of the other 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.

³ These amendments have been recommended by CTAC and CSCAC.

- 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)).

Amendment to title 4

The amendment to title 4 will:⁴

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

Amendments to title 5

The amendments to title 5 will:⁵

- 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).)

Amendment to title 7

The amendment to title 7 will:⁶

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

Amendments to title 8

The amendments to title 8 will:⁷

- 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 new rule 8.11 and amend rule 8.800(b) to clarify that the rules are intended to apply to documents filed and served electronically;

⁴ This amendment has been recommended by CTAC and the Traffic Advisory Committee.

⁵ These amendments have been recommended by CTAC and the Family and Juvenile Law Advisory Committee.

⁶ This new rule has been recommended by CTAC and the Probate and Mental Health Advisory Committee.

⁷ These amendments have been recommended by CTAC and the Appellate Advisory Committee (AAC).

- 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 that are transmitted electronically must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g));
- 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).

Comments, Alternatives Considered, and Policy Implications

Eleven commentators submitted comments in response to the Invitation to Comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

Comments

The advisory committees’ responses to all comments received during the comment period are provided in the attached comment chart. In addition, specific responses to certain comments, including the response submitted after the comment period, are addressed further below.

Electronic form and formatting rules. This rules proposal clarifies that many of the form and formatting rules apply only to documents filed on paper, and not filed electronically. Three commentators—the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology

Subcommittee, and the State Bar’s Committee on Appellate Courts—submitted comments urging that electronic form and formatting rules be adopted in the near future. The TCPJAC/CEAC Joint Rules and Joint Technology Subcommittees specifically recommended future amendments to require bookmarking exhibits and attachments submitted with electronic documents.

The Superior Court of San Diego County submitted a comment in response to the proposed amendment to rule 3.1110(f), which would limit the requirement that parties tab their motions papers to those filed physically in paper form. The court objected to the amendment unless the council were to add similar language requiring bookmarking or its equivalent for all electronically filed documents. The court explained that it refers to rule 3.1110(f) in requiring litigants to bookmark their electronically filed motions since bookmarking is the electronic equivalent to tabbing. Bookmarking allows the court to easily locate documents and exhibits filed with motions. The court also proposed language for amending rule 3.1110(f) that would expressly authorize the bookmarking of electronic documents.

Electronic form and formatting rules, including any rules governing the bookmarking of electronic documents, will be considered during phase II of the Rules Modernization Project. Meanwhile, in response to the concerns raised by the Superior Court of San Diego County, this rules proposal will not amend rule 3.1110(f), so that the court may continue to rely on that rule in requiring that parties bookmark electronic documents.

Typewriters. The State Bar’s Committee on Administrative Justice (CAJ) submitted comments regarding the proposed amendment to rules 2.3(3), 2.104, and 2.150. CAJ opposed removing references to “typewritten,” “typewriting,” and “typewriter” from these rules.⁸ It explained that typewriters “provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors.” In response to CAJ’s concerns, this rules proposal leaves the references to “typewritten,” “typewriting,” and “typewriter” in these rules.

E-mail addresses. Rule 2.111(1) provides that the top of the first page of papers should list an “e-mail address (if available),” among other identifying information. The Civil Unit Managers of the Superior Court of Orange County submitted comments recommending that the phrase “e-mail address (if available)” be replaced with “e-mail address (if available and/or required if submitted electronically).” The managers explained that their proposal would allow the court to capture accurate data for electronic service because it would require all electronic filers to provide the court with their e-mail addresses. The managers further explained that the rules do not require placing the e-mail address on documents and there is no mechanism for placing e-mail addresses on documents.

⁸ Retaining these references also makes the amendments to the trial court rules consistent with the appellate rules: prior to circulating the Invitation to Comment, CTAC and AAC decided against removing these references in the appellate rules because indigent and incarcerated litigants may only have access to typewriters.

Under rule 2.111(1), an e-mail address may be provided on the first page of papers, if available, as a convenience to the court and parties. However, this e-mail address is not necessarily the electronic service address; the electronic service address might instead be registered with an Electronic Filing Service Provider. As provided in the rule, an attorney or litigant may list his or her work or personal e-mail address on the first page of a paper without consenting to receive electronic service at that address. (See Cal. Rules of Court, rule 2.111(1) [“The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law”].)

A party consents to permissive electronic service by filing form EFS-005, *Consent to Electronic Service and Notice of Electronic Service Address*, which requires that the party specify his or her electronic service address.⁹ This form captures the electronic service address only where electronic service is permissive. In addition, rule 2.256(a)(4) requires parties to provide “one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept electronic service.” Since courts already have the ability to require parties to provide their electronic service addresses, this rules proposal does not amend rule 2.111(1).

Filing records under seal. This rules proposal amends rules 2.551 (governing procedures for filing records under seal) and 2.577 (governing procedures for filing confidential name change records under seal). It states specific procedures for filing electronically transmitted records under seal by court order.

As circulated, the rules proposal would have amended rules 2.551(e)(1) and 2.577(f)(3) to require that, when a court grants an order sealing a record, it must replace the cover sheet with a filed-endorsed copy of the court’s order. In addition, the rules proposal would have required the court, if the record was in electronic form, to place the record ordered sealed in a secure electronic file, clearly identified as sealed by court order on a specified date.

After the comment period closed, Mr. Alan Carlson—the Court Executive Officer of the Superior Court of Orange County—provided his response to these proposed amendments. He explained that removing the cover sheet and attaching the court’s order for records and petitions transmitted electronically is unworkable in his court’s electronic case and document management systems. Once these records and petitions have been electronically transmitted by the parties, the court cannot alter these documents; however, the court can change the level of access to these documents and can identify these documents as sealed by court order on a specific date. Mr. Carlson also explained that his document management system does not electronic documents in a secure electronic “file.”

This rules proposal incorporates Mr. Carlson’s recommendations into the amendments for rules 2.551(e)(1) and 2.577(f)(3).

⁹ Form EFS-005 is available at <http://www.courts.ca.gov/documents/efs005.pdf>.

Rule 2.551(e)(1) is amended to provide as follows:

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

Rule 2.577(f)(3) is amended as follows:

For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the Confidential Cover Sheet that the matter is filed “CONDITIONALLY UNDER SEAL,” add a notation to that sheet prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and file the documents under seal. For petitions transmitted electronically, the clerk must file the court’s order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Electronic submission of documents after close of business. Four commentators submitted comments in response to the proposed amendment to rule 3.1300(e), which governs the filing and service of motion papers.¹⁰ Under this rules proposal, as circulated, subdivision (e) would have been amended as follows:

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.

Three commentators identified an error in the proposed language in that papers are initially “received,” not filed. Ms. Robin Brandes-Gibbs, an employee at the Superior Court of Orange County, proposed replacing the term “filed” with “received by the court.” This rules proposal incorporates Ms. Brandes-Gibb’s suggested language since it would correct the error and would track the language of rule 2.259(c).¹¹

¹⁰ Ms. Robin Brandes-Gibbs referenced subdivision (c) of rule 3.1300, but her comments appear directed toward subdivision (e).

¹¹ Rule 2.259(c) provides in full:

A document that is received electronically by the court after the close of business is deemed to have been received on the next court day, unless the court has provided by local rule with respect

In response to the error, the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee proposed adding the phrase “if, after review by the clerk, it is accepted for filing” to the end of the proposed amendment. This rules proposal does not incorporate this recommendation since the subcommittee’s concern is already addressed by the cross-reference in rule 3.1300(e) to rule 2.259(c), which provides that electronically filed documents must “be processed and satisfy all other legal filing requirements to be filed as an official court record.”

In addition, Ms. Brandes-Gibbs questioned whether the proposed amendment to rule 3.1300(e), as well as rules 2.253(b)(7) and 2.259(c),¹² contradict Code of Civil Procedure section 1010.6(b)(3). Code of Civil Procedure section 1010.6(b)(3) does provide that “[a]ny 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.” It also defines “close of business” as meaning “5 p.m. or the time at which the court would not accept filing at the court’s filing counter, whichever is earlier.”

