



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/itac.htm
itac@jud.ca.gov

ITAC RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 22, 2018
12:15 PM – 1:30 PM
Teleconference

Advisory Body Members Present: Hon. Peter Siggins; Hon. Julie Culver; Hon. Jackson Lucky; Hon. Louis Mauro; Mr. Don Willenburg

Advisory Body Members Absent: Mr. Darrel Parker

Others Present: Ms. Fati Farmanfarmaian; Ms. Andrea Jaramillo, Mr. Patrick O'Donnell, Ms. Jane Whang

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:15 PM, and took roll call.

Approval of Minutes and Public Comment

The advisory body reviewed and approved the minutes of the November 15, 2017, ITAC Rules and Policy Subcommittee meeting.

There were no public comments received.

DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

Item 1

Modernization Project Rules Proposal: Proposed Amendments to Title 2, Division 3, Chapter 2 (Action Required)

Consider whether to recommend circulating proposed amendments to title 2, division 3, chapter 2 of the California Rules of Court for public comment. The proposed amendments respond to new requirements in Code of Civil Procedure section 1010.6, amend definitions in the rules, and ensure indigent filers are not required to have a payment mechanism to create an account with electronic filing service providers.

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 presented the recommended edits for public comment to amend Cal. Rules of Court.

Rule 2.250(b) – The context would be clearer substituting the word paper for filing. The document may be in paper or electronic form. It was suggested and agreed to use “or another writing” instead of paper to have the broadest meaning.

Rule 2.250(b) – Amend the definitions of “electronic service,” “electronic transmission” and “electronic notification.” Will go out for comment again using Option B asking for specific comments on this issue.

Rule 2.250(b) – Add definition for “electronic filing manager” based on the descriptions the Judicial Council used of electronic filing managers in a request for proposals in 2017.

Rule 2.250(b) – Add definition for “unrepresented” and exclude attorneys representing themselves or unauthorized to practice law in California from the definition. The subcommittee and staff will work to identify if unrepresented or self-represented is the correct use and definition.

Rule 2.251(b) – This will be a technical amendment only, no public comment. Will mimic the language of the statute.

Rule 2.255 – To bring electronic filing service providers and managers within scope of the rule. They must comply with the court’s contract and Code of Civil Procedure section 1010.6.

Rule 2.257 – Subdivision (a) This provides a definition of electronic signature based on Code of Civil Procedure, which are almost identical. Subdivision (b)(1) Will change to “Declares under penalty of perjury under the laws of the state of California”.

The subcommittee will vote on these changes as a package on their next call once the unrepresented/self-represented issue has been resolved.

Item 2

Modernization Project: Form Proposal, Withdrawal of Consent to Electronic Service (Action Required)

Consider whether to recommend circulating proposed Judicial Council form EFS-005-##, *Withdrawal of Consent to Electronic Service*. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019. This is a joint proposal with the Civil and Small Claims Advisory Committee.

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: Suggested form changes include adding a second and third item to the existing form. The second item (#2) item will ask for the mailing address and third item (#3) will ask for the date of motion. Staff will prepare and circulate sample with those changes to the subcommittee.

There was no additional discussion around circulating the Judicial Council form EFS-005-##. Staff will prepare and circulate with the other outstanding issue.

Item 3

Remote Access for Government Entities, Parties, Attorneys Rules Proposal: Proposed Amendments to Title 2, Division 1, Chapter 2 of the California Rules of Court (Discussion Item)

Report status update. The proposed amendments facilitate remote access to trial court records by state, local, and tribal government entities, parties, parties' attorneys, and court-appointed persons.

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 reported as informational only that there is a comprehensive set of rules for this item that will be presented at the next Information Technology Advisory Committee (ITAC) meeting.

Item 4

Proposed New Rule 5.523, Electronic Service in Juvenile Matters (Discussion Item)

The Family and Juvenile Law Advisory Committee is developing a proposal for a new rule governing electronic service in juvenile matters consistent with Code of Civil Procedure section 1010.6 and the new Welfare and Institutions Code section 212.5. This is an information item for the subcommittee and no formal action is required. Feedback from subcommittee members on the proposal is welcome.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Ms. Diana Click, Attorney II, Center for Families, Children and the Courts
Ms. Andrea Jaramillo, Attorney II, Legal Services

Discussion: (35:00)
Ms. Glick asked members their opinions on electronic service in juvenile matters. The rule changes are in the distributed meeting materials. Members didn't have any additional comments.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:59 pm.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
June 17, 2018	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	June 21, 2018
From	Contact
Andrea L. Jaramillo Attorney, Legal Services	Andrea L. Jaramillo Legal Services 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Rules Proposal: Review public comments and make recommendation on amending Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259	

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a rules proposal for public comment that would amend several rules related to electronic service and electronic filing found in title 2, division 3, chapter 2 of the California Rules of Court. New provisions of Code of Civil Procedure section 1010.6 (section 1010.6) require express consent for electronic service necessitate conforming changes to the rules of court. In addition, the new provisions of section 1010.6 require the Judicial Council to adopt rules of court related to disability access and electronic signatures for documents signed under penalty of perjury. Finally, the proposal includes amendments based on comments received from the public. These include amendments to the definitions and contract requirements between EFSPs and courts. The public comment period ended on June 8, 2018.

Discussion

Four commenters responded to the invitation to comment either agreeing with the proposal or agreeing as modified. Three of the commenters responded with substantive comments focused on amendments to the definitions and requirements for express consent to electronic service.

A. Rule 2.250(b)(1) definition of “document”

Rule 2.250(b)(1) defines “document” as:

a pleading, a paper, a declaration, an exhibit, or another filing submitted by a party or other person, or by an agent of a party or other person on the party's or other person's behalf. A document is also a notice, order, judgment, or other issuance by the court. A document may be in paper or electronic form.

The current wording of the definition of “document” can be read to mean that a document must be a filing. The proposed amendment removes this ambiguity by striking “filing” and replacing it with “writing” to clarify that a “document” is not necessarily a filing. When the Rules and Policy Subcommittee discussed circulating the proposal, it also struck the first use of the term “paper” in the definition as unnecessary.

