



# JUDICIAL COUNCIL OF CALIFORNIA

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## RULES AND POLICY SUBCOMMITTEE AND UNLIMITED CASE AND COMPLEX LITIGATION SUBCOMMITTEE

### MINUTES OF OPEN MEETING

May 23, 2017  
12:10 PM – 1:30 PM  
Teleconference

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**Advisory Body**            RPS:  
**Members Present:**    Hon. Peter J. Siggins; Hon. Jackson Lucky; Mr. Darrel Parker; Mr. Don Willenburg

UCCLS:  
   Hon. Ann I. Jones; Hon. David Chapman; Mr. Keith Chidlaw; Mr. William Chisum; Mr. Robert Olson; Mr. Saul Bercovitch; Ms. Brenda McCormick

**Advisory Body**            RPS:  
**Members Absent:**     Hon. Julie Culver; Hon. Louis Mauro

UCCLS:  
   Hon. Debra Katz Weintraub; Hon. Harold Kahn; Hon. Victoria Chaney; Hon. Michael Sachs; Hon. Richard K. Sueyoshi; Ms. Twila White

**Others Present:**        Ms. Andrea Jaramillo; Mr. Patrick O'Donnell; Ms. Fati Farmanfarmaian, Ms. Nicole Rosa; Ms. Susan McMullen; Ms. Jane Whang

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### OPEN MEETING

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#### Call to Order and Roll Call

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

#### Approval of Minutes

Subcommittees members reviewed and approved the minutes of the January 19, 2017, joint ITAC Rules and Policy Subcommittee and CSCAC Unlimited Case and Complex Litigation Subcommittee Meeting.

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### DISCUSSION AND ACTION ITEMS (ITEMS 1 – 4)

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#### Item 1

#### **Modernization Project Rules Proposal: Proposed Amendments to Title 2, Chapter 3, Division 2 of the California Rules of Court (Action Required)**

Review public comments received and decide whether to recommend proposed amendments to title 2, chapter 3, division 2 of the California Rules of Court. The proposed amendments reduce

redundancies and improve consistency between California Rules of Court governing electronic service and electronic filing in the trial courts, and provisions of the Code of Civil Procedure that provide statutory authority for permissive and mandatory electronic service and electronic filing in the courts. The proposal also includes amendments to make limited organizational changes to the rules to improve their logical ordering.

**Presenters:** Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Mr. Patrick O'Donnell, Managing Attorney, Legal Services  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Update:** Justice Siggins noted that there have been changes to the Assembly Bill that may affect the rules of court. The Assembly amendments would require express consent to electronic service and would not allow the act of electronic filing to be deemed consent. This would require a change to the rules of court, which allows the act of electronic filing to serve as consent to electronic service. The subcommittees discussed the substantive comments on the proposal, but held the proposal pending the outcome of the legislation.

Ms. Jaramillo reviewed the technical comments, which mostly clarified or agreed with proposed amendments. She then reviewed the substantive topics. The subcommittees had sought specific comments on whether and how certain definitions should be retained rule 2.250 (b)(1). There were 3 comments in favor of cross-referencing Code of Civil Procedure section 1010.6 definitions in the rule and one suggested to retaining the definitions in their entirety in the rules so that self-represented litigants don't have to cross reference the Code of Civil Procedure. No changes to the definitions were planned in this proposal, but comments were solicited for future reference. Members voiced it might be more helpful to retain the reference so people don't have to look in several places.

## **Item 2**

### **405.23, 594, 659, 660, and 663a of the Code of Civil Procedure (Action Required)**

Review public comments and decide whether to recommend proposed amendments to the Civil Code and Code of Civil Procedure. The purpose of the legislative amendments is to provide clarity about and foster the use of electronic service. The proposed amendments authorize electronic service for certain demands and notices. The proposal also clarifies that the broader term "service" is applicable rather than "mailing" in certain code sections.

**Presenters:** Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Mr. Patrick O'Donnell, Managing Attorney, Legal Services  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Action:** Ms. Jaramillo reviewed the comments regarding Civil Code section 1719 which would allow a court to use electronic service when they have received a bad check, if a litigant is already accepting electronic service in the case to which the check pertains. One substantive comment was that when a litigant is represented by counsel, the litigant's email should be used and not the law firm's email if the law firm's email was the electronic service address. The members discussed this,

but determined that if the litigant was a client of a law firm, then the firm's attorneys would have a professional ethical duty to inform the client if the firm received a bad check email on the client's behalf. One commenter noted that the Assembly Bill containing Code of Civil Procedure 1013b was pending in the legislature and that some of the proposal relied on it. However, staff explained to the subcommittees that the passage of the Assembly Bill would be resolved prior to the November Judicial Council meeting and, if necessary, parts of the proposal that relied on Code of Civil Procedure section 1013b could be pulled.

Regarding the proposed amendments to Code of Civil Procedure sections 405.22 and 405.23, the Orange County Bar commented that electronic service will not be a benefit and unlikely to be used. Staff discussed with the subcommittee that while this would be a very narrow subset of litigants and may not apply to all, it would still make sense to allow it for litigants that could use it. Assembly Bill 976 may impact this part of the proposal, however, and staff will update the subcommittees on the bill's progress.

The proposed changes to Code of Civil procedure section 594 would allow for electronic service of notice of a trial or hearing. Los Angeles County Superior Court commented that this should clarify whether this would change the timing of service. The proposal only allows for electronic service and does not change any other aspect. There was another similar comment about changing different timeframes, but the proposal does not alter applicable time frames. No further substantive comments. All comments can be found in the meeting materials.

**Motion to Pass the Proposed Legislative Changes onto the Respective Advisory Committees.**

**Approved.**

**Item 3**

**Rules and Policy Subcommittee: Privacy Policy Project Update (Discussion Item)**

Present an update on the activities of the *Privacy Resource Guide* development.

**Presenters:** Hon. Julie Culver, Judge of the Superior Court of California, County of Monterey  
Mr. Patrick O'Donnell, Managing Attorney, Legal Services  
Ms. Jane Whang, Attorney, Legal Services

**Discussion:** Mr. O'Donnell invited members to review and contribute any items they think might be of interest. Justice Siggins will send an email asking ITAC to review and any areas they might be of assistance or have ideas to share.

**Item 4**

**Rules and Policy Subcommittee: Rules for Remote Access to Records for Justice Partners Project Update (Discussion Item)**

Present an update on the development of remote access rules for Justice Partners.

