



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/itac.htm
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ITAC RULES & POLICY ADVISORY SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 22, 2019
12:10 pm – 1:20 pm
Teleconference

Advisory Body Members Present: Hon. Peter Siggins; Hon. Julie Culver; Hon. Louis Mauro; Hon. Samantha Jessner; Hon. Kimberly Menninger; Mr. Darrell Parker; Mr. Don Willenburg

Advisory Body Members Absent:

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

OPEN MEETING

Call to Order and Roll Call

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

Approval of Minutes

The advisory body reviewed and approved the minutes of the November 6, 2018, Rules & Policy Subcommittee meeting. Mr. Darrel Parker did not attend meeting and abstained.

One written comment received pertaining to Rule 2.257 that will be addressed in Item 3.

DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

Item 1

Trial Court Rules and Statutes Revisions: Proposed Amendments to Amend the Penal Code Section 1203.01 (Action Required)

Consider whether to recommend circulating proposed amendments to the Penal Code section 1203.01 of the California Rules of Court for public comment. The proposed amendments will provide an alternative to mailing certain statements and reports.

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

Action: Ms. Jaramillo explained the current rule and the three options she drafted from discussion with the Data Exchange Working Group for the committee to review in the materials. Option 2 is the preferred choice to put in the proposal, but they will still solicit comments on the other options.

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).

Some concern was raised about the email address used and if it will increase contact by inmates at courts. One option is to include this issue in the public comment to get feedback from courts directly. Additionally, bring issue back to the Data Exchange Working Group for feedback and insight.

Motion to recommend for public comment proposed amendments to Penal Code Section 1203.1 Option 2 and call out Options 1 & 3 in the public comment and to specifically seek the input of CEOs as the means of transferring data and potential for misuse.

Approved

Item 2**Trial Court Rules and Statutes Revisions: Proposed Amendments to Amend the Code of Civil Procedure Section 1010.6 (Action Required)**

Consider whether to recommend circulating proposed amendments to the Code of Civil Procedure section 1010.6 of the California Rules of Court for public comment. The proposed amendments will allow courts to recover actual costs of permissive electronic filing and mandatory electronic filing by court order, just as they can with mandatory electronic filing by local rule, and clarify a provision for signatures made not under penalty of perjury to account for signatures of non-filers.

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

Action: Ms. Jaramillo stated the cost recovery proposal is to clarify that courts would be able to recover no more than actual cost and could waive fees when appropriate. Hopefully, this change would encourage more courts to move to electronic filing.

Also, under section 1010.6 the proposed statutory change for when someone signs a document not under penalty of perjury. The proposal allows for clarity when filer and signer are different people. Additionally, a suggestion was made to remove "adopted by Judicial Council" as it is already stated previously in the rule.

Motion to recommend for public comment the proposed changes to Code of Civil Procedure Section 1010.6 and to remove staff proposed language from Section 1010.6(b) "adopted by Judicial Council".

Approved.

Item 3**Trial Court Rules and Statutes Revisions: Proposed Amendments to the Electronic Filing and Service Rules (Action Required)**

Consider whether to recommend circulating proposed amendments to the electronic filing and services rules for public comment. The proposed amendments to rule 2.251 will clarify how notice of electronic service is to be given and provide standardized language for consent. The proposed amendments to rule 2.257 will revise language on signatures of opposing parties, and make minor revisions consistent with Code of Civil Procedure section 1010.6.

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

Action: Ms. Jaramillo spoke of rules 2.251 and 2.255 together as they are similar. The amendments are to let the other party know as well as the court when consent to electronic service is given by either the filer or EFSP.

Suggestion to consolidate language to change is rule 2.251(b)(1)(C) should be 2.251(b)(2) for ease of flow in the rule. Ms. Jaramillo will send updates before public comment.

Motion to approve proposals of Rules 2.251 and 2.255 for public comment with a numbering change and deletion of part (C) in rule 2.251.

Approved.

Rule 2.257 proposal isn't clear on who is responsible for the signature validation. DCSS is directly impacted, but this change is broader. Suggestion is to call this issue out in public comment to better identify suggested amendment. Also, include an advisory committee comment and include reference to government code.

Motion to recommend amendments to Rule 2.257 (b) as proposed; (b)1 will be revised to read "that if the data are changed, the electronic signature may be invalidated by the court; (c) delete extra "the"; (d) accept DCSS wording suggestions with final editing. These will be passed along to ITAC for consideration and approval prior to public comment.

Approved.

Item 4**Trial Court Rules and Statutes Revisions: Proposed Amendments to the Rules on Remote Access to Electronic Records (Action Required)**

Consider whether to recommend circulating proposed amendments to the rules on remote access to electronic records for public comment. The proposed amendments to rule 2.540 will add more clarity and additional local government entities.

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

Action: Due to a previous oversight to rule 2.540 of the California Rules of Court is to capture two agencies “county public administrator” and “county public conservator” missed in the previous update.

Motion to recommend as proposed for California Rules of Court Rule 2.540.

Approved.

The closed meeting minutes from November 6, 2018 were approved during the January 22, 2019 open meeting with Mr. Darrel Parker abstaining.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:20pm.

