JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

5Date
February 17, 2016

Action Requested
Please review for February 22 meeting

To
Information Technology Advisory Committee

Deadline
February 22, 2016

From
Tara Lundstrom, Attorney
Legal Services

Contact
Tara Lundstrom, 415-865-7650
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Subject
Proposals to implement AB 1519

Introduction

During the 2016 winter cycle, the Information Technology Advisory Committee (ITAC) and the Family and Juvenile Law Advisory Committee (FJLAC) circulated for public comment two proposals to implement new legislation—Assembly Bills 879 and 1519—that went into effect on January 1, 2016. The rules proposal to implement AB 1519 has been reviewed and recommended by FJLAC and by ITAC's Rules and Policy Subcommittee. It is described below, and the draft Judicial Council report with attachments is included in these materials.[1]

[1] The rules and form proposal to implement AB 879 has been reviewed by FJLAC and ITAC's Rules and Policy Subcommittee. FJLAC will revisit AB 879 during its meeting on Thursday, February 18. At that time, FJLAC will review input provided by the Rules and Policy Subcommittee. ITAC's Chair has agreed to delay posting and distributing the materials for the AB 879 proposal until after the FJLAC meeting. (See Cal. Rules of Court, rule 10.75(h) [providing an exception to the time period for posting meeting materials for extraordinary circumstances].)

Discussion

Assembly Bill 1519 amended Family Code section 17400(b)(3) to provide for two exceptions to the signature requirements on e-filed pleadings signed by local child support agencies. Instead of maintaining the original signature made under penalty of perjury on e-filed pleadings indefinitely, local child support agencies may (1) maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and (2) need retain the original signed pleadings only for the same statutory time period for which courts must retain court records under Government Code section 68152. The rules proposal would amend rule 2.257(a)(2)—the rule governing signatures made under penalty of perjury on e-filed documents—to recognize these exceptions for local child support agencies.

In response to the Invitation to Comment, six organizations provided comments; five agreed with the proposal and one agreed if modified. To address concerns raised by the Superior Court of Los Angeles, FJLAC recommended adding a sentence to the proposed amendment to rule 2.257(a)(2) to clarify that if the local child support agency maintains an electronic copy of the original signed pleading in the statewide automated child support system, it may destroy the paper original.

During its meeting on February 16, ITAC's Rules and Policy Subcommittee recommended the rules proposal to implement AB 1519, as revised by FJLAC.

Committee's Task

The committee is tasked with reviewing the draft proposal to implement 1519 and:

- Asking staff or group members for further information and analysis;
- Recommending to the Rules and Projects Committee that all or part of the proposal be presented to the Judicial Council during its April meeting; or
- Rejecting the proposal.

Attachments

1. Draft Judicial Council report for rules proposal implementing AB 1519 and attachments (proposed rule amendment and comment chart)

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 15, 2016

Title
Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (Implementation of AB 1519)

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.257

Recommended by
Family & Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
February 17, 2016

Contact
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Executive Summary

To implement Assembly Bill 1519, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend amending California Rules of Court, rule 2.257, which governs the use of signatures on electronically filed documents. Effective January 1, 2016, AB 1519 amends Family Code section 17400(b)(3) to provide that local child support agencies (1) are required to maintain original signed pleadings only for the time period stated in Government Code section 68152(a); and (2) may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system. AB 1519 requires the Judicial Council to develop implementing rules by July 1, 2016.

Recommendation

The Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective June 1, 2016, amend the California Rules of Court to:

1. Provide in rule 2.257(a)(2) that local child support agencies may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a).

The text of the amended rule is attached at page 5.

Previous Council Action

Judicial Council-sponsored legislation resulted in the enactment in 1999 of Code of Civil Procedure section 1010.6, which governs electronic filing and service in the trial courts and contains provisions regulating the use of signatures on electronically filed documents. Since its enactment, section 1010.6 has required that an attorney or person who electronically files a document signed under penalty of perjury (1) sign a printed form of the document prior to, or on the same day as, the date of filing; (2) maintain the printed document bearing the original signature; and (3) 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. (Code Civ. Proc., § 1010.6(b)(2)(B).)

The Judicial Council subsequently adopted rule 2.257 to implement Code of Civil Procedure section 1010.6(b)(2). Rule 2.257(a) provides that the following conditions apply to electronically filed documents signed under penalty of perjury:

(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.

Rationale for Recommendation

In enacting AB 1519 this year, the Legislature amended Family Code section 17400(b)(3) to provide as follows:

> Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.

In effect, AB 1519 carves out two exceptions to Code of Civil Procedure section 1010.6(b)(2)(B) for electronically filed pleadings that are signed by local child support agencies under penalty of perjury. First, whereas Code of Civil Procedure section 1010.6(b)(2)(B) requires that the printed document bearing the original signature be maintained in its paper form, Family Code section 17400(b)(3) authorizes local child support agencies to maintain original signed pleadings in electronic form through the statewide automated child support system.

Second, whereas Code of Civil Procedure section 1010.6(b)(2)(B) provides that the signed, printed form must be maintained and made available for review upon request without specifying when, if ever, the printed document may be destroyed, Family Code section 17400(b)(3) provides that local child support agencies need to maintain the original signed pleadings only for the statutory retention periods for trial court records stated in Government Code section 68152(a). The retention period, which begins upon final disposition of the case, is 30 years for court records in family cases; for adoption and parentage cases, the records are maintained permanently. (Gov. Code, § 68152(a)(7)–(9).)