Presenters: Mr. Patrick O'Donnell, Managing Attorney, Legal Services  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Discussion:** Mr. O'Donnell reported that there are several gaps in the rules that say they don't apply to parties or justice partners. Courts are very involved in working with parties and justice partners without any guidelines. It would be helpful to have guidelines with input from a variety of advisory committees. He proposed to amend the annual agendas in several advisory committees so they can assist ITAC, as the lead, in formulating and developing rules; and to get authorization to form a joint subcommittee to undertake this task. After speaking to the chairs of various committees, they all agree this is a good project and would like to participate. There is a total of nine advisory committees, including ITAC. Each would have at least one member assigned to participant. Ms. Jaramillo will draft initial discussion topics and once all members are assigned there will be a telephonic meeting.

Ms. Jaramillo has been reviewing the rules and the subject matter experts are editing drafts to reflect the suggested changes. She feels there may be some interest generated and she expects public comments.

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

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There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the advisory body on enter date.

#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
8.	<p><b>Modernize Rules of Court for the Trial Courts</b></p> <p><b>Modernize Trial Court Rules to Support E-Business</b></p> <p><i>Major Tasks:</i></p> <p>(a) In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for more comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).</p> <p>Note: Projects include proposals to amend rules to conform to Judicial Council-sponsored legislation to be introduced in 2017. For example if the legislation is enacted, the rules on e-filing and e-service (Cal. Rules of Court, rule 2.250-2.275) to be amended by January 1, 2018 to replace the current “close of business” provisions in the rules. Additional codes sections that would benefit from review and amendments to modernizing them include Code Civ. Proc. § 405.23, 594, 680.010-724.260; Civ. Code § 1719; Gov. Code § 915.2; and Labor Code § 3082.</p>	2	<p><b>Judicial Council Direction:</b></p> <p>Tactical Plan for Technology Goal 4: Identify New Policy, Rule, and Legislation Change</p> <p><b>Origin of Project:</b></p> <p>Tactical Plan; standing item on annual agenda.</p> <p><b>Resources:</b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee</p> <p><i>Judicial Council Staffing:</i> Legal Services, Information Technology, Office of Governmental Affairs, Center for Families, Children and the Courts (CFCC), Criminal Justice Services</p> <p><i>Collaborations:</i> ITAC Joint Appellate Technology Subcommittee; Appellate Advisory Committee, Civil &amp; Small Claims, Criminal Law, Traffic, Family and Juvenile Law, and Probate and Mental Health advisory committees; TCPJAC, CEAC and their Joint Technology, Rules, and Legislative Subcommittees</p> <p><b>Key Objective Supported:</b> Goal 4</p>	Ongoing	Rule and/or Legislative Proposal(s), if appropriate

#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
9.	<p><b>Standards, Rules and/or Legislation for E-Signatures</b></p> <p><b>Develop Legislation, Rules, and Standards for Electronic Signatures on Documents Filed by Parties and Attorneys</b></p> <p><i>Major Tasks:</i></p> <p>(a) Develop rule proposal to amend Code of Civil Procedure section 1010.6(b)(2) and Cal. Rules of Court, rule 2.257, to authorize electronic signatures on documents filed by the parties and attorneys.</p> <p>(b) CEAC Records Management Subcommittee to develop standards governing electronic signatures for documents filed into the court to be included in the "Trial Court Records Manual" with input from the Court Information Technology Managers Forum (CIOs). Rules &amp; Policy Subcommittee to review.</p>	2	<p><b><i>Judicial Council Direction:</i></b></p> <p>Tactical Plan for Technology Goal 4: Identify New Policy, Rule, and Legislation Change</p> <p><b><i>Origin of Project:</i></b></p> <p>Tactical Plan; next phase and expansion of 2014, 2015, and 2016 Annual Agenda items. Recommendation by Department of Child Support Services and attorney, Tim Perry.</p> <p><b><i>Resources:</i></b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee</p> <p><i>Judicial Council Staffing:</i> Legal Services, Information Technology</p> <p><i>Collaborations:</i> ITAC Joint Appellate Technology Subcommittee; CEAC Subcommittee on Records Management, CEAC, TCPJAC, and their Joint Rules and Legislative Subcommittees; Civil &amp; Small Claims Advisory Committee, and the Court Information Technology Managers Forum (CITMF)</p> <p><b><i>Key Objective Supported:</i></b> Goal 4</p>	December 2017, effective January 2018 (2 years)	<p>Rule and/or Legislative Proposal, if appropriate</p> <p>Recommendation of Standards for Electronic Signatures (Update to the "Trial Court Records Manual")</p>

#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
10.	<p><b>Rules for Remote Access to Records for Justice Partners</b></p> <p><b>Develop Rule Proposal to Facilitate Remote Access to Trial Court Records by Local Justice Partners</b></p> <p><i>Major Tasks:</i></p> <p>(a) In collaboration with the Criminal Law Advisory Committee, amend trial court rules to facilitate remote access to trial court records by state and local justice partners, parties, and their attorneys.</p>	1	<p><b><i>Judicial Council Direction:</i></b></p> <p>Tactical Plan for Technology Goal 4: Identify New Policy, Rule, and Legislation Change</p> <p><b><i>Origin of Project:</i></b></p> <p>Carryover from 2016 Annual Agenda. Rules and Policy Subcommittee discussion/recommendation. Currently, the trial court rules recognize remote electronic access of trial court records in criminal cases and certain civil cases by parties, their attorneys, and persons or entities authorized by statute or rule. This rules proposal would facilitate remote access to trial court records by local justice partners.</p> <p><b><i>Resources:</i></b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee</p> <p><i>Judicial Council Staffing:</i> Legal Services, Information Technology, Criminal Justice Services, Center for Families, Children &amp; the Courts</p> <p><i>Collaborations:</i> Criminal Law Advisory Committee, CEAC, TCPJAC, and their Joint Technology Subcommittee; Family &amp; Juvenile Law and Traffic Law Advisory Committee</p> <p><b><i>Key Objective Supported:</i></b> Goal 4</p>	December 2017, effective January 2018 (2 years)	Rule Proposal