Approved by the subcommittee on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 24, 2019

Action Requested

Please review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee
Hon. Peter J. Siggins, Chair

Deadline

July 2, 2019

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Contact

Andrea L. Jaramillo
916-263-0991 phone
andrea.jaramillo@jud.ca.gov

Subject

Legislative Proposal: Review public
comments and make recommendation on
sponsoring legislation to amend Penal Code
section 1203.01

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a legislative proposal for public comments to amend Penal Code section 1203.01 to allow for electronic delivery of documents currently required to be mailed following conviction. The proposal originated with a recommendation of the Judicial Council Data Exchange Working Group, which is made up of court participants and justice partners and is working to develop a standardized data exchanges. More detailed background information is included in the attached draft Judicial Council report.

Discussion

Four commenters responded to the invitation to comment: (1) Superior Court of San Diego County, which agreed with the proposal if modified; (2) Superior Court of Orange County, which agreed with the proposal if modified; (3) Orange County Bar Association (OCBA), which agreed with the proposal; (4) Child Support Directors Association (CSDA), which agreed with the proposal.

ITAC included several requests for specific comments and the bulk of comments received were responses to these requests. This section is organized by each request for specific comment followed by the commenters' responses, and where appropriate, staff analysis. In addition, general comments not tied to any request for specific comment are included at the end.

1. Proposal appropriately tailored to its purpose

ITAC requested comments on the question, "Does the proposal appropriately address the stated purpose?"

- a. **San Diego County court comments:** In theory, the idea of being able to serve such documents electronically does serve the stated purpose. However, practically speaking, unless a particular court has adopted a local rule allowing electronic filing in criminal cases (and, even then, it would not be mandatory, per Cal. Rules of Court, rule 2.253, subd. (a)), these documents are still going to be filed by the parties in paper format. As such, the clerk will have to take the filed documents and scan them before emailing them. The process of scanning, saving, and emailing is often the same or more time consuming than the process of copying and mailing the documents. However, this court understands the desire to move to a paperless court and that the new rules are permissive and not mandatory. As such, each court can decide whether it makes sense based on their technological limitations.

In addition, this issue could be resolved by courts implementing a local rule requiring parties to serve courtesy electronic copies of the filed documents with the courtroom clerk.

- b. **Orange County court comments:** Yes, purpose is stated clearly.
- c. **OCBA comments:** Yes. The proposal's objective is to reduce reliance on paper and improve efficiency by providing an electronic option where paper distribution is currently required. It advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts.

- d. **CSDA comments:** Yes while including options for potential limitations for incarcerated individuals.

2. Alternatives to the language proposed

ITAC considered the following alternatives to the language proposed and requested specific comments on whether “either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why?”

- Alternative 1: (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).

- Alternative 2: (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).

- a. **San Diego County court comments:** The court has some concerns about allowing an inmate to opt in for email, but then also be able to send a written request for these documents without having to make any showing on why a duplicate hard copy is necessary and/or what efforts he or she has made to secure the emailed version. Even if an inmate receives an electronic copy, he or she is likely to request a hard copy from the court be mailed. After all, if the court mails a copy, an inmate does not have to pay the cost of printing the emailed version. Thus, courts will likely only be doubling their work by having to send electronic copies and mail copies.

This court suggests either using Alternative 1, which provides for maintaining only mail service for inmates. The other option would be to keep the language as proposed;

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however, add language requiring that an inmate who previously opted in for electronic service provide good cause for also needing a hard copy be mailed.

It should be noted that these documents are also being sent to CDCR for their records. These documents will be placed in an inmates Central File (C-File), which an inmate has a right to review. (Cal. Code of Reg., §3370, subd. (c).) As such, even if an inmate were to opt into email service, but then have trouble accessing it, the documents would be available to them through their own C-File in prison. In addition, copies are also being provided to an inmate's trial attorney. Upon request, the attorney must supply an inmate with a copy of his/her file. (Rules of Professional Conduct, rule 3-700, subd. (d).) In sum, if an inmate opts in for email service, then the court should not be required to also send a duplicate copy via mail. An inmate has other means by which to obtain such a records, if he or she has an issue accessing email. If this is a concern, then it is recommended that the policy be that inmates only get mailed copies.

Staff Analysis

The court's concerns about additional workload from inmate requests is valid. It would be more work for a court to electronically deliver the materials to the inmate and then also, subsequently, have to mail a paper copy than it would be to mail the materials the first time. This should be ameliorated by the discretionary nature of the electronic delivery option. The amendment allows, but does not require, a court to provide the materials by electronic means. Mail-only is an option a court could choose for materials sent to inmates.

The committee's initial concern was that inmates, even if they opted in to electronic delivery, might ultimately face obstacles to access the materials. As the court notes, prisons are supposed to provide access to the case records in their central file though this must be done in the presence of prison staff. (Cal. Code Regs., tit. 15, § 3370(c).) In addition, attorneys are obligated to keep their clients reasonably informed of their cases and promptly respond to reasonable requests for copies of documents. (Rules Prof. Conduct, rule 1.4(a)(3).)¹ Given these facts, access to the documents is less of a concern than the committee believed and this makes Alternative 1 less attractive to address that issue.