The Superior Court of California, County of Los Angeles and the Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee (TCPJC/CEAC) Joint Rules Subcommittee both submitted the same comment:

The proposed definition allows confusion, inasmuch as it leaves open the possibility of a person e-filing a hearing exhibit, or trial exhibit. The language should explicitly exclude such exhibits from the definition in 2.250(b)(1), or allow courts to exclude them through local rules.

1. Staff analysis

The existing rule contains “an exhibit” within the scope of what can constitute a “document” and this is unaffected by the proposed amendments. Accordingly, the recommendation may be something for the subcommittee to consider for potential amendment during next year’s rules cycle. Staff will present potential topics for next year’s rules proposals to the subcommittee in the fall for discussion by the subcommittee and direction on which topics are to be developed into proposals.

B. Rule 2.251 provisions for consent to permissive electronic service

Effective January 1, 2019, section 1010.6 will no longer allow the act of electronic filing alone to serve as consent to permissive electronic service. (§ 1010.6(a)(2)(A)(ii).) Under section 1010.6, parties may still consent through electronic means by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic service address with that consent for the purpose of receiving electronic service.” The proposal amends rule 2.251(b)(1)(B) to remove the provision allowing the act of filing to serve as consent to electronic service and replaces it with the language for manifesting affirmative consent by electronic means from section 1010.6.

1. Manifestation of affirmative consent

The proposal adds rule 2.251(b)(1)(C) to provide for how a party or other person may “manifest affirmative consent.” To do so, a party other person would either (a) agree to the terms of service agreement with an electronic filing service provider, which clearly states that agreement constitutes consent to receive electronic service electronically; or (2) file *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV).

The Orange County Bar Association commented that “the provision for manifesting affirmative consent should reference by definition the requirements of CCP §1010.6 for ‘express consent’ rather than using the phrase ‘manifest affirmative consent’ which is merely a subset definition in the statute[.]”

a. Staff analysis

The full requirements, not just a subset, of section 1010.6’s express consent requirements are already captured in the rules. Concerning express consent, section 1010.6 states,

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.

(§ 1010.6(a)(2)(A)(ii).) The option to serve a notice on all parties is in existing rule 2.251(b)(1)(A).

2. Responses to request for specific comments

Because there was some uncertainty on how a court or other parties would know someone had affirmatively consented to electronic service by electronic means, the invitation comment asked for specific comments on: (1) how notice is to be given to the court that a party or other person has provided express consent, or (2) how notice of the same is to be given to other parties or persons in the case. Two commenters submitted comments responsive to these questions.

The Orange County Bar Association commented, “the proposed Rule should specifically address how notice of express consent is to be given to the court and other parties and persons; since the statute is ambiguous in those regards the Council should adopt any simple notice or proof of service procedure as may be in conformity with CCP §1010.6.”

The Superior Court of California, County of San Diego commented:

Our court proposes that the committee create standard language for parties to consent to service by the method outlined in 2.251(b)(1)(C)(i). The court or court’s electronic filing service providers could then include that language in their filing portal, which would allow parties to consent by accepting the terms. A copy of the acceptance would then be transmitted to the court by the service provider. If express consent is provided by filing a Consent to Electronic Service and Notice of Electronic Service Address (JC Form # EFS-005-CV) as indicated in 2.251(b)(1)(C)(ii), the court is provided notice through the filing. Our court proposes that the rule include that if a party manifests affirmative consent by either of the methods listed in 2.251(b)(1)(C), he/she is required to serve notice on all other parties.

a. Staff review

The provision of standard language in the rule as recommended by the Superior Court of California, County of San Diego would create uniformity statewide, which may provide more certainty that consent had been obtained as language would not potentially differ from one electronic filing service provider to the next. A transmittal of the party’s acceptance of consent to the court, in the absence of filing a form, may resolve the issue of how the court can know about the consent. These topics could potentially be addressed in next year’s rules cycle.

C. Additional comments

1. Impacts on court operations

The TCPJAC/CEAC Joint Rules Subcommittee commented on expected impacts on court operations. Specifically:

- Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)
- Increases court staff workload.
- New configurations and workflows will have to be designed and implemented in all case management systems to manage the notices and the potential for withdrawal of consent.

a. Staff analysis

The impacts on court operations are will be included with the Judicial Council report. To ensure the report is clear on which rules will have these impacts, staff have reached out to TCPJAC/CEAC Joint Rules Subcommittee staff to request additional specificity.

2. Rule 2.251(c), mandatory electronic service

The Superior Court, County of Los Angeles submitted comments regarding rule 2.251(c)(1). Rule 2.251(c) governs electronic service required by local rule or court order and rule 2.251(c)(1) provides: “A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.” The court commented:

To ensure that there is no confusion between 2.251(b) and (c). We recommend amending 2.251(c) Electronic service required by local rule or court order to read:

“(1) Notwithstanding any provisions regarding consent to electronic service, a court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.”

a. Staff analysis

This comment is out of the scope of the proposed amendments. It is a statement of existing law, but the subcommittee may consider it for clarifying purposes when reviewing material for next year’s rule cycle.

Staff Recommendations

Recommend the proposed rule amendments for Judicial Council adoption at its November 2018 meeting.

Attachments and Links

1. Text of proposed amendments to the California Rules of Court, rules 2.250, 2.251, 2.255, and 2.257, at pages 7-12.
2. Chart of comments, at pages 13-17.
3. Draft Judicial Council Report (minus attachments to the report), at pages 18-24.
4. Link A: Code of Civil Procedure section 1010.6,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6

Rules 2.250, 2.251, 2.255, and 2.257 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 2.250. Construction and definitions**

2
3 (a) * * *

4
5 (b) **Definitions**

6
7 As used in this chapter, unless the context otherwise requires:

8
9 (1) A “document” is a pleading, ~~a paper~~, a declaration, an exhibit, or another
10 ~~filing writing~~ submitted by a party or other person, or by an agent of a party
11 or other person on the party’s or other person’s behalf. A document is also a
12 notice, order, judgment, or other issuance by the court. A document may be
13 in paper or electronic form.

