



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

[www.courts.ca.gov/itac.htm](http://www.courts.ca.gov/itac.htm)  
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## ITAC RULES AND POLICY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

November 6, 2018  
12:10 PM – 1:20 PM  
Teleconference

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**Advisory Body Members Present:** Hon. Peter Siggins; Hon. Julie Culver; Hon. Louis Mauro

**Advisory Body Members Absent:** Mr. Darrell Parker; Don Willenburg

**Others Present:** Ms. Fati Farmanfarmaian; Ms. Andrea Jaramillo; Ms. Kristi Morioka; Richard Blalock

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

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

##### **Approval of Minutes**

The ITAC Rules and Policy Subcommittee reviewed and approved the minutes of the June 21, 2018. There was no public comment for this meeting.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1–3)

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##### **Item 1**

##### **Privacy Resource Guide (Action Required)**

Review the Privacy Resource Guide (PRG) and decide whether to recommend it for publication on the Judicial Council website as a resource for the courts and as a public document.

Discuss proposals for which entity will be responsible for maintaining and updating the PRG after its publication.

**Presenters:** Hon. Julie R. Culver  
Ms. Kristi Morioka, Attorney II, Legal Services

**Action:** Judge Culver responded to Justice Siggins' question, confirming this team had reached out to other advisory committees to alert and discuss the PRG. There is no need for branch or public comment since this is a resource rather than rule change. Justice Mauro suggested one change on page 2 the reference is to the trial court and not appellate court. Judge Culver agreed a correction is needed and will be done prior to submitting to ITAC.

**Motion to Approve the Privacy Resource Guide go to ITAC for issuance as a guide for the judicial branch with the recommendation that it go to the Judicial Council to be approved in 2019.**

**Motion approved.**

Justice Siggins and Judge Culver wanted to discuss where the PRG should be housed. He suggests it remain under ITAC Rules & Policy for the time being. Judge Culver suggests that there be more involvement with court CEOs. Justice Mauro suggests that rather than an ongoing annual agenda item, perhaps Judicial Council staff manage the minor changes going forward, bringing major changes back to ITAC as needed.

The subcommittee recommendation is that updating responsibility and maintenance be retained by the Rules & Policy subcommittee for one more year and then be reviewed again to see where this document should be finally housed.

## **Item 2**

### **Rules and Policy Subcommittee 2018 Project Updates (Discussion Item)**

Report on end of year Rules and Policy Subcommittee 2018 projects.

**Presenters:** Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Discussion:** Justice Siggins gave a brief status report on the 2018 projects with no comments from members.

## **Item 3**

### **Rules and Policy Subcommittee 2019 Work Plan (Discussion Item)**

Review, prioritize and plan ITAC's 2019 Annual Agenda projects assigned to the subcommittee.

**Presenters:** Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Discussion:** Justice Siggins presented the 2019 work plan items. There are two statutory proposals and two rules proposals recommended. Related to the new remote access rules, Justice Siggins suggested that audit trails and records date request is premature until the courts have implemented. Members agreed not to include it at this time.

Ms. Jaramillo presented on the other proposals for a discussion with members.

1. Potential Legislative proposals to amend the Code of Civil Procedure section 1010.6.
  - A. Amend to allow courts to charge fees for actual costs of permissive electronic filing and service just as they are authorized to do for mandatory electronic filing and service.
  - B. Amend provisions for signatures made not under penalty of perjury.
2. Potential Legislative proposals to amend the Penal Code of section 1203.01 to provide an alternative to mailing.

Ms. Jaramillo spoke with the Criminal Law Advisory Committee (CLAC) and they are unable to take this item on in 2019 but are willing to provide ITAC consult. Ms. Jaramillo doesn't believe this is a complicated issue.

Justice Siggins believes this is an easy item and members concur with staff recommendations.

3. Potential proposals to amend electronic filing and service Rules of Court.
  - A. Amend rule 2.257 to strike or reverse language on signatures of opposing parties.
  - B. Amend provisions for signatures made not under penalty of perjury.

All proposed four items will be included in the 2019 annual agenda. Members will review priority via email.

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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 12:45 PM.

Approved by the advisory body on enter date.



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### MEMORANDUM

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Date	Action Requested
January 15, 2019	Please review
To	Deadline
Hon. Peter J. Siggins, Chair Information Technology Advisory Committee, Rules and Policy Subcommittee	January 22, 2019
From	Contact
Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	Andrea L. Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Amendments to Penal Code Section 1203.01	

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On November 6, 2018, the Rules and Policy Subcommittee (RPS) of the Information Technology Advisory Committee (ITAC) met and considered potential topics for proposals to be developed during the 2019 rules cycle. RPS decided to develop a proposal for the Judicial Council to sponsor legislation to amend Penal Code section 1203.01, which requires the court to mail certain documents to various persons and entities following criminal judgment. The purpose of the proposal would be to permit the courts to deliver the documents by electronic means. The originating source of the proposal is the Data Exchange Working Group, which is made up of court participants and justice partners and is working to develop standardized data exchanges.

In addition to ITAC, the proposal would fall within the scope of the Criminal Law Advisory Committee's (CLAC) subject area. CLAC does not have the capacity to take a lead or joint role in 2019, but is amenable to ITAC taking the lead role while CLAC serves in a consultative role to provide feedback on the proposal.