#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
11.	<p><b>Standards for Electronic Court Records as Data</b></p> <p><b>Develop Standards for Electronic Court Records Maintained as Data</b></p> <p><i>Major Tasks:</i></p> <p>(a) CEAC Records Management Subcommittee -- in collaboration with the Data Exchange Workstream governance body (TBD) -- to develop standards and proposal to allow trial courts to maintain electronic court records as data in their case management systems to be included in the "Trial Court Records Manual" with input from the Court Information Technology Managers Forum (CITMF). Rules &amp; Policy Subcommittee to review.</p> <p>(b) Determine what statutory and rule changes may be required to authorize and implement the maintenance of records in the form of data; develop proposals to satisfy these changes.</p>	1	<p><b><i>Judicial Council Direction:</i></b></p> <p>Tactical Plan for Technology Goal 4: Identify New Policy, Rule, and Legislation Change</p> <p><b><i>Origin of Project:</i></b></p> <p>Carryover from 2016 Annual Agenda. Court Executives Advisory Committee (CEAC); Government Code section 68150 provides that court records may be maintained in electronic form so long as they satisfy standards developed by the Judicial Council. These standards are contained in the Trial Court Records Manual. However, the current version of the manual addresses maintaining electronic court records only as documents, not data.</p> <p><b><i>Resources:</i></b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee</p> <p><i>Judicial Council Staffing:</i> Information Technology, Legal Services</p> <p><i>Collaborations:</i> Data Exchange governance body (TBD); CEAC, TCPJAC, and their Joint Technology Subcommittee</p> <p><b><i>Key Objective Supported:</i></b> Goal 4</p>	December 2018 (2 years)	<p>Recommend Statutes and Rules to be Developed</p> <p>Adoption of Standards for Maintaining Electronic Court Records as Data (Update to the "Trial Court Records Manual")</p>



#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
12.	<p><b>Rules for E-Filing</b></p> <p><b>Evaluate Current E-Filing Laws and Rules, and Recommend Appropriate Changes</b></p> <p><i>Major Tasks:</i></p> <p>(a) Evaluate current e-filing laws, rules, and amendments. Projects may include reviewing statutes and rules governing Electronic Filing Service Providers (EFSP) and filing deadlines.</p> <p>(b) Develop rule proposals to implement the legislative proposal developed in 2016, which amends e-filing laws and rules (Code of Civil Procedure section 1010.6 and California Rules of Court, rule 2.250 et seq.).</p> <p>Note: This effort will be informed by the E-Filing and SRL E-Services Workstreams, and the CMS Data Exchange governance body (TBD) for any additional rules development needed.</p>	2	<p><b>Judicial Council Direction:</b></p> <p>Tactical Plan for Technology Goal 4: Identify New Policy, Rule, and Legislation Change</p> <p><b>Origin of Project:</b></p> <p>Tactical Plan; carry over project from 2015 and 2016 Annual Agenda.</p> <p><b>Resources:</b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee</p> <p><i>Judicial Council Staffing:</i> Legal Services, Information Technology</p> <p><i>Collaborations:</i> ITAC E-Filing and SRL Workstreams; DX governance body (TBD); TCPJAC/CEAC Joint Technology, Rules and Legislative Subcommittees; also Criminal Law, Civil and Small Claims, Family and Juvenile Law, and Appellate Advisory Committees</p> <p><b>Key Objective Supported:</b> Goal 4</p>	December 2017, effective January 2018 (2 years)	Legislative and Rule Proposal(s)

#	Project	Priority	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
13.	<p><b>Privacy Policy</b></p> <p><b>Develop Branch and Model Court Privacy Policies on Electronic Court Records and Access in Trial and Appellate Courts</b></p> <p><i>Major Tasks:</i></p> <p>(a) Continue development of a comprehensive statewide privacy policy addressing electronic access to court records and data to align with both state and federal requirements.</p> <p>(b) Continue development of a model (local) court privacy policy, outlining the key contents and provisions to address within a local court's specific policy.</p>	2	<p><b><i>Judicial Council Direction:</i></b></p> <p>Tactical Plan for Technology Goal 4: Promote Rule and Legislative Changes</p> <p><b><i>Origin of Project:</i></b></p> <p>Tactical Plan; carryover from Annual Agenda 2014, 2015 and 2016. Code Civ. Proc., § 1010.6 (enacted in 1999) required the Judicial Council to adopt uniform rules on access to public records; subsequently the rules have been amended in response to changes in the law and technology, requests from the courts, and suggestions from members of CTAC, the bar, and the public.</p> <p><b><i>Resources:</i></b></p> <p><i>ITAC:</i> Rules &amp; Policy Subcommittee, Joint Appellate Technology Subcommittee</p> <p><i>Judicial Council Staffing:</i> Legal Services, Information Technology</p> <p><i>Collaborations:</i> Identity Management Working Group; Appellate Advisory Committee, CEAC, TCPJAC, and their Joint Technology Subcommittee; Criminal Law Advisory Committee, and the Department of Justice</p> <p><b><i>Key Objective Supported:</i></b> Goal 4</p>	December 2018 (2 years)	<p>Recommendation of Branch Privacy Policy</p> <p>Recommendation of Model Local Court Privacy Policy</p>

# Information Technology Advisory Committee Q3 2017 Status Report

October 2017

This report was provided at the **October 27, 2017** ITAC meeting. Status updates are submitted by workstream sponsors and subcommittee chairs.



## 8 – 12. Rules & Policy Subcommittee Projects

Summary <i>Various Projects, refer to following slides</i>	
<b>ITAC Resource</b>	Rules & Policy Subcommittee
<b>Sponsor(s) or Chair(s)</b>	Hon. Peter J. Siggins <span style="float: right;">PM: N/A</span>
<b>JCC Resources</b>	Legal Services (Patrick O'Donnell, Andrea Jaramillo, Jane Whang, Camilla Kieliger), JCIT (Fati Farmanfarmaian)
<b>Project Authorized</b>	<input checked="" type="checkbox"/> Yes. Approved in 2017 Annual Agenda (1/9/2017 ).
<b>Membership Est'd</b>	<input checked="" type="checkbox"/> Rules & Policy Subcommittee
<b>Active</b>	<input checked="" type="checkbox"/> Yes, meeting ad-hoc.
<b>Expected Outcomes</b>	1. Rule and/or Legislative Proposal(s), if appropriate
<b>Expected Completion</b>	Ongoing



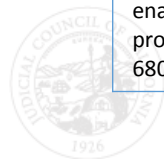
## 8. Modernize Rules of Court for Trial Courts




**Highlight:** Subcommittees reviewed rules proposal comments and staff analysis and recommendations, and voted to advance the rules proposal to ITAC and CSCAC.