14
15 (2) “Electronic service” has the same meaning as defined in Code of Civil
16 Procedure section 1010.6 is service of a document on a party or other person
17 by either electronic transmission or electronic notification. Electronic service
18 may be performed directly by a party or other person, by an agent of a party
19 or other person, including the party’s or other person’s attorney, through an
20 electronic filing service provider, or by a court.

21
22 (3) “Electronic transmission” has the same meaning as defined in Code of Civil
23 Procedure section 1010.6 means the transmission of a document by electronic
24 means to the electronic service address at or through which a party or other
25 person has authorized electronic service.

26
27 (4) “Electronic notification” has the same meaning as defined in Code of Civil
28 Procedure section 1010.6 means the notification of a party or other person
29 that a document is served by sending an electronic message to the electronic
30 service address at or through which the party or other person has authorized
31 electronic service, specifying the exact name of the document served and
32 providing a hyperlink at which the served document can be viewed and
33 downloaded.

34
35 (5)–(8) * * *

36
37 (9) An “electronic filing manager” is a service that acts as an intermediary
38 between a court and various electronic filing service provider solutions
39 certified for filing into California courts.

40
41 (10) “Self-represented” means a party or other person who is unrepresented in an
42 action by an attorney and does not include an attorney appearing in an action
43 who represents himself or herself.

1 **Rule 2.251. Electronic service**

2
3 (a) * * *

4
5 (b) **Electronic service by express consent of the parties**

6
7 (1) ~~Electronic service may be established by consent.~~ A party or other person
8 indicates that the party or other person agrees to accept electronic service by:

9
10 (A) Serving a notice on all parties and other persons that the party or other
11 person accepts electronic service and filing the notice with the court.
12 The notice must include the electronic service address at which the
13 party or other person agrees to accept service; or

14
15 (B) ~~Electronically filing any document with the court. The act of electronic~~
16 ~~filing is evidence that the party or other person agrees to accept service~~
17 ~~at the electronic service address the party or other person has furnished~~
18 ~~to the court under rule 2.256(a)(4). This subparagraph (B) does not~~
19 ~~apply to self-represented parties or other self-represented persons; they~~
20 ~~must affirmatively consent to electronic service under subparagraph~~
21 ~~(A).~~ Manifesting affirmative consent through electronic means with the
22 court or the court's electronic filing service provider, and concurrently
23 providing the party's electronic service address with that consent for
24 the purpose of receiving electronic service.

25
26 (C) A party or other person may manifest affirmative consent under (B) by:

27
28 (i) Agreeing to the terms of service agreement with an electronic
29 filing service provider, which clearly states that agreement
30 constitutes consent to receive electronic service electronically;
31 or

32
33 (ii) Filing *Consent to Electronic Service and Notice of Electronic*
34 *Service Address* (form EFS-005-CV).

35
36 (2) A party or other person that has consented to electronic service under (1) and
37 has used an electronic filing service provider to serve and file documents in a
38 case consents to service on that electronic filing service provider as the
39 designated agent for service for the party or other person in the case, until
40 such time as the party or other person designates a different agent for service.

41
42 (c)–(k) * * *

1 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**
2 **managers**

3
4 **(a) Right to contract**

- 5
6 (1) A court may contract with one or more electronic filing service providers to
7 furnish and maintain an electronic filing system for the court.
8
9 (2) If the court contracts with an electronic filing service provider, it may require
10 electronic filers to transmit the documents to the provider.
11
12 (3) A court may contract with one or more electronic filing managers to act as an
13 intermediary between the court and electronic filing service providers.
14
15 ~~(3)~~(4) If the court contracts with an electronic service provider or the court has an
16 in-house system, the provider or system must accept filing from other
17 electronic filing service providers to the extent the provider or system is
18 compatible with them.
19

20 **(b) Provisions of contract**

- 21
22 (1) The court's contract with an electronic filing service provider may:
23
24 (A) Allow the provider to charge electronic filers a reasonable fee in
25 addition to the court's filing fee;
26
27 (B) Allow the provider to make other reasonable requirements for use of
28 the electronic filing system.
29
30 (2) The court's contract with an electronic filing service provider must comply
31 with the requirements of Code of Civil Procedure section 1010.6.
32
33 (3) The court's contract with an electronic filing manager must comply with the
34 requirements of Code of Civil Procedure section 1010.6.
35

36 **(c) Transmission of filing to court**

- 37
38 (1) An electronic filing service provider must promptly transmit any electronic
39 filing and any applicable filing fee to the court: directly or through the court's
40 electronic filing manager.
41
42 (2) An electronic filing manager must promptly transmit an electronic filing and
43 any applicable filing fee to the court.

1
2 **(d) Confirmation of receipt and filing of document**

- 3
4 (1) An electronic filing service provider must promptly send to an electronic filer
5 its confirmation of the receipt of any document that the filer has transmitted
6 to the provider for filing with the court.
7
8 (2) The electronic filing service provider must send its confirmation to the filer's
9 electronic service address and must indicate the date and time of receipt, in
10 accordance with rule 2.259(a).
11
12 (3) After reviewing the documents, the court must promptly transmit to the
13 electronic filing service provider and the electronic filer the court's
14 confirmation of filing or notice of rejection of filing, in accordance with rule
15 2.259.
16

17 **(e) Ownership of information**

18
19 All contracts between the court and electronic filing service providers or the court
20 and electronic filing managers must acknowledge that the court is the owner of the
21 contents of the filing system and has the exclusive right to control the system's use.
22

23 **(f) Establishing a filer account with an electronic filing service provider**

- 24
25 (1) An electronic filing service provider may not require a filer to provide a credit
26 card, debit card, or bank account information to create an account with the
27 electronic filing service provider.
28
29 (2) This provision applies only to the creation of an account and not to the use of
30 an electronic filing service provider's services. An electronic filing services
31 provider may require a filer to provide a credit card, debit card, or bank account
32 information before rendering services unless the services are within the scope
33 of a fee waiver granted by the court to the filer.
34