## Background

Under Penal Code section 1203.01, once judgment is pronounced in a criminal case, “the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner.” (Pen. Code, § 1203.01(a).) The law enforcement agency that investigated the case may also file statements with the clerk. (*Ibid.*) The clerk is then required to mail copies of the statements and reports to (1) the attorney for the defendant and (2) to the defendant, in care of the California Department of Corrections and Rehabilitation (CDCR). (*Ibid.*) The attorney for the defendant may also file a statement and, in that event, the clerk is required to mail a copy of that statement to the district attorney. (*Ibid.*) The clerk is also required to mail certified copies of all statements and reports addressed to the CDCR at the prison or other institution to which the person convicted is delivered. (*Ibid.*)

In addition, the clerk is also required to mail to the prison or other institution to which the person convicted is delivered, copies of the charging documents and, if applicable, waiver and plea forms. (Pen. Code, § 1203.01(b)(1)–(2).) Finally, when the sentence is death or of an indeterminate term, or upon request of CDCR, the inmate, or the inmate’s counsel, the clerk is required to mail the transcript of the proceedings at the time of sentencing, and, if applicable, the transcript of the proceedings at the time of the defendant’s guilty or nolo contendere plea. (*Ibid.*)

There is no option for the clerk to deliver the documents or data contained in the documents described in Penal Code section 1203.01 by electronic means rather than by mail.

## Draft Proposal

The draft below includes the existing text of Penal Code section 1203.1 and three potential options for a new subdivision (c) to add an electronic delivery option. All three options make electronic delivery optional both for the court as the sender and for the recipients. The recipients must consent to receive the statements and reports electronically. A main concern with electronic delivery is that persons convicted may have unreliable access to electronic resources. Therefore, the options include special provisions to address that concern.

In addition, staff consulted with the Data Exchange Working Group on what terminology would make the most sense to refer to the postconviction documents that are currently mailed because data exchanges may not require transmission of any sort of electronic version of a document (e.g., a PDF). The working group suggested referring to “information” instead because the information contained in the documents is what is relevant. Because “information” has a

particular meaning as an accusatory pleading in criminal law, staff have used “data” instead to convey that the document itself is not necessarily required.

**Penal Code section 1203.01**

(a) Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted. Immediately after the filing of those statements and reports, the clerk of the court shall mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the Department of Corrections and Rehabilitation at the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage prepaid, addressed to the attorney for the defendant, if any, and to the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of any statement submitted by the attorney for the defendant, with postage prepaid, shall be mailed to the district attorney.

(b)(1) In all cases in which the judgment imposed includes a sentence of death or an indeterminate term with or without the possibility of parole, the clerk shall, within 60 days after judgment has been pronounced, mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, a copy of the charging documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

(2) In all other cases not described in paragraph (1), the clerk shall mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, a copy of the charging documents, a copy of the waiver and plea forms, if any, and upon written request by the Department of Corrections and Rehabilitation or by an inmate, or by his or her counsel, for, among other purposes on a particular case, appeals, review of custody credits and release dates, and restitution orders, the transcript of the proceedings at the time of the

defendant's guilty or nolo contendere plea, if the defendant pleaded guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

**Option 1: Persons convicted will continue to receive mail-only documents, but other recipients may opt in to electronic delivery.**

(c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.

(2) Notwithstanding paragraph (1), the person convicted is not eligible to receive electronic delivery of the documents, or the data contained in the documents, described in subdivisions (a) and (b), and the clerk of the court must mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).

**Option 2: All recipients can opt in. Persons convicted can request to receive the documents by mail as well.**

(c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.

(2) Notwithstanding paragraph (1), upon written request by a person convicted or by his or her counsel, the clerk shall also mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).

**Option 3: All recipients can opt in. Persons convicted will automatically receive the documents by mail as well.**

(c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.

(2) Notwithstanding paragraph (1), the clerk of the court must also mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).

### **Staff recommendation**

Staff recommend option 2 for the proposal because it is the most electronic-friendly. The default for all options is mail because recipients must opt in to electronic delivery. When they do opt in, however, option 2 removes all reliance on paper and is entirely electronic. However, it still ensures persons convicted can later obtain paper copies if they request them. This should mitigate against unreliable access to electronic resources to access electronically delivered documents.

Options 1 and 3 both continue to require mailing to the person convicted. This would also be a benefit where access to electronic resources is unreliable, but it provides no electronic-only option for the recipients. Staff recommend that the invitation to comment request specific comments on options 1 and 3.

The Data Exchange Working Group had suggested “the clerk of the court may deliver the information described in subdivisions (a) and (b) by electronic means in a mutually agreeable format . . .” but staff did not include the “mutually agreeable format” since the proposed new subdivision is already predicated on consent. If the recipient did not agree with the format the court had available, the recipient could simply not consent to electronic delivery.

### **Additional Proposal Considerations**

The Policy Coordination Liaison Committee (PCLC) recommends that advisory committees use the “Worksheet for Judicial Council-Sponsored Legislation Proposal” to assist with the analysis and other important considerations of proposed legislation. The worksheet must be submitted to the Judicial Council’s Governmental Affairs office prior to PCLC considering the proposal for circulation. A draft completed copy of the worksheet is attached for the subcommittee’s review and consideration.

### **Subcommittee’s Tasks**

- Discuss the draft proposal and proposal considerations.
- Determine which option in the draft proposal language should be included in the proposal. (Note: ITAC can still solicit specific comments in the invitation to comment on other options as well.)