Code of Civil Procedure section 1010.6(b)(3) governs only *permissive* electronic filing. Subdivision (g) exempts superior courts from complying with subdivision (b)(3) where electronic filing is *mandatory*. Subdivision (f), in turn, instructs the Judicial Council to adopt uniform rules governing mandatory electronic filing that conform with the conditions in section 1010.6, including the exception in subdivision (g) to subdivision (b)(3). Thus, Code of Civil Procedure section 1010.6 provides an exception to the close-of-business rule where electronic filing is mandatory.

The amendment to rule 3.1300(e) tracks this legislative scheme. By its cross-reference to rule 2.259(c), which in turn references rule 2.253(b)(7), the proposed amendment to rule 3.1300(e) only applies to papers that are required to be filed electronically. Even though the amendment to rule 3.1300(e) is authorized under Code of Civil Procedure section 1010.6, this proposal includes additional language to clarify that the amendment only applies to mandatory filing. In response to Ms. Brandes-Gibbs’ comments, rule 3.1300(e) will be amended to provide:

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*

to documents filed under the mandatory electronic filing provisions in rule 2.253(b)(7), that documents received electronically before midnight on a court day are deemed to have been filed on that court day, and documents received electronically after midnight are deemed filed on the next court day. 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.

¹² Rule 2.253(b)(7) addresses mandatory electronic filing and is cross-referenced in rule 2.259(c). It recognizes that courts may provide by local rule that electronically filed documents received before midnight will be deemed to have been filed by that court day.

electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.

In its comments to the proposed amendment to rule 3.1300(e), the Superior Court of Sacramento County recommended against authorizing inconsistencies throughout the State. Currently, the Code of Civil Procedure and trial court rules allow for electronic filing deadlines to vary depending on whether electronic filing is permissive or mandatory and depending on the court's local rules. Addressing the court's concern about inconsistencies is beyond the scope of the present rules proposal because it would require a substantive amendment to the rules and possibly to the Code of Civil Procedure. The advisory committees may address the court's concern during phase II of the Rules Modernization Project.

Electronic transmission of the record to appellate courts. CAJ expressed concern about the impact of the proposed amendments to rules 8.122, 8.144, 8.336, and 8.838, on indigent appellate litigants, particularly incarcerated appellants and others who do not have access to computers. The proposed amendments to these rules would have authorized trial courts to transmit electronically all or part of the record on appeal. In addition, the proposed amendments to rule 8.832, not specifically mentioned by CAJ, would have added language to the rule's Advisory Committee Comment parallel to the language proposed for the comment to rule 8.122, but applying to appeals to an appellate division of a superior court.

Recognizing that the exceptions for self-represented litigants in the electronic filing and service rules do not apply to the trial court's transmission of the record, the proposed amendments to 8.122, 8.144, 8.832, and 8.838—which would have expressly authorized transmission of the record in electronic form—have been withdrawn from this rules proposal for further consideration in phase II of the Rules Modernization Project. Other amendments to rules 8.144 and 8.838, as well as the amendment to rule 8.336, remain part of this rules proposal. These amendments clarify application of the rules where the clerk's or reporter's transcript is in electronic form.

Alternatives

As an alternative to making technical changes at this time, CTAC considered deferring action and proposing a single rules proposal that would have included both substantive and technical changes to the rules at a later date. One benefit of this approach would have been increasing 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 will modernize the rules, to the extent possible, on a more responsive timeline for those courts that are already implementing electronic filing and service and adopting modern business practices.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal does not introduce substantive changes to the rules, it is not expected to incur any new costs or require implementation. To the extent that the proposal clarifies existing

law, it will facilitate electronic filing and service in the trial and appellate courts and provide cost-efficiencies.

Only minimal costs are associated with amending the rules.

Attachments and Links

1. Cal. Rules of Court, amendments to title 2, at pages 12–21
2. Cal. Rules of Court, amendments to title 3, at pages 22–35
3. Cal. Rules of Court, amendments to title 4, at page 36
4. Cal. Rules of Court, amendments to title 5, at pages 37-40
5. Cal. Rules of Court, amendments to title 7, at pages 41
6. Cal. Rules of Court, amendments to title 8, at pages 42–98
7. Comment chart, at pages 99–108

DRAFT

Rules 2.3, 2.10, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.108, 2.111, 2.113, 2.114, 2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, and 2.1100, of the California Rules of Court are amended, and rule 2.10 is adopted, effective January 1, 2016, to read:

Title 2. Trial Court Rules

Rule 2.3. Definitions

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

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

Rule 2.10. Scope of rules [Reserved]

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 2.102. One-sided paper

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

Rule 2.103. Size, quality, and color, and size of paper

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

Rule 2.104. Printing; type font size

All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in type a font not smaller than 12 points.

1 **Rule 2.105. Type Font style**

2
3 The ~~typeface~~ font must be essentially equivalent to Courier, Times New Roman, or Arial.

4
5 **Rule 2.106. Font color of print**

6
7 The font color ~~of print~~ must be black or blue-black.

8
9 **Rule 2.107. Margins**

10
11 The left margin of each page must be at least one inch from the left edge ~~of the paper~~ and
12 the right margin at least 1/2 inch from the right edge ~~of the paper~~.

13
14 **Rule 2.108. Spacing and numbering of lines**

15
16 The spacing and numbering of lines on a page must be as follows:

17
18 (1)-(3) * * *

19
20 (4) Line numbers must be placed at the left margin and separated from the text ~~of the~~
21 ~~paper~~ by a vertical column of space at least 1/5 inch wide or a single or double
22 vertical line. Each line number must be aligned with a line of type, or the line
23 numbers must be evenly spaced vertically on the page. Line numbers must be
24 consecutively numbered, beginning with the number 1 on each page. There must be
25 at least three line numbers for every vertical inch on the page.

26
27 **Rule 2.111. Format of first page**

28
29 The first page of each paper must be in the following form:

30
31 (1)-(2) * * *

32
33 (3) On line 8, at or below 3 1/3 inches from the top of the ~~paper~~ page, the title of the
34 court.

35
36 (4)-(11) * * *

37
38 **Rule 2.113. Binding**

39
40 Each paper not filed electronically must consist entirely of original pages without riders
41 and must be firmly bound together at the top.

1 **Rule 2.114. Exhibits**

2
3 Exhibits submitted with papers not filed electronically may be fastened to pages of the
4 specified size and, when prepared by a machine copying process, must be equal to
5 ~~typewritten~~ computer processed materials in legibility and permanency of image.
6

7 **Rule 2.115. Hole punching**

8
9 When papers are not filed electronically, each paper presented for filing must contain two
10 prepunched normal-sized holes, centered 2½ inches apart and 5/8 inch from the top of the
11 paper.
12

13 **Rule 2.117. Conformed copies of papers**

14
15 All copies of papers served must conform to the original papers filed, including the
16 numbering of lines, pagination, additions, deletions, and interlineations except that, with
17 the agreement of the other party, a party serving papers by non-electronic means may
18 serve that other party with papers printed on both sides of the page.
19

20 **Rule 2.130. Application**

21
22 The rules in this chapter apply to Judicial Council forms, local court forms, and all other
23 official forms to be filed in the trial courts. The rules apply to forms filed both in paper
24 form and electronically, unless otherwise specified.
25

26 **Rule 2.133. Hole punching**

27
28 All forms not filed electronically must contain two prepunched normal-sized holes,
29 centered 2½ inches apart and 5/8 inch from the top of the form.
30

31 **Rule 2.134. Forms longer than one page**

32
33 **(a) Single side may be used**

34
35 If a form not filed electronically is longer than one page, the form may be printed
36 on sheets printed only on one side even if the original has two sides to a sheet.
37