35 **Rule 2.257. Requirements for signatures on documents**

36
37 **(a) Electronic signature**

38
39 An electronic signature is an electronic sound, symbol, or process attached to or
40 logically associated with an electronic record and executed or adopted by a person
41 with the intent to sign a document or record created, generated, sent,
42 communicated, received, or stored by electronic means.
43

1 **(a)(b) Documents signed under penalty of perjury**

2
3 When a document to be filed electronically provides for a signature under penalty
4 of perjury of any person, the document is deemed to have been signed by that
5 person if filed electronically provided that either of the following conditions is
6 satisfied:

- 7
- 8 (1) The declarant has signed the document using an electronic signature a
9 computer or other technology, in accordance with procedures, standards, and
10 guidelines established by the Judicial Council and declares under penalty of
11 perjury under the laws of the state of California that the information
12 submitted is true and correct; or
- 13
- 14 (2) The declarant, before filing, has physically signed a printed form of the
15 document. By electronically filing the document, the electronic filer certifies
16 that the original, signed document is available for inspection and copying at
17 the request of the court or any other party. In the event this second method of
18 submitting documents electronically under penalty of perjury is used, the
19 following conditions apply:
- 20
- 21 (A) At any time after the electronic version of the document is filed, any
22 party may serve a demand for production of the original signed
23 document. The demand must be served on all other parties but need not
24 be filed with the court.
- 25
- 26 (B) Within five days of service of the demand under (A), the party or other
27 person on whom the demand is made must make the original signed
28 document available for inspection and copying by all other parties.
- 29
- 30 (C) At any time after the electronic version of the document is filed, the
31 court may order the filing party or other person to produce the original
32 signed document in court for inspection and copying by the court. The
33 order must specify the date, time, and place for the production and must
34 be served on all parties.
- 35
- 36 (D) Notwithstanding (A)–(C), local child support agencies may maintain
37 original, signed pleadings by way of an electronic copy in the statewide
38 automated child support system and must maintain them only for the
39 period of time stated in Government Code section 68152(a). If the local
40 child support agency maintains an electronic copy of the original,
41 signed pleading in the statewide automated child support system, it may
42 destroy the paper original.
- 43

1 ~~(b)(c)~~ * * *

2

3 ~~(e)(d)~~ * * *

4

5 ~~(d)(e)~~ * * *

6

7 ~~(e)(f)~~ * * *

8

9

~~Advisory Committee Comment~~

10

11 ~~Subdivision (a)(1). The standards and guidelines for electronic signatures that satisfy the~~
12 ~~requirements for an electronic signature under penalty of perjury are contained in the Trial Court~~
13 ~~Records Manual.~~

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#	Commentator	Position	Comment	[DRAFT] Committee Response
1	1971 By Thomas S Hubbard, Jr. President & CEO Organization: 1971 311 Cobblestone Court Chapel Hill, NC 27514 Tel: 571-721-1485 Email: TSHUBBARDJR@AMVSR.COM	A	[Comments omitted. Comments were of a commercial nature unrelated to the proposal.]	The committee appreciates the support.
2	Orange County Bar Association By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710	AM	The OCBA provides the following responses to the request for specific comments: (a) we believe the proposal appropriately addresses the stated purposes if amended as below; (b) the provision for manifesting affirmative consent should reference by definition the requirements of CCP §1010.6 for “express consent” rather than using the phrase “manifest affirmative consent” which is merely a subset definition in the statute; (c) the proposed Rule should specifically address how notice of express consent is to be given to the court and other parties and persons; since the statute is ambiguous in	The committee appreciates the support and recommendations. With respect to (b), the committee notes that the rules capture the full scope of Code of Civil Procedure section 1010.6’s express consent requirements. The option to serve a notice on all parties is in existing rule 2.251(b)(1)(A).

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			those regards the Council should adopt any simple notice or proof of service procedure as may be in conformity with CCP §1010.6.	
3	<p>Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst Management Research Unit 111 N. Hill Street, Room 620 Los Angeles, CA 90012 Tel: 213-633-0452</p>	AM	<p>Suggested Modifications:</p> <p>Rule 2.250 (b)(1) The proposed definition allows confusion, inasmuch as it leaves open the possibility of a person e-filing a hearing exhibit, or trial exhibit. The language should explicitly exclude such exhibits from the definition in 2.250(b)(1), or allow courts to exclude them through local rules.</p> <p>Rule 2.251 (c)(1) To ensure that there is no confusion between 2.251(b) and (c). We recommend amending 2.251(c) Electronic service required by local rule or court order to read:</p> <p>“(1) Notwithstanding any provisions regarding consent to electronic service, a court may require parties to serve documents</p>	<p>The committee appreciates the support and recommendations. The inclusion of “exhibit” in the definition of “document” is part of the existing rule definition and not impacted by the amendment. Rule 2.251(c)(1) is not within the scope of the proposal, but the committee appreciates that the suggested language may improve clarity. The committee may consider the recommendations for next year’s rules cycle.</p>

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			electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.”	
4	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101	AM	<p>Q: Does the proposal appropriately address the stated purpose? Yes. The amendments to rule 2.251(b) bring the rule into compliance with section 1010.6’s express consent requirements. In addition, the rule adds a provision for how a party or other person may “manifest affirmative consent.”</p> <p>Q: Is the provision for manifesting affirmative consent clear and does it adequately capture how a party or other person may manifest affirmative consent? Yes.</p> <p>Q: Rule 2.251(b) does not detail (1) how notice is to be given to the court that a party or other person has provided express consent, or (2) how notice of the same is to be given to other parties or persons in</p>	The committee appreciates the support and recommendations. The committee may consider the recommendations to refine the rules in the next rules cycle.