### **Next Steps**

- Based on the subcommittee’s direction and edits on the proposal language, staff will prepare an invitation to comment and proposal and submit them to (1) ITAC to vote on



circulating the proposal for public comment and (2) the Judicial Council Editing and Graphics Group for copyediting.

#### Attachments and Links

1. Worksheet for Judicial Council-Sponsored Legislation Proposal, pages 7-8.

# Worksheet for Judicial Council–Sponsored Legislation Proposal

Advisory Committee: ITAC Date: \_\_\_\_\_

Contact Person: Andrea Jaramillo

Governmental Affairs Liaison: Sharon Reilly

1. Describe the problem to be addressed.

Penal Code section 1203.01 requires the courts to mail certain documents about a convicted person to the Department of Corrections and Rehabilitation, attorneys, and defendants following criminal judgment. There is no option for electronic delivery of the documents.

2. How does this problem affect the judicial branch?

It requires the courts to mail paper documents and thus requires the recipients to receive paper documents. Many recipients may prefer to receive the documents or the data contained in the documents electronically.

3. What is the proposed solution?

Amend Penal Code section 1203.01 to add a new subdivision (c), which would allow the courts to deliver the documents or data contained in the documents electronically with the consent of the recipient.

[TBD by RPS on additional detail on electronic delivery to the person convicted. This will be updated to reflect which option RPS decides what language should be incorporated into the proposal.]

4. Discuss alternative solutions. Why is the recommended solution preferable?

[TBD by RPS. This will be added after the RPS meeting to reflect the alternatives considered.]

5. Any foreseeable problems with the proposed solution?

No.

6. Is the proposal within the Judicial Council's purview?

Yes

7. Could the proposal be carried out by amending the California Rules of Court instead of legislation?

No. The mailing requirement is statutory and therefore a statutory amendment is necessary to allow an alternative for electronic delivery.

8. Please estimate costs or operational impacts of the proposal.

It is not expected that the proposal will result in any costs to the courts as it does not mandate the courts provide electronic delivery. As such, courts have discretion based on their business needs to develop the necessary processes and technical capacity to provide electronic delivery. The proposal should eliminate some costs required for mailing such as printing paper copies and paying postage. The committee will seek specific comments from the courts on costs and operational impacts.

9. Why is the Judicial Council the best sponsor?

The proposal will directly impact the courts, justice partners, and persons convicted of crimes. The proposal is helpful to advance the Judicial Council's goal of promoting the modernization of statutes to facilitate the use of technology in court operations. (Judicial Council of Cal., Strategic Plan for Technology 2019-2022 (2018) pp. 14-15.) In particular, one of the Judicial Council's priority objectives is to "[e]nsure current rules and legislation do not inhibit the use of technology solutions." (*Id.* at p. 14.) Allowing for electronic delivery rather than relying exclusively on mail of the documents described in Penal Code section 1203.01 should further this objective.

10. What political factors are associated with the proposal? Is there any expected opposition or support for the proposal?

The committee expects that courts and justice partners will support the proposal as the Data Exchange Working Group, which identified the problem and suggested a proposal be developed, consists of courts and justice partners. The committee does not anticipate opposition, but does anticipate there may be differing viewpoints on how best to provide the documents to persons convicted.

11. Does this proposal require urgent consideration? If so, why?

No.

***Note: This worksheet must be completed and submitted to Governmental Affairs staff prior to the sponsored proposal being placed on the PCLC agenda for final consideration***



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### MEMORANDUM

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Date	Action Requested
January 15, 2019	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	January 22, 2019
From	Contact
Andrea L. Jaramillo Attorney, Legal Services	Andrea L. Jaramillo Legal Services 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Amendments to Code of Civil Procedure Section 1010.6	

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On November 6, 2018, the Rules and Policy Subcommittee (RPS) of the Information Technology Advisory Committee (ITAC) met and considered potential topics for proposals to be developed during the 2019 rules cycle. RPS decided to develop a proposal for the Judicial Council to sponsor legislation to amend certain provisions of Code of Civil Procedure section 1010.6 (section 1010.6), which governs electronic filing and service in civil matters. The purpose of the proposal would be twofold. First, to allow courts to recover no more than their actual costs of electronic filing and service for (1) permissive electronic filing, and (2) electronic filing and service required by court order. This would be parallel to the actual cost recovery authorized for electronic filing and service required by local rule. Second, the proposal would account for signatures made not under penalty of perjury by persons other than the filer.

## Background

### **Cost recovery**

Code of Civil Procedure section 1010.6 provides statutory authority for electronic filing and service. Under the code section, trial courts may adopt local rules permitting or requiring electronic filing subject to certain conditions. (§ 1010.6(b), (d).) A court may also require electronic filing and service by court order in certain types of cases if it has adopted local rules conforming to the statutory conditions for permissive electronic filing. (§ 1010.6(c).) When a court permits electronic filing, it may charge a fee for payment processing only not to exceed the costs of processing a payment. (1010.6(b)(7).) If a court permits electronic filing, it may also order electronic filing and service, but the provision on ordering electronic filing and service does not directly address costs. (§ 1010.6(c).) When a court requires electronic filing and service by local rule, it may “charge fees of no more than the actual cost” except in instances where the court deems waiving the fees appropriate. (§ 1010.6(d).) Accordingly, what costs it can recover varies depending on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule.