38 **(b) Two-sided forms must be tumbled**

39
40 If a form not filed electronically is filed on a sheet printed on two sides, the reverse
41 side must be rotated 180 degrees (printed head to foot).
42

1 (c) **Multiple-page forms must be bound**

2
3 If a form not filed electronically is longer than one page, it must be firmly bound at
4 the top.
5

6 **Rule 2.150. Authorization for computer-generated or typewritten forms for proof**
7 **of service of summons and complaint**
8

9 (a) **Computer-generated or typewritten forms; conditions**

10
11 Notwithstanding the adoption of mandatory form *Proof of Service of Summons*
12 (form POS-010), a form for proof of service of a summons and complaint prepared
13 entirely by word processor, typewriter, or similar process may be used for proof of
14 service in any applicable action or proceeding if the following conditions are met:
15

16 (1)–(4) * * *

17
18 (5) The text of form POS-010 must be copied in the same order as it appears on
19 ~~the printed~~ form POS-010 using the same item numbers. A declaration of
20 diligence may be attached to the proof of service or inserted as item 5b(5).
21

22 (6) Areas marked “For Court Use” must be copied in the same general locations
23 and occupy approximately the same amount of space as on ~~the printed~~ form
24 POS-010.
25

26 (7)–(8) * * *

27
28 (9) Material that would have been ~~typed~~ entered onto ~~the printed~~ form POS-010
29 must be ~~typed~~ entered with each line indented 3 inches from the left margin.
30

31 (b) * * *

32
33 **Advisory Committee Comment**
34

35 This rule is intended to permit process servers and others to prepare their own shortened versions
36 of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant
37 to show the method of service used.
38

39 **Rule 2.550. Sealed records**
40

41 (a) * * *

1 (b) **Definitions**

2
3 As used in this chapter:

4
5 (1) “Record.” Unless the context indicates otherwise, “record” means all or a
6 portion of any document, paper, exhibit, transcript, or other thing filed or
7 lodged with the court, by electronic means or otherwise.

8
9 (2)–(3) * * *

10
11 (c)–(e) * * *

12
13 **Rule 2.551. Procedures for filing records under seal**

14
15 (a) * * *

16
17 (b) **Motion or application to seal a record**

18
19 (1) * * *

20
21 (2) *Service of motion or application*

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

30
31 (3) *Procedure for party not intending to file motion or application*

32
33 (A) * * *

34
35 (B) If the party that produced the documents and was served with the notice
36 under (A)(iii) fails to file a motion or an application to seal the records
37 within 10 days or to obtain a court order extending the time to file such
38 a motion or an application, the clerk must promptly remove all the
39 documents in (A)(i) from the envelope, ~~or~~ container, or secure
40 electronic file where they are located and place them in the public file.
41 If the party files a motion or an application to seal within 10 days or
42 such later time as the court has ordered, these documents are to remain

1 conditionally under seal until the court rules on the motion or
2 application and thereafter are to be filed as ordered by the court.

3
4 (4) * * *

5
6 (5) *Redacted and unredacted versions*

7
8 If necessary to prevent disclosure, any motion or application, any opposition,
9 and any supporting documents must be filed in a public redacted version and
10 lodged in a complete, unredacted version conditionally under seal. The cover
11 of the redacted version must identify it as “Public—Redacts materials from
12 conditionally sealed record.” The cover of the unredacted version must
13 identify it as “May Not Be Examined Without Court Order—Contains
14 material from conditionally sealed record.”

15
16 (6) *Return of lodged record*

17
18 If the court denies the motion or application to seal, the clerk must return the
19 lodged record to the submitting party and must not place it in the case file
20 unless that party notifies the clerk in writing ~~within 10 days after the order~~
21 ~~denying the motion or application~~ that the record is to be filed. Unless
22 otherwise ordered by the court, the submitting party must notify the clerk
23 within 10 days after the order denying the motion or application.

24
25 (c) * * *

26
27 (d) **Procedure for lodging of records**

28
29 (1) A record that may be filed under seal must be transmitted to the court in a
30 secure manner that preserves the confidentiality of the records to be lodged.
31 If the record is transmitted in paper form, it must be put in an envelope or
32 other appropriate container, sealed in the envelope or container, and lodged
33 with the court.

34
35 (2) The materials to be lodged under seal must be clearly identified as
36 “CONDITIONALLY UNDER SEAL.” If the materials are transmitted in
37 paper form, the envelope or container lodged with the court must be labeled
38 “CONDITIONALLY UNDER SEAL.”

39
40 (3) The party submitting the lodged record must affix to the electronic
41 transmission, the envelope or the container a cover sheet that:

42
43 (A)–(B) * * *

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2
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44

(4) * * *

(e) Order

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

(2) The order must state whether—in addition to the sealed records ~~in the envelope or container~~—the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) * * *

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed ~~records or papers~~.

(f)–(g) * * *

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

(1)–(2) * * *

(3) If the court proposes to order a record unsealed on its own motion, the court must ~~mail~~ give notice to the parties stating the reason for unsealing the record therefor. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is provided ~~mailed or within such time as the court specifies~~, and any other party may file a response within 5 days after the filing of an opposition.

(4) * * *

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court’s order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or

1 both. If, in addition to the records in the envelope, ~~or~~ container, or secure
2 electronic file, the court has previously ordered the sealing order, the register of
3 actions, or any other court records relating to the case to be sealed, the
4 unsealing order must state whether these additional records are unsealed.

5
6 **Rule 2.577. Procedures for filing confidential name change records under seal**

7
8 (a)–(c) * * *

9
10 **(d) Procedure for lodging of petition for name change**

11
12 (1) The records that may be filed under seal must be lodged with the court. If
13 they are transmitted on paper, they must be placed in a sealed envelope. If
14 they are transmitted electronically, they must be transmitted to the court in a
15 secure manner that preserves the confidentiality of the documents to be
16 lodged.

17
18 (2) If the petitioner is transmitting the petition on paper, the petitioner must
19 complete and affix to the envelope a completed *Confidential Cover Sheet—*
20 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
21 *Home)* (form NC-400) and in the space under the title and case number mark
22 it “CONDITIONALLY UNDER SEAL.” If the petitioner is transmitting
23 electronically, the first page of the electronic transmission must be a
24 completed *Confidential Cover Sheet—Name Change Proceeding Under*
25 *Address Confidentiality Program (Safe at Home)* (form NC-400) with the
26 space under the title and case number marked “CONDITIONALLY UNDER
27 SEAL.”

28
29 (3) On receipt of a petition lodged under this rule, the clerk must endorse the
30 ~~affixed~~ cover sheet with the date of its receipt and must retain but not file the
31 record unless the court orders it filed.

32
33 (4) * * *

34
35 (e) * * *

36
37 **(f) Order**

38
39 (1)–(2) * * *

40
41 (3) For petitions transmitted in paper form, if the court grants an order sealing a
42 record, the clerk must strike out the notation required by (d)(2) on the
43 *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY

1 UNDER SEAL,” and add a notation to that sheet prominently stating
2 “SEALED BY ORDER OF THE COURT ON (DATE),” and file the
3 documents under seal. For petitions transmitted electronically, the clerk must
4 file the court’s order, store the record ordered sealed in a secure electronic
5 manner, and clearly identify the record as sealed by court order on a specified
6 date.

7
8 (4)–(5) * * *

9
10 (g)–(h) * * *

11
12 **Rule 2.816. Stipulation to court-appointed temporary judge**

13
14 (a)–(d) * * *

15
16 (e) **Application or motion to withdraw stipulation**

17
18 An application or motion to withdraw a stipulation for the appointment of a
19 temporary judge must be supported by a declaration of facts establishing good
20 cause for permitting the party to withdraw the stipulation. In addition:

21
22 (1)–(2) * * *

23
24 (3) The application or motion must be served and filed, and the moving party
25 must ~~mail or deliver~~ provide a copy to the presiding judge.

