



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

[www.courts.ca.gov/itac.htm](http://www.courts.ca.gov/itac.htm)  
[itac@jud.ca.gov](mailto:itac@jud.ca.gov)

## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

November 20, 2015

4:00 PM – 5:00 PM

Teleconference

---

**Advisory Body Members Present:** Hon. Louis Mauro, Chair; Hon. Peter Siggins; Ms. Kimberly Stewart, Mr. Joseph Lane; Mr. Frank McGuire and Mr. Kevin Green

**Advisory Body Members Absent:** Mr. Don Willenburg

**Others Present:** Ms. Katherine Sher, Ms. Tara Lundstrom; Ms. Heather Anderson, Mr. Patrick O'Donnell and Ms. Julie Bagoye

---

#### OPEN SESSION

---

##### Call to Order and Roll Call

Justice Mauro called the meeting to order at 4:00 PM, and roll call was taken. He noted there were no public comments received prior to this meeting.

##### Approval of Minutes

The subcommittee reviewed and approved the minutes of the July 30, 2015, Joint Appellate Technology Subcommittee (JATS) meeting.

##### Item 1

##### Proposals to Modernize Rules for E-Filing/E-Business

JATS members considered various items for inclusion in Phase II of the Rules Modernization Project. JATS members agreed to include the following items discussed in Katherine Sher's memorandum to JATS dated November 17, 2015: substantive items 1, 2, 3, 4, 6 and 8 (although JATS will wait on item 2 for the appellate districts to gain more experience in electronic filing); and all of the technical and forms items.

#### ADJOURNMENT

The meeting was adjourned at 4:20 PM.



## JUDICIAL COUNCIL OF CALIFORNIA

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

---

### MEMORANDUM

---

Date	Action Requested
December 11, 2015	Please read before December 16th subcommittee conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	December 16th, 2015
From	Contact
Katherine Sher, Attorney, Legal Services	Katherine Sher 415-865-8031 katherine.sher@jud.ca.gov
Subject	
Possible changes to be considered for inclusion in the e-filing Rules-Practice consistency proposal	

---

#### Introduction

As discussed in the October 6<sup>th</sup> JATS conference call, one of the projects JATS will work on this year is a review of the rules of court regarding appellate e-filing to determine if changes are needed to ensure that the rules are consistent with current e-filing practices. In addition, JATS will look at areas where changes to the rules or new rules are needed to ensure consistency in practice across the District Courts of Appeal – areas the appellate courts have addressed by local rule where statewide consistency is desirable.

At its December 16th conference call, JATS will discuss possible issues to address in this project. This memo provides a list of the ideas proposed thus far to be included in the project. I hope that JATS members will, prior to or during the conference call, suggest additional ideas to be included in this project.

As reflected in the descriptions of the ideas, some or all of these ideas might be addressed either as part of this proposal or in the Phase 2 Rules Modernization proposal. JATS may wish to discuss which approach works best for each of these items.

The issue of bookmarking of electronic documents is included as one of the possible issues to address in this project. In discussion of this issue at the November 20<sup>th</sup> JATS meeting, the question was raised of whether rulemaking in this area should wait until the appellate courts have more experience with electronic filing. The subcommittee may wish to continue this discussion at the December 16<sup>th</sup> meeting, as it determines what to include in a rules-practice consistency proposal.

As with Rules Modernization, it may not be possible, due to workload constraints, for all of the proposals – those listed in this memo and those additional ideas which subcommittee members may suggest -- to be included in a rule proposal for this coming year. If JATS decides to prioritize some items and not others for inclusion in a proposal to be circulated this year, the items not worked on this year may be considered in future years.