### **Documents not signed under penalty of perjury**

Under section 1010.6, “When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by the person who filed the document electronically.” (§ 1010.6(b)(2)(A).) While this provision initially states that it applies when a signature of *any* person is required, the scope is limited by the language “the document shall be deemed to have been signed *by the person who filed.*” As such, the provision does not account for a situation where someone signs a document not under penalty of perjury, that document is to be filed electronically, and the filer and signer are different people.

## Draft Proposal

The draft below includes the existing text of the relevant provisions of section 1010.6 and potential amendments along with staff comments. A complete copy of section 1010.6 is available at [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP).

## Cost recovery provisions

### Draft proposed amendment to section 1010.6(b): electronic filing and service permitted by local rule

(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)-(6) \* \* \*

(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.

(8) The court may charge fees of no more than the actual cost of the electronic filing and service of the documents. The court shall waive any fees charged if the court deems a waiver appropriate, including in instances when a party has received a fee waiver.

*Staff comments:* The amendment above would allow the court to recover additional actual costs for permissive electronic filing and service. Since that would encompass any payment processing fees, it would not be necessary to keep “the court” in subdivision (b)(7). The language in proposed subdivision (b)(8) is the same language used to authorize courts to charge or waive fees covering actual costs for mandatory electronic filing and service by local rule in subdivision (d). The language originated as a part of Assembly Bill 2073 (2012), which authorized a pilot of electronic filing and service required by local rule in one court, and which was later expanded statewide. The circumstances when a court should waive fees when “appropriate” are not specified other than when a party has a fee waiver. Based on the history of the rules following this legislation, more specificity may not be needed. Rules developed by the Civil and Small Claims Advisory Committee and Court Technology Advisory Committee after AB 2073 went into effect contained the same provisions as the statute. The committees sought specific comments on whether more provisions were needed on waiving fees. (Jud. Council of Cal., Advisory Com. Rep., *Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases* (2013), pp. 25-26, <<https://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>> [as of Jan. 15, 2019].) At the time, most courts did not think more provisions on waiving fees were needed and those that did, thought it could be addressed through local rules. (*Id.* at p. 25.) Accordingly, the committees did not provide more detailed rules and guidelines at the time. (*Id.* at p. 26.) Rather, the committees decided rules and guidelines could be developed in the future if experience provide it was

needed. (*Ibid.*) If there has been a shift in thinking about this among the courts and if it is something that should be addressed in statute, the committee should hear about through public comment.

**Draft proposed amendment to section 1010.6(c): electronic filing and service required by court order**

(c) If a trial court adopts rules conforming to subdivision (b), it may provide by order, subject to the requirements and conditions stated in subdivision (b) and the rules adopted by the Judicial Council under subdivision (f), 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.

*Staff comments:* The phrases “subject to the requirements and conditions in subdivision (b)” and “the rules adopted by the Judicial Council under subdivision (f)” are used in subdivision (d), which governs mandatory electronic filing and service by local rule. Adding the language on subdivision (b) makes it clearer that the provisions of subdivision (b) apply to subdivision (c) rather than the adoption of local rules conforming to subdivision (b) merely being a predicate to a court being allowed to require electronic filing and service by court order. Coupled with the language in proposed subdivision (b)(8), above, the proposed amended language would allow courts to charge or waive fees for actual costs they incur for electronic filing and service required by court order. The reference to subdivision (f) makes subdivisions (c) and (d) more consistent. Subdivision (f) requires the council to create rules for mandatory electronic filing and service, which it has already done for both types of mandatory electronic filing and service.

**Proposed amendments to section 1010.6(d)(2): electronic filing and service required by local rule**

(d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial Council under subdivision (f), and the following conditions:

(1) \* \* \*

(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~~ 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.

(3)-(5) \* \* \*

*Staff comments:* Because the provisions governing electronic filing and service required by local rule are “subject to the requirements and conditions stated in subdivision (b),” which would include proposed subdivision (b)(8), above, it would be extraneous to retain the same language in subdivision (d)(2). Combined with the proposed subdivision (b)(8), the proposed amendment here would still allow courts to charge or waive fees for actual costs they incur for mandatory electronic filing by local rule.

## **Document signing provisions**

### **Draft proposed amendments to section 1010.6(b)(2)**

(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) \* \* \*

(2)(A) When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by ~~the~~ that person ~~who filed the document electronically.~~ if filed electronically and if either of the following conditions is satisfied:

(i) The filer is the signer.

(ii) The person has signed the document pursuant to the procedure set forth in a rule of court adopted by the Judicial Council.

(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:



(i) The person has signed a printed form of the document 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)-(7) \* \* \*

*Staff comments:* The proposed amendment would preserve the status quo when the filer is the signer, but allow for documents not signed under penalty of perjury to be considered signed when the filer and signer are different people. The amendment would leave the specific processes to the Judicial Council to develop just as the statute did for documents electronically signed under penalty of perjury.

#### Additional Proposal Considerations

The Policy Coordination Liaison Committee (PCLC) recommends that advisory committees use the “Worksheet for Judicial Council-Sponsored Legislation Proposal” to assist with the analysis and other important considerations of proposed legislation. The worksheet must be submitted to the Office of Governmental Affairs prior to PCLC considering the proposal for circulation. A draft copy of the completed worksheet and blank copy of the work sheet are attached to the memo.