Major Tasks	Status	Description
<p>(a) In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for more comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).</p>	<p>In Progress</p>	<ul style="list-style-type: none"> <li>• ITAC’s Rules and Policy Subcommittee and CSCAC’s Unlimited Case and Complex Litigation Subcommittee, voted to recommend that the Judicial Council adopt the rule proposal (effective January 2018):                             <ul style="list-style-type: none"> <li>• Rules 2.250-2.259: The rules proposal makes amendments to trial court electronic filing and service rules in the California Rules of Court. The rule amendments would reduce redundancies and improve consistency between electronic filing and service provisions of California Rules of Court and the Code of Civil Procedure. The proposal also includes amendments to make limited organizational changes to the rules to improve their logical ordering.</li> </ul> </li> <li>• The legislative proposal (effective January 2019) will be presented at the Judicial Council’s November meeting for their consideration to sponsor:                             <ul style="list-style-type: none"> <li>• Legislative Proposal for Electronic Service: The proposal amends the Civil Code and Code of Civil Procedure. The purpose of the amendments is to provide clarity about and foster the use of electronic service. The proposed amendments authorize electronic service for certain demands and notices consistent with Code of Civil Procedure sections 1010.6 and 1013b (section 1013b will be a new provision of the Code of Civil Procedure and it codifies proof of electronic service provisions currently found in the Rules of Court). The proposal also clarifies that the broader term “service” is applicable rather than “mailing” in certain code sections consistent with Judicial Council-sponsored legislation related to those sections.</li> </ul> </li> </ul>

Note: Projects include rule proposals to amend rules to conform to Judicial Council-sponsored legislation to be introduced in 2017. For example, if the legislation is enacted, the rules on e-filing and e-service (Cal. Rules of Court, rule 2.250-2.275) to be amended by January 1, 2018 to replace the current “close of business” provisions in the rules. Additional codes sections that would benefit from review and amendments to modernizing them include Code Civ. Proc. § 405.23, 594, 680.010-724.260; Civ. Code § 1719; Gov. Code § 915.2; and Labor Code § 3082.



## 9. Standards, Rules and/or Legislation for E-Signatures

 **Highlight:** AB 976 has been signed by the Governor; and new members of a CEAC subcommittee have been appointed to work on developing standards.

Major Tasks	Status	Description
(a) Develop rule proposal to amend Code of Civil Procedure section 1010.6(b)(2) and Cal. Rules of Court, rule 2.257, to authorize electronic signatures on documents filed by the parties and attorneys.	Complete	The legislature has passed amendments to section 1010.6. The subcommittee recommended to RUPRO and the Council a set of rules to implement the new law. But the amendments as enacted require the subcommittee some minor revisions to the rules by January 1, 2019. The subcommittee anticipates recommending some further amendments to the rules next year.
(b) CEAC Records Management Subcommittee to develop standards governing electronic signatures for documents filed into the court to be included in the "Trial Court Records Manual" with input from the Court Information Technology Managers Forum (CIOs). Rules & Policy Subcommittee to review.	In Progress-Starting	New members have been appointed to the CEAC Records Management Subcommittee that will be developing standards for electronic signatures on documents filed into the courts.

# 10. Rules for Remote Access to Records for Justice Partners



**Highlight:** The Joint Ad Hoc Subcommittee had it's first meeting to review draft rules developed by staff.

Major Tasks	Status	Description
<p>(a) In collaboration with the Criminal Law Advisory Committee, amend trial court rules to facilitate remote access to trial court records by state and local justice partners, parties, and their attorneys.</p>	<p>In Progress</p>	<p>The membership of the <b>Joint Ad Hoc Subcommittee on Remote Access</b> has been finalized and the ad hoc subcommittee met in September to review an initial draft of rules. Staff is in process of providing the group a set of revisions for further discussion.</p> <p>The goal of this project is to develop a set of rules to be adopted by the Judicial Council by January 1, 2019.</p>

## 11. Standards for Electronic Court Records as Data



Major Tasks	Status	Description
(a) CEAC Records Management Subcommittee -- in collaboration with the Data Exchange Workstream governance body (TBD) -- to develop standards and proposal to allow trial courts to maintain electronic court records as data in their case management systems to be included in the <i>Trial Court Records Manual</i> with input from the Court Information Technology Managers Forum (CITMF). Rules & Policy Subcommittee to review.	In Progress-Starting	New members have been appointed to serve on the CEAC Records Management Subcommittee. During the coming year, the subcommittee will review the section in the <i>Trial Court Records Manual</i> on creating and maintaining records in electronic format; and will develop new provisions relating to creating and maintaining records in the form of data.
(b) Determine what statutory and rule changes may be required to authorize and implement the maintenance of records in the form of data; develop proposals to satisfy these changes.	In Progress-Starting	Same as above.



# Status Update

## 12. Rules for E-Filing



Major Tasks	Status	Description
(a) Evaluate current e-filing laws, rules, and amendments. Projects may include reviewing statutes and rules governing Electronic Filing Service Providers (EFSP) and filing deadlines.	Completed	
(b) Develop rule proposals to implement the legislative proposal developed in 2016, which amends e-filing laws and rules (Code of Civil Procedure section 1010.6 and California Rules of Court, rule 2.250 et seq.).	In Progress	<a href="#">Refer to Project #8.</a>

Note: This effort will be informed by the E-Filing and SRL E-Services Workstreams, and the CMS Data Exchange governance body (TBD) for any additional rules development needed.

# Status Update

## 13. Privacy Policy (Privacy Resource Guide)

*Co-sponsored by the Rules & Policy and Joint Appellate Technology Subcommittees*



Major Tasks	Status	Description
(a) Continue development of a comprehensive statewide privacy policy addressing electronic access to court records and data to align with both state and federal requirements.	In Progress	During April-June, Judge Julie R. Culver and staff have been preparing a draft Privacy Resource Guide that will assist the branch in addressing privacy issues; this preliminary draft will be presented to the committee.
(b) Continue development of a model (local) court privacy policy, outlining the key contents and provisions to address within a local court's specific policy.	In Progress	The Privacy Resource Guide will include a section on best privacy practices for local courts and model templates for them to use; this section has been outlined but has not yet been drafted.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

Date	Action Requested
November 7, 2017	Please Review
To	Deadline
Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	November 15, 2017
From	Contact
Andrea L. Jaramillo Attorney Patrick O'Donnell Principal Managing Attorney Judicial Council Legal Services	Andrea L. Jaramillo Legal Services (916) 263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Potential Topics for 2018 Rules, Forms, and Legislative Proposals Based on Statutory Requirements and Public Suggestions	

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The Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a multiyear effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. In the past year, there have been legislative changes that necessitate amendments to the electronic filing and electronic service rules as well as development of a new form. In addition, there have been several public suggestions received that the subcommittee may address in its discretion.