To implement AB 1519, this proposal amends subdivision (a)(2) of rule 2.257 to recognize the two limited exceptions for child support agencies stated in Family Code section 17400(b)(3). Rule 2.257(a)(2) currently provides that by electronically filing a document, the electronic filer certifies that he or she has complied with subdivision (a)(1), which requires that a printed form of the document be signed before filing, and that the original, signed document is available for inspection and copying at the request of the court or any other party.

This proposal adds the following language to subdivision (a)(2): “Local child support agencies may maintain original signed pleadings by way of an electronic copy in the Statewide Automated Child Support System and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the

original signed pleading in the statewide automated child support system, it may destroy the paper original."

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment from December 11, 2015 to January 22, 2016, as part of the winter 2016 invitation to comment cycle. It was distributed to the standard mailing list for family and juvenile law proposals, which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Six organizations provided comment; five agreed with the proposal and one agreed if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 6–9.

The Superior Court of Los Angeles County recommended adding language to the rule amendment to clarify that local child support agencies need not retain the original signed pleading in paper form if they maintain an electronic copy in the statewide automated child support system. The advisory committees agree with the recommendation and modified the rule amendment to make this clear.

Because the rule amendment is mandated by legislation, the advisory committees did not consider any alternatives.

Implementation Requirements, Costs, and Operational Impacts

The rule amendment is directed toward local child support agencies and governs how and for how long they maintain original signed pleadings. It is not expected that the amendment will result in any costs or operational impacts on the courts.

Attachments and Links

1. Cal. Rules of Court, rule 2.257, at page 5
2. Chart of comments, at pages 6–9
3. AB 1519 (Stats. 2015, ch. 416), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1519*

Rule 2.257 of the California Rules of Court would be amended, effective July 1, 2016, to read:

Rule 2.257. Requirements for signatures on documents

(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. Local child support agencies may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original signed pleading in the statewide automated child support system, it may destroy the paper original.

(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) * * *

(c) * * *

(d) * * *

(e) * * *

W16-13

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (amend Cal. Rules of Court, rule 2.257)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	Los Angeles County Bar Association (no name provided)	A	"**PROPOSAL:** AB 1519 proposes to amend subdivision (a) (2.257) to recognize two limited exceptions for child support agencies under Family Code § 17400(b)(3). Currently Rule 2.257(a)(2) requires that the electronic filer keep a printed form of the document signed before filing and that the original signed document is available for inspection and copying at the request of the court or any other party. The rule proposal would add a sentence to subdivision (a)(2) to recognize that local child support agencies may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for a period of time stated in Government Code §68152(a) which is 30 years. **REQUEST FOR COMMENTS:** The Advisory Committee is interested in receiving comments on whether this proposal addresses the stated purpose of AB 1519. LACBA Response: Yes"	No response required.
2.	Orange County Bar Association by Todd G. Friendland, President	A	"Does the proposal appropriately address the stated purpose? YES."	No response required.
3.	State Bar of California Family Law Section by Fariba R. Soroosh and Saul Bercovitch	A	"The Executive Committee of the Family Law Section supports this proposal."	No response required.

4.	Superior Court of Los Angeles County (no name provided)	AM	"Assembly Bill 1519 <u>The proposal appropriately addresses the stated purpose:</u> • Yes. Currently there is in place methodology for handling electronic filing of the Summons and Complaint by the local child support agency (LCSA) in accord with FC Sec 174000(3). The current practice is to receive the completed Summons and Complaint from the State in an electronic format. The documents are then printed and that documentation becomes the original. The documents are maintained for the statutory period provided. <u>Language Clarification of proposal:</u> • We agree with the proposed changes to implement AB 1519 with the following modification. By adding the Council's proposed language, e.g., a sentence to subdivision (a)(2), it clarifies the two limited exceptions for child support agencies. However, it does not promote consistency between the Code of Civil Procedures and Family Code. CCP section 1010.6(b)(2)(B) requires the documents bearing the original signature to be maintained in the paper form, the language added to the rule should explicitly state the electronic filing	No response required. The committees agree with the court's recommendation and have added language to the rule to clarify that local child support agencies are not required to maintain the original signed pleadings in paper form if they maintain an electronic copy in the statewide automated child support system.

			exception. The following additional language is proposed to eliminate any ambiguities, possible confusion and to promote consistency between CCP and the Family Code. o "Local child support agencies may maintain original signed pleading by way of an electronic copy in the Statewide Automated Child Support System, ***in lieu of the paper original***, and must maintain them only for the period of time stated in Government Code Section 68152(a)." o By adding the words "in lieu of a paper original," ambiguities are eliminated and consistency is promoted. <u>Forms:</u> • There are no new forms. <u>Costs/Operational Impact:</u> • No new costs or operational changes are associated as the proposed amendment to the rule is the current method of maintaining and receiving electronic filings by the LASC."	
5.	Superior Court of Riverside County (no name provided)	A	No specific comment.	No response required.

6.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	No specific comment.	No response required.