The invitation to comment includes the opportunity to ask for specific comments. Staff recommend asking for specific comments from the courts on whether the proposal on actual costs for electronic filing would encourage courts that do not have electronic filing to allow it, or encourage courts that do electronic filing to improve it and in what ways (e.g., expand the scope of electronic filing). In addition, staff recommend soliciting specific comments on whether the proposal on actual costs for electronic filing would discourage self-represented litigants from using electronic filing and whether there should be an exception for self-represented litigants.

#### Subcommittee's Task

- Discuss the draft proposal and proposal considerations.
- Determine what draft language should be included in the proposal for the full ITAC's consideration.

#### Attachments and Links

1. Draft Completed Worksheet for Judicial Council-Sponsored Legislation Proposal, pages 8-10.
2. Code of Civil Procedure section 1010.6, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP).

## Worksheet for Judicial Council–Sponsored Legislation Proposal

Advisory Committee: ITAC Date: \_\_\_\_\_

Contact Person: Andrea Jaramillo

Governmental Affairs Liaison: Dan Pone

1. Describe the problem to be addressed.
  - A. Disparate provisions on cost recovery for electronic filing under Code of Civil Procedure section 1010.6. What costs a court can recover varies depends on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule.
  - B. When a document signed not under penalty of perjury is to be electronically filed, the statute only allows for the document to be considered signed by the person who filed. Specifically, under Code of Civil Procedure section 1010.6(b)(2)(A), “When a document to be filed requires the signature *of any person*, not under penalty of perjury, the document shall be deemed to have been *signed by the person who filed* the document electronically.” The statute does not account for signatures not made under penalty of perjury on electronically filed documents when the signer and filer are different people.
2. How does this problem affect the judicial branch?
  - A. Prevents courts from recovering actual costs of electronic filing and service when electronic filing and service is permitted or required by court ordered. Actual costs are only recoverable when mandatory electronic filing is by local rule.
  - B. It impacts litigants when electronically filing documents signed by someone other than the filer.
3. What is the proposed solution?
  - A. Amend Code of Civil Procedure section 1010.6 to allow recovery of actual costs for electronic filing and service regardless of whether electronic filing and service is permitted, required by court order, or required by local rule.
  - B. Add a provision to account for signatures of non-filers, but leave it to the Judicial Council to develop a procedure for signatures of non-filers on electronically filed documents.

4. Discuss alternative solutions. Why is the recommended solution preferable?
  - A. Status quo. Recommended solution is preferable as it may encourage more courts to offer electronic filing and service or expand electronic filing and service either on their own or through vendors, including vendors participating in the statewide electronic filing program. The committee will solicit specific comments on the courts about the specific ways it would impact courts' use of electronic filing and service.
  - B. Status quo. The recommended solution is preferable as it would expand the options for signatures on electronically filed documents.
5. Any foreseeable problems with the proposed solution?
  - A. There is a concern about the potential impact on self-represented litigants. The committee will seek specific comments on whether allowing recovery of actual costs would be a barrier or self-represented litigants and whether there should be an exception for self-represented litigants.
  - B. No.
6. Is the proposal within the Judicial Council's purview?
  - A. Yes
  - B. Yes.
7. Could the proposal be carried out by amending the California Rules of Court instead of legislation?
  - A. No. The fee provisions are contained in statute.
  - B. Maybe, but there is a concern that a rule would be inconsistent with statute.
8. Please estimate costs or operational impacts of the proposal.
  - A. This would be highly dependent on the individual courts and how they approach electronic filing. For courts that participate in the statewide electronic filing program, the administrative cost to the courts is 30 cents on the electronic transaction. For mandatory electronic filing, this is recovered from the filer. The Judicial Council calculated the cost and it may go down with increased participation.
  - B. It is not expected to increase costs to the courts.

9. Why is the Judicial Council the best sponsor?

The proposals directly impact the courts and electronic litigants.

10. What political factors are associated with the proposal? Is there any expected opposition or support for the proposal?

Unknown. This will become more apparent when the proposal circulates for comment.

11. Does this proposal require urgent consideration? If so, why?

No.

***Note: This worksheet must be completed and submitted to Governmental Affairs staff prior to the sponsored proposal being placed on the PCLC agenda for final consideration***

DRAFT



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
January 16, 2019	Please review
To	Deadline
Hon. Peter J. Siggins, Chair Information Technology Advisory Committee, Rules and Policy Subcommittee	January 22, 2019
From	Contact
Andrea L. Jaramillo Attorney, Legal Services	Andrea L. Jaramillo Legal Services 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Amendments to California Rules of Court, rules 2.251, 2.255, and 2.257	

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On November 6, 2018, the Rules and Policy Subcommittee (RPS) of the Information Technology Advisory Committee (ITAC) met and considered potential topics for proposals to be developed during the 2019 rules cycle. RPS decided to develop a proposal to amend electronic filing and service rules. The proposal would recommend amending rules 2.251 and 2.255 to provide for how notice of consent to electronic service is to be given, language for consent, and a requirement for EFSPs to transmit a person's consent to the court. The origin of these amendments is the Superior Court of California, County of San Diego. The proposal would also recommend amending rule 2.257 to reduce reliance on paper for signatures of opposing parties, and include other persons in addition to parties within the scope of the rule. The reduction of reliance on paper for signatures of opposing parties originated with the California Department of Child Support Services, which is expanding the functions of the electronic system that local child support agencies use, and the inclusion of other persons in addition to parties in the rule originated with staff as a recommendation to make the rule more consistent with Code of Civil Procedure section 1010.6.

