



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

February 11, 2016  
3:00 PM – 4:30 PM

Teleconference

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

**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 3:00 PM, and roll call was taken. He noted there were no public comments received prior to this meeting.

#### Approval of Minutes

The subcommittee reviewed and approved the minutes of the January 22, 2016, Joint Appellate Technology Subcommittee (JATS) meeting.

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

JATS members considered the changes to rules and forms proposed for circulation in the Phase II Appellate Rules Modernization proposal, as discussed in Katherine's Sher's memorandum to JATS dated February 8, 2016, in the draft Invitation to Comment attached to that Memorandum, and in the proposed language for rule amendments and proposed new and revised forms attached to the memorandum. Ms. Sher suggested, with regard to the proposed new rule 8.12, regarding the format required for a computer-readable copy of a reporter's transcript, that the subcommittee consider placing the draft language in existing rule 8.144 (a), as 8.144 (a)(4), instead of creating a new rule. Ms. Sher further noted that the draft language had been revised to eliminate references to PDF format. Justice Mauro added that this change had been made based on the experience of the Third District Court of Appeal, whose local rules require PDF format, and where court reporters have asked for greater flexibility to allow them to use newer, improved programs instead. JATS approved the revised language and its placement in rule 8.144(a).

JATS approved the remaining proposed rule changes as shown in the draft rules in the meeting materials.

JATS then considered the proposed Rules Modernization changes to appellate forms. JATS approved the changes made throughout the forms to remove the language “optional” or “if available” when a form asks for an e-mail address or fax number. JATS approved the change to remove the integrated proof of service from several forms, the change to add an integrated proof of service to form APP-004, and the change to form MC-275, Petition for Writ of Habeas Corpus, adding instructions as to the number of copies to be filed when an attorney files the Petition electronically or when an unrepresented party files the petition.

JATS then considered specifically the proposed newly created forms for proof of electronic service. Ms. Sher asked JATS members to consider whether proof of electronic service should be on a separate form, or whether electronic service should be added to existing appellate proof of service forms and also whether information on electronic proof of service should be included in existing information forms or whether new informational forms should be created. Mr. Willenburg said that separate forms are less confusing to use. Mr. Lane asked why this would be so, and noted that currently several kinds of service are included on one proof of service form. Justice Mauro noted that when a litigant first enters a case, one form might be easier, depending on the length of that form, but that once someone is into a case, all documents are generally served and filed one way or the other, electronically or non-electronically, and it then is easier to have separate forms. Mr. O'Donnell noted that in the trial courts, when a combined proof of service form was created, it became long and confusing – and so now there are lots of separate forms, and one combined form which is not often used.

Ms. Lundstrom noted that however the proof of service forms are done, the time of service needed to be removed as to electronic service, as is proposed for the trial court proof of service forms.

Mr. Willenburg offered the following proposal: 1. Time of service should be removed from all electronic proof of service forms; 2. Separate appellate proof of service forms should be created; and 3. Existing information forms on proof of service should be revised to include information on proof of electronic service. JATS approved this proposal, and directed Ms. Sher to prepare revised proposed forms accordingly, with the subcommittee to review these forms by e-mail action.

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

JATS members then considered the appellate e-filing rules-practice consistency proposal, as discussed in Ms. Sher's memorandum dated February 8, 2016, in the draft Invitation to Comment attached to that Memorandum, and in the proposed language for rule amendments attached to the memorandum. Justice Mauro gave a brief summary of the purpose of the proposal: to get rid of outdated references, such as the language referring to e-filing pilot proposals; to put the rules into an order that makes more sense, and to revise the rules to reflect mandatory e-filing with potential opt-outs.

Mr. McGuire noted that the Supreme Court does not yet have e-filing, and does not have local rules. He asked how the Supreme Court would be able to opt out of the rule implementing mandatory e-filing. JATS members discussed the possibility of doing so by a miscellaneous court order to be posted on the court's website. Justice Siggins noted that the First District posts on its website miscellaneous orders for many of its e-filing requirements.

JATS members discussed the language of proposed rule 8.77(d), regarding court users who are unable to timely file documents because of technical problems with a court's e-filing system. Justice Mauro noted that the Third District's local rules allow the court to determine whether to accept a late filing in this situation. Mr. McGuire noted a related issue of what it means to require a filer to "demonstrate" that the filer attempted to file a document. After further discussion of possible approaches, including a discussion of appellate local rules that require a motion in this situation, JATS directed Ms. Sher to review appellate local rules and craft language requiring a motion to have a late filing accepted, with JATS to review the proposed language by e-mail action.

With regard to rule 8.78, on e-service, Justice Mauro then raised the question of whether non-parties who have been ordered to accept e-service should be included in references to e-service. Justice Siggins suggested soliciting comments on a provision that would state that for purposes of rule 8.78, the word party includes a non-party who has consented to or has been ordered to accept e-service or to e-serve documents, and taking out the references to non-parties elsewhere in the rule.

Ms. Lundstrom noted that there are changes proposed in those provisions of the trial court rules that parallel rule 8.78(f), regarding proof of electronic service, and that she would provide the language of those proposed changes to Ms. Sher for Ms. Sher to incorporate in the appellate rule proposal.

Justice Mauro then asked for discussion of whether to delete rule 8.79(a)(2)(B), which prohibits a court from ordering a party to electronically service documents if the party would be required to pay an electronic filing service provider (EFSP) fee and objects to doing so. Ms. Sher noted that this rule was adopted in recognition of the fact that the appellate courts cannot waive a fee that is charged by the EFSP, and so gave parties the opportunity to opt out when an EFSP fee was burdensome to the party. JATS members discussed the local rule of one appellate court that in its agreement with the EFSP, requires waiver of the EFSP fee for indigent parties. Justice Mauro then suggested that 8.79(a)(2)(B) be deleted, and that the Invitation to Comment ask for comments on this; Mr. Lane noted that the Invitation to Comment should also note that the rule will now apply only to e-service, not e-filing.

Ms. Sher then asked for clarification regarding the proposed deletion of rule 8.78(d), creating a presumption that when a party e-files documents, the address used for that e-filing is valid for e-service on that party. Justice Mauro noted that the provision could either be deleted entirely, or the language could be revised to clarify that when a notice has been filed by a party regarding the address to be used for e-service, the presumption does not apply. JATS agreed that the provision should be deleted entirely.

In order for the completed Invitation to Comment and revised proposed rules to be approved by JATS in time to be considered by the Appellate Advisory Committee at its February 29<sup>th</sup> meeting, JATS agreed that Ms. Sher's draft of the revisions to the forms included in the Rules Modernization proposal, and the rules of the Appellate E-filing Rules proposal, as discussed during this meeting, would be distributed to subcommittee members for consideration by e-mail action.

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

The meeting was adjourned at 4:30 PM.