The court's issue is not inmate access, but court workload. It is understandable that the court recommends that the inmate be required to pursue alternative avenues available before requesting paper copies of materials from the court that the court *already* provided to the inmate

¹ The court cited a prior rule related to termination of employment and returning client materials to the client. That rule is now rule 1.16(e)(1) of the Professional Rules of Conduct. Though a different context, it is a similar obligation to provide information to clients.

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electronically. The court recommends including a good cause standard. While requiring a good cause standard could potentially reduce the number of requests for paper copies from inmates, it would also create more work for the court than mailing documents because the court would have to make such a good cause determination in every instance. Adding a good cause standard for requesting mailed copies introduces additional complexity in the process and would require a new proposal to be circulated for public comment.

Ultimately, a court can decide not to use electronic delivery when use of electronic delivery creates inefficiencies.

- b. Orange County court comments:** Proposed language seems sufficient. Defense can request in writing that documents be sent via mail to prison.
- c. OCBA comments:** The listed alternatives are inferior to the one proposed. Alternative 1 is missing an if/then statement to clarify the second part and is confusing. It makes it obligatory to mail the documents should the defendant be ineligible to receive them electronically. The current proposal allows a defendant to opt in for both electronic and paper documentation, so seems to address ineligibility for electronic transmission by giving the defendant the option of regular mail.

Alternative 2 requires the court to provide paper copies no matter what, which seems at odds with the stated purpose of the proposal to move toward electronic distribution.

3. Cost savings

ITAC asked courts for comment on whether the proposal would provide cost savings.

- a. San Diego County court comments:** The cost saving would be minimal because, as mentioned above, clerks would still need to scan the filed documents before emailing them out and inmates are likely to request written copies in addition to email copies.
- b. Orange County court comments:** Postage costs for transcripts in particular would be significant.

4. Concerns on means of transferring data

ITAC asked, “Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or in some other way?”

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- a. **San Diego County court comments:** Any time that data is transferred via email, there is a security concern. However, such a concern could be alleviated by including language that the court may also use an approved electronic filing service provider.

Staff Analysis

The statute is neutral as to technology or services utilized for electronic delivery. It is not clear from the comment what the necessity is of including electronic service providers in particular as a security measure as part of the statute.

- b. **Orange County court comments:** The proposed language in the statute does not make clear that electronic delivery is not a requirement for the court. Perhaps you may consider adding language to the statute that explains that this applies to courts that have the current capability for electronic delivery.

Staff Analysis

The statute is written using permissive, not mandatory language. Specifically, “With the consent of the recipient, the clerk of the court *may* deliver the documents, or the data contained in the documents . . . by electronic means rather than by mail.”

The use of “may” rather than “must” indicates that the amended language is permissive rather than mandatory. It is permissive even for courts that have the capability of electronic delivery.

5. Data sent back to the court

ITAC asked for specific comments on the following:

Does the proposal raise any concerns on data being sent back to the court by the recipient (e.g., if the court delivers an electronic copy of a document by e-mail to a convicted person and the convicted person replies to that e-mail in an attempt to communicate with the court)? If so, should those concerns be addressed in statute or in some other way?

- a. **Orange County court comments:** Yes, it should be made clear that the option of electronic delivery is for the clerk of the court and not the recipient.

6. Documenting consent of recipient to electronic transmission

ITAC asked for specific comments on the following:

The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way?

- a. San Diego County court comments:** Yes. It is recommended that the rule itself use language to the effect of: “With the written consent of the recipient.”

Staff Analysis

Written consent would be clear though, if required in statute, would preclude oral consent on the record. One option would be to include oral consent as well. “With the consent of the recipient, expressed in writing or on the record...” Though it is ultimately the Rules and Projects Committee’s decision, a revision like this probably would not require recirculation for additional public comment since it would likely be considered within the scope of the invitation to comment based on the request for specific comments on the topic.

- b. Orange County court comments:** A form could be helpful, especially for defendants represented by private counsel or defendants in pro per. Could also be helpful if agencies are required to submit something with each case to ensure the court has the correct email address when staff or departments shift.

7. Undeliverable electronic transmissions

ITAC asked for specific comments on the following:

The proposed amendment does not address what the court should do if someone consents to electronic delivery, but when the court electronically transmits the document, it is undeliverable (e.g., the court emails the documents to an address the recipient provided, but then gets a message back that the email was undeliverable). Is this something that should be addressed in statute, a rule of court, or in some other way?

- a. Orange County court comments:** Direction would be helpful. Is it the court’s responsibility to then send via mail? Or is the recipient responsible for following up if documentation is not received, as the email information provided is likely incorrect?

Staff Analysis

Electronic delivery could fail for a variety of reasons. Unless the court received a message that a failure occurred, it would not necessarily know that it had occurred. The recipient would know eventually that a failure occurred because they would have not received the materials. This is something that could be handled through local policy. The statute does not address what to do if

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a mailed delivery fails; it may not be necessary to address it with electronic delivery. If the committee determines this should be addressed in the statute, it will require additional consideration to draft appropriate language and circulation of that new language for comment. This is something that may be more appropriate for local policy. If it needs to be addressed at a state level in the future, it could be addressed by statewide rule.