## Background

### **Rule 2.251**

#### **Consent to electronic service**

In 2017, the Legislature amended Code of Civil Procedure section 1010.6 (section 1010.6) to require all persons to provide express consent to electronic service. Rule 2.251(b) had allowed the act of electronic filing alone to act as evidence of consent to receive electronic service for represented persons, but the amendments to Code of Civil Procedure section 1010.6 eliminated this option. Code of Civil Procedure section 1010.6 does allow a person to provide express consent electronically 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 address with that consent for the purpose of receiving electronic service.” (§ 1010.6(a)(2)(A)(ii).)

The Legislature did not provide for what it meant to “manifest affirmative consent through electronic means.” To fill this gap, the Judicial Council amended rule 2.251(b), effective January 1, 2019, to provide a process for manifesting affirmative consent through electronic means. One of the objectives was to replicate the prior electronic process of consenting by the act of electronic filing while also ensuring, consistent with Legislative direction, that parties and other persons expressly consented. Neither Code of Civil Procedure section 1010.6 nor the electronic filing and service rules of court 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 the case. ITAC sought specific comments on this issue when the amendments to rule 2.251(b) circulated for comment in 2018. The Superior Court of California, County of San Diego commented:

Our court proposes that the [Information Technology Advisory 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.

## **Rule 2.255**

### **Requirements of EFSPs**

Rule 2.255 authorizes courts to contract with EFSPs and places requirements on EFSPs. For example, EFSPs must promptly transmit filings and fees to the courts and must promptly transmit confirmation of receipt of documents to the electronic filers. Rule 2.255 does not require an EFSP to transmit an electronic filer's consent to electronic service to the court.

## **Rule 2.257**

### **Signatures of opposing parties on electronically filed documents**

Rule 2.257(d) governs signatures of opposing parties and requires electronic filers to use and retain printed versions of documents with ink signatures. This is a challenge for local child support agencies and the California Department of Child Support Services (DCSS) as DCSS moves toward expanding its system's electronic filing process as more courts require electronic filing. Currently, local child support agencies generate thousands of stipulations in child support cases that are physically signed at an in-person appointment, or, more often, mailed out for the signing party to review, sign, and mail back to the caseworker. This can be a protracted process, particularly when the signing party resides out of state or multiple signatures are needed. DCSS recommended that the rule be amended as the ability to electronically file stipulations containing electronic signatures would drastically reduce the time it takes to obtain a filed stipulation and update the child support case based on the parties' agreement.

Effective January 1, 2019, consistent with statutory requirement, the Judicial Council adopted an amendment to rule 2.257 to create a procedure for electronic signatures on electronically filed documents signed under penalty of perjury. Under that procedure, "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 . . ." the person signs with 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. (Cal. Rules of Court, rule 2.257(b)(1), emphasis added.) However, when an opposing party signature is required, rule 2.257(d) still requires the use and retention of a printed document.

### **Parties and other persons**

The scope of Code of Civil Procedure section 1010.6, which governs electronic filing and service, includes "other persons" in addition to parties. Rule 2.257 has references to parties only in some provisions where it would be appropriate to include other persons.



## Draft Proposal

The draft proposal language below includes the relevant portions of rules 2.251, 2.255, and 2.257 along with staff comments and recommendations.

### **Rule 2.251. Electronic Service**

Only subdivision (b) and the advisory committee comment are excerpted below because they are the only provisions impacted by the draft proposed amendments. For reference, the entirety of rule 2.251 is available at

[http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_251](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_251).

#### **(b) Electronic service by express consent**

- (1) A party or other person indicates that the party or other person agrees to accept electronic service by:
  - (A) Serving a notice on all parties and other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or
  - (B) 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.
  - (C) A party or other person may manifest affirmative consent under (B) by serving notice of consent to electronic notice to all parties and other persons and either:
    - (i) Agreeing 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
    - (i) Filing *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV).

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

### **Advisory Committee Comment**

**Subdivision (b)(1)(C)(i).** The rule does not prescribe specific language for a provision of a term of service where the filer consents to electronic service, but does require that any such provision be clear. Judicial Council form EFS-005-CV (*Consent to Electronic Service and Notice of Electronic Service Address*) provides an example of language for consenting to electronic service.

### **Staff comments and recommendations**

The draft proposed amendment to rule 2.251(b)(1)(C) adds the requirement recommended by the San Diego Court that the rule require the party or other person manifesting affirmative consent by electronic means still serve notice on other parties and other persons.

The San Diego Court had also recommended creating standard language for consenting to electronic service through an agreement with the EFSP. Rather than placing standard language in a rule of court, staff recommend using an advisory committee comment to point to an example of language the Judicial Council itself uses in form EFS-005-CV. On that form, the person completing it checks off who the person is (e.g., plaintiff, defendant, petitioner) and that the person “consents to electronic service of notices and documents in the above-captioned case.” (*Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) <http://www.courts.ca.gov/documents/efs005cv.pdf> [as of Jan. 9, 2019].) Creating standardized language is a challenge because any language used may not be consistent with how each EFSP has drafted their terms of service. For example, how an EFSP refers to the filer, the EFSP, and the case may be variable across EFSPs. Therefore, an illustrative example may be more useful.

The other suggestion from the San Diego Court of requiring the EFSP to transmit the filer’s consent to electronic filing to the court is addressed in proposed amendments to rule 2.255. The requirements could be placed on rule 2.251, but rule 2.255 may be a better place because it contains other requirements placed on EFSPs.