The list below identifies potential topics for rules, forms, and legislative proposals for the 2018 proposals cycle based on legislative requirements and public suggestions. It also includes staff comments with additional feedback about the topics.

## 1. Amend Rule 2.251(b) Governing Consent to Accept Electronic Service

### **Amendment Required by Statute.**

Under rule 2.251(b)(1), except for self-represented parties, the act of electronically filing a document serves as consent to accept electronic service. Specifically, a person may consent to electronic service by serving notice to that effect, or by:

Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court. . . This subparagraph (B) does not apply to self-represented parties persons; they must affirmatively consent to electronic service. . .<sup>1</sup>

By statute, for all case filed on or after January 1, 2019, the act of electronic filing will not serve as consent for electronic service. (Stats. 2017, ch. 319, § 2), Rather, express consent will be required. (Stats. 2017, ch. 319, § 2). Specifically, under amendments to Code of Civil Procedure section 1010.6(a)(2)(A)(ii), express consent may be accomplished either by “serving a notice on all the parties and filing the notice with the court,” or “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic address with that consent for the purpose of receiving electronic service.” (Stats. 2017, ch. 319, § 2).

A copy of section 2 of chapter 319 of the statutes of 2017 showing the amendments to section Code of Civil Procedure section 1010.6(a)-(g) is attached.

### **Public Suggestions**

There were two public suggestions related to rule 2.251(b).

**Delete the first sentence—“Electronic service may be established by consent”—from rule 2.251(b)(1).** This was recommended by a publisher during comment period for ITAC’s rules proposal this year because the commenter found “established” unclear and also unnecessary. Members of ITAC favorably discussed the comment when reviewing the comments during its October 10, 2017 meeting, but did not modify the language of the proposal at the time as the comment was beyond the scope of the proposal.

*Staff comments.* Because rule 2.251(b)(1) must be amended during the upcoming rules cycle anyway, this edit could be included as part of the amendments.

<sup>1</sup> This is the current language of the rules. The rules proposal that circulated this year added “other person” in addition the parties. The Judicial Council will vote on the proposed language at its November meeting.

**Authorize service on a represented party through the party's attorney's e-mail address registered through the State Bar when the represented party fails to provide an electronic service address with their filings under Rule 2.251(b)(1)(B).** This was recommended by a member of the public through an email, which stated, “there is no actual disincentive for attorneys who wish to artificially extend deadlines and increase costs of litigation despite enjoying the convenience of e-filing to simply refuse to include their electronic service addresses in their filings. This can create confusion and lead to unnecessary disputes over service of documents.” The commenter recommended adding language to rule 2.251(b)(1)(B) to effectuate the suggestion.

*Staff comments.* As discussed above, rule 2.251(b)(1) must be amended to conform to statute, which requires an electronic service address to be provided concurrent with a manifestation of express consent. This should resolve the issue the commenter has raised without needing to create a rule for a backup default electronic service address because without providing an electronic service address, a party does not consent to electronic service.

## 2. Create a Form for Withdrawal of Consent for Electronic Service

### **Form Required by Statute**

Statute requires the Judicial Council to create a form for the withdrawal of consent to accept electronic service by January 1, 2019. (Stats. 2017, ch. 319, § 2).

## 3. Create a Rule with a Procedure for Electronic Signatures on Electronically Filed Documents where a Signature Must Be Made Under Penalty of Perjury

### **Rule Required by Statute**

By statute, when a document to be filed requires a signature made under penalty of perjury, the document is considered signed by the person if, in relevant part, “The person has signed the document using a computer or other technology pursuant to the procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.” (Stats. 2017, ch. 319, § 2, emphasis added.)

### **Staff Comments**

This year's rules proposal includes the following language concerning signatures made under penalty of perjury on electronically filed documents was added to rule 2.257(a) (underlined words indicate new language):

When a document to be filed electronically provides for a signature under penalty of perjury, of any person, the document is deemed to have been signed by that

person if filed electronically provided that either of the following conditions is satisfied:

(1) The declarant has signed the document using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council; or

(2) [Option for retaining a paper original of a signed document.]

The advisory committee comment on the rule advises that the standards and guidelines will be in the *Trial Court Records Manual*. It is not clear what more “procedure” is required in the rules or what level of detail they should contain. It was anticipated that technical details would be articulated in the manual. Accordingly, staff recommend any further procedures articulated in the rules remain high level.

In addition, the subcommittee may consider whether any detailed technical procedures, guidelines, or standards should be located somewhere else other than the *Trial Court Records Manual* and updated the advisory committee comment accordingly. A member of the Court Executives Advisory Committee, who is also a member of the Judicial Council Technology Committee, questioned whether that manual is the right place for the standards and guidelines because the manual is designed for internal court use by the courts rather than third party use.

4. Create Rules to Implement Code Of Civil Procedure Section 1010.6(h), which Requires Compliance with Accessibility Laws and Standards to Ensure Persons with Disabilities Can Access Electronic Filing and Electronic Service

#### **Rule Required by Statute**

Under Code of Civil Procedure section 1010.6(h)(1), “The Judicial Council shall adopt uniform rules to implement this subdivision as soon as practicable, but no later than June 30, 2019.” Section 1010.6(h) requires electronic filing service providers “or any other vendor or contractor that provides an electronic filing and service system to a trial court” to comply with federal disability access laws and certain accessibility guidelines by June 30, 2019. (Code Civ. Proc., § 1010.6(h)(2)-(3).) It also requires trial courts that contract with “with an entity for the provision of a system for electronic filing and service” to include certain contract terms, requires trial courts to comply with the same requirements as EFSPs if offering direct electronic filing and service with the court, and requires the Judicial Council to make reports to the legislature. (Code Civ. Proc., § 1010.6(h)(4)-(6).) A copy of Code of Civil Procedure section 1010.6(h) is included as an attachment to this memorandum.

**Staff comments.** The rules proposal that circulated this year added a provision to rule 2.255, which governs contracts with EFSPs, that specified that a court’s contract with an EFSP “must comply with requirements of Code of Civil Procedure section 1010.6.” However, this rule does not account for situations where a court does not contract with an EFSP, but may, instead, contract with an electronic filing manager, which may contract with EFSPs.

### **Public Suggestions**

During the comment period on ITAC’s rules proposal this year, the State Bar of California Standing Committee on the Delivery of Legal Services recommended that EFSPs should have to comply with the accessibility requirements of the Americans with Disabilities Act.