- b. OCBA comments:** One way to address returned emails is for the forms/rule of court (not yet proposed) to include alternative email/ mailing addresses in case the primary email or mailing address is not valid.

Staff Analysis

The committee could consider developing a form in a future rule cycle. The Superior Court of Orange County also commented on page 7, above, that a form would be helpful for capturing consent to electronic delivery. The OCBA’s recommendation could be included with such a form.

8. General comments

- a. Orange County court comments:** As far as we are aware, the only time the court is sending information via email is in response to a record or copy request, not as part of the business of the court as a case progresses from initiation to adjudication to appeal. The proposed legislation could impact sensitive documentation, such as transcripts or confidential information. If the court chooses to opt-in to electronic delivery, steps should be implemented to ensure the email address provided by an agency and/or party is current and correct.
- b. CSDA comments:** Education or outreach materials may be necessary to ensure the person incarcerated understands receiving these documents via an electronic delivery is specific to these documents alone and does not remain the method of delivery for all other correspondence. In addition, electronic delivery, as noted, can be challenging to an incarcerated recipient so including physical mail as an option, upon request is preferred.

Implementation of this process could result in savings for the clerk of the court in both staffing time and costs associated to postage, and materials necessary to generate all of the copies (paper, toner, etc).

Attachments and Links

1. Text of proposed amendments to Penal Code section 1203.01, at pages 10-11.

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2. Chart of comments, at pages 12–19.
3. Draft Judicial Council Report (minus attachments to the report), at pages 20–24.
4. Link A: California Code of Regulations, title 15, section 3370(c) (allowing inmates to access materials in their central file), [https://govt.westlaw.com/calregs/Document/IF97670B0D47311DEBC02831C6D6C108E?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\).](https://govt.westlaw.com/calregs/Document/IF97670B0D47311DEBC02831C6D6C108E?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default).)

Section 1203.01 of the Penal Code would be amended, effective January 1, 2021, to read:

1 **§ 1203.01**

2
3 (a) Immediately after judgment has been pronounced, the judge and the district attorney,
4 respectively, may cause to be filed with the clerk of the court a brief statement of their
5 views respecting the person convicted or sentenced and the crime committed, together
6 with any reports the probation officer may have filed relative to the prisoner. The judge
7 and district attorney shall cause those statements to be filed if no probation officer's
8 report has been filed. The attorney for the defendant and the law enforcement agency that
9 investigated the case may likewise file with the clerk of the court statements of their
10 views respecting the defendant and the crime of which he or she was convicted.
11 Immediately after the filing of those statements and reports, the clerk of the court shall
12 mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the
13 Department of Corrections and Rehabilitation at the prison or other institution to which
14 the person convicted is delivered. The clerk shall also mail a copy of any statement
15 submitted by the court, district attorney, or law enforcement agency, pursuant to this
16 section, with postage prepaid, addressed to the attorney for the defendant, if any, and to
17 the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of
18 any statement submitted by the attorney for the defendant, with postage prepaid, shall be
19 mailed to the district attorney.

20
21 (b)(1) In all cases in which the judgment imposed includes a sentence of death or an
22 indeterminate term with or without the possibility of parole, the clerk shall, within 60
23 days after judgment has been pronounced, mail with postage prepaid, to the prison or
24 other institution to which the person convicted is delivered, a copy of the charging
25 documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at
26 the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty
27 or nolo contendere, and the transcript of the proceedings at the time of sentencing.

28
29 (2) In all other cases not described in paragraph (1), the clerk shall mail with postage
30 prepaid, to the prison or other institution to which the person convicted is delivered, a
31 copy of the charging documents, a copy of the waiver and plea forms, if any, and upon
32 written request by the Department of Corrections and Rehabilitation or by an inmate, or
33 by his or her counsel, for, among other purposes on a particular case, appeals, review of
34 custody credits and release dates, and restitution orders, the transcript of the proceedings
35 at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded
36 guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

37
38 (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents,
39 or the data contained in the documents, described in subdivisions (a) and (b) by electronic
40 means rather than by mail.