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			<p>the case. The committee seeks specific comments on how such notification should be addressed in the rules.</p> <p>Our court proposes that the committee create standard language for parties to consent to service by the method outlined in 2.251(b)(1)(C)(i). The court or court’s electronic filing service providers could then include that language in their filing portal, which would allow parties to consent by accepting the terms. A copy of the acceptance would then be transmitted to the court by the service provider. If express consent is provided by filing a Consent to Electronic Service and Notice of Electronic Service Address (JC Form # EFS-005-CV) as indicated in 2.251(b)(1)(C)(ii), the court is provided notice through the filing. Our court proposes that the rule include that if a party manifests affirmative consent by either of the methods listed in 2.251(b)(1)(C), he/she is required to serve notice on all other parties.</p>	
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Technology: Rules Modernization Project

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

5	<p>TCPJAC/CEAC Joint Rules Subcommittee (JRS) By Corey Rada, Senior Analyst Judicial Council and Trial Court Leadership Leadership Services Division Judicial Council of California 2860 Gateway Oaks Drive, Suite 400 Sacramento, CA 95833-3509 Tel. 916-643-7044 E-mail: Corey.Rada@jud.ca.gov www.courts.ca.gov</p>	AM	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Increases court staff workload. • New configurations and workflows will have to be designed and implemented in all case management systems to manage the notices and the potential for withdrawal of consent. <p><i>Suggested Modifications:</i> Rule 2.250 (b)(1) The proposed definition allows confusion, inasmuch as it leaves open the possibility of a person e-filing a hearing exhibit, or trial exhibit. The language should explicitly exclude such exhibits from the definition in 2.250(b)(1), or allow courts to exclude them through local rules.</p>	<p>The committee appreciates the support, insight into the impact on court operations, and rule recommendation.</p> <p>The inclusion of “exhibit” in the definition of “document” is part of the existing rule definition and not impacted by the amendment. The committee may consider the recommendation for next year’s rules cycle.</p>
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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20-21, 2018:

Title	Agenda Item Type
Rules and Forms: Electronic Filing and Service	Action Required”Action Required”
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257	January 1, 2019
Recommended by	Date of Report
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	June 18, 2018
	Contact
	Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends amending several rules related to electronic service and electronic filing. The purpose of the proposal is to conform the rules to the Code of Civil Procedure, clarify and remove redundancies in rule definitions, and ensure indigent filers are not required to have a payment mechanism to create an account with electronic filing service providers.

Recommendation

The Information Technology Advisory Committee recommends, effective January 1, 2017, the Judicial Council:

1. Amend rule 2.250 to:
 - Clarify the definition of “document.”
 - Revise the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b) to refer to the definitions in section 1010.6 rather than duplicate them.
 - Add a definition of “electronic filing manager” because it is a new term used in the rules.

- Add a definition of “self-represented” which excludes attorneys rules applicable to self-represented persons were intended to add protections for persons untrained in the law, not attorneys.
2. Amend rule 2.251 to require express consent for permissive electronic service consistent with the requirements of Code of Civil Procedure section 1010.6
 3. Amend rule 2.255 to:
 - Add electronic filing managers within the scope of the rule to ensure contracts with electronic filing managers will comply with Code of Civil Procedure section 1010.6.
 - Add a requirement that electronic filing service providers allow filers to create an account without having to provide payment information.
 4. Amend rule 2.257 to create a procedure for electronically filed documents signed under penalty of perjury as required by Code of Civil Procedure section 1010.6.

The text of the amended rules are attached at pages X-XX [TBD when report is finalized].

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976, which amended provisions of Code of Civil Procedure section 1010.6 to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision that requires that, starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service.

Analysis/Rationale

The purpose of the proposal is to conform the rules to the Code of Civil Procedure, clarify and remove redundancies in rule definitions, and ensure indigent filers are not required to have a payment mechanism to create an account with electronic filing service providers.

Amendments to rule 2.250

Rule 2.250 contains the definitions for terms used in the electronic and filing service rules found in title 2, division 3, chapter 2 of the rules of court.

Amending the definition of “document.”

The current wording of the definition states that a document, in relevant part, is “a pleading, a paper, a declaration, an exhibit, or another filing...” (Cal. Rules of Court, rule 2.250(b)(1), emphasis added.) This can be read to mean that a document must be something filed with the court and thus, for example, would exclude written discovery demands and responses. The proposed amendment removes this ambiguity by striking “filing” and replacing it with “writing.” In addition, the amendment strikes “a paper” from “a pleading, a paper, a declaration, an exhibit...” because it is unnecessary in the definition.

Amending the definitions of “electronic service,” “electronic transmission,” and “electronic notification.”

The current definitions of “electronic service,” “electronic transmission,” and “electronic notification” in the rules duplicate Code of Civil Procedure section 1010.6’s of those same terms. The amendments retain the terms in the rules’ scheme of definitions, but for the actual definition components, delete the duplicative language and refer instead to Code of Civil Procedure section 1010.6. This reduces redundancies between the rules and Code of Civil Procedure and avoids the risk of the rules and Code of Civil Procedure differing in their definitions should the Legislature amend Code of Civil Procedure section 1010.6.

Adding a definition of “electronic filing manager.”

The proposal includes amendments to rule 2.255, which add electronic filing managers within the scope of the rule. Because the term “electronic filing manager” was not previously used in the electronic filing and service rules, it is necessary to define it. The definition is based descriptions of electronic filing managers the Judicial Council has used in past procurements for electronic filing manager contractors.

Adding a definition of “self-represented.”

The proposal adds a definition for “self-represented,” which excludes attorneys from the scope of the definition. Rules applicable to self-represented persons were intended to add protections for those without an attorney. For example, self-represented persons are exempt from mandatory electronic filing. Attorneys acting for themselves are not acting without an attorney. Accordingly, attorneys are excluded from the definition of “self-represented” under the electronic filing and service rules. Because section 1010.6 uses the term “unrepresented” and the rules of court use the term “self-represented,” the definition in the rules refers to self-represented parties or other persons as being those unrepresented by an attorney.

Amendments to rule 2.251

Rule 2.251 governs electronic service. The proposal amends rule 2.251(b), which governs permissive electronic service, to require express consent to electronic service and add a provision for how a party or other person may manifest consent. The current rules allow the act of electronic filing to serve as consent to electronic service. Effective January 1, 2019, Code of Civil Procedure section 1010.6 will no longer allow the act of electronic filing alone to serve as consent. (§ 1010.6(a)(2)(A)(ii).) Under section 1010.6, parties may still consent through electronic means by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic service address with that consent for the purpose of receiving electronic service.” The proposal amends the rules to remove the provision allowing the act of filing to serve as consent to electronic service and replaces it with the language for manifesting affirmative consent by electronic means from section 1010.6. The proposal also adds a provision for how a party or other person may “manifest affirmative consent” by agreeing to consent in an electronic service provider’s terms of service or filing a form consenting to electronic service.