**Staff comments.** As discussed above, Code of Civil Procedure section 1010.6(h) imposes accessibility requirements on EFSPs and there will need to be a rule or rules related to the requirements. This should address the issue raised in the public suggestion.

5. Potential Amendments to Rule 2.250(b), which Contains the Definitions Applicable to the Electronic Filing and Electronic Service Rules

### **Public Suggestions**

**Comments received in reply to the request for specific comments on terms and definitions contained both in the rules and Code of Civil Procedure section 1010.6.** As a part of the ITAC rules proposal that circulated this year, some material was removed from the rules where that language is now contained in the Code of Civil Procedure. However, the rules retained terms and definitions that are duplicative of those found in Code of Civil Procedure section 1010.6. Specifically, the terms “electronic service,” “electronic transmission,” and “electronic notification” and the accompanying definitions of these terms. The Invitation to Comment solicited specific feedback on whether, in rule 2.250(b), (1) the duplicative terms and their definitions should be removed, (2) the duplicative terms and their definitions should be retained, (3) whether the duplicative terms should be retained by refer to section 1010.6 for the definition, or (4) any other alternatives suggested. These were the comments received in response to the request for specific comments:

- *State Bar of California Standing Committee on the Delivery of Legal Services.* “It is better to retain the duplicative terms and their definitions in the rule so that practitioners and especially self-represented litigants have the full comprehensive scheme without having to refer back to section 1010.6.”
- *Orange County Bar Association.* “. . . it would be preferable for ease of administration to retain each of the terms, but refer back to section 1010.6 for the statutory definitions and also

preferable to retain the additional non-statutory definitions at (1),(5),(6),(7), and (8) as within the Council’s authority and helpful to the Court, parties, and other persons.”

- *One Legal, LLC (an EFSP)*. “While eService is not a new concept to us, it is to many law firms and so to define it is helpful. Our eService trainings touch on the rule and statute for that reason which is why we think eliminating these definitions entirely would be a bad idea. Keeping it in both the rule and the statute, however, is unnecessary.”
- *Litigation by the Numbers (a publisher of practice guides)*. “I agree with the third option: retain the terms but refer to 1010.6.”

*Staff comments.* Part of the issue with having duplicative language between the rules and Code of Civil Procedure section 1010.6 is that there is a risk the rules will become inconsistent with the Code of Civil Procedure as rule amendments trail behind legislative amendments. The proposal this year did clean up some of duplication so this is less likely to happen. The overall risk of inconsistent definitions is likely low. It may be desirable to retain the duplicative terms and definitions for the reasons identified by the State Bar’s Standing Committee on the Delivery of Legal Services.

**Delete the definition of “document” or clarify that a party’s or other person’s “document” does not have to be something filed with the court.** Under the definition of “document” in rule 2.250(b)(1), a “document” is “a pleading, a paper, a declaration, an exhibit, or another filing. . . .” (emphasis added) One commenter did not believe “document” required a definition and should be deleted entirely, but if not deleted, it should be modified so that it is not interpreted to mean that a “document” must be something filed with the court and thus, for example, would exclude written discovery demands and responses. Another commenter also noted this issue and recommended amending the language to clarify that a document does not have to be filing.

*Staff comments.* This would be a straightforward change by moving “paper” to the end of the list to replace “filing.”

## 6. Do Not Exempt Attorneys Acting In Pro Per from Mandatory Electronic Filing and Service

### **Public Suggestion**

A member of the bar wrote in to recommend that attorneys acting in pro per not be included in the exemption to mandatory electronic filing and service for self-represented litigants. Effective January 1, 2018, Code of Civil Procedure section 1010.6 will exempt “unrepresented persons” from mandatory electronic filing and service. (Stats. 2017, ch. 319, § 2.)



**Staff comments.** If the subcommittee determines that attorneys acting in pro per were not meant to be within the scope of the exemption, potential ways to address the issue would be to develop a legislative proposal to exclude attorneys who are representing themselves from this scope, or a rules proposal defining the scope of “unrepresented person” and excluding in pro per attorneys from that definition.

7. Prohibit EFSPs from Requiring Indigent Users to Have a Credit Card, Debit Card, or Bank Account to Utilize an EFSP’s Services

**Public Suggestion**

This was recommended by the State Bar of California Standing Committee on the Delivery of Legal Services during the comment period for ITAC’s rules proposal this year. Specifically, “With respect to the ‘reasonable requirements’ to access the electronic filing system, it would greatly benefit low income clients to explicitly state that [EFSPs] cannot require indigents to have either a credit card, debit card, or bank account to utilize the EFSP’s services. In the past, some EFSPs have required a credit card to create an account, even if that credit card was never billed, and that creates an insurmountable barrier to those without access to credit or banking services.”

**Staff comments.** The “reasonable requirements” that State Bar Committee is likely referring to rule 2.255(b) concerning contracts between courts and EFSPs. Under the rule, a contract between a court and an EFSP may allow the EFSP to, in addition to charging users a reasonable fee, “make other reasonable requirements for use of the electronic filing system.”

8. Clarify Language in Rule 2.252(e), which Allows for the Electronic Filing of Original Documents

Under rule 2.252(e), “In a proceeding that requires the filing of an original document, an electronic filer may file an electronic copy of a document if the original document is then filed with the court within 10 calendar days.” During the comment period for ITAC’s rules proposal this year, an EFSP commented, “many ‘eFiling courts’ have specifically listed documents which cannot be eFiled, including Wills. Since a Will is, or can be, an original document, perhaps some clarifying language is needed as this section conflicts with what those courts are doing.”

**Staff comments.** The time may not be ripe for the subcommittee to address original wills and electronic filing. The handling of original wills is a complex topic, which the Court Executive Advisory Committee and Probate and Mental Health Advisory Committee are working on. It may make more sense at this time to keep informed of the activities on those committees.

9. Amend Rule 3.1312(c), which Governs Submission of Proposed Orders by Electronic Means, So Courts Have More Flexibility

### **Public Suggestion**

A court probate examiner recommended amending rule 3.1312(c), which is cross-referenced by rule 2.252(h), to give courts more flexibility. Rule 3.1312(c) governs electronic submission of proposed orders.

Under rule 3.1312(c):

If a proposed order is submitted to the court electronically in a case in which the parties are electronically filing documents under rules 2.250-2.261, two versions of the proposed order must be submitted:

- (1) A version of the proposed order must be attached to a completed Proposed Order (Cover Sheet) (form EFS-020), and the combined document in Portable Document Format (PDF) must be filed electronically; and
- (2) A version of the proposed order in an editable word-processing format must also be sent electronically to the court, with a copy of the e-mail and proposed order also being sent to all parties in the action.