#### Possible Items for Inclusion in Rules-Practice Consistency Proposal

- 1. Electronic bookmarking of documents; electronic “volumes”.** What type of bookmarking/indexing/electronic tabbing should be required for electronic records? Finally, should electronically filed documents be required to be put in “volumes”? **(Note: this is also on the list for potential consideration as part of Rules Modernization.)**

**Bookmarking.** All of the Courts of Appeal have existing local rules, or guidelines posted on their websites setting the requirements for bookmarking and pagination of documents that are electronically filed or submitted. They are all substantially similar, although in some cases they are incorporated into local rule (e.g., in the First DCA) and in some the particular formatting is requested and guidelines posted on the court’s website. (See links below.) All of the Courts of Appeal either ask or require that briefs, motions and petitions be electronically bookmarked, and that for appendices and exhibits, any document that include an index should have that index include electronic bookmarking.

JATS may wish to consider whether there should be statewide rules of court incorporating these requirements, whether more experience with e-filing is needed before a statewide rule is proposed, or whether this is a matter better addressed through local rules and guidelines.

Links to local rules/guidelines:

First DCA, local rule: <http://www.courts.ca.gov/documents/1DCA-Local-Rule-16.pdf>

First DCA, bookmarking and pagination guidelines:

<http://www.courts.ca.gov/documents/1dca-Local-Rule-16-bookmarks-and-pagination.pdf>

Second DCA, guidelines (same as First DCA):

<http://www.courts.ca.gov/documents/2DCA-Bookmarks-and-Pagination.pdf>

Third DCA, local rule: <http://www.courts.ca.gov/documents/3dca-Local-Rule-5.pdf>

Fourth DCA, local rule (Rule 5, for Division One only):

<http://www.courts.ca.gov/documents/4dca-local-rules.pdf>

Fourth DCA, guidelines: <http://www.courts.ca.gov/documents/4DCA-BookmarksAndPaging.pdf>

Fifth DCA, local rule: <http://www.courts.ca.gov/2997.htm#acc28012>

Fifth DCA, formatting guidelines: <http://www.courts.ca.gov/documents/TrueFiling-bookmarking.pdf>

Sixth DCA, local rule (effective 1/19/2016): <http://www.courts.ca.gov/33825.htm>

**Volumes:** Some of the Courts of Appeal also have local rules or guidelines regarding the maximum size of documents to be electronically filed and guidelines or rules for indexing when a part of the record is submitted as multiple electronic “volumes.” Staff is continuing to research various approaches on these issues for consideration by JATS as the proposal continues to be developed

- 2. Electronic Filing of Sealed and Confidential Documents.** How to handle sealed and confidential records where the records are electronic (rules 8.45 to 8.47, and 8.482, for conservatorship appeals). (**Note: this is also on the list for potential consideration as part of Rules Modernization.**)

Some of the Courts of Appeal accept electronic filing of sealed or confidential documents while others do not. At the meeting, I will have more information to share on the practices (and local rules) of the Courts of Appeal, and possibly on the practices of courts in other jurisdictions (federal and other states), to inform JATS’s consideration of possible approaches to this issue.

- 3. Pagination of e-filed documents.** Should there be a statewide rule regarding pagination of e-filed briefs?

All of the Courts of Appeal either ask or require (as reflected in local rules and/or guidelines, see links above) that documents be paginated consecutively beginning with the cover page of the document, using only Arabic numerals (so that PDF page numbers will match the document’s page numbers).

Currently, Rule 8.204 (b)(7) specifically states that “The tables and the body of the brief may have different numbering systems.” JATS may wish to consider either amending this rule to allow a local rule requirement of consecutive pagination, or creation of a statewide rule requiring consecutive pagination.

### Subcommittee Task

The subcommittee's tasks at the December 16th meeting are to:

1. Discuss possible additional ideas for the rules-practice consistency proposal;
2. Determine which of the proposals in this memo or newly suggested should be included in the project for this coming year, which would be better addressed as part of the Rules Modernization proposal, which should be deferred for consideration in future proposals, and which should not be pursued at all; and
3. To begin consideration of what specific changes to the Rules of Court should be proposed in the areas to be addressed.