26
27 (4) * * *

28
29 **Rule 2.831. Temporary judge—stipulation, order, oath, assignment, disclosure, and**
30 **disqualification**

31
32 (a)–(e) * * *

33
34 (f) **Motion to withdraw stipulation**

35
36 A motion to withdraw a stipulation for the appointment of a temporary judge must
37 be supported by a declaration of facts establishing good cause for permitting the
38 party to withdraw the stipulation, and must be heard by the presiding judge or a
39 judge designated by the presiding judge. A declaration that a ruling is based on
40 error of fact or law does not establish good cause for withdrawing a stipulation.
41 Notice of the motion must be served and filed, and the moving party must ~~mail or~~
42 ~~deliver~~ provide a copy to the temporary judge. If the motion to withdraw the
43 stipulation is based on grounds for the disqualification of the temporary judge first

1 learned or arising after the temporary judge has made one or more rulings, but
2 before the temporary judge has completed judicial action in the proceeding, the
3 provisions of rule 2.816(e)(4) apply. If a motion to withdraw a stipulation is
4 granted, the presiding judge must assign the case for hearing or trial as promptly as
5 possible.

6
7 **Rule 2.1055. Proposed jury instructions**

8
9 (a) * * *

10
11 (b) **Form and format of proposed instructions**

12
13 (1)–(3) * * *

14
15 (4) Each set of proposed jury instructions filed on paper must be bound loosely.

16
17 (c)–(e) * * *

18
19 **Rule 2.1100. Notice when statute or regulation declared unconstitutional**

20
21 Within 10 days after a court has entered judgment in a contested action or special
22 proceeding in which the court has declared unconstitutional a state statute or regulation,
23 the prevailing party, or as otherwise ordered by the court, must ~~mail~~ serve a copy of the
24 judgment and a notice of entry of judgment ~~to~~ on the Attorney General and file a proof of
25 service with the court.

Rules 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, and 3.2107, of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Title 3. Civil Rules**

2
3 **Rule 3.254. List of parties**

4
5 **(a) Duties of first-named plaintiff or petitioner**

6
7 Except as provided under rule 2.251 for electronic service, if more than two parties
8 have appeared in a case and are represented by different counsel, the plaintiff or
9 petitioner named first in the complaint or petition must:

10
11 (1)–(2) * * *

12
13 **(b) Duties of each party**

14
15 Except as provided under rule 2.251 for electronic service, each party must:

16
17 (1)–(3) * * *

18
19 **Rule 3.524. Order assigning coordination motion judge**

20
21 **(a) Contents of order**

22
23 An order by the Chair of the Judicial Council assigning a coordination motion
24 judge to determine whether coordination is appropriate, or authorizing the presiding
25 judge of a court to assign the matter to judicial officers of the court to make the
26 determination in the same manner as assignments are made in other civil cases,
27 must include the following:

28
29 (1) The special title and number assigned to the coordination proceeding; and

30
31 (2) The court's address or electronic service address for submitting all
32 subsequent documents to be considered by the coordination motion judge.

33
34 **(b) * * ***

35
36 **Rule 3.544. Add-on cases**

37
38 **(a) Request to coordinate add-on case**

39
40 A request to coordinate an add-on case must comply with the requirements of rules
41 3.520 through 3.523, except that the request must be submitted to the coordination

1 trial judge under Code of Civil Procedure section 404.4, with proof of ~~mailing~~
2 service of one copy ~~to~~ on the Chair of the Judicial Council and proof of service as
3 required by rule 3.510.
4

5 (b)–(d) * * *

6
7 **Rule 3.670. Telephone appearance**
8

9 (a)–(g) * * *

10
11 **(h) Notice by party**
12

13 (1) Except as provided in (6), a party choosing to appear by telephone at a
14 hearing, conference, or proceeding, other than on an ex parte application,
15 under this rule must either:
16

17 (A) Place the phrase “Telephone Appearance” below the title of the
18 moving, opposing, or reply papers; or
19

20 (B) At least two court days before the appearance, notify the court and all
21 other parties of the party’s intent to appear by telephone. If the notice is
22 oral, it must be given either in person or by telephone. If the notice is in
23 writing, it must be given by filing a “Notice of Intent to Appear by
24 Telephone” with the court at least two court days before the appearance
25 and by serving the notice at the same time on all other parties by
26 personal delivery, fax transmission, express mail, ~~e-mail~~ electronic
27 service if such service is required by local rule or court order or agreed
28 to by the parties, or other means reasonably calculated to ensure
29 delivery to the parties no later than the close of the next business day.
30

31 (2)–(6) * * *

32
33 (i)–(q) * * *

34
35 **Rule 3.815. Selection of the arbitrator**
36

37 (a) * * *

38
39 **(b) Selection absent stipulation or local procedures**
40

41 If the arbitrator has not been selected by stipulation and the court has not adopted
42 local rules or procedures for the selection of the arbitrator as permitted under (c),
43 the arbitrator will be selected as follows:

1
2
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14
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16
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19
20
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42

(1) * * *

(2) The administrator must select at random a number of names equal to the number of sides, plus one, and ~~mail~~ send the list of randomly selected names to counsel for the parties.

(3) Each side has 10 days from the date of ~~mailing~~ on which the list was sent to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4)–(5) * * *

(c)–(f) * * *

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

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

Rule 3.827. Entry of award as judgment

(a) * * *

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must ~~mail~~ serve notice of entry of judgment ~~to~~ on all parties who have appeared in the case and must execute a certificate of ~~mailing~~ service and place it in the court’s file in the case.

(c) * * *

1 **Rule 3.931. Open proceedings, notice of proceedings, and order for hearing site**

2
3 (a) * * *

4
5 (b) **Notice regarding proceedings before referee**

6
7 (1) In each case in which he or she is appointed, a referee must file a statement
8 that provides the name, telephone number, e-mail address, and mailing
9 address of a person who may be contacted to obtain information about the
10 date, time, location, and general nature of all hearings scheduled in matters
11 pending before the referee that would be open to the public if held before a
12 judge. This statement must be filed at the same time as the referee's
13 certification under rule 3.904(a) or 3.924(a). If there is any change in this
14 contact information, the referee must promptly file a revised statement with
15 the court.

16
17 (2) In addition to providing the information required under (1), the statement
18 filed by a referee may also provide the address of a publicly accessible ~~Web~~
19 site website at which the referee will maintain a current calendar setting forth
20 the date, time, location, and general nature of any hearings scheduled in the
21 matter that would be open to the public if held before a judge.

22
23 (3) * * *

24
25 (c) * * *

26
27 **Rule 3.1010. Oral depositions by telephone, videoconference, or other remote**
28 **electronic means**

29
30 (a) * * *

31
32 (b) **Appearing and participating in depositions**

33
34 Any party may appear and participate in an oral deposition by telephone,
35 videoconference, or other remote electronic means, provided:

36
37 (1) Written notice of such appearance is served by personal delivery, e-mail, or
38 fax at least three court days before the deposition;

39
40 (2) The party so appearing makes all arrangements and pays all expenses
41 incurred for the appearance.
42

1 (c)–(e) * * *

2
3 **Rule 3.1109. Notice of determination of submitted matters**

4
5 **(a) Notice by clerk**

6
7 When the court rules on a motion or makes an order or renders a judgment in a
8 matter it has taken under submission, the clerk must immediately notify the parties
9 of the ruling, order, or judgment. The notification, which must specifically identify
10 the matter ruled on, may be given by servicing electronically or mailing the parties a
11 copy of the ruling, order, or judgment, and it constitutes service of notice only if
12 the clerk is required to give notice under Code of Civil Procedure section 664.5.

13
14 **(b)** * * *

15
16 **(c) Time not extended by failure of clerk to give notice**

17
18 The failure of the clerk to give the notice required by this rule does not extend the
19 time provided by law for performing any act except as provided in rules 8.104(a) or
20 ~~8.824~~ 8.822(a).

