



JUDICIAL COUNCIL
OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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INFORMATION TECHNOLOGY ADVISORY COMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

October 20, 2015
12:10 PM – 1:10 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. Louis R. Mauro

Advisory Body Members Absent: Mr. Don Willenburg

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

OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the August 5, 2015, Rules and Policy Subcommittee meeting.

Public Comments

No public comments were submitted.

DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

Item 1

Electronic Signature Standards and Guidelines

Mr. Tara Lundstrom presented general background information on the proposal to update the *Trial Court Records Manual* by including electronic signature standards. She went over the three comments submitted by the trial courts in response to the Invitation to Comment, as well as the responses that were recommended by the Court Executives Advisory Committee's Records Management Subcommittee. In response to questions by the subcommittee, Ms. Lundstrom clarified that the proposal would not affect any of the current requirements governing signatures on documents that are electronically filed into the courts. The subcommittee voted to recommend the proposal to the Information Technology Advisory Committee (ITAC).

Item 2

2016 Annual Agenda Planning

Ms. Lundstrom went over the six projects proposed for inclusion on ITAC's 2016 Annual Agenda and assignment to the subcommittee. These included four carry over projects from this year's annual agenda (phase 2 of the Rules Modernization Project, electronic signature legislation and rules proposals, electronic filing legislation and rules proposals, and the privacy policy) and two new projects (standards for maintaining electronic court records as data and data exchange with local justice partners rules proposal). Ms. Lundstrom clarified that the Court Executives Advisory Committee would have primary responsibility for developing the standards for maintaining electronic court records as data. The subcommittee recommended that these proposals be considered by ITAC in setting its 2016 Annual Agenda.

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 January 12, 2016	Action Requested For Your Review
To ITAC's Rules and Policy Subcommittee	Deadline January 14, 2016
From Tara Lundstrom Attorney, Legal Services	Contact Tara Lundstrom 415-865-7650 phone tara.lundstrom@jud.ca.gov
Subject E-Signatures & E-Filing: Proposals to Add Code of Civil Procedure Section 1013b and to Amend Section 1010.6	

Background

During its December 2015 meeting, the Information Technology Advisory Committee (ITAC) recommended that several projects from its 2015 Annual Agenda be carried over to this year. Three are relevant to the subcommittee's meeting on January 14, 2016. The first involves a legislative proposal to amend Code of Civil Procedure section 1010.6 to authorize e-signatures on e-filed documents. The second involves reviewing the e-filing provisions in Code of Civil Procedure section 1010.6. The third involves ITAC's multi-year effort to modernize the statutes and rules to facilitate e-business, e-filing, and e-service.

Because the legislative proposals to authorize e-signatures on e-filed documents and to review the e-filing provisions both involve possible amendments to the same statute—Code of Civil Procedure section 1010.6—they are combined in the attached draft for the subcommittee to review and discuss together. However, they would be circulated for public comment as separate legislative proposals.

As part of this year's modernization efforts, the Probate and Mental Health Advisory Committee will be considering whether to recommend amending the Probate Code to authorize electronic notices of hearing in probate proceedings. To facilitate that effort and to fill a current gap in the statute, the attached materials for the subcommittee's meeting include a proposal to add new Code of Civil Procedure section 1013b on proof of electronic service.

Before any legislative proposal recommended by the subcommittee is reviewed by ITAC, it would first be circulated to the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee for their input.

Subcommittee's Task

The subcommittee is tasked with reviewing the draft proposal to add new Code of Civil Procedure section 1013b and to amend Code of Civil Procedure section 1010.6 and:

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

Attachment

1. Draft amendments to Code of Civil Procedure sections 1013a and 1010.6 with drafter's notes and specific questions for the subcommittee members.

Section 1013b of the Code of Civil Procedure would be enacted and section 1010.6 would be amended, effective January 1, 2018, to read as follows:

1 **Section 1013b**

2
3 (a) Proof of electronic service may be made by any of the methods provided in Section
4 1013a, except that the proof of service must state:

5
6 (1) The electronic service address of the person making the service, in addition to
7 that person’s residence or business address;

8
9 (2) The date and time of the electronic service, instead of the date and place of
10 deposit in the mail;

11
12 (3) The name and electronic service address of the person served, in place of that
13 person’s name and address as shown on the envelope; and

14
15 (4) That the document was served electronically in place of the statement that the
16 envelope was sealed and deposited in the mail with postage fully prepaid.

17
18 (b) Proof of electronic service may be in electronic form and may be filed
19 electronically with the court.

20
21 (c) Proof of electronic service must be signed as provided in Section 1010.6(b)(2)(B).
22

23 ****DRAFTER’S NOTE:*** *Currently, the Code of Civil Procedure addresses proof of service*
24 *by mailing, but not proof of electronic service. (See [Code Civ. Proc., § 1013a](#).) Proof of*
25 *electronic service is addressed only in the California Rules of Court. (See [Cal. Rules of](#)*
26 *[Court, rule 2.251\(i\)](#).)*

27
28 *Various other statutes, including the Probate Code, cross-reference Code of Civil*
29 *Procedure section 1013a for proof of mailing. (See [Probate Code, § 1261](#).) As part of*
30 *phase 2 of the Rules Modernization Project, the Probate and Mental Health Advisory*
31 *Committee will be reviewing a legislative proposal that would amend the Probate Code*
32 *to authorize sending electronic notices. Absent a statute addressing proof of electronic*
33 *service, the proposal would have to reference rule 2.251. To avoid having the Probate*
34 *Code reference the rules, the subcommittee should consider recommending that a new*
35 *statute be added to the Code of Civil Procedure to address proof of electronic service.*
36 *Because the current Code of Civil Procedure addresses proof of mailing, but not proof of*
37 *electronic service, adding this would also fill an apparent statutory gap.*

38
39 ****QUESTION 1:*** *Does the subcommittee recommend adding a statute to the Code of Civil*
40 *Procedure to address proof of electronic service? If so, does it agree with the proposed*
41 *language? The language suggested above is taken directly from rule 2.251(i)(1) and (2).*
42 *Paragraph (4) of rule 2.251 is incorporated, but modified to cross-reference the*

1 *proposed new signature requirements (see below) in Code of Civil Procedure section*
2 *1010.6(b)(2)(B). Paragraph (3) of rule 2.251(i) was left out of the draft amendment*
3 *because it cross-references another rule and appears to be better left in the rules.*

4
5 **Section 1010.6**

6
7 (a) A document may be served electronically in an action filed with the court as
8 provided in this section, in accordance with rules adopted pursuant to subdivision
9 (e).

10
11 (1) For purposes of this section:

12
13 (A) “Electronic service” means service of a document, on a party or other
14 person, by either electronic transmission or electronic notification.
15 Electronic service may be performed directly by a party, by an agent of
16 a party, including the party’s attorney, or through an electronic filing
17 service provider.

18
19 (B) “Electronic transmission” means the transmission of a document by
20 electronic means to the electronic service address at or through which a
21 party or other person has authorized electronic service.

22
23 (C) “Electronic notification” means the notification of the party or other
24 person that a document is served by sending an electronic message to
25 the electronic address at or through which the party or other person has
26 authorized electronic service, specifying the exact name of the
27 document served, and providing a hyperlink at which the served
28 document may be viewed and downloaded.

29
30 (2) If a document may be served by mail, express mail, overnight delivery, or
31 facsimile transmission, electronic service of the document is authorized when
32 a party has agreed to accept service electronically in that action.

33
34 (3) In any action in which a party has agreed to accept electronic service under
35 paragraph (2), or in which the court has ordered electronic service under
36 subdivision (c) or (d), the court may electronically serve any document issued
37 by the court that is not required to be personally served in the same manner
38 that parties electronically serve documents. The electronic service of
39 documents by the court shall have the same legal effect as service by mail,
40 except as provided in paragraph (4).

41
42 (4) Electronic service of a document is complete at the time of the electronic
43 transmission of the document or at the time that the electronic notification of

1 service of the document is sent. However, any period of notice, or any right
2 or duty to do any act or make any response within any period or on a date
3 certain after the service of the document, which time period or date is
4 prescribed by statute or rule of court, shall be extended after service by
5 electronic means by two court days, but the extension shall not apply to
6 extend the time for filing any of the following:

- 7
- 8 (A) A notice of intention to move for new trial.
- 9
- 10 (B) A notice of intention to move to vacate judgment under Section 663a.
- 11
- 12 (C) A notice of appeal.
- 13

14 This extension applies in the absence of a specific exception provided by any
15 other statute or rule of court.

- 16
- 17 (b) A trial court may adopt local rules permitting electronic filing of documents,
18 subject to rules adopted pursuant to subdivision (e) and the following conditions:
 - 19
 - 20 (1) A document that is filed electronically shall have the same legal effect as an
21 original paper document.
 - 22
 - 23 (2)
 - 24
 - 25 (A) When a document to be filed requires the signature, not under penalty
26 of perjury, of an attorney or a self-represented party, the document shall
27 be deemed to have been signed by that attorney or self-represented
28 party if filed electronically.
 - 29

30 ***DRAFTER'S NOTE:** *When an attorney or self-represented litigant e-files a document,*
31 *he or she is deemed to have signed the document (unless a signature under penalty of*
32 *perjury is required). The fact of e-filing the document alone is sufficient to deem it*
33 *signed; the attorney or self-represented party need not apply any mark to the document.*
34 *This provision governs e-filing only by attorneys and self-represented parties.*

35

36 ***QUESTION 2.A:** *Does the subcommittee want to propose amending subdivision*
37 *(b)(2)(A) to provide that the attorney or self-represented party must also apply an e-*
38 *signature or other mark to the document before filing?*

39

40 ***QUESTION 2.B:** *Does the subcommittee want to propose expanding this authorization*
41 *beyond attorneys and self-represented parties?*

1 (B) When a document to be filed requires the signature, under penalty of
2 perjury, of any person, the document shall be deemed to have been
3 signed by that person if filed electronically and if either of the
4 following conditions is satisfied:
5

6 (i) That person has signed a printed form of the document ~~has been~~
7 ~~signed by that person~~ prior to, or on the same day as, the date of
8 filing. The attorney or person filing the document represents, by
9 the act of filing, that the declarant has complied with this section.
10 The attorney or person filing the document shall maintain the
11 printed form of the document bearing the original signature and
12 make it available for review and copying upon the request of the
13 court or any party to the action or proceeding in which it is filed.
14 The attorney or person filing the document must maintain the
15 original signature only for the period of time stated in
16 Government Code section 68152.
17

18 (ii) That person has signed the document using a computer or other
19 technology in accordance with procedures, standards, and
20 guidelines established by the Judicial Council pursuant to this
21 section.
22

23 ***DRAFTER'S NOTE:** Code of Civil Procedure section 1010.6(b)(2)(B) requires that
24 anyone e-filing a document signed under penalty of perjury must print, sign, and keep
25 the document indefinitely. These requirements have proved burdensome for litigants,
26 especially government agencies and other high-frequency filers.
27

28 Some relevant considerations include:
29

- 30 • In 2015, the Legislature enacted [AB 1519](#) to ease this burden for local child support
31 agencies. In amending Family Code section 17400(a)(3), the legislation carves out
32 two exceptions for local child support agencies to the signature requirements in Code
33 of Civil Procedure section 1010.6(b)(2)(B). Effective January 1, 2016, local child
34 support agencies may maintain signed pleadings electronically in the automated
35 statewide child support system. They may also destroy the signed pleadings once
36 the statutory retention period for court records of the same case type (set forth in
37 [Government Code section 68152](#)) has expired. In comments submitted in response
38 to the Rules Modernization Project (Phase 1) rules proposal, the Department of Child
39 Support Services recommended incorporating similar changes into Code of Civil
40 Procedure section 1010.6.
- 41 • Attorney Tim Perry has requested that e-signatures be allowed on all e-filed forms.
42 Because some forms are signed under penalty of perjury, implementing his request
43 would first require amending Code of Civil Procedure section 1010.6(b)(2)(B).

- 1 • *Judicial Council staff who work on access to justice issues for self-represented*
2 *litigants (SRLs) have urged authorizing e-signatures on e-filed documents because it*
3 *would facilitate efforts to assist SRLs. Staff from local court self-help centers have*
4 *voiced similar support.*
- 5 • *The Court Executives Advisory Committee (CEAC) has recommended that its annual*
6 *agenda include developing standards for e-signatures on e-filed documents for*
7 *inclusion in the Trial Court Records Manual. These standards would be developed*
8 *concurrently with this legislative proposal such that they would be ready to go into*
9 *effect if and when the Legislature enacts the proposal. (In 2015, CEAC developed*
10 *and recommended standards governing e-signatures by judicial officers and the*
11 *court to implement Government Code section 68150(g). These standards were*
12 *included in the Trial Court Records Manual effective January 1, 2016.)*

13

14 ***QUESTION 3:** *Does the subcommittee recommend amending subdivision (b)(2)(B) to*
15 *allow e-filed documents to be signed under penalty of perjury by means of an e-*
16 *signature? In addition or alternatively, does the subcommittee recommend expanding*
17 *the exceptions carved out by AB 1519 (i.e., signatures under penalty of perjury may be*
18 *maintained in electronic form and may be destroyed after the retention period has*
19 *expired) to all e-filed documents?*

20

21 *Staff recommends authorizing e-signatures; the language proposed above for new*
22 *subdivision (b)(2)(B)(ii) largely mirrors [Government Code section 68150\(g\)](#). To*
23 *accommodate those without access to e-signature technology, staff also suggests*
24 *retaining, but modifying the procedure required in the current statute. The proposed*
25 *language would still provide for the form to be printed and signed by hand (in lieu of an*
26 *e-signature); however, it would eliminate the requirement that original signatures must*
27 *be maintained indefinitely. Instead, it would mirror the language in AB 1519, which*
28 *allows for the destruction of the original signature after the records retention period has*
29 *elapsed.*

30

31 Option 1:

- 32
- 33 (3) Any document ~~that is electronically filed with the~~ received electronically by
34 the court on or after the close of business 5 p.m. on any day ~~shall be~~ is
35 deemed to have been filed on the next court day. "Close of business," as used
36 in this paragraph, shall mean 5 p.m. or the time at which the court would not
37 accept filing at the court's filing counter, whichever is earlier.

38

39 Option 2:

- 40
- 41 (3) Any document ~~that is electronically filed with the~~ received electronically by
42 the court before midnight after the close of business on any a court day shall
43 be is deemed to have been filed on that court day, and any document that is

1 received electronically by the court on or after midnight is deemed to have
2 been filed on the next court day. ~~“Close of business,” as used in this~~
3 ~~paragraph, shall mean 5 p.m. or the time at which the court would not accept~~
4 ~~filing at the court’s filing counter, whichever is earlier.~~

5
6 ***DRAFTER’S NOTE:** Under current law, where e-filing is permissive, documents must
7 be e-filed before the ‘close of business’—which is defined as 5:00 p.m. or the time when
8 the court would not accept filing at its filing counter, whichever is earlier—in order to be
9 deemed filed that day. (Code Civ. Proc., § 1010.6(b)(3).) However, in authorizing the
10 Superior Court of Orange County’s mandatory e-filing pilot project, the Legislature
11 provided that the court “may permit documents to be filed electronically until 12 a.m. of
12 the day after the court date that the filing is due, and the filing shall be considered
13 timely.” (Id., § 1010.6(d)(1)(D).)

14
15 With the exception of the Superior Court of Orange County’s mandatory e-filing pilot
16 project, the statute is silent as to when documents must be e-filed for mandatory e-filing
17 cases to be deemed filed that day. (See id., § 1010.6(g)(2).) In adopting uniform rules for
18 mandatory e-filing, the Judicial Council elected to allow courts to provide by local rule for
19 up-until-midnight e-filing in mandatory e-filing cases (the approach adopted by the
20 Legislature for the Superior Court of Orange County’s mandatory e-filing pilot project);
21 otherwise, in the absence of such a local rule, the document must be filed by ‘close of
22 business’ to be deemed filed that day. ([Cal. Rules of Court, rule 2.253\(b\)\(7\)](#).) The rules
23 also define ‘close of business’ as “5 p.m. or any other time on a court day at which the
24 court stops accepting documents for filing at its filing counter, whichever is earlier.” ([Id.,](#)
25 [rule 2.250\(b\)\(10\)](#).)

26
27 Accordingly, the current statute and rules allow for both inter- and intra-court variation in
28 the effective date for e-filing depending on (1) whether e-filing is permissive or
29 mandatory for the case type and (2) what time a court stops accepting filings each day.
30 The potential for variation has increased in recent years as budget courts have caused
31 many courts to cut back on the hours that their filing counters are open.

32
33 To assist the subcommittee in deciding what recommendations to make regarding
34 amendments to subdivision (b)(3), as well as (d)(1)(D) and (g)(2) below, the following
35 discusses the comments received when the Judicial Council adopted uniform mandatory
36 e-filing rules in 2013, the Superior Court of Orange County’s study of its mandatory e-
37 filing pilot project, and comments submitted in response to the 2015 rules proposal for
38 phase 1 of the Rules Modernization Project.

39
40 2013 uniform mandatory e-filing rules proposal

41
42 The commentators were divided as to whether the effective date for mandatory e-filing
43 cases should be close of business (as it is for permissive e-filing cases) or midnight (as

1 is authorized for the Superior Court of Orange County’s pilot project). (See [Judicial](#)
2 [Council of Cal., Electronic Filing and Service: Rules Allowing the Superior Courts to](#)
3 [Mandate Electronic Filing and Service in Civil Cases \(June 21, 2003\), pp. 26–29.](#)) A
4 majority favored adopting the close-of-business option for both mandatory and
5 permissive e-filing. (Id. at p. 26.) Most commentators recommended that, whichever
6 option is adopted, it apply uniformly across case types. (Id. at pp. 29–30, 269–270, 272.)
7

8 Even though several commentators recommended adopting 5:00 p.m. as the time by
9 which e-filed documents must be received to be deemed filed that day, the Judicial
10 Council recognized that adopting this approach would first require amending Code of
11 Civil Procedure section 1010.6(b)(3). (Id. at p. 28, fn. 22.)
12

13 Specific comments are grouped below by the identity of the commentator:
14

15 Superior Courts: Five superior courts (Los Angeles, San Diego, Santa Clara,
16 Sacramento, and San Bernardino) submitted comments supporting the close-of-
17 business option, compared to two (Orange and Riverside) in favor of the up-until-
18 midnight option.
19

- 20 • Superior Court of Los Angeles County: “[A]dopting the [close-of-business] standard
21 would provide for a consistent standard for all filings regardless of the process by
22 which they are received.”
- 23 • Superior Court of San Diego County: “Our court believes the rules should adopt a
24 close of business standard. With the severe staffing shortages, allowing filing until
25 midnight would backlog items for processing by court staff the next business day and
26 this would make it more difficult to process emergency requests in a timely manner.
27 It would also create inconsistency in the code related to when documents must be
28 filed, which would be unmanageable for court personnel. Our court also believes that
29 this makes it fair for all litigants because some, like self-represented parties, may not
30 have access to e-filing, which would put them on an unequal playing field.”
- 31 • Superior Court of Santa Clara County: “We recommend ‘close of business as
32 determined by the court.’ This option provides equal access to justice and ensures
33 consistency at a specific court without imposing a particular time on all courts.”
- 34 • Superior Court of Sacramento County: “The ‘close of business’ standard should be
35 adopted for determining the effective date of electronic filings. We disagree with the
36 proposed amendments to Rule 2.259 (c) and propose that the existing rule remain to
37 clarify that a document that is received after the court closes is deemed to have been
38 received the next court day.”
- 39 • Superior Court of San Bernardino County: “We recommend the ‘Close of business as
40 determined by the Court’ standard be retained for e-filing. While we concur that this
41 is a somewhat dated standard, the fact that exemptions will be available and granted
42 means that not all parties will be filing electronically. To maintain a fair and level
43 playing field for all parties, a common standard must exist for filing deadlines.”

- 1 • Superior Court of Orange County: “There should be a uniform statewide rule
2 permitting the ‘file until midnight’ option This will be a significant benefit to
3 attorneys who will have more time to draft their pleadings, and very little hardship to
4 the local courts.”
- 5 • Superior Court of Riverside County: “File until midnight has [the] most appeal
6 because all courts across the state do not close at the same time. This is also a
7 tangible benefit of e-filing for the filers but may put a burden on the court.”

8
9 Legal Aid Organizations: Three legal aid organizations recommended the close-of-
10 business option, compared to two that recommended the file-until-midnight option.

- 11
- 12 • California Family Law Facilitators Association: “[T]here may be an inequality created
13 when a litigant with a paper filing is limited by the fact that the Clerk’s office is closed
14 yet the e-filer can file until midnight.” The Association recommends the close-of-
15 business option “because it is inherently unfair to allow someone with access to a
16 computer to file at midnight but the opposing side—who may be already
17 disadvantaged because of the financial disparity between the parties—must file by
18 ‘close of business’ at the Clerk’s office, which in some counties is as early as 1 or 2
19 o’clock each day.”
- 20 • Los Angeles Center for Law and Justice: “The current standard should be
21 maintained, that is determining that any document e-filed with the court after the
22 close of business (which should be a standard time such as 5pm, since different
23 courts close at different times) on any day is deemed to have been filed on the next
24 court day. This is to ensure fairness to those who do not have the resources to e-file
25 and must do so before the close of business and not give an unfair advantage to
26 those who do have the resources to e-file and may do so before midnight.”
- 27 • Public Law Center: “We are suggesting that the cut-off for filing should be the time of
28 the court closure. Setting the cut-off for filing at 11:59 pm may create a challenge for
29 self-represented parties who have opted out of electronic filing and service.”
- 30 • Legal Services of Northern California: “Documents should be deemed timely filed if
31 they are transmitted by 11:59 p.m. on the day they are due. The ability to file at any
32 time on the day a document is due is important for low wage workers who often work
33 retail jobs with unconventional hours.”
- 34 • Legal Aid Society of Orange County: “LASOC believes that the standard should be
35 file until midnight. This would allow greater access for clients who come in after the
36 close of business, as well as evening clinics, to be able to e-file their documents.
37 This is particularly important for litigants who need to file answers to an Unlawful
38 Detainer action.”

39

40 Attorney Organizations: Two-thirds of the State Bar’s Committee on the Administration of
41 Justice favored the up-until-midnight option. The State Bar’s Standing Committee on the
42 Delivery of Legal Services was divided between the up-until-midnight and up-until-5PM
43 options.

- 1
- 2 • Majority of the State Bar’s Committee on the Administrative of Justice: The ‘file until
- 3 midnight’ option would “increase access to the courts, decrease confusion among
- 4 litigants, and advance the goal of encouraging e-filing. . . . [H]aving a midnight
- 5 deadline may increase access for working-class litigants. Some attorneys who
- 6 provide direct services to working-class litigants have expressed their desire to have
- 7 time to meet with their clients who cannot do so during work hours. Self-represented
- 8 litigants who can and choose to e-file . . . could also benefit from being able to file
- 9 documents after work. They will not have to take time off work to travel to and from
- 10 the court, wait in line, and personally file those documents. . . . [A] number of solo
- 11 practitioners and attorneys from small firms disagree with the minority’s contention
- 12 below—that a midnight filing deadline will benefit large law firms. According to these
- 13 practitioners, a midnight standard would actually help attorneys from small firms
- 14 because they have to juggle numerous matters simultaneously. Thus, for example,
- 15 while a solo or small firm practitioner is trying a case during the day, a midnight
- 16 deadline for e-filing will allow that practitioner to work on and electronically file
- 17 motions for other matters in the evening. Finally, federal courts have long used a
- 18 midnight deadline with no known problems for the litigants (so far as CAJ is aware),
- 19 and many practitioners are accustomed to that standard. Using a different standard
- 20 could create confusion, especially if that standard is not uniformly applied across the
- 21 state. The close-of-business deadline as defined in Code of Civil Procedure section
- 22 1010.6(b)(3), for example, currently requires litigants to file by 4:30 p.m. in one
- 23 county (Los Angeles Superior Court), while litigants in an adjacent county must file
- 24 by 4:00 p.m. (San Bernardino Superior Court). Other variations of that deadline exist,
- 25 depending upon the county and the particular day of the week.”
- 26 • Minority of the State Bar’s Committee on the Administration of Justice: The close-of
- 27 business option “provides an even playing field, in which all litigants will have the
- 28 same filing time, and no one would have the advantage of additional hours in which
- 29 to prepare and file pleadings. Permitting a later deadline for those who electronically
- 30 file will probably give practitioners with abundant resources the upper hand, while
- 31 self-represented litigants without access to computers or lacking in skills, like senior
- 32 citizens and the underprivileged, would have less time than other litigants to prepare
- 33 and file pleadings. . . . A number of CAJ’s members expressed a concern that a
- 34 midnight filing time would have a negative impact on law office staff members, who
- 35 would be asked to remain at work until late hours. In addition, public entities and
- 36 small law offices may not have the financial resources to keep staff that late at the
- 37 office (e.g., to pay overtime), thus the extended filing cut-off would effectively expand
- 38 the time allowed for filing documents for larger private law firms willing and able to
- 39 extend their hours of operations. Some CAJ members with the minority view do not
- 40 favor ‘close of business’ as currently defined in Code of Civil Procedure section
- 41 1010.6(b)(3), but do favor 5:00 p.m. as a uniform statewide deadline for e-filing.”
- 42 • State Bar’s Standing Committee on the Delivery of Legal Services: “Ultimately no
- 43 consensus was reached by SCDLS on how to best answer this question. The

1 Committee was able to see benefits and drawbacks to both allowing for the ‘file until
2 Midnight’ standard as well as for the ‘file until 5 PM’ standard. No member of the
3 Committee was in favor of a ‘close of business’ standard as currently defined in
4 Code of Civil Procedure section 1010.6(b)(3), as this would allow for wide variations
5 in filing times – which continue to change – dependent upon the different courts and
6 different days of the week. Some members felt that allowing for a ‘file until Midnight’
7 standard would allow for those assisting low-income litigants to be able to e-file after
8 normal business hours. Yet this would also allow for those opposing low-income
9 litigants to take advantage of e-filing to the detriment of low-income or self-
10 represented litigants. . . . Other members favored a ‘file at 5 PM’ standard, which
11 would provide less of a difference between the time allowed for paper filing and
12 electronic filing than a midnight e-filing deadline, but would create a uniform
13 statewide deadline for e-filing, unlike the ‘close of business’ deadline. Yet this
14 standard would deprive those assisting low-income and self-represented litigants the
15 opportunity to e-file after normal business hours.”

- 16 • State Bar’s Litigation Section: “The committee prefers the midnight rule for
17 mandatory electronic filing as stated in the second option for rule 2.253(b)(7). We
18 believe that the midnight rule is practical, consistent with e-filing rules in California
19 appellate courts and in federal courts, and avoids uncertainties caused by
20 inconsistent and changing closing times of filings windows. We also agree with the
21 corresponding change to rule 2.259(c). . . . In response to the question whether the
22 standard as to the effective time of filing should be uniform for voluntary and
23 mandatory e-filing, we believe that the answer is yes. . . . The committee believes
24 that the midnight rule should be adopted for mandatory e-filing effective July 1, 2013,
25 despite the fact that the rule for mandatory e-filing would be inconsistent with the
26 statutory ‘close of business’ rule for permissive e-filing. We believe that the rule for
27 permissive e-filing should be changed to the midnight rule and believe that the
28 temporary lack of uniformity between the mandatory and permissive rules would be
29 preferable to adopting a close of business rule for mandatory e-filing and later
30 changing it.”

31
32 Other organizations: The California Judges Association, the Task Force on Self-
33 Represented Litigants, and the Joint Rules Committee of the Trial Court Presiding
34 Judges and Court Executives Advisory Committees supported the close-of-business
35 option.

- 36
37 • California Judges Association: “CJA recommends adopting the ‘close of business’
38 rule. It avoids problems that might otherwise arise with the ‘up to midnight’ rule”
- 39 • Task Force on Self-Represented Litigants: “The ‘close of business’ rule should
40 continue. Allowing until midnight for electronic filers would be unfair to the other side
41 that is not e-filing or does not have access to a computer after work hours.”
- 42 • Joint Rules Committee: “[T]he effective time [should] be the same as required by the
43 court for any other method of filing.”

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5 Legal publishers: One legal publisher favored the close-of-business option, whereas
6 another favored the up-until-5PM option.

- 7
- 8 • Essential Publishers, LLC (Electronic Filing Service Provider and legal publisher):
9 “[M]idnight filings in electronic filings can and will cause general confusion amongst
10 the entire population. . . . If for example, a county has required electronic filing for all
11 civil cases, optional electronic filing for Probate, and no electronic filing for Family
12 Law cases, how do you expect a law firm staff to deal with two different filing times
13 each day? . . . What will happen if some courts choose the midnight filing cut off and
14 other courts choose the court window hours for cut off? It is not reasonable to expect
15 filers to keep track of these rule variants. They’re just not necessary. . . . [W]e believe
16 there is absolutely no benefit to the filer or the court to extending the filing time
17 beyond window hours.”
 - 18 • Lawdable Press (legal publisher): “Extending the deadline to midnight cannot be
19 necessary, and I cannot see how it could benefit anyone, particularly the attorneys
20 and staff force to work so late. . . . With today’s court closures and limited service
21 days, [‘close of business’] makes no sense. Surely there is no reason to peg the time
22 to the court’s filing counter in any event. . . . Certainty and uniformity – a 5:00 p.m.
23 eFiling deadline and a 5:00 p.m. eService deadline for all cases – will do just that.”

24
25 Ultimately, the Judicial Council opted to provide for flexibility in the rule to allow for
26 experimentation and the collection of courts’ experiences with mandatory e-filing. (Id. at
27 p. 7.) To capture that experience, the rules require courts adopting mandatory e-filing
28 programs to report semiannually to the Judicial Council on the operation and
29 effectiveness of their program. ([Cal. Rules of Court, rule 2.253\(b\)\(8\)](#).) To date, Judicial
30 Council staff has not received any semi-annual reports from courts implementing
31 mandatory e-filing.

32
33 2014 Superior Court of Orange County’s study on its mandatory e-filing pilot project

34
35 As required by the statute, the Superior Court of Orange County reported to the
36 Legislature on its experience implementing its mandatory e-filing pilot project. Based on
37 data from its case management system and user surveys, it concluded that the option to
38 file up until midnight “was appreciated, but not extensively used.” The peak filing times
39 were between 11:00 a.m. and noon and between 3:00 and 4:00 p.m. Only 21 percent of
40 filings were received by the court after 4:00 p.m. (when its clerk’s office closes). ([See
41 Judicial Council of Cal., Report to the Legislature, Report on the Superior Court of
42 Orange County’s Mandatory E-Filing Pilot Project \(Sept. 30, 2014\) Attachment, p. 5.](#))

1
2 2015 Rules Modernization Project – phase 1 rules proposal

3
4 Some of the comments received in response to the Rules Modernization Project (Phase
5 I) rules proposal in 2015 suggest that the varying effective dates across courts and case
6 types remains a source of concern and confusion. (See [Judicial Council of Cal., Report
7 to the Judicial Council, Technology: Modernization of the Rules of Court to Facilitate E-
8 Business, E-Filing, and E-Service.](#)) The rules proposal included a technical amendment
9 that added cross-references to [rule 2.253\(b\)\(7\)](#) and [rule 2.259\(c\)](#) in [rule 3.1300\(e\)](#) in
10 order to recognize that the ‘up until midnight’ effective date applies to motions papers
11 that are required to be filed electronically. In response to the proposed amendment, the
12 Superior Court of Sacramento County recommended against “encouraging
13 inconsistency throughout the State.” Reflecting general confusion, another commentator
14 questioned whether Code of Civil Procedure section 1010.6(b)(3)’s ‘close-of-business’
15 provision applied to the motions that were subject to mandatory e-filing.

16
17 Over the past year, various appellate courts have implemented e-filing. Thus far, they
18 have consistently allowed for up-until-midnight filing.

19
20 ***QUESTION 4:** Does the subcommittee recommend amending subdivisions (b)(3),
21 (d)(1)(D), and (g)(2)? If so, how?

22
23 To promote consistency across courts and case types, the subcommittee should
24 consider amending subdivision (b)(3), as well as (d)(1)(D) and (g)(2) below. Possible
25 options include:

- 26
- 27 1. Allow for up-until-midnight filing in permissive e-filing cases, as is currently allowed
28 in mandatory e-filing cases;
 - 29 2. Require up-until-midnight filing for both permissive and mandatory e-filing cases;
 - 30 3. Require close-of-business filing in mandatory e-filing cases, as is currently required
31 for permissive e-filing cases;
 - 32 4. Define “close of business” more narrowly (e.g., 5:00 p.m.); or
 - 33 5. Leave as is.
- 34

35 If undecided, the subcommittee may consider circulating more than one option for public
36 comment and specifically requesting comment on which option is preferable. Although
37 comments were previously submitted on this issue in response to the proposal for
38 uniform mandatory e-filing rules, courts and litigants now have more experience with e-
39 filing than they did three years ago.

40
41 Staff recommends promoting consistency across case types and courts to reduce
42 confusion for courts and litigants, but does not have a recommendation regarding the
43 specific cut-off time for the e-filing effective date.

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- (4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

- (5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

- (6) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Sections 68630 to 68641, inclusive, of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Sections 68630 to 68641, inclusive, of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

- (c) If a trial court adopts rules conforming to subdivision (b), it may provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

- (d) A superior court may, by local rule, require electronic filing. Any superior court that elects to adopt mandatory electronic filing must do so subject to the requirements and conditions stated in subdivision (b) of this section, the rules adopted by the Judicial Council under subdivision (f), and the following conditions:
 - (1) ~~Notwithstanding subdivision (b), the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of~~

1 subdivision (b) and rules adopted pursuant to subdivision (e) and the
2 following conditions:

3 ***QUESTION 5:** *Does the subcommittee recommend eliminating references to the*
4 *Superior Court of Orange County's mandatory e-filing pilot project and consolidating the*
5 *provisions governing mandatory e-filing? Staff recommends making these changes.*
6

7 (A) The court shall have the ability to maintain the official court record in
8 electronic format for all cases where electronic filing is required.
9

10 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic
11 filing service provider capable of electronically filing documents with the
12 court, or to electronic filing access directly through the court. Any fees
13 charged by the court shall be for no more than the actual cost of the electronic
14 filing and service of the documents, and shall be waived when deemed
15 appropriate by the court, including, but not limited to, for any party who has
16 received a fee waiver. Any fees charged by an electronic filing service
17 provider shall be reasonable and shall be waived when deemed appropriate
18 by the court, including, but not limited to, for any party who has received a
19 fee waiver.
20

21 ~~(C)~~(3) The court shall have a procedure for the filing of nonelectronic documents in
22 order to prevent the program from causing undue hardship or significant
23 prejudice to any party in an action, including, but not limited to,
24 unrepresented parties.
25

26 ~~(D)~~ A court that elects to require electronic filing pursuant to this subdivision
27 may permit documents to be filed electronically until 12 a.m. of the day after
28 the court date that the filing is due, and the filing shall be considered timely.
29 However, if same day service of a document is required, the document shall
30 be electronically filed by 5 p.m. on the court date that the filing is due. Ex
31 parte documents shall be electronically filed on the same date and within the
32 same time period as would be required for the filing of a hard copy of the ex
33 parte documents at the clerk's window in the participating county.
34 Documents filed on or after 12 a.m., or filed upon a noncourt day, will be
35 deemed filed on the soonest court day following the filing.
36

37 ***DRAFTER'S NOTES:** *Subdivision (d)(1)(D) governs the e-filing cut-off time for the*
38 *Superior Court of Orange County's mandatory e-filing project. If the subcommittee*
39 *recommends eliminating references to the pilot project, this paragraph would be deleted.*
40

41 *In adopting uniform rules for mandatory e-filing, the Judicial Council opted not to include*
42 *the language in subdivision (d)(1)(D) regarding same day filings and ex parte*
43 *applications. As the council report explains, "[i]t appears unnecessary to add such a*

1 provision in the statewide rules” because “the same deadlines that apply to
2 conventionally filed documents also apply to electronically filed documents” already
3 under the rules. (See [Judicial Council of Cal. supra, at p. 7](#) (reasoning that “there is no
4 reason to single out ex parte applications for attention in the rules” because “[i]f a
5 document must be filed by a certain time of day, that document needs to be filed by that
6 time—whether it is filed electronically or on paper”); [Cal. Rules of Court, rule 2.252\(c\)\(2\)](#)
7 [“Filing a document electronically does not alter any filing deadline”].)

8
9 ***QUESTION 6a** (see also Question 3): Should the time for electronically filing
10 documents vary depending on whether electronic filing is mandatory or permissive? Staff
11 recommends making this consistent across case types.

12
13 ***QUESTION 6b:** If the subcommittee recommends providing for up-until-midnight filing,
14 does the subcommittee view the language regarding filing deadlines for same day filings
15 and ex-parte applications as unnecessary? Or should it be retained in the statute?
16

17 ~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council~~
18 ~~shall conduct an evaluation of the pilot project and report to the Legislature,~~
19 ~~on or before December 31, 2013, on the results of the evaluation. The~~
20 ~~evaluation shall review, among other things, the cost of the program to~~
21 ~~participants, cost effectiveness for the court, effect on unrepresented parties~~
22 ~~and parties with fee waivers, and ease of use for participants.~~

23
24 (e) The Judicial Council shall adopt uniform rules for the electronic filing and service
25 of documents in the trial courts of the state, which shall include statewide policies
26 on vendor contracts, privacy, and access to public records, and rules relating to the
27 integrity of electronic service. These rules shall conform to the conditions set forth
28 in this section, as amended from time to time.

29
30 (f) The Judicial Council shall, ~~on or before July 1, 2014,~~ adopt uniform rules to permit
31 the mandatory electronic filing and service of documents for specified civil actions
32 in the trial courts of the state, ~~which shall be informed by any study performed~~
33 ~~pursuant to paragraph (2) of subdivision (d) and~~ which shall include statewide
34 policies on vendor contracts, privacy, access to public records, unrepresented
35 parties, parties with fee waivers, hardships, reasonable exceptions to electronic
36 filing, and rules relating to the integrity of electronic service. These rules shall
37 conform to the conditions set forth in this section, as amended from time to time.

38
39 ~~(g)~~

40
41 ~~(1) Upon the adoption of uniform rules by the Judicial Council for mandatory~~
42 ~~electronic filing and service of documents for specified civil actions in the~~
43 ~~trial courts of the state, as specified in subdivision (f), a superior court may,~~

1 by local rule, require mandatory electronic filing, pursuant to paragraph (2) of
2 this subdivision.

3

4 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so~~
5 ~~pursuant to the requirements and conditions set forth in this section,~~
6 ~~including, but not limited to, paragraphs (1), (2), (4), (5), and (6) of~~
7 ~~subdivision (b) of this section, and subparagraphs (A), (B), and (C) of~~
8 ~~paragraph (1) of subdivision (d), and pursuant to the rules adopted by the~~
9 ~~Judicial Council, as specified in subdivision (f).~~

DRAFT