There are also minor amendments to strike unnecessary wordiness in rule 2.251(b)(1)(C)(i).

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

Only subdivision (c) is excerpted below because it is the only provision impacted by the draft proposed amendments. For reference, the entirety of rule 2.255 is available at [http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_255](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255).

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

- (1) An electronic filing service provider must promptly transmit any electronic filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent to receive electronic service to the court directly or through the court's electronic filing manager.
- (2) An electronic filing manager must promptly transmit an electronic filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent to receive electronic service to the court.

#### **Staff comments and recommendations**

This amendment would ensure that courts are notified that someone has consented to electronic service. Rule 2.251 allows a party or other person to manifest consent to electronic service by agreeing to an EFSP's term of service that clearly states that the agreement constitutes consent to receive electronic service. EFSPs are not required to include such a provision with their terms of service, but if they do, under the draft proposed amendment to rule 2.255, the EFSP must transmit the filer's acceptance of the term to the court along with the filing and any applicable fee.

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

The entirety of rule 2.257 is included below along with staff comments and recommendations. The comments and recommendations reference Code of Civil Procedure section 1010.6, which is available at [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP).

#### **(a) Electronic signature**

An electronic signature is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person

with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

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

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 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. If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and be linked to data in such a manner that if the data are changed, the electronic signature is invalidated; or
- (2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that the original, signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:
  - (A) At any time after the electronic version of the document is filed, any party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
  - (B) Within five days of service of the demand under (A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
  - (C) At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

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

**(c) Documents not signed under penalty of perjury by the electronic filer**

If a document does not require a signature under penalty of perjury, the document is deemed signed by the ~~party if the document is~~ the person who filed electronically.

**(d) Documents requiring signatures of opposing parties not under penalty of perjury**

When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties not under penalty of perjury, the following procedure applies:

- (1) The party filing the document must obtain the signatures of all parties on a printed form of the document. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:
- (2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in (a)(2) of this rule and Code of Civil Procedure section 1010.6. The court and any other party may demand production of the original signed document in the manner provided in (a)(2)(A-C).
- (3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

**(e) Digital signature**

A party or other person is not required to use a digital signature on an electronically filed document.

**(f) Judicial signatures**

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

**Staff comments and recommendations**

Code of Civil Procedure section 1010.6 only categorizes signatures in two ways: under penalty of perjury or not under penalty of perjury. For signatures under penalty of perjury, there is no requirement that signatures of opposing parties must be on a printed form. Signatures can be made on a printed form, or they can be made electronically following a procedure established by the Judicial Council. (§ 1010.6(b)(2)(B).) As such, subdivision (d) of rule 2.257 can be amended so that it does not apply to signatures under penalty of perjury by opposing parties. Rather, that can be captured in subdivision (b), which, consistent with section 1010.6, provides a procedure for electronic signatures as well as signatures on printed documents. Because electronic signatures are simple to create, there may be more of a concern about the validity electronic signatures where the filer and signer are different people. Accordingly, the draft proposed language includes additional requirements when the filer and signer are different people. Specifically, the electronic signature must be unique to the person using it, under the control of the person using it, and be capable of verification. These elements are designed to ensure that the application of the signatures is the act of the person signing and can be proven as such. In addition, there is a requirement that the electronic signature be linked to data in such a manner that if the data are changed, the electronic signature is invalidated. This element protects against alteration of an electronic record after it has been signed. The heightened requirements for electronic signatures of non-filers are elements of digital signatures under Government Code section 16a, but they are not digital signatures as they do not have to comply with the Secretary of State's regulations, which prescribe the use two specific technologies. (See Cal. Code Regs., tit 2., §§ 22000-22005.)

For signatures not under penalty of perjury, section 1010.6 is quite narrow and does not account for signatures of anyone other than the filer. Under the Code of Civil Procedure, a document signed not under penalty of perjury is only deemed signed *by the person who filed*. (Proc, § 1010.6(b)(2)(A).) The draft proposal language includes an amendment to subdivision (c) of rule 2.257 to bring it more clearly in line with section 1010.6. In addition, the draft proposal language amends subdivision (d) of rule 2.257 so that it only addresses signatures not under penalty of

perjury as signatures under penalty of perjury can be entirely addressed under subdivision (b). As applied to documents not signed under penalty of perjury, subdivision (d) deals with the limitations of section 1010.6 by allowing someone to electronically file copies of signatures on printed signed documents that the electronic filer must retain and present for inspection if demanded by the court or another party. ITAC is developing a legislative proposal to amend the Code of Civil Procedure to allow for a broader scope of signatures on documents not signed under penalty of perjury.

The proposed draft language includes a minor amendment to rule 2.257(e) to include “other persons” in addition to parties, consistent with Code of Civil Procedure section 1010.6.

#### Additional Proposal Considerations

The Invitation to Comment includes an opportunity for ITAC to request specific comments about the proposal.

#### Subcommittee’s Tasks

- Discuss the draft proposal and whether the subcommittee has any specific questions to be included with a request for specific comments.
- Determine the draft proposal language should be included in the proposal.

#### Next Steps

- Based on the subcommittee’s direction and edits on the proposal language, staff will prepare an invitation to comment and proposal and submit them to (1) ITAC to vote on circulating the proposal for public comment, and (2) the Judicial Council Editing and Graphics Group for copyediting.