Amendments to rule 2.255

Rule 2.255 governs contracts with electronic filing service providers. The proposed amendments to rule 2.255 add electronic filing managers within the scope of the rule to ensure contracts with electronic filing managers will comply with Code of Civil Procedure section 1010.6, and add a requirement that electronic filing service providers allow filers to create an account without having to provide financial account information.

Adding electronic filing managers to the scope of the rule

The proposal adds electronic filing managers within the scope of rule 2.255. Code of Civil Procedure section 1010.6(g)(2) requires that “[a]ny 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” be accessible by persons with disabilities and comply with certain access standards. Vendors and contractors must comply as soon as practicable, but no later than June 30, 2019. (Code Civ. Proc, § 1010.6(g)(3).) Likewise, the statute requires the Judicial Council to adopt rules to implement the requirements as soon as practicable, but no later than June 30, 2019. (Code Civ. Proc, § 1010.6(g)(1).) Code of Civil Procedure section 1010.6 includes specific requirements that courts and contractors must meet. Rule 2.255 already requires courts’ contracts with electronic filing service providers to comply with requirements of Code of Civil Procedure section 1010.6. However, because courts may also contract with electronic filing managers and the rules of court do not account for contracts with electronic filing managers, the proposal amends rule 2.255 to include them.

Adding a requirement that electronic service providers allow filers to create an account without providing payment information

The proposal amends rule 2.255 to add subdivision (f) to require electronic filing service providers to allow filers to create an account without having to provide a credit card, debit card, or bank account information. The amendment is based on a suggestion from the State Bar’s Standing Committee on the Delivery of Legal Services. According to the standing committee, some electronic filing service providers require such payment information even if the filer is never charged. According to the standing committee, this “creates an insurmountable barrier to those without access to credit or banking services.” Subdivision (f) provides that it only applies to the creation of an account, but not to the provision of services unless the filer has a fee waiver.

Amendments to rule 2.257

The proposal amends 2.257 to create a procedure for electronically filed documents signed under penalty of perjury. Cod of Civil Procedure section 1010.6(b)(2)(B)(ii) provides that 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, “[t]he 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.” Accordingly, the proposal creates a procedure where the document is deemed signed when the “declarant has signed the document using an electronic signature, and declares under penalty of perjury under the laws of the state of California that the

information submitted is true and correct.” The language is modeled after the requirements in the Uniform Electronic Transactions Act for electronic signatures made under penalty of perjury. (Civ. Code, § 1633.11(b).) In addition, the amendments add a definition of “electronic signature” to the rule, modeled after the definitions used in the Uniform Electronic Transactions Act and the Code of Civil Procedure.

Policy implications

The statutory requirement for the manifestation of affirmative consent through electronic means is new. The rule provisions addressing manifesting affirmative consent may require additional amendments in the future to address any practical issues that may result and to include requirements for notice to the courts and other parties from the electronic service provider that a party or other person has manifested affirmative consent to receive electronic service.

Comments

Comments on the manifestation of affirmative consent to permissive electronic service

The Orange County Bar Association commented that “the provision for manifesting affirmative consent should reference by definition the requirements of [Code of Civil Procedure section] 1010.6 for ‘express consent’ rather than using the phrase ‘manifest affirmative consent’ which is merely a subset definition in the statute[.]”

The committee noted that the full requirements, not just a subset, of Code of Civil Procedure section 1010.6’s express consent requirements are already captured in the rules. The option other than manifesting affirmative consent is to serve a notice on all the parties and filing the notice with the court.” (Code Civ. Proc. § 1010.6(a)(2)(A)(ii).) This option is accounted for in existing rule 2.251(b)(1)(A).

Comments responsive to the invitation to comments’ request for specific comments

Because there was some uncertainty on how a court or other parties would know someone had affirmatively consented to electronic service by electronic means, the invitation comment asked for specific comments on: (1) how notice is to be given to the court that a party or other person has provided express consent, or (2) how notice of the same is to be given to other parties or persons in the case. Two commenters submitted comments responsive to these questions recommending that the rules address how notice be given. The Superior Court of California, County of San Diego provided specific recommendations on when a party manifests consent by agreeing to consent in the terms of service with an electronic service provider. The first recommendation is that there should be standard language used for parties to consent to electronic service, and the second was that a copy of the parties’ acceptance be transmitted to the court by the electronic filing service provider. The court also commented that the party consenting should serve notice on all other parties. These comments are helpful for refinement of the rules to provide greater clarity and guidance and the committee may develop them into proposals in the next rule cycle.

Alternatives considered

Amendments to rule 2.250

- The committee did not consider the alternative of not amending the definition of “document” because the existing definition contains ambiguity that may cause confusion.
- The committee considered the alternative of not amending the definitions of “electronic service,” “electronic transmission,” and “electronic notification.” The committee received specific comments concerning this topic during the amendments to the electronic filing and service rules in 2017 and agreed with the comments that duplicating the definitions already contained in statute was unnecessary.
- The committee did not consider the alternative of not defining “electronic filing manager” because the term could be unclear if undefined.
- The committee considered the alternative of not adding a definition for “self-represented” as it has not been necessary to define it previously. However, including the definition provides greater clarity on the purpose of having separate requirements for “self-represented,” which is to protect persons who do not have or who are not attorneys.

Amendments to rule 2.251

The committee considered making a technical amendment to the consent requirements in rule 2.251(b) to ensure the rules comply with Code of Civil Procedure section 1010.6’s express consent requirements without interpreting the statute’s requirement for “manifesting consent through electronic means.” However, during the development of the proposal, the committee received public comments from the electronic filing service provider community raising concerns over uncertainty in the meaning of “manifesting affirmative consent” and providing an interpretation, which was integrated into the proposal.