## JUDICIAL COUNCIL OF CALIFORNIA

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

---

### MEMORANDUM

---

Date	Action Requested
December 11, 2015	Please read before December 16th subcommittee conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	December 16 <sup>th</sup> , 2015
From	Contact
Katherine Sher, Attorney, Legal Services	Katherine Sher 415-865-8031 katherine.sher@jud.ca.gov
Subject	
Further detail on Phase 2 Rules Modernization proposal	

---

#### Introduction

In the November 20<sup>th</sup>, 2015 JATS conference call, the subcommittee set priorities for items to be included in the Phase 2 Appellate Rules Modernization proposal to move forward in 2016. This memorandum discusses, as to those items prioritized, possible approaches to how the rules might be changed to accomplish the goals of modernization.

In this memo, I have used the list of items from the memo distributed before the November 20<sup>th</sup> meeting as a starting point. (For those items not prioritized, I have left them on the list with a note that they are not prioritized.) For some of the items, I have been able to draft proposed rule amendments, which are attached to this memo for the subcommittee's discussion. For other items, decisions on the approach to be taken need to be made before I can draft proposed language for the subcommittee's consideration. Two of the items, as noted in the list, are discussed in more detail in the memo on the Rules-Practice Consistency Proposal also distributed for this meeting. Please note with regard to the changes to forms discussed at the November 20<sup>th</sup> meeting, draft revised forms will be prepared for the subcommittee's consideration at a subsequent meeting.

## Rules Modernization Project Proposed Changes

### Substantive Changes

1. Changes were proposed in phase 1, but not carried out, to rules 8.122, 8.144, 8.336 and 8.838, to allow use of an electronic record on appeal.

Staff is in the process of drafting possible language for the proposed changes to these provisions. **The subcommittee's input is sought on the following possible language** to be added to rule 8.144 (and elsewhere):

Where the local rules of the reviewing court so allow, all or part of the record may be in electronic format. However, in a case where any party is self-represented or has been granted a fee waiver, the reviewing court will offer that party the opportunity to object to use of an electronic record, and will consider any objections made in determining whether an electronic record will be used.

2. What type of bookmarking/indexing/electronic tabbing should be required for electronic records, and should electronically filed documents be required to be put in "volumes"?

**Note: this is discussed in more detail in the memo regarding the rules-practice consistency proposal.** The subcommittee may wish to discuss whether to include this in the rules modernization proposal or in the rules-practice consistency proposal, in addition to discussing whether this question should be addressed now or when the appellate courts have had more experience with-filing.

3. Changing the rules to give the appellate courts discretion to order e-filing and e-service where not allowed now under rule 8.73.

**The subcommittee's input is sought on the possible language for rule 8.73 included in the attached draft.** An alternative to the attached draft would be simply to delete the provisions barring an order for electronic filing/service in certain circumstances.

4. Creation of standards for the digital format of transcripts, as allowed under Code of Civil Procedure section 271(b).

Staff is working on drafting language for this proposed change and determining where in the rules it might best be placed.

5. **NOT PRIORITIZED.** Creation of rules to govern e-filing and e-service (like rules 8.70 to 8.79 in the appellate courts), and access to electronic court records (like new rules 8.80 to 8.85 in the appellate courts) in the appellate divisions of Superior Courts.
6. How to handle sealed and confidential records where the records are electronic (rules 8.45 to 8.47, and 8.482, for conservatorship appeals).

**Note: this is discussed in more detail in the memo regarding the rules-practice consistency proposal.** The subcommittee may wish to discuss whether to include this in the rules modernization proposal or in the rules-practice consistency proposal.

7. **NOT PRIORITIZED.** Updating of rules regarding death penalty appeals.
8. Amend Rule 10.1028 (d)(2) to allow retention of a true and correct electronic copy of the reporter's transcript rather than of the original, which must be a paper copy under CCP Section 271 (a). **The subcommittee's input is sought on the possible language for rule 10.1028 included in the attached draft.**

## Technical Changes

### Rules

1. In Rule 8.104 (c), regarding what constitutes entry of judgment, adding language to say that orders signed electronically have same effect as orders with an original signature.

**The subcommittee's input is sought on the possible language for rule 8.104 included in the attached draft.**

2. Allowing e-mail notice from the reviewing court to the trial court under rules 8.452 8.456 and 8.489.

**The subcommittee's input is sought on the possible language for these rules, included in the attached draft.**

3. Changes where the appellate rules refer to the "return" of records.

Further work is needed to determine where changes might be made and what those changes might be.

### Forms



1. Change to proofs of service on the Notice of Appeal form and other appellate forms to allow for electronic proof of service.

Forms affected: APP 002, APP 005, APP 007, APP 009 (this is POS generally for appellate), APP 009 INFO (info sheet for appellate POS), APP 101 INFO (info on appeals in limited cases, includes language about service by mail/in person), APP 109 (POS for superior court appellate division cases), APP 109 INFO (info for APP 109), APP 150 INFO (info on writs in limited cases – includes language about serving by mail/in person)

2. Change to Notice of Appeal form and other appellate forms so that they no longer state that providing the email address of the attorney (or party without attorney) is optional.

**Possible language** would be to change the word “optional” to “if available,” which accurately reflects the law.

Forms affected: APP 002, APP 003, APP 005, APP 007, APP 008, APP 011, APP 106, APP 107, CR 120 (doesn't ask for e-mail), CR 137, CR 145, JV 800, JV 810, JV 822, and JV 825 (doesn't ask for e-mail).

3. Change to form MC 275 (Petition for Writ of Habeas Corpus) to modify instructions to reflect possibility of e-filing (where instructions dictate the number of copies to be filed).

#### Subcommittee Task

The subcommittee's tasks at the December 16<sup>th</sup> meeting are to:

- Review the attached draft rule amendments and determine whether to recommend their inclusion in the subcommittee's rules modernization proposal, as drafted or as modified by the subcommittee.
- Review the language proposed in this memo for allowing the record to be in electronic format (item number 1) and determine whether to recommend this language for inclusion in the subcommittee's rules modernization proposal.

Appellate Rules Modernization, Phase 2

**Rule 8.73. Court order requiring electronic service or filing**

**(a) Court order**

- (1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties to:
  - (A) Serve all documents electronically, except when personal service is required by statute or rule;
  - (B) File all documents electronically; or
  - (C) Serve and file all documents electronically, except when personal service is required by statute or rule.
- (2) The court will not:
  - (A) Order a self-represented party to electronically serve or file documents **if the party requests exemption**;
  - (B) Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or
  - (C) Order a trial court to electronically serve or file documents **if the trial court objects**.
- (3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.

**(b)-(c) \* \* \***

**Rule 8.104. Time to appeal**

**(a)-(b) \* \* \***

**(c) What constitutes entry**

For purposes of this rule:

- (1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.
- (2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.
- (3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.
- (4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.
- (5) An order signed electronically has the same effect as an order signed on paper.

(d)-(e) \* \* \*

**Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26**

(a)-(g) \* \* \*

**(h) Decision**

- (1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.
- (2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.
- (3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.
- (4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(i) \* \* \*

**Advisory Committee Comment**

\* \* \*

**Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights**

(a)-(g) \* \* \*

**(h) Decision**

- (1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.
- (2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.
- (3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.
- (4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.
- (5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(i) \* \* \*

**Rule 8.489. Notice to trial court**

**(a) Notice if writ issues**

If a writ or order issues directed to any judge, court, board, or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.

**(b) Notice by telephone**

- (1) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

- (2) The clerk need not give telephonic or e-mail notice of the summary denial of a writ, whether or not a stay previously issued.

**Drafter's Note:** Rule 8.489 applies in writ proceedings in the Supreme Court or Courts of Appeal.

**Rule 10.1028. Preservation and destruction of Court of Appeal records**

**(a)-(c) \* \* \***

**(d) Time to keep other records**

(1) Except as provided in (2), the clerk may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.

(2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript or a true and correct electronic copy thereof for 20 years after the decision becomes final.

*(Subd (d) relettered effective January 1, 2013; adopted as subd (c).)*

*Rule 10.1028 amended effective January 1, 2013; adopted as rule 70 effective January 1, 2005; previously renumbered effective January 1, 2007.*