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

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LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
1.	Child Support Directors Association By Terrie Porter Sacramento, CA	A	<p>General Comments: Education or outreach materials may be necessary to ensure the person incarcerated understands receiving these documents via an electronic delivery is specific to these documents alone and does not remain the method of delivery for all other correspondence. In addition, electronic delivery, as noted, can be challenging to an incarcerated recipient so including physical mail as an option, upon request is preferred. Implementation of this process could result in savings for the clerk of the court in both staffing time and costs associated to postage, and materials necessary to generate all of the copies (paper, toner, etc).</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose? Yes while including options for potential limitations for incarcerated individuals. The committee considered the following alternatives to the language proposed. Are either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why? The proposed language is preferred. It is clearer with the incarcerated individuals being able to opt-in for electronic delivery while also still having the option to receive mailed documents upon request.</p>	The committee appreciates the support and the comments.
2.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130	A	<p>Agree with the proposal as stated.</p> <p>1) Does the proposal appropriately address the stated purpose?</p>	The committee appreciates the support and the comments. The committee will consider creating a form to capture alternate electronic mail or mailing address.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
	Newport Beach, CA 92658		<p>Yes. The proposal’s objective is to reduce reliance on paper and improve efficiency by providing an electronic option where paper distribution is currently required. It advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts.</p> <p>2) Comment on the alternatives to current proposal. The listed alternatives are inferior to the one proposed. Alternative 1 is missing an if/then statement to clarify the second part and is confusing. It makes it obligatory to mail the documents should the defendant be ineligible to receive them electronically. The current proposal allows a defendant to opt in for both electronic and paper documentation, so seems to address ineligibility for electronic transmission by giving the defendant the option of regular mail.</p> <p>Alternative 2 requires the court to provide paper copies no matter what, which seems at odds with the stated purpose of the proposal to move toward electronic distribution.</p> <p>3) How might we address electronic mail being returned? One way to address returned emails is for the forms/rule of court (not yet proposed) to include alternative email/mailing addresses in case the primary email or mailing address is not valid.</p>	
3.	Superior Court of California, County of Orange	AM	As far as we are aware, the only time the court is sending information via email is in response to a	The committee appreciates the support and the comments. The court raised a concern that “The

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
	By Randy Montejano Courtroom Operations Supervisor Westminster, CA		<p>record or copy request, not as part of the business of the court as a case progresses from initiation to adjudication to appeal. The proposed legislation could impact sensitive documentation, such as transcripts or confidential information. If the court chooses to opt-in to electronic delivery, steps should be implemented to ensure the email address provided by an agency and/or party is current and correct.</p> <p>Request for Specific Comments</p> <ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes, purpose is stated clearly. • The committee considered the following alternatives to the language proposed. Are either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why? Proposed language seems sufficient. Defense can request in writing that documents be sent via mail to prison. <ul style="list-style-type: none"> o Alternative 1: (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). 	<p>proposed language in the statute does not make clear that electronic delivery is not a requirement for the court.” The statute is written using permissive, not mandatory language. Specifically, “With the consent of the recipient, the clerk of the court <i>may</i> deliver the documents, or the data contained in the documents . . . by electronic means rather than by mail.” The use of “may” rather than “must” indicates that the amended language is not imposing a requirement on courts to offer electronic delivery.</p> <p>The court commented that a form may be helpful for documenting consent and the committee will consider creating an appropriate form.</p> <p>The court commented that direction would be helpful on what the court should do in the event an electronic transmission turns out to be undeliverable. The committee considered this issue and determined this is something that could be handled through local policy. The statute does not address what to do if a mailed delivery fails so it seems unnecessary to do so for electronic delivery. However, if it turns out that this does need to be addressed at a state rather than local level in the future, it could be addressed by statewide rule.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>o Alternative 2: (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.</p> <p>(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).</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? If so, please quantify. Postage costs for transcripts in particular would be significant. • Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or in some other way? The proposed language in the statute does not make clear that electronic delivery is not a requirement for the court. Perhaps you may consider adding language to the statute that explains that this applies to courts that have the current capability for electronic delivery. • Does the proposal raise any concerns on data being sent back to the court by the recipient (e.g., if the court delivers an electronic copy of a document by e-mail to a convicted person and the convicted person replies to that e-mail in an attempt to communicate with the court)? If so, should those concerns be addressed in statute or in some other way? Yes, it should be made clear that 	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>the option of electronic delivery is for the clerk of the court and not the recipient.</p> <ul style="list-style-type: none"> • The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way? A form could be helpful, especially for defendants represented by private counsel or defendants in pro per. Could also be helpful if agencies are required to submit something with each case to ensure the court has the correct email address when staff or departments shift. • The proposed amendment does not address what the court should do if someone consents to electronic delivery, but when the court electronically transmits the document, it is undeliverable (e.g., the court emails the documents to an address the recipient provided, but then gets a message back that the email was undeliverable). Is this something that should be addressed in statute, a rule of court, or in some other way? Direction would be helpful. Is it the court’s responsibility to then send via mail? Or is the recipient responsible for following up if documentation is not received, as the email information provided is likely incorrect? 	
4.	<p>Superior Court of California, County of San Diego By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101</p>	AM	<p>1. Does the proposal appropriately address the stated purpose?</p> <p>In theory, the idea of being able to serve such documents electronically does serve the stated purpose. However, practically speaking, unless a</p>	<p>The committee appreciates the court’s support and comments. The court expressed workload concerns where the court would have to mail documents it had already electronically delivered to an inmate. The court recommended the inmate be required to provide good cause why they need</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>particular court has adopted a local rule allowing electronic filing in criminal cases (and, even then, it would not be mandatory, per Cal. Rules of Court, rule 2.253, subd. (a)), these documents are still going to be filed by the parties in paper format. As such, the clerk will have to take the filed documents and scan them before emailing them. The process of scanning, saving, and emailing is often the same or more time consuming than the process of copying and mailing the documents. However, this court understands the desire to move to a paperless court and that the new rules are permissive and not mandatory. As such, each court can decide whether it makes sense based on their technological limitations.</p> <p>In addition, this issue could be resolved by courts implementing a local rule requiring parties to serve courtesy electronic copies of the filed documents with the courtroom clerk.</p> <p>2. Consideration of alternative language.</p> <p>The court has some concerns about allowing an inmate to opt in for email, but then also be able to send a written request for these documents without having to make any showing on why a duplicate hard copy is necessary and/or what efforts he or she has made to secure the emailed version. Even if an inmate receives an electronic copy, he or she is likely to request a hard copy from the court be mailed. After all, if the court mails a copy, an inmate does not have to pay the cost of printing the</p>	<p>a mailed copy. The committee understands the workload concern. However, this should be ameliorated by the discretionary nature of the electronic delivery option. The amendment allows, but does not require, a court to provide the materials by electronic means. Mail-only is an option a court could choose for materials sent to inmates. The committee considered the court’s recommendation for a good cause provision and decided [to be updated with the subcommittee’s decision].</p> <p>The court also recommended the proposed amendment require consent to be in writing. The committee considered this and decided [to be updated with the subcommittee’s decision].</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>emailed version. Thus, courts will likely only be doubling their work by having to send electronic copies and mail copies.</p> <p>This court suggests either using Alternative 1, which provides for maintaining only mail service for inmates. The other option would be to keep the language as proposed; however, add language requiring that an inmate who previously opted in for electronic service provide good cause for also needing a hard copy be mailed.</p> <p>It should be noted that these documents are also being sent to CDCR for their records. These documents will be placed in an inmates Central File (C-File), which an inmate has a right to review. (Cal. Code of Reg., §3370, subd. (c).) As such, even if an inmate were to opt into email service, but then have trouble accessing it, the documents would be available to them through their own C-File in prison. In addition, copies are also being provided to an inmate’s trial attorney. Upon request, the attorney must supply an inmate with a copy of his/her file. (Rules of Professional Conduct, rule 3-700, subd. (d).) In sum, if an inmate opts in for email service, then the court should not be required to also send a duplicate copy via mail. An inmate has other means by which to obtain such a records, if he or she has an issue accessing email. If this is a concern, then it is recommended that the policy be that inmates only get mailed copies.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-02

Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>3. Would the proposal provide cost savings? If so, please quantify.</p> <p>The cost saving would be minimal because, as mentioned above, clerks would still need to scan the filed documents before emailing them out and inmates are likely to request written copies in addition to email copies.</p> <p>4. Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or some other way?</p> <p>Any time that data is transferred via email, there is a security concern. However, such a concern could be alleviated by including language that the court may also use an approved electronic filing service provider.</p> <p>5. The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way?</p> <p>Yes. It is recommended that the rule itself use language to the effect of: “With the written consent of the recipient.”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



JUDICIAL COUNCIL OF CALIFORNIA
 455 Golden Gate Avenue · San Francisco, California 94102-3688
 www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

Commented [JA1]: Note: This draft report has not yet been proofread by the Judicial Council Editing and Graphics Group. It will be before it is submitted to PCLC.

<p>Title Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction</p> <p>Rules, Forms, Standards, or Statutes Affected Amend Pen. Code, § 1203.01</p> <p>Recommended by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair</p>	<p>Agenda Item Type Action Required</p> <p>Effective Date January 1, 2021</p> <p>Date of Report June 26, 2019</p> <p>Contact Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov</p>
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Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to allow for electronic delivery of documents currently required to be mailed following conviction. The proposal originated with a recommendation of the Judicial Council Data Exchange Working Group, which is made up of court participants and justice partners working to develop standardized data exchanges.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to amend Penal Code section 1203.01 to allow courts to electronically deliver certain material that courts are currently required to mail after a person has been convicted. If the Legislature approved the amendments, the expected effective date would be January 1, 2021.

The text of the amendment is attached at pages [X]–[XX].

Commented [JA2]: This will be updated with the final version.

Relevant Previous Council Action

In November 2018, the Judicial Council adopted the *Strategic Plan for Technology 2019-2022* to provide comprehensive technology strategy at the branch level. The plan included a goal of promoting rule and legislative changes that facilitate the use of technology in the courts. (Jud. Council of Cal., *Strategic Plan for Technology 2019–2022* (2018), pp. 14–15.)

Analysis/Rationale

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).) Counsel for the defendant and 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 required to mail to the prison or other institution to which the person convicted is delivered, copies of the charging documents and waiver and plea forms, if any. (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.

The proposal would add a new subdivision to Penal Code section 1203.01 to create an option for electronic delivery of the material currently required to be mailed. Under the proposal, if a recipient consents to electronic delivery, the court may deliver the documents electronically rather than by mail. Accordingly, providing electronic delivery would be an option, though not a requirement for the court, and likewise, receiving documents electronically would be an option for the recipient.

A main concern of the committee with electronic delivery is that an incarcerated recipient may have unreliable access to electronic resources even if they had initially consented to electronic delivery rather than mail. To address this concern, the proposal includes a provision that would still require the court to mail the materials to an incarcerated recipient upon request of that recipient or their counsel even if they had had consented to electronic delivery.

The proposal is intended to reduce reliance on paper and improve efficiency by providing an electronic option where paper is currently required.