21
22 **Rule 3.1110. General format**

23
24 **(a)–(d)** * * *

25
26 **(e) Binding**

27
28 For motions filed on paper, all pages of each document and exhibit must be
29 attached together at the top by a method that permits pages to be easily turned and
30 the entire content of each page to be read.

31
32 **(f) Format of exhibits**

33
34 Each exhibit must be separated by a hard 8½ x 11 sheet with hard paper or plastic
35 tabs extending below the bottom of the page, bearing the exhibit designation. An
36 index to exhibits must be provided. Pages from a single deposition and associated
37 exhibits must be designated as a single exhibit.

38
39 **(g)** * * *

40
41 **Rule 3.1113. Memorandum**

1 (a)–(h) * * *

2
3 (i) **Copies of authorities**
4

5 (1) A judge may require that if any authority other than California cases, statutes,
6 constitutional provisions, or state or local rules is cited, a copy of the
7 authority must be lodged with the papers that cite the authority and tabbed or
8 separated as required by rule 3.1110(f).
9

10 (2) If a California case is cited before the time it is published in the advance
11 sheets of the Official Reports, the party must include the title, case number,
12 date of decision, and, if from the Court of Appeal, district of the Court of
13 Appeal in which the case was decided. A judge may require that a copy of
14 that case must be lodged and tabbed or separated as required by rule
15 3.1110(f).
16

17 (3) * * *
18

19 (j)–(l) * * *
20

21 (m) **Proposed orders or judgments**
22

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

28 **Rule 3.1202. Contents of application**
29

30 (a) **Identification of attorney or party**
31

32 An ex parte application must state the name, address, e-mail address, and telephone
33 number of any attorney known to the applicant to be an attorney for any party or, if
34 no such attorney is known, the name, address, e-mail address, and telephone
35 number of the party if known to the applicant.
36

37 (b)–(c) * * *
38

39 **Rule 3.1300. Time for filing and service of motion papers**
40

41 (a) **In general**
42

1 Unless otherwise ordered or specifically provided by law, all moving and
2 supporting papers must be served and filed in accordance with Code of Civil
3 Procedure section 1005 and, when applicable, the statutes and rules providing for
4 electronic filing and service.

5
6 **(b)–(d) * * ***

7
8 **(e) Computation of time**

9
10 A paper submitted before the close of the clerk’s office to the public on the day the
11 paper is due is deemed timely filed. Under rules 2.235(b)(7) and rule 2.259(c), a
12 court may provide by local rule that a paper that is required to be filed
13 electronically and that is received electronically by the court before midnight on a
14 court day is deemed filed on that court day.

15
16 **Rule 3.1302. Place and manner of filing**

17
18 **(a) Papers filed in clerk’s office**

19
20 Unless otherwise provided by local rule or specified in a court’s protocol for
21 electronic filing, all papers relating to a law and motion proceeding must be filed in
22 the clerk’s office.

23
24 **(b) Requirements for lodged material**

25
26 Material lodged physically with the clerk must be accompanied by an addressed
27 envelope with sufficient postage for mailing the material. Material lodged
28 electronically must clearly specify the electronic address to which the materials
29 may be returned. After determination of the matter, the clerk may mail or send the
30 material back to the party lodging it.

31
32 **Rule 3.1304. Time of hearing**

33
34 **(a) General schedule**

35
36 The clerk must post electronically and at the courthouse a general schedule
37 showing the days and departments for holding each type of law and motion
38 hearing.

39
40 **(b)–(d) * * ***

41
42 **Rule 3.1320. Demurrers**

1 (a)–(b) * * *

2
3 (c) **Notice of hearing**

4
5 A party filing a demurrer must serve and file therewith a notice of hearing that must
6 specify a hearing date in accordance with the provisions of Code of Civil Procedure
7 section 1005 and, if service is by electronic means, in accordance with the
8 requirements of Code of Civil Procedure section 1010.6(a)(4) and rule 2.251(h)(2).
9

10 (d)–(j) * * *

11
12 **Rule 3.1326. Motions for change of venue**

13
14 Following denial of a motion to transfer under Code of Civil Procedure section 396b,
15 unless otherwise ordered, 30 calendar days are deemed granted defendant to move to
16 strike, demur, or otherwise plead if the defendant has not previously filed a response. If a
17 motion to transfer is granted, 30 calendar days are deemed granted from the date the
18 receiving court ~~mails~~ sends notice of receipt of the case and its new case number.
19

20 **Rule 3.1327. Motions to quash or to stay action in summary proceeding involving**
21 **possession of real property**

22
23 (a) **Notice**

24
25 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
26 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
27 motion to quash service of summons on the ground of lack of jurisdiction or to stay
28 or dismiss the action on the ground of inconvenient forum must be given in
29 compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1167.4.
30

31 (b) * * *

32
33 (c) **Written opposition in advance of hearing**

34
35 If a party seeks to have a written opposition considered in advance of the hearing,
36 the written opposition must be filed and served on or before the court day before
37 the hearing. Service must be by personal delivery, electronic service, fax ~~faesimile~~
38 transmission, express mail, or other means consistent with Code of Civil Procedure
39 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
40 delivery to the other party or parties no later than the close of business on the court
41 day before the hearing. The court, in its discretion, may consider written opposition
42 filed later.
43

1 **Rule 3.1330. Motion concerning arbitration**

2
3 A petition to compel arbitration or to stay proceedings pursuant to Code of Civil
4 Procedure sections 1281.2 and 1281.4 must state, in addition to other required
5 allegations, the provisions of the written agreement and the paragraph that provides for
6 arbitration. The provisions must be stated verbatim or a copy must be physically or
7 electronically attached to the petition and incorporated by reference.
8

9 **Rule 3.1340. Motion for discretionary dismissal after two years for delay in**
10 **prosecution**

11
12 (a) * * *

13
14 (b) **Notice of court’s intention to dismiss**

15
16 If the court intends to dismiss an action on its own motion, the clerk must set a
17 hearing on the dismissal and ~~mail~~ send notice to all parties at least 20 days before
18 the hearing date.
19

20 (c) * * * *

21
22 **Rule 3.1346. Service of motion papers on nonparty deponent**

23
24 A written notice and all moving papers supporting a motion to compel an answer to a
25 deposition question or to compel production of a document or tangible thing from a
26 nonparty deponent must be personally served on the nonparty deponent unless the
27 nonparty deponent agrees to accept service by mail or electronic service at an address or
28 electronic service address specified on the deposition record.
29

30 **Rule 3.1347. Discovery motions in summary proceeding involving possession of real**
31 **property**

32
33 (a) **Notice**

34
35 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
36 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
37 discovery motion must be given in compliance with Code of Civil Procedure
38 sections 1010.6 or 1013 and 1170.8.
39

40 (b) * * *

41
42 (c) **Written opposition in advance of hearing**

43

1 If a party seeks to have a written opposition considered in advance of the hearing,
2 the written opposition must be served and filed on or before the court day before
3 the hearing. Service must be by personal delivery, electronic service, ~~fax~~ ~~facsimile~~
4 transmission, express mail, or other means consistent with Code of Civil Procedure
5 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
6 delivery to the other party or parties no later than the close of business on the court
7 day before the hearing. The court, in its discretion, may consider written opposition
8 filed later.

9
10 **Rule 3.1350. Motion for summary judgment or summary adjudication**

11
12 **(a)–(d) * * ***

13
14 **(e) Documents in opposition to motion**

15
16 Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the
17 opposition to a motion must consist of the following separate documents,
18 ~~separately stapled and~~ titled as shown:

19
20 **(1)–(4) * * ***

21
22 **(f)–(i) * * ***

23
24 **Rule 3.1351. Motions for summary judgment in summary proceeding involving**
25 **possession of real property**

26
27 **(a) Notice**

28
29 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
30 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
31 motion for summary judgment must be given in compliance with Code of Civil
32 Procedure sections 1010.6 or 1013 and 1170.7.