Each court that provides for electronic filing must provide an electronic address or addresses to which the editable versions of proposed orders are to be sent and must specify any particular requirements regarding the editable word-processing format for proposed orders.

The commenter suggested (1) both PDF and editable word-processing versions not be required by the rule, but rather courts could specify one or the other or both; (2) allow courts to specify whether the PDF of the coversheet should be combined in a single document with the order or kept as a separate document, and (3) there should be broader language for the electronic submission mechanism for the proposed order than electronic address and courts can provide greater specificity at the court level (so the mechanism could be, but does not have to be an electronic address).

**Staff comments.** This is an issue for the processes in one court, but staff have insufficient information on whether there may be similar issues in other courts or whether the recommended changes are the best solutions. Accordingly, staff recommend soliciting feedback from the Civil and Small Claims Advisory Committee and the Court Executives Advisory Committee on how proposed orders are captured electronically.

10. Allow Courts to Electronically Serve a Notice of Non-Payment of Check

### **Public Suggestion**

During the comment period for ITAC’s legislative proposal this year, a member of the bar commented, “C.C.P. section 411.20 requires the clerk to mail notice regarding a dishonored check for a filing fee, and C.C.P. section 411.21 requires the clerk to mail notice regarding partial payment of a filing fee. I recommend that both sections be amended to permit the notices to be served electronically or by postal mail.”

Under Code of Civil Procedure sections 411.20, when a check for a filing fee is returned to the court without payment, the court clerk must notify “the party who tendered the check” that the check was returned without payment, the cost of an administrative charge for processing the returned check and sending notice, and the party who tendered the check as 20 days to pay the filing fee and administrative charge. (Code Civ. Proc., § 411.20(a).) If the payment is not made within the 20 days, the clerk voids the filing. (Code Civ. Proc., § 411.20(b).) Similarly, if a clerk performs a service or issues any document for which a fee is required and the check is returned without payment, the court can order further proceedings halted and the clerk must mail a notice. (Code Civ. Proc, § 411.20(f).)

Under Code of Civil Procedure sections 411.21, if a complaint or other first paper is accompanied by a payment by check in an amount less than the required fee, the clerk must accept the filing, but not issue a summons until the court receives full payment. (Code Civ. Proc., § 411.21(a).) The clerk then must provide a notice similar to the notice section 411.20(a), described above, and void the filing if the remainder of the filing fee plus an administrative charge is not paid within 20 days. (Code Civ. Proc, § 411.21(a)-(b).)

**Staff comments:** The legislative proposal that ITAC circulated this year included language to amend Civil Code section 1719, which governs civil penalties for checks passed on insufficient funds, to allow courts to electronically serve rather than mail a written demand for payment when the check relates to an action in which the drawer is accepting electronic service. This is a narrow exception to the requirement of mailing a demand and made Civil Code section 1719 better align with Code of Civil Procedure section 1010.6(a)(3), which allows courts to “electronically serve any document issued by the court” when personal service is not required and when a party has consented or is required to accept electronic service.

A similar narrow carve out could be proposed here, but, for a couple of reasons, the subcommittee may want to hold on developing a proposal at this time. First, the proposed changes to Civil Code section 1719 have not been introduced in the Legislature. The legislative process may provide insight into any legislative edits or concerns with allowing electronic service of notices of bad checks that may help develop language for any similar changes to Code of Civil Procedure sections 411.20 and 411.21, or may provide insight into whether the Legislature is amenable to such changes at all. Second, per information from the Office of Government Affairs, EFSPs may seek legislation amending Civil Code section 411.20 and

411.21 for when an EFSP is not paid or partially paid. The development of such legislation may be informative for any similar proposal as it relates to courts.

11. On Judicial Council Forms for Family Law, Add a Checkbox Near The Signature Line with Text next to the Checkbox that States, "Signature Pursuant To CRC, Rule 2.305(d)"

### **Public Suggestion**

Rule 2.305 governs signatures on fax filings. Subpart (d) of the rule states that a fax signature "is deemed to be an original." The fax filer must keep the "original signed document" and must produce that document upon demand. (Rule 2.305(b)-(c).) The recommendation to add a checkbox came from a member of the bar, who stated, "because use of that Rule is becoming more and more prevalent. Some of my colleagues have started using a rubber stamp to that effect, placed near the signature line, others handwriting in or typing into the text elsewhere."

**Staff comments:** Staff recommend not pursuing a rule change to the fax filing signatures. It is unclear from the letter why a checkbox would be necessary. The rule does not require such a notation and a faxed signature is treated as an original. Rules and Policy Subcommittee staff discussed this with Family and Juvenile Law Advisory Committee staff, who agreed and had already shared this with that committee.

### Subcommittee's Task

- Determine what rules, forms, and legislative proposals staff should develop for the 2018 cycle.
- Determine any other action that staff should take.

### Attachments

1. Text of section 2, chapter 319, statutes of 2017 showing the amendments to section Code of Civil Procedure section 1010.6(a)-(g) (effective January 1, 2018.)
2. Text of Code of Civil Procedure section 1010.6(h) (effective June 27, 2017).<sup>2</sup>

<sup>2</sup> On January 1, 2018, subsection (h) will become subsection (g).

**SEC. 2.** Section 1010.6 of the Code of Civil Procedure is amended to read:

**1010.6.** (a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) "Electronic service" means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a ~~party,~~ *party or other person,* by an agent of a ~~party, including the party's~~ *party or other person, including the party or other person's* attorney, or through an electronic filing service provider.

(B) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

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

(2) ~~If (A) (i) For cases filed on or before December 31, 2018, if~~ a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is *not* authorized ~~when unless~~ a *party or other person* has agreed to accept *electronic* service ~~electronically in that action. in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d).~~

*(ii) For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.*

*(B) If a document is required to be served by certified or registered mail, electronic service of the document is not authorized.*

(3) In any action in which a party ~~has agreed~~ *or other person has agreed or provided express consent, as applicable,* to accept electronic service under paragraph (2), or in which the court has ordered electronic service *on a represented party or other represented person* under subdivision (c) or (d), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

*(4) (A) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of that document is deemed complete at the time of the*

*electronic transmission of the document or at the time that the electronic notification of service of the document is sent.*

~~(4) (B) (A) Any~~ ~~Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. However, any~~ period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following:

(i) A notice of intention to move for new trial.

(ii) A notice of intention to move to vacate judgment under Section 663a.

(iii) A notice of appeal.