Policy implications

The proposal advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts. (Jud. Council of Cal., *Strategic Plan for Technology 2019–2022* (2018), pp. 14–15.) In particular, it advances an objective of ensuring “current rules and legislation do not inhibit the use of technology solutions.” (*Id.* at p. 14.)

There may be additional need for further policy development to address potential issues that may arise from problems with electronic delivery. For example, how to address failures of electronic delivery, capture consent to electronic delivery, or security of electronic delivery. Ultimately, ITAC determined that these issues did not need to be addressed in statute and anticipates policies to address these practical issues may be addressed at the local level. However, ITAC will consider state-level rulemaking as an option if the need arises.

Comments

Four commenters responded to the invitation to comment: (1) Superior Court of San Diego County, which agreed with the proposal if modified; (2) Superior Court of Orange County, which agreed with the proposal if modified; (3) Orange County Bar Association (OCBA), which agreed with the proposal; (4) Child Support Directors Association (CSDA), which agreed with the proposal.

All commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court noted as a practical concern that courts may have technological limitations impacting their ability to implement the electronic deliver option, but that courts could decide what to choose in light of those limitations. The OCBA observed that the proposal “advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts.”

The bulk of comments received were in response to ITAC’s request for specific comments. ITAC had considered three options when developing the proposal. (See Alternatives considered, below.) ITAC’s main concern in crafting the options was that an inmate, even if he or she opted in to electronic delivery, may find access to the electronic materials difficult. ITAC ultimately chose the option under which an inmate may opt-in to electronic delivery, but may also request mailed documents. The Orange County court and OCBA both preferred the proposed option. However, ITAC sought specific comments on the two alternatives to the option it selected. One of the alternatives was to make incarcerated persons ineligible for electronic delivery and require the court continue mailing documents to those persons. The San Diego County court submitted detailed comments on this alternative. The court’s concern was of workload. In particular, courts would have to send the same materials twice if an inmate opted in to electronic delivery and then requested the documents be mailed. The committee agreed that this would be an added workload. However, this should be ameliorated by the discretionary nature of the electronic

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Commented [JA4]: This section will be updated in the final version to reflect any significant points of discussion at the RPS and ITAC meetings.

This section also asserts things that the committee determined. These are just drafts based on the potential outcome, but will be updated to reflect the committee’s actual determinations and comments.

delivery option. The amendment allows, but does not require, courts to deliver the materials by electronic means. Courts could choose a mail only option for materials sent to inmates.

The San Diego County court also proposed adding in a good cause requirement as another alternative. This would require an inmate to have good cause to obtain a mailed copy of the documents after opting in to electronic delivery. The court noted that inmates can also access documents through their attorney and through the prison. The committee determined that while requiring a good cause standard could potentially reduce the number of requests for paper copies from inmates, it would also create more work for the court than mailing documents because the court would have to make a good cause determination in every instance in addition to mailing documents where good cause is found.

The proposal does not prescribe any particular method for how consent of the recipient would be documented. ITAC sought comments on whether that should be addressed in statute, rule, or some other way. The San Diego County court recommended that consent to electronic service be required in writing in the statute. The Orange County court recommended creation of a form. Though not specifically in response to the issue of documentation of consent, the OCBA also recommended the creation of a form to ensure accurate contact information is captured. ITAC determined that written consent [to be updated to reflect the committee's decision]. The committee will consider developing a relevant form in the future.

Alternatives considered

Terminology

ITAC considered alternatives for the terminology to use in the new subdivision to refer to the paper documents that Penal Code section 1203.01 currently requires to be mailed. Because data exchanges may not require the transmission of an electronic version of a paper document (e.g., a PDF), the term “document” alone seemed insufficient. The Data Exchange Working Group suggested “information” instead because the information contained in the documents is what is important. Because “information” has a particular meaning as an accusatory pleading in criminal law, to avoid confusion, the committee decided to use “documents, or the data contained in the documents” instead to convey that the document itself is not necessarily required.

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 the committee did not include the “mutually agreeable format” language because 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.

Delivery options

To address the committee’s concern about incarcerated recipients having unreliable access to electronic resources to receive an electronic delivery from the court, the committee considered three options: (1) incarcerated recipients would continue to receive mail-only documents, but other recipients could opt-in for electronic delivery; (2) incarcerated recipients could opt-in for

electronic delivery, but would receive mail-only documents as well; or (3) incarcerated recipients could opt-in for electronic delivery, but could still receive mailed documents upon request.

ITAC chose the third option for the proposal because it removes all reliance on paper when recipients opt-in, but still ensures convicted persons can later obtain mailed paper copies if they request them. Continuing to require the use of mail would not be consistent with the strategic goal of facilitating technology use by the courts. The committee concluded that the third option had the best balance of advancing the use of technology while mitigating against unreliable access to electronic resources that persons convicted may experience even if they had initially opted-in for electronic delivery. However, ITAC requested and received specific comments on whether one of the other options was preferable, and those comments are discussed in the comments section above.

Fiscal and Operational Impacts

The San Diego County court commented that any cost savings would be minimal because the labor involved in scanning paper-filed documents can be more intensive than copying and mailing them. The Orange County court commented that cost savings on postage for transcripts would be significant.