Amendments to rule 2.255

The committee did not consider the alternative of not adding electronic filing managers to the scope of the rule because including electronic filing managers is necessary to comply with the requirements of Code of Civil Procedure section 10106.(g).

The court did not consider the alternative of not adding new subdivision (f) because adding the subdivision removes a barrier to filers without access to credit or banking services. The committee limited the scope of the rule to ensure it was targeted at only the ability to create an account, not to utilize the services, which can require payment information or, if applicable, a fee waiver.

Amendments to rule 2.257

The committee did not consider the alternative of not creating a procedure for electronic signatures on documents filed under penalty of perjury. Code of Civil Procedure section 1010 requires creation of the rule by January 1, 2019.

Fiscal and Operational Impacts

The Joint Rules Subcommittee of Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committees commented on expected impacts on court operations.

Specifically:

- Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)
- Increases court staff workload.
- New configurations and workflows will have to be designed and implemented in all case management systems to manage the notices and the potential for withdrawal of consent.

[Additional details TBD on whether it is particular rules in the proposal that have these impacts. ITAC staff contacted TCPJAC/CEAC JRS staff for additional details.]

Attachments and Links

1. Cal. Rules of Court, rules 5.502, 5.518, and 5.810, at pages XX-XX [TBD when report finalized]
2. Forms JV-180, JV-225, JV-535(A), and JV-536, at pages 24–44
3. Chart of comments, at pages 45–56
4. Attachment A: Chart of comments on proposal SPR12-20 [this proposal circulated for comment twice, and this chart from the first comment cycle is provided for background]
5. Link A: Senate Bill 368 (Stats. 2011, ch. 471), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB368&search_keywords=



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
June 18, 2018	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	June 21, 2018
From	Contact
Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	Andrea L. Jaramillo 916-263-0991 phone andrea.logue@gmail.com
Subject	
Rules and Forms: Form for Withdrawal of Consent to Electronic Service	

Background

This spring, the Information Technology Advisory Committee and Civil and Small Claims Advisory Committee circulated a form proposal for public comment. The proposed form, EFS-006, *Withdrawal of Consent to Electronic Service*, will be a new form. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019.

Discussion

Four commenters responded to the invitation to comment either agreeing with the proposal or agreeing as modified. Three of the commenters responded to the invitation to comment's request for specific comments.

A. Add language clarifying use of the form for permissive electronic service only

The Superior Court of California, County of Los Angeles suggested that EFS-006 be modified to add the following under the title: “(This form may not be used for electronic service required by local rule or court order.)” Staff recommend that this modification be incorporated into EFS-006 because the form is only applicable to permissive electronic service and not mandatory electronic service. Accordingly, the modification adds clarity on the proper use of the form. An example of what the form would look like as modified is attached and the format is modeled after forms using similar such notices.

B. Responses to the request for specific comments

Three of the commenters responded to the invitation to comment’s request for specific comments. The invitation to comment requested specific comments on the following questions:

- Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006?
 - If not, should language be included on EFS-006 directing the completion of a proof of service. For example, “You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”

The Superior Court of California, County of Ventura commented, “It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service.” The court recommended the form be modified accordingly and that the example language regarding proof of service included in the second bullet point, above, be added to the form.

The Superior Courts of California, Counties of Los Angeles and San Diego both recommended that the proof of electronic service be retained on page 2 of the form. The Los Angeles court commented, “The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.” The San Diego court commented, “Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the [proof of service] and more convenient for the litigant.” The San Diego court also commented that if the decision is to remove the proof of service, the proposed language for directing the completion of a proof of service is appropriate and clear.

Staff recommend the proof of electronic service be kept with form EFS-006. The proof of electronic service includes a note at the top that form POS-030, *Proof of Service by First-Class Mail-Civil*, should be used if service is by mail. The Superior Courts of California, County of San Diego makes a good point that it is more convenient for self-represented litigants if the proof of service is included. While some litigants may elect to use form POS-030, *Proof of Service by First-Class Mail-Civil*, instead of the proof of electronic service included with form EFS-006, and, thus, have to look up an additional form, removing the proof of electronic service from form EFS-006 would require *all* litigants to look up a separate proof of service form.

Staff Recommendations

Modify the proposed form EFS-006, *Withdrawal of Consent to Electronic Service*, to include a notice that the form may not be used for electronic service required by local rule or court order. As modified, recommend the form for Judicial Council adoption at its September 2018 meeting.

Attachments and Links

1. Form EFS-006, *Withdrawal of Consent to Electronic Service*, as circulated, at pages 4-5.
2. Form EFS-006, *Withdrawal of Consent to Electronic Service*, as modified to include a notice that the form may not be used for electronic service required by local rule or court order, at pages 6-7.
3. Chart of comments, at pages 8-10.
4. Draft Judicial Council Report (minus attachments to the report), at pages 11-13.
5. Link A: Code of Civil Procedure section 1010.6, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT Not approved by the Judicial Council 2018-01-25</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE	JUDICIAL OFFICER:
	DEPARTMENT:

1. The following self-represented party or the attorney for:
- a. plaintiff (name):
 - b. defendant (name):
 - c. petitioner (name):
 - d. respondent (name):
 - e. other (describe):

withdraws consent to electronic service of notices and documents in the above-captioned action.

2. The mailing address for service on the person identified in item 1 is (specify):
- Street:
 City:
 State: Zip:

3. All notices and documents in the above-captioned action must be served on the person identified in item 1 at the address in item 2 as of (date):

Date: _____

_____  _____

TYPE OR PRINT NAME
(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
------------	--------------

(Note: If you serve Withdrawal of Consent to Electronic Service by mail, you should use form POS-030, Proof of Service by First-Class Mail–Civil, instead of using this page.)