~~(B) (C)~~ This extension applies in the absence of a specific exception provided by any other statute or rule of court.

*(5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a noncourt day shall be deemed served on the next court day.*

*(6) A party or other person who has provided express consent to accept service electronically may withdraw consent at any time by completing and filing with the court the appropriate Judicial Council form. The Judicial Council shall create the form by January 1, 2019.*

*(7) Consent, or the withdrawal of consent, to receive electronic service may only be completed by a party or other person entitled to service or that person's attorney.*

*(8) Confidential or sealed records shall be electronically served through encrypted methods to ensure that the documents are not improperly disclosed.*

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the ~~signature,~~ *signature of any person*, not under penalty of perjury, ~~of an attorney or a self-represented party,~~ the document shall be deemed to have been signed by ~~that attorney or self-represented party if filed~~ *the person who filed the document* electronically.

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

~~(B) (i) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if~~ *The person has signed* a printed form of the document ~~has been signed by that person before~~ *before*, or on the same day as, the date of filing. The attorney or *other* person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or *other* person filing the document shall maintain the printed form of the document bearing the original signature *until final disposition of the case, as defined in subdivision (c) of*

*Section 68151 of the Government Code*, and 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.

*(ii) The person has signed the document using a computer or other technology pursuant to the procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.*

(3) Any document ~~that is electronically filed with the court after the close of business on any~~ *received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court* day shall be deemed ~~to have been filed on the next court day. "Close of business," as used in this paragraph, means 5 p.m. or the time at which the court will not accept filing at the court's filing counter, whichever is earlier.~~ *filed on that court day. Any document that is received electronically on a noncourt day shall be deemed filed on the next court day.*

(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 Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(7) A fee, if any, charged by the court, an electronic filing manager, or an electronic filing service provider to process a payment for filing fees and other court fees shall not exceed the costs incurred in processing the payment.

(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, 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) ~~(1) A Notwithstanding subdivision (b), the Orange County Superior Court~~ *trial 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,~~ *rule, require electronic filing and service in civil actions,* subject to the requirements ~~set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b), rules adopted pursuant to subdivision (e), and conditions stated in subdivision (b), the rules adopted by the Judicial Council under subdivision (f),~~ and the following conditions:

~~(A)~~ *(1)* The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

~~(B)~~ (2) The court and the parties shall have access to more than one electronic filing service provider capable of electronically filing documents with the court or to electronic filing access directly through the court. The court may charge fees of no more than the actual cost of the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable. The court, an electronic filing manager, or an electronic filing service provider shall waive any fees charged if the court deems a waiver appropriate, including in instances where a party has received a fee waiver.

~~(C)~~ (3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties. *The Judicial Council shall make a form available to allow a party to seek an exemption from mandatory electronic filing and service on the grounds provided in this paragraph.*

~~(D)~~ (4) ~~A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court date that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county. Documents filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest court day following the filing. Unrepresented persons are exempt from mandatory electronic filing and service.~~

~~(2)~~ (5) ~~If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants. Until January 1, 2019, a local child support agency, as defined in subdivision (h) of Section 17000 of the Family Code, is exempt from a trial court's mandatory electronic filing and service requirements, unless the Department of Child Support Services and the local child support agency determine it has the capacity and functionality to comply with the trial court's mandatory electronic filing and service requirements.~~

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

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

~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, as specified in subdivision (f), a superior court may, by local rule, require mandatory electronic filing, pursuant to paragraph (2).~~



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

(h) (1) The Judicial Council shall adopt uniform rules to implement this subdivision as soon as practicable, but no later than June 30, 2019.

(2) Any system for the electronic filing and service of documents, including any information technology applications, Internet Web sites, and Web-based applications, used by an electronic service provider or any other vendor or contractor that provides an electronic filing and service system to a trial court, regardless of the case management system used by the trial court, shall satisfy both of the following requirements:

(A) The system shall be accessible to individuals with disabilities, including parties and attorneys with disabilities, in accordance with Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d), as amended, the regulations implementing that act set forth in Part 1194 of Title 36 of the Code of Federal Regulations and Appendices A, C, and D of that part, and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(B) The system shall comply with the Web Content Accessibility Guidelines 2.0 at a Level AA success criteria.

(3) A vendor or contractor that provides an electronic filing and service system to a trial court shall comply with paragraph (2) as soon as practicable, but no later than June 30, 2019. Commencing on the operative date of this subdivision, the vendor or contractor shall provide an accommodation to an individual with a disability in accordance with subparagraph (D) of paragraph (4).

(4) A trial court that contracts with an entity for the provision of a system for electronic filing and service of documents shall require the entity, in the trial court's contract with the entity, to do all of the following:

(A) Test and verify that the entity's system complies with this subdivision and provide the verification to the Judicial Council no later than June 30, 2019.

(B) Respond to, and resolve, any complaints regarding the accessibility of the system that are brought to the attention of the entity.

(C) Designate a lead individual to whom any complaints concerning accessibility may be addressed and post the individual's name and contact information on the entity's Internet Web site.

(D) Provide to an individual with a disability, upon request, an accommodation to enable the individual to file and serve documents electronically at no additional charge for any time period that the entity is not compliant with paragraph (2) of this subdivision. Exempting an individual with a disability from mandatory electronic filing and service of documents shall not be deemed an accommodation unless the person chooses that as an accommodation. The vendor or contractor shall clearly state in its Internet Web site that an individual with a disability may request an accommodation and the process for submitting a request for an accommodation.

(5) A trial court that provides electronic filing and service of documents directly to the public shall comply with this subdivision to the same extent as a vendor or contractor that provides electronic filing and services to a trial court.

(6) (A) The Judicial Council shall submit four reports to the appropriate committees of the Legislature relating to the trial courts that have implemented a system of electronic filing and service of documents. The first report is due by June 30, 2018; the second report is due by December 31, 2019; the third report is due by December 31, 2021; and the fourth report is due by December 31, 2023.

(B) The Judicial Council's reports shall include all of the following information:

(i) The name of each court that has implemented a system of electronic filing and service of documents.

(ii) A description of the system of electronic filing and service.

(iii) The name of the entity or entities providing the system.

(iv) A statement as to whether the system complies with this subdivision and, if the system is not fully compliant, a description of the actions that have been taken to make the system compliant.

(7) An entity that contracts with a trial court to provide a system for electronic filing and service of documents shall cooperate with the Judicial Council by providing all information, and by permitting all testing, necessary for the Judicial Council to prepare its reports to the Legislature in a complete and timely manner.