Because electronic delivery is optional on the part of the courts, each court can decide not to use electronic delivery when use of electronic delivery would create financial or operational inefficiencies.

Attachments and Links

1. Proposed amendments to Penal Code section 1203.01 at pages XX-YY.
2. Chart of comments, at pages XX-YY.
3. Link A: Judicial Council of California, *Strategic Plan for Technology 2019-2022*, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>

Commented [JA5]: Page numbers will be updated in the final version.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 26, 2019

Action Requested

Please review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee
Hon. Peter J. Siggins, Chair

Deadline

July 2, 2019

Contact

Andrea L. Jaramillo
916-263-0991 phone
andrea.jaramillo@jud.ca.gov

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Subject

Legislative Proposal: Review public
comments and make recommendation on
sponsoring legislation to amend Code of Civil
Procedure section 1010.6

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a legislative proposal for public comment to amend Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil trial court matters. The purpose of the proposal would be twofold: (1) to create consistency in the fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule; and (2) to account for signatures made not under penalty of perjury by persons other than the filer. The proposal originated with Judicial Council staff.

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Discussion

Four commenters responded to the invitation to comment: (1) Superior Court of San Diego County, which agreed with the proposal; (2) California Department of Child Support Services (DCSS), which agreed with the proposal; (3) Orange County Bar Association (OCBA), which agreed with the proposal if modified; (4) Child Support Directors Association (CSDA), which agreed with the proposal if modified.

This section is organized by each commenter and, where appropriate, comments are followed by staff analysis.

1. Superior Court of San Diego County comments

The Superior Court of San Diego County agreed that the proposal appropriately addressed its stated purpose. The court did not believe the proposal would provide a cost savings, but thought it could potentially make it more feasible for courts that do not have local rules to permit electronic filing and service to do so “provided the court has the resources to implement e-filing.” The court thought the proposal could encourage improvement or expansion of electronic filing and service and could increase e-filing by self-represented litigants, but specifically only in courts that have direct electronic filing.

2. DCSS comments

DCSS agreed that the proposal appropriately addressed its stated purpose and was “clear as to intent and purpose.” Regarding what impact the proposal would have on self-represented litigants and their access to electronic filing and service, DCSS commented:

The proposal provides further clarity and consistency as to fees for electronic filing and service, as well as the process and requirements for electronically filing documents with signature components. Should a self-represented litigant choose to electronically file documents with the court, this proposal will serve them in that it clarifies language that was not accurate for all e-filing scenarios.

Commenting on the amendments specific to signatures on electronically filed documents not signed under penalty of perjury, DCSS commented:

DCSS is a current e-filer with several Superior Courts statewide. When our [local child support agencies] e-file legal documents today, the signature lines on the enabled forms are meant to be signed by the worker generating the form; therefore, the current language of Code of Civil Procedure Section 1010.6(b)(2)(A) works. However, with the expansion of our e-filing program,

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and in the future when we begin to e-file documents such as stipulations, where the signature lines will be signed by other parties, the current language will be incorrect and the clarifying language proposed will account for those situations. As these scenarios will occur frequently once stipulations and other similar forms are added to e-filing via DCSS, this will have a significant impact on the child support program and the clarity in the law will be necessary and extremely helpful.

3. OCBA comments

OCBA agreed with the proposal if modified. It agreed that the proposal properly accounted for signatures if not made under penalty of perjury by persons other than the filer. However, the OCBA disagreed on the fee provisions. Specifically, the OCBA commented:

The proposal as to fees is inconsistent, ambiguous, and creates more ambiguities for unexplained reasons:

- (1) as proposed the statute still only allows an electronic service provider to charge a fee “for the costs incurred in processing the payment” of filing and other fees, but changes the legislation to now allow the court to charge a fee “no more than the actual cost of the electronic filing and service of the documents”; as currently written the fees charged by the court and the service provider under CCP §1010.6(b)(7) have the same limitations to the “costs incurred in processing the payment”; perhaps there are logical and fiscal reasons for treating the courts and the service provider differently, but this proposal does not explain, justify, nor analyze any of those difference and misstates a significant purpose of this proposal; and
- (2) as proposed, only in the case of an electronic service provider functioning under a trial court’s mandatory local rule requirements of CCP §1010.6(d) is the provider limited to charging “reasonable” fees; but a provider operating under the optional local rules of CCP §1010.6(b) has no such limitation nor does a provider operating under the court order rules of CCP §1010.6(c); it is also seemingly inconsistent to not place a similar “reasonable” fee requirement on the courts if such a rule is to exist at all (the “reasonable” fee rule seems fair to litigants but is ambiguous and difficult to interpret); and
- (3) although a statutory amendment would take precedence, the Judicial Council should reference and explain that Rule 8.73 of the California Appellate Rules would have to be changed since it now allows an electronic service provider

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Page 4

to charge a “reasonable fee” in addition to the court’s own filing fees and several other rules provisions such as Rule 8.76 pertaining to filing fees would be rendered inconsistent or superfluous with this legislation.

Staff Analysis: As to the first point made by OCBA, the “costs in processing a payment” apply only to those costs. “Actual costs” is a broader term and can therefore encompass more than payment processing fees. The actual cost provision in the proposal applