



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

January 22, 2016  
10:00 AM – 11:30 AM

Teleconference

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

**Advisory Body Members Absent:** Ms. Kimberly Stewart

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

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### OPEN SESSION

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#### Call to Order and Roll Call

Justice Mauro called the meeting to order at 10:00 AM, 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 December 16, 2015, Joint Appellate Technology Subcommittee (JATS) meeting.

#### Item 1 Proposals to Modernize Rules for E-Filing/E-Business

JATS members considered the specific changes proposed for inclusion in Phase II of the Rules Modernization project as discussed in Katherine Sher's memorandum to JATS dated January 19, 2016 and the proposed language for rule amendments attached to that memorandum. With regard to Item 1 in the Rules Modernization section of that memorandum, the proposed change allowing all or part of the record on appeal to be in electronic format, JATS members discussed the practices of the various districts regarding receiving the record electronically. Mr. McGuire noted that the Supreme Court does not yet have e-filing. Justice Mauro responded that the proposed change, in advisory committee comments, simply notes that the existing language of rule 8.72 allows the record to be in electronic form where permitted by the reviewing court. JATS then considered the proposed comment language regarding whether the parties would receive the record in electronic form. Justice Mauro suggested that the proposed comment should include only the first sentence of the draft, with no language about how the parties receive the record, and JATS members agreed with this change.

With regard to Item 2 in the January 19<sup>th</sup> memorandum, creation of standards for the digital format of reporters' transcripts, Justice Mauro suggested that the language of the new format requirement from the draft proposal be approved, but that this language be placed in one rule, rather than in each of the existing rules that now refers to the format requirements set by Code of Civil Procedure section 271. JATS members approved this approach, and asked Ms. Sher to present at the next JATS meeting a proposal as to where in the rules the new requirement should be placed.

Item 3, the proposed amendment to rule 10.1028, was not discussed at the meeting.

On the proposed technical Rules Modernization changes, beginning at page 5 of the January 19<sup>th</sup> memorandum, items 1 (orders signed electronically) and 2 (allowing e-mail notice to the trial court of certain actions by the reviewing court), previously approved, were not discussed. JATS members agreed that action on technical item 3, changes where the rules refer to the return of documents, should be deferred until next year.

JATS then considered the proposed Rules Modernization changes to forms. JATS members discussed how the appellate forms for proof of service would be modified to allow for electronic service, and whether those forms which currently have an integrated proof of service should be modified instead to refer to the stand-alone appellate proof of service form. On the issue of changing those forms that state that an e-mail address is "optional," Mr. Lane suggested that "optional" need not be replaced with "if available" but instead the form could simply ask for e-mail. Ms. Lundstrom suggested that where forms state that a fax number is "optional" or to be provided "if available" that language could also be removed. JATS approved both of these suggestions and approved the proposed form changes, as modified.

## **Item 2 Proposals to Ensure Consistency Between Rules and Practices for Appellate E-Filing**

JATS considered the proposed change to rule 8.204(b)(7), regarding pagination of briefs, discussed at page 7 of the January 19<sup>th</sup> memorandum. Justice Mauro noted that the beginning of the proposed additional language for the rule appears to repeat the existing first sentence and that some courts allow the page number to be suppressed on the cover page. Ms. Lundstrom noted that the language in the trial court rules allows the page number to be omitted from the first page of a document. Justice Mauro asked for a motion to modify the proposed language to be consistent with the trial court rule. Mr. McGuire so moved, Mr. Green seconded and JATS approved the motion.

JATS then considered the proposed changes to rules 8.70 to 8.79 attached to the January 19<sup>th</sup> memorandum. Justice Mauro noted that the draft changes were merely a starting point for discussion. Ms. Sher said JATS should consider whether and where these appellate rules (1) should be consistent with the trial court rules, or (2) should be flexible to allow for changes in practice. On the issue of electronic notification as a means of service, Mr. O'Donnell noted that there is some use of electronic notification in the California trial courts, as well as in federal courts, and that he believed it might also have been used in some California appellate cases. Mr. McGuire noted that in some high-profile Supreme Court cases, an electronic dropbox is created to allow parties and the press to access publicly filed documents. Justice Mauro noted that if this method of service is being used, the references to electronic notification probably should remain unchanged.

JATS then discussed the possibility of changing the rule to reflect the current contract with a single electronic filing service provider. Mr. Willenburg and Justice Siggins expressed their

belief that the rules should allow flexibility in the future. Justice Mauro added that perhaps the rules should allow for a future in which the courts handle e-filing directly.

On the issue of revising rule 8.71(c), allowing parties to carry out electronic service directly, Mr. O'Donnell noted that the existing language of this provision, like the trial court rules, tracks the language of Code of Civil Procedure section 1010.6, which allows electronic service to be performed by a party to the case.

Justice Mauro ended the meeting by inviting JATS members to share their thoughts about changes to rules 8.70 to 8.79 as he and staff begin work on proposed changes to be presented at the next JATS meeting.

#### **A D J O U R N M E N T**

The meeting was adjourned at 11:10 AM.