33
34 **(b) * * ***

35
36 **(c) Written opposition in advance of hearing**

37
38 If a party seeks to have a written opposition considered in advance of the hearing,
39 the written opposition must be filed and served on or before the court day before
40 the hearing. Service must be by personal delivery, electronic service, ~~fax~~ ~~facsimile~~
41 transmission, express mail, or other means consistent with Code of Civil Procedure
42 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
43 delivery to the other party or parties no later than the close of business on the court

1 day before the hearing. The court, in its discretion, may consider written opposition
2 filed later.

3

4 **Rule 3.1354. Written objections to evidence**

5

6 **(a)–(b) * * ***

7

8 **(c) Proposed order**

9

10 A party submitting written objections to evidence must submit with the objections a
11 proposed order. The proposed order must include places for the court to indicate
12 whether it has sustained or overruled each objection. It must also include a place
13 for the signature of the judge. The court may require that the proposed order be
14 provided in electronic form. The proposed order must be in one of the following
15 two formats:

16

17 *(First Format):*

18

Objections to Jackson Declaration

19

20

Objection Number 1

21

22 “Johnson told me that no widgets were ever received.” (Jackson declaration, page 3, lines
23 7–8.)

24

25 **Grounds for Objection 1:** Hearsay (Evid. Code, § 1200); lack of personal knowledge
26 (Evid. Code, § 702(a)).

27

Court’s Ruling on Objection 1:	Sustained: _____ Overruled: _____
---------------------------------------	--------------------------------------

28

29

30

Objection Number 2

31

32

33

34

“A lot of people find widgets to be very useful.” (Jackson declaration, page 17, line 5.)

Grounds for Objection 2: Irrelevant (Evid. Code, §§ 210, 350–351).

Court’s Ruling on Objection 2:	Sustained: _____ Overruled: _____
---------------------------------------	--------------------------------------

35

36

37

38

39

(Second Format):

Objections to Jackson Declaration

Material Objected to:	Grounds for Objection:	Ruling on the Objection
1. Jackson declaration, page 3, lines 7–8: “Johnson told me that no widgets were ever received.”	Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).	Sustained: _____ Overruled: _____
2. Jackson declaration, page 17, line 5: “A lot of people find widgets to be very useful.”	Irrelevant (Evid. Code, §§ 210, 350–351).	Sustained: _____ Overruled: _____
Date:	_____	_____ Judge

1
2 **Rule 3.1590. Announcement of tentative decision, statement of decision, and**
3 **judgment**

4
5 (a)–(k) * * *

6
7 (l) **Signature and filing of judgment**

8
9 If a written judgment is required, the court must sign and file the judgment within
10 50 days after the announcement or service of the tentative decision, whichever is
11 later, or, if a hearing was held under (k), within 10 days after the hearing. An
12 electronic signature by the court is as effective as an original signature. The
13 judgment constitutes the decision on which judgment is to be entered under Code
14 of Civil Procedure section 664.

15
16 (m)–(n) ***

17
18 **Rule 3.1700. Prejudgment costs**

19
20 (a) **Claiming costs**

21
22 (1) *Trial costs*

23

1 A prevailing party who claims costs must serve and file a memorandum of
2 costs within 15 days after the date of ~~mailing~~ service of the notice of entry of
3 judgment or dismissal by the clerk under Code of Civil Procedure section
4 664.5 or the date of service of written notice of entry of judgment or
5 dismissal, or within 180 days after entry of judgment, whichever is first. The
6 memorandum of costs must be verified by a statement of the party, attorney,
7 or agent that to the best of his or her knowledge the items of cost are correct
8 and were necessarily incurred in the case.

9
10 (2) * * *

11
12 **(b) Contesting costs**

13
14 (1) *Striking and taxing costs*

15
16 Any notice of motion to strike or to tax costs must be served and filed 15
17 days after service of the cost memorandum. If the cost memorandum was
18 served by mail, the period is extended as provided in Code of Civil Procedure
19 section 1013. If the cost memorandum was served electronically, the period is
20 extended as provided in Code of Civil Procedure section 1010.6(a)(4).

21
22 (2)-(4) * * *

23
24 **Rule 3.1900. Notice of renewal of judgment**

25
26 A copy of the application for renewal of judgment must be physically or electronically
27 attached to the notice of renewal of judgment required by Code of Civil Procedure
28 section 683.160.

29
30 **Rule 3.2107. Request for court order**

31
32 **(a) Request before trial**

33
34 If a party files a written request for a court order before the hearing on the claim,
35 the requesting party must mail, ~~or~~ personally deliver, or if agreed on by the parties
36 electronically serve a copy to all other parties in the case. The other parties must be
37 given an opportunity to answer or respond to the request before or at the hearing.
38 This subdivision does not apply to a request to postpone the hearing date if the
39 plaintiff's claim has not been served.

40
41 **(b) Request after trial**

1 If a party files a written request for a court order after notice of entry of judgment,
2 the clerk must ~~mail~~ send a copy of the request to all other parties in the action. A
3 party has 10 calendar days from the date on which the clerk ~~mailed~~ sent the request
4 to file a response before the court makes an order. The court may schedule a
5 hearing on the request, except that if the request is to vacate the judgment for lack
6 of appearance by the plaintiff, the court must hold a hearing. The court may give
7 notice of any scheduled hearing with notice of the request, but the hearing must be
8 scheduled at least 11 calendar days after the clerk has ~~mailed~~ sent the request.

DRAFT

Title 4. Criminal Rules

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail or e-mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

(1)–(2) * * *

Rules 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534 and 5.906 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 5. Family and Juvenile Rules

Rule 5.50. Papers issued by the court

(a) * * *

(b) **Automatic temporary family law restraining order in summons; handling by clerk**

Under Family Code section 233, in proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a summons that includes automatic temporary (standard) restraining orders ~~on the reverse side of the summons.~~

(1)–(2) * * *

(c) **Individual restraining order**

(1) On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders in (b) ~~included on the back of~~ in the family law summons under Family Code section 233.

(2) Individual restraining orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.83. Family centered case resolution

(a)–(c) * * *

(d) **Family centered case resolution conferences**

(1)–(4) * * *

(5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, ~~or~~ in writing, or by other means approved by the court, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

1 (e)–(g) * * *

2
3 **Rule 5.91. Individual restraining order**

4
5 On a party’s request for order and as provided in the Family Code, a court may issue any
6 individual restraining order that appears to be reasonable or necessary, including those
7 automatic temporary restraining orders included ~~on the back of~~ in the family law
8 summons. Individual orders supersede the standard family law restraining orders ~~on the~~
9 ~~back of~~ in the Family Law and Uniform Parentage Act summonses.

10
11 **Rule 5.215. Domestic violence protocol for Family Court Services**

12
13 (a)–(c) * * *

14
15 **(d) Family Court Services: Description and duties**

16
17 (1)–(4) * * *

18
19 (5) *Providing information*

20
21 Family Court Services staff must provide information to families accessing
22 their services about the effects of domestic violence on adults and children.
23 Family Court Services programs, including but not limited to orientation
24 programs, must provide information and materials that describe Family Court
25 Services policy and procedures with respect to domestic violence. ~~Where~~
26 Whenever possible, the videotapes provided information delivered in video
27 or audiovisual format should be closed-captioned.

28
29 (6)–(8) * * *

30
31 (e)–(j) * * *

32
33 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
34 **represent a child in family law proceedings**

35
36 (a)–(j) * * *

37
38 **(k) Other considerations**

39
40 Counsel is not required to assume the responsibilities of a social worker, probation
41 officer, child custody evaluator, or mediator and is not expected to provide
42 nonlegal services to the child. Subject to the terms of the court’s order of
43 appointment, counsel for a child may take the following actions to implement his or
44 her statutory duties in representing a child in a family law proceeding:

45
46 (1)–(3) * * *

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(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child’s interest, which may include:

(A)–(F) * * *

(G) Reviewing relevant photographs, video or audiotapes recordings, and other evidence;

(H)–(L) * * *

(5) * * *

Rule 5.275. Standards for computer software to assist in determining support

(a)–(f) * * *

(g) Definitions

As used in this rule chapter:

(1) “Software” refers to any program or digital application used to calculate the appropriate amount of child or spousal support.

~~(1)~~(2) “Default settings” refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (1) the user is permitted to change the settings back to the default without reinstalling the software, (2) the computer screen prominently indicates whether the software is set to the default settings, and (3) any printout from the software prominently indicates whether the software is set to the default settings.

~~(2)~~(3) “Contains” means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

(h)–(j) * * *

Rule 5.534. General provisions—all proceedings

(a)–(m) * * *

(n) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

1 (1)–(5) * * *

2
3 (6) When form JV-290 or a caregiver letter is filed, the court clerk must provide
4 the social worker, all unrepresented parties and all attorneys with a copy of
5 the completed form or letter immediately upon receipt. The clerk also must
6 complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The
7 clerk may use any technology designed to speed the distribution process,
8 including drop boxes in the courthouse, e-mail ~~or~~, fax, or other electronic
9 transmission, as defined in rule 2.250, to distribute the JV-290 form or letter
10 and proof of service form.

11
12 (o)–(p) * * *

13
14 **Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction**
15 **(§§ 224.1(b), 303, 388(e))**

16
17 (a)–(b) * * *

18
19 (c) **Filing the request**

20
21 (1) * * *

22
23 (2) For the convenience of the nonminor, the form JV-466 and, if the nonminor
24 wishes to keep his or her contact information confidential, the *Confidential*
25 *Information—Request to Return to Juvenile Court Jurisdiction and Foster*
26 *Care* (form JV-468) may be:

27
28 (A) Filed with the juvenile court that maintained general jurisdiction; or

29
30 (B) Submitted to the juvenile court in the county in which the nonminor
31 currently resides, after which:

32
33 (i) The court clerk must record the date and time received on the
34 face of the originals submitted and provide a copy of the originals
35 marked as received to the nonminor at no cost to ~~the~~ him or her.

36
37 (ii)–(v) * * *

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39 (C) * * *

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41 (3)–(5) * * *

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43 (d)–(i) * * *

Rule 7.802 of the California Rules of Court is adopted, effective January 1, 2016, to read:

1 **Title 7. Probate Rules**

2
3 **Chapter 17. Contested Hearings and Trials**

4
5 **Rule 7.802. Electronic filing and service in contested probate proceedings**

6
7 The provisions of Code of Civil Procedure 1010.6 and rules 2.250–2.261 of the
8 California Rules of Court concerning filing and service by electronic means apply to
9 contested proceedings under the Probate Code and the Probate Rules to the same extent
10 as they apply to other contested civil proceedings in each superior court in this state.

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Rules 8.10, 8.40, 8.42, 8.44, 8.45, 8.46, 8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.122, 8.123, 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, 8.385, 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, 8.822, 8.823, 8.824, 8.832, 8.833, 8.834, 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, 8.882, 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, 8.927, 8.928, 8.931, and 8.1018 of the California Rules of Court are amended, and rule 8.11 is adopted, effective January 1, 2016, to read:

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The amendments to title 8 will be added by the Joint Appellate Technology Subcommittee and the Appellate Advisory Committee and will be included in the materials presented to the Court Technology Advisory Committee during its August 18 meeting.

DRAFT

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.

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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.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committees (CEAC), Joint Rules Subcommittee and Joint Technology Subcommittee	A	<p>The subcommittees agree that the proposed rule changes are necessary to begin facilitating an e-business environment in the trial courts.</p> <p>The subcommittees determined that the proposal will result in additional training, which requires the commitment of staff time and court resources.</p>	<p>The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee’s support is noted.</p> <p>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.</p>

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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
			<p>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.</p> <p>See comments on specific provisions below.</p>	<p>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.</p>

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		<p>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.”</p>	<p>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.</p>
13.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair		<p>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.</p>	<p>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.</p>

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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
14.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	<p>Please note that many of the comments on SPR15-16 are “global”:</p> <ul style="list-style-type: none"> • 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” <p>[*General comment made in response to three Invitations to Comment, including SPR15-32]</p>	<p>CTAC and CSCAC decline to pursue the general suggestions regarding the use of the words “also” and “parties,” which appear to be directed beyond the rules covered in this proposal. The comments referring to Judicial Council forms and to the terms “visitation” and “parenting time” do not apply to SPR15-32.</p>

Title Two—Trial Court Rules			
	Commentator	Comment	**PROPOSED Committee Response**
15.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	<p>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</p>	<p>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.</p> <p>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</p>

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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 (*).

Title Two—Trial Court Rules			
	Commentator	Comment	**PROPOSED Committee Response**
		court is permitted to do under Government Code section 68150.	documents are signed under penalty of perjury.
16.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	<p>Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page</p> <p>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:</p> <p>“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.”</p> <p>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.</p>	<p>Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page</p> <p>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.</p> <p>Parties consent to permissive electronic service by filing form EFS-500, <i>Consent to Electronic Service and Notice of Electronic Service Address</i>, which requires that the party specify his or her electronic service address. In addition, rule 2.256(a)(4) requires parties to provide one or more electronic service addresses, in the manner specified by the court, at which the filer agrees to accept service. So courts already have the ability to require parties to provide their electronic service addresses.</p>

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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 (*).

Title Three—Civil Rules			
	Commentator	Comment	* PROPOSED Committee Response
18.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	<p>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.”</p> <p>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.</p>	<p>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.”</p> <p>Code of Civil Procedure section 1010.6(b)(3) governs for cases involving <i>permissive</i> electronic filing. Under subdivisions (f) and (g) of section 1010.6, <i>mandatory</i> 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.</p> <p>To address the concerns of Ms. Brandes-Gibbs, the proposed amendment to rule 3.1300(e) would be revised as follows:</p> <p>(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. <u>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.</u>”</p>

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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 (*).

19.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	<p><u>Rule 3.1302</u></p> <p>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 mail the material back to the party lodging it. If the material was lodged electronically, the clerk may delete it.”</p> <p><u>Rule 3.1304</u></p> <p>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.”</p>	<p><u>Rule 3.1302</u></p> <p>CTAC and CSCAC decline to pursue CAJ’s recommendation at this time. The group foresees that potential issues may arise by instructing clerks only to delete the materials. Having clerks return the materials would provide the parties with notice. The committees will give further consideration to this rule during phase II of the Rules Modernization Project.</p> <p><u>Rule 3.1304</u></p> <p>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.</p>
20.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	<p>We would recommend not encouraging inconsistency throughout the State.</p> <p>[*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. <u>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.</u>”]</p>	<p>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.</p>

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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 (*).

<p>21.</p>	<p>Superior Court of San Diego County by Michael M. Roddy, Executive Officer</p>	<p>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 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.”</p>	<p>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 documents.</p> <p>The court’s specific recommendation for an electronic bookmarking rule will be considered next year during phase II of the Rules Modernization Project.</p>
<p>22.</p>	<p>TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee</p>	<p><u>Suggested modification</u> 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.</p> <p>The subcommittees recommend that the new provisions contained in Rule 3.1300(e) should read as follows (see highlighted text):</p> <p>(e) Computation of time</p>	<p><u>Suggested modification</u> 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).</p> <p>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</p>

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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 (*).

		<p>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. <u>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 if, after review by the clerk, it is accepted for filing.</u></p>	<p>all other legal filing requirements to be filed as an official court record.”</p> <p>(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. <u>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.”</u></p>
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Title Eight—Appellate Rules			
	Commentator	Comment	*PROPOSED Committee Response
23	<p>The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel</p>	<p><u>Rules 8.122, 8.144 and 8.336, and 8.838</u></p> <p>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.</p>	<p>CTAC and AAC agree with CAJ regarding the importance of considering the potential impact on indigent litigants of authorizing transmission of all or part of the trial court record in electronic form. Where the appellate rules authorize the appellate courts to require parties to file or serve documents electronically, they include protections for self-represented litigants. (See Cal. Rules of Court, rule 8.73(a)(2)(A).) Express authorization for the record to be transmitted electronically should include similar protections. The amendments expressly authorizing transmission of the record in electronic form have been withdrawn from this rules proposal. CTAC and AAC may consider amendments to these rules, including protections for self-</p>

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 (*).