#### Attachments and Links

1. California Rules of Court, rule 2.251,  
[http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_251](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_251).
2. California Rules of Court, rule 2.255,  
[http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_255](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255).
3. California Rules of Court, rule 2.257,  
[http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_257](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_257).

4. Code of Civil Procedure section 1010.6,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP).





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### MEMORANDUM

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Date	Action Requested
December 24, 2018	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	January 22, 2019
From	Contact
Andrea L. Jaramillo Attorney, Legal Services	Andrea L. Jaramillo Legal Services 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Amendments to rule 2.540 of the California Rules of Court	

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On November 6, 2018, the Rules and Policy Subcommittee (RPS) of the Information Technology Advisory Committee (ITAC) met and considered potential topics for proposals to be developed during the 2019 rules cycle. RPS decided to develop a proposal to amend rule 2.540, which lists government entities that may be granted remote access to certain electronic court records. The amendments would (1) add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain electronic records, and (2) replace “statutory duties” to “legal duties” in the standard for good cause to provide remote access. The proposals originated with staff and comments received during public comment on the remote access rules circulated in 2018.

Because the amendments are relatively straight forward, staff have prepared a draft invitation to comment and proposal language, which are attached to this memorandum for the subcommittee’s review and consideration. Staff consulted with Probate and Mental Health Advisory Committee staff on the appropriate types of electronic records to include with the public administrator and public conservator.

#### Subcommittee's Task

- Discuss the draft invitation to comment and proposal.
- Determine whether to recommend the invitation and proposal for ITAC's consideration.

#### Next Steps

- Staff will incorporate any subcommittee edits into the invitation to comment and proposal and submit them to (1) ITAC to vote on circulating the proposal for public comment, and (2) the Judicial Council Editing and Graphics Group for copyediting.

#### Attachments and Links

1. Draft invitation to comment and proposal for amendments to rule 2.540 of the California rules of court, pages 3-6.

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title Rules: Remote Access to Electronic Records by Government Entities	Action Requested Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 2.540	Proposed Effective Date January 1, 2020
Proposed by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Contact Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary and Origin

The Information Technology Advisory Committee recommends that the Judicial Council amend rule 2.540 of the California Rules of Court to add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain electronic records, and make a minor amendment to the good cause provision of the rule. The purpose of the proposal is to make the rule more clear and comprehensive based on comments received when the rule was originally circulated for public comment in 2018.

### Background

Rule 2.540 is one of several new rules addressing remote access to electronic records by government entities that went into effect January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records and was geared toward government entities that have a high volume of business before the court with respect to certain case types. The rule includes a good cause provision under which a court may grant remote access to electronic court records to additional government entities and case types beyond those specifically identified in the rule. The standard for good cause is that the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

## **The Proposal**

The proposal would add county public administrator and county public conservator to the list of government entities in rule 2.540(b)(1). Under the amendments, courts could permit (1) the county public administrator to have remote access to electronic probate records, and (2) the county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. In addition, the proposal would amend the good cause provision under rule 2.540(b)(1). The current rule allows courts to permit remote access to additional government entities not otherwise listed in rule 2.540(b)(1) when there is good cause to do so. Good cause means that “the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.” (Cal. Rules of Court, rule 2.540(b)(1)(O).) The proposal amends “statutory duties” to “legal duties” The purpose of the amendments to rule 2.540(b)(1) is to make the rule more clear and comprehensive.

## **Alternatives Considered**

The committee did not consider the alternative of the status quo as the amendments provide more clarity and comprehensiveness to the rule.

## **Fiscal and Operational Impacts**

Adding the county public administrator and county public conservator to the list of government entities the court may allow to remotely access electronic records will remove a need to make a good cause finding for those entities. The amendments are not expected to result in any costs.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

## **Attachments and Links**

1. Proposed amendments to rules 2.540 of the California Rules of Court.
2. Existing text of rule 2.540 of the California Rules of Court, [https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_540](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_540).

Rule 2.540 of the California Rules of Court is amended, effective January 1, 2020, to read:

**Title 2. Trial Court Rules**

**Division 4. Court Records**

**Chapter 2. Access to Electronic Trial Court Records**

**Article 4. Remote Access by Government Entities**

**Rule 2.540. Application and scope**

**(a) Applicability to government entities**

The rules in this article provide for remote access to electronic records by government entities described in (b). The access allowed under these rules is in addition to any access these entities or authorized persons working for such entities may have under the rules in articles 2 and 3.

**(b) Level of remote access**

(1) A court may provide authorized persons from government entities with remote access to electronic records as follows:

~~(A)~~–(M) \* \* \*

(N) County public conservator: criminal electronic records, mental health electronic records, and probate electronic records.

(O) County public administrator: probate electronic records.

~~(N)~~(P) Federally recognized Indian tribe (including any reservation, department, subdivision, or court of the tribe) with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.

~~(Q)~~(Q) For good cause, a court may grant remote access to electronic records in particular case types to government entities beyond those listed in (b)(1)(A)–~~(P)~~(N). For purposes of this rule, “good cause” means that the government entity requires access to the electronic records in order to adequately perform its ~~statutory~~ legal duties or fulfill its responsibilities in litigation.

~~(P)~~(R) All other remote access for government entities is governed by articles 2 and 3. articles

Rule 2.540 of the California Rules of Court is amended, effective January 1, 2020, to read:

1  
2  
3  
4  
5

(2) – (3) \* \* \*

(c) \* \* \*

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