**PROOF OF ELECTRONIC SERVICE
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE**

1. I am at least 18 years old.

My residence or business address is (specify):

2. I electronically served a copy of the *Withdrawal of Consent to Electronic Service* as follows:

a. Name of person served:

b. Electronic service address of person served:

On behalf of (name or names of parties represented, if person served is an attorney):

c. On (date):

Electronic service of the *Withdrawal of Consent to Electronic Service* on additional persons is described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

(Note: If you serve Withdrawal of Consent to Electronic Service by mail, you should use form POS-030, Proof of Service by First-Class Mail–Civil, instead of using this page.)

**PROOF OF ELECTRONIC SERVICE
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE**

1. I am at least 18 years old.

My residence or business address is (specify):

2. I electronically served a copy of the *Withdrawal of Consent to Electronic Service* as follows:

a. Name of person served:

On behalf of (name or names of parties represented, if person served is an attorney):

b. Electronic service address of person served:

c. On (date):

Electronic service of the *Withdrawal of Consent to Electronic Service* on additional persons is described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ITC SPR18-38

Technology: Rules Modernization Project Proposed Rules

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

#	Commentator	Position	Comment	[DRAFT] Committee Response
1	Orange County Bar Association By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710	A	No specific comment.	The committees appreciate the support.
2	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst Management Research Unit 111 N. Hill Street, Room 620 Los Angeles, CA 90012 Tel: 213-633-0452	AM	Suggested Modification: Form EFS-006 Under the title: Withdrawal of Consent to Electronic Service add: (This form may not be used for electronic service required by local rule or court order.) Request for Specific Comments: Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include	The committees appreciate the support, suggested modification, and responses to the request for specific comments. The suggested modification adds clarity to the form.

ITC SPR18-38

Technology: Rules Modernization Project Proposed Rules

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

#	Commentator	Position	Comment	[DRAFT] Committee Response
			<p>a proof of electronic service as part of EFS-006? The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.</p>	
3	<p>Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101</p>	A	<p>Q: Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006? Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the POS and more convenient for the litigant.</p> <p>Q If not, should language be included on EFS-006 directing the completion of a proof of</p>	<p>The committees appreciate the support and responses to the request for specific comments.</p>

ITC SPR18-38
Technology: Rules Modernization Project Proposed Rules

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#	Commentator	Position	Comment	[DRAFT] Committee Response
			<p>service. For example, “You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”</p> <p>If the committee elects to remove the POS on page two, then the proposed language is appropriate and clear.</p>	
4	<p>Superior Court of California, County of Ventura By Julie Camacho, Court Manager 800 S. Victoria Avenue Ventura CA, 93006 Email: julie.camacho@ventura.courts.ca.gov</p>	AM	<p>It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service.</p> <p>Yes, the indicated language regarding proof of service should be added to the form.</p>	<p>The committees appreciate the support and responses to the request for specific comments.</p>



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20-21, 2018:

Title	Agenda Item Type
Rules and Forms: Form for Withdrawal of Consent to Electronic Service	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt form EFS-006, <i>Withdrawal of Consent to Electronic Service</i>	January 1, 2019
Recommended by	Date of Report
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	June 13, 2018
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact
	Andrea Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov
	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee and Civil and Small Claims Advisory Committee recommend the Judicial Council adopt a new form for withdrawal of consent to electronic service. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019.

Recommendation

The Information Technology Advisory Committee and Civil and Small Claims Advisory Committee recommend the Judicial Council adopt form EFS-006, *Withdrawal of Consent to Electronic Service*, effective January 1, 2019. The text of the amended rules and the new and revised forms are attached at pages [X-XX, TBD when report is finalized].

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976, which amended provisions of Code of Civil Procedure section 1010.6 to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision that requires the Judicial Council to create, by January 1, 2019, a form for a party or other person to withdraw their consent to permissive electronic service.

Analysis/Rationale

Code of Civil Procedure section 1010.6(a)(6) requires the Judicial Council to create a form for withdrawal of consent to electronic service by January 1, 2019. For the sake of consistency, the recommended form, EFS-006, *Withdrawal of Consent to Electronic Service*, is modeled after existing form EFS-005-CV, *Consent to Electronic Service and Notice of Electronic Service Address*.

Policy implications

The proposed form does not have significant policy implications. The form merely creates a formal mechanism for parties to use to withdraw consent to permissive electronic service.

Comments

Four commenters responded to the invitation to comment either agreeing with the proposal or agreeing as modified. Three of the commenters responded to the invitation to comment's request for specific comments.

Add language clarifying use of the form for permissive electronic service only

The Superior Court of California, County of Los Angeles suggested that EFS-006 be modified to add the following under the title: "(This form may not be used for electronic service required by local rule or court order.)" The committees decided to [incorporate/not incorporate, TBD] the modification into EFS-006 because [reasons TBD; these highlighted portions will be updated following the subcommittee meetings and finalized after the committee meetings].

Responses to the request for specific comments

Three of the commenters responded to the invitation to comment's request for specific comments. The invitation to comment requested specific comments on the following questions:

- Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006?

- If not, should language be included on EFS-006 directing the completion of a proof of service. For example, “You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”

The Superior Court of California, County of Ventura commented, “It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service.” The court recommended the form be modified accordingly and that the example language regarding proof of service included in the second bullet point, above, be added to the form.

The Superior Courts of California, Counties of Los Angeles and San Diego both recommended that the proof of electronic service be retained on page 2 of the form. The Los Angeles court commented, “The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.” The San Diego court commented, “Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the [proof of service] and more convenient for the litigant.” The San Diego court also commented that if the decision is to remove the proof of service, the proposed language for directing the completion of a proof of service is appropriate and clear.

The committees decided the proof of electronic service would be [kept/not kept TBD] with form EFS-006 because [reasons TBD; these highlighted portions will be updated following the subcommittee meetings and finalized following the committee meetings].

Alternatives considered

The committees did not consider the alternative of not creating EFS-006, *Withdrawal of Consent to Electronic Service*, because statute mandates the creation of the form.

Fiscal and Operational Impacts

It is not expected that the new form will result in any significant costs or operational impacts on the courts.

Attachments and Links

1. Form EFS-006, *Withdrawal of Consent to Electronic Service*, at pages XX-XX, TBD
2. Chart of comments, at pages XX-XX, TBD
3. Link A: Code of Civil Procedure section 1010.6, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6