Title Eight—Appellate Rules		
Commentator	Comment	*PROPOSED Committee Response
		represented litigants, during phase II of the Rules Modernization Project. However, CTAC and AAC do not propose modifying those parts of the proposed amendments to rules 8.144, 8.336, and 8.838 that clarify application of those rules to documents in electronic format.

DRAFT



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
July 31, 2015	Please review for August 5 meeting
To	Deadline
Rules and Policy Subcommittee	August 5, 2015
From	Contact
Patrick O'Donnell, Managing Attorney	Tara Lundstrom
Tara Lundstrom, Attorney	415-865-7650 phone
Legal Services	tara.lundstrom@jud.ca.gov
Subject	
Public comments received in response to rules proposal to amend rule 2.251 (e-service)	

Background

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

On June 30, 2015, JATS reviewed the comments received in response to rule 8.71 and voted to recommend the proposal to AAC and CTAC for submission to the council during its October 27 meeting.

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. The draft report, the proposed amendment to rule 8.71, and the comment chart incorporate the JATS's response. RPS should review the comments on rule 2.251 and make recommendations with that rule consistent with JATS's recommendations on rule 8.71.

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 2.251 are discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended modifying subdivision (g) of rule 2.251, which governs electronic service via electronic notification. This rules proposal, as circulated, did not contemplate amending subdivision (g), which currently provides as follows:

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

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

- (1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (3) Maintain the hyperlink until either:
 - (A) All parties in the case have settled or the case has ended and the time for appeals has expired; or

- (B) 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.

The Civil Managers Unit recommended adding a new subparagraph (C) to subdivision (g)(3) of rule 2.251 that would provide:

- (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.

Staff recommends that the subcommittee decline to pursue this suggestion. Subdivision (g) currently 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. And it already establishes the relevant time periods during which the party must maintain the hyperlink. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would appear to be a substantive change to the rule that is beyond the scope of this proposal, which is intended to include only minor, technical changes to the rules.

In addition, staff notes that 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 would also appear to be beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

- During its August 5 meeting, the subcommittee should consider the Civil Unit Managers' comment and decide whether to recommend their suggestion for amending rule 2.251(g).

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 (j)(2) of rule 2.251 to read as follows:

(j) 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, the subcommittee should consider that the language proposed in the circulated rules proposal for new subdivisions (j)(2) of rule 2.251 and (g)(2) of 8.71 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 the subcommittee agrees with the bar association, it should consider also amending subdivision (b)(1) of rule 2.251 to ensure that the rule is internally consistent.

During its meeting on July 30, JATS reviewed this comment in relation to subdivisions (a)(2) and (g)(2) of rule 8.71. It decided not to recommend the changes proposed by the San Diego Bar Association. JATS noted that similar language in subdivision (b)(1) of rule 2.251 has not resulted in any known issues in the trial courts and that any effort to clean up the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

¹ Rule 2.251(b)(1) provides as follows;

- (b) Electronic service by *consent* of the parties
- (1) Electronic service may be established by *consent* of the parties in the action. 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 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties; they must affirmatively *consent* to electronic service under subparagraph (A).

(Italics added.)

- During its August 5 meeting, the subcommittee should discuss whether to recommend amending rules 2.251(b)(1) and (j)(2) to replace references to “accept” and “agrees to accept” with “consent.” To ensure consistency between the trial court and appellate rules, the subcommittee should consider JATS’ recommendation not to incorporate the recommendation into the proposal.

The Subcommittee’s Task

The subcommittee is tasked with reviewing the rules proposal to amend rule 2.251, including any public comments received in response to the proposed amendment to rule 2.251, and:

- Asking staff or group members for further information and analysis; or
- Advising 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

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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

Agenda Item Type

Action Required

Effective Date

January 1, 2016

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

Date of Report

July 31, 2015

Recommended by

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

Contact

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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

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Rule 2.251. Electronic service**

2
3 (a)–(i) * * *

4
5 (j) **Electronic service by or on court**

6
7 (1) The court may electronically serve any notice, order, judgment, or other
8 document issued by the court in the same manner that parties may serve
9 documents by electronic service.

10
11 (2) A document may be electronically served on a court if the court consents to
12 electronic service or electronic service is otherwise provided for by law or
13 court order. A court indicates that it agrees to accept electronic service by:

14
15 (A) Serving a notice on all parties that the court accepts electronic service.
16 The notice must include the electronic service address at which the
17 court agrees to accept service; or

18
19 (B) Adopting a local rule stating that the court accepts electronic service.
20 The rule must indicate where to obtain the electronic service address at
21 which the court agrees to accept service.

22
23 **Rule 8.71. Electronic service**

24
25 (a) **Consent to Authorization for electronic service**

26
27 (1) A document may be electronically served under these rules:

28
29 (A) If electronic service is provided for by law or court order; or

30
31 (B) If the recipient agrees to accept electronic services as provided by these
32 rules and the ~~When a document may be~~ is otherwise authorized to be
33 served by mail, express mail, overnight delivery, or fax transmission,
34 electronic service of the document is permitted when authorized by
35 these rules.

36
37 (2)–(3) * * *

38
39 (4) A document may be electronically served on a nonparty if the nonparty
40 consents to electronic service or electronic service is otherwise provided for
41 by law or court order.

42
43 (b) **Maintenance of electronic service lists**

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

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

5
6 **(c) Service by the parties**

7
8 (1) Notwithstanding (b), parties are responsible for electronic service on all other
9 parties in the case. A party may serve documents electronically directly, by
10 an agent, or through a designated electronic filing service provider.

11
12 (2) ~~A document may not be electronically served on a nonparty unless the~~
13 ~~nonparty consents to electronic service or electronic service is otherwise~~
14 ~~provided for by law or court order.~~

15
16 **(d)–(f) * * ***

17
18 **(g) Electronic service by or on court**

19
20 (1) The court may electronically serve any notice, order, opinion, or other
21 document issued by the court in the same manner that parties may serve
22 documents by electronic service.

23
24 (2) A document may be electronically served on a court if the court consents to
25 electronic service or electronic service is otherwise provided for by law or
26 court order. A court indicates that it agrees to accept electronic service by:

27
28 (A) Serving a notice on all parties that the court accepts electronic service.
29 The notice must include the electronic service address at which the
30 court agrees to accept service; or

31
32 (B) Adopting a local rule stating that the court accepts electronic service.
33 The rule must indicate where to obtain the electronic service address at
34 which the court agrees to accept service.

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	<p>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.</p> <p>DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.</p>	DCSS’s support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	<p>1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2.</p> <p>2. Recommendation: Amend California Rules of Court 2.251(g)</p> <p>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:</p> <p>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.”</p>	<p>The Civil Unit Managers’ support is noted.</p> <p>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</p>

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
			<p>3. Request for Specific Comments</p> <p>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.</p> <p>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.</p>	<p>additional public comment. It may be considered by CTAC in the future.</p> <p>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.</p> <p>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.</p>

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	<p>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.</p> <p>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.</p>	<p>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 <i>send</i> 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.</p> <p>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</p>

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
				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	<p>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.</p> <p>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.</p> <p>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:</p>	<p>The San Diego Bar Association’s comments are noted.</p> <p>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.</p> <p>**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</p>

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
			<p>(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:</p> <p>(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</p> <p>(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.</p>	<p>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).)</p>
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	<p>The Committee supports this proposal, with a recommendation for implementation.</p> <p>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.</p>	<p>The Committee on Appellate Court's (CAC) support is noted.</p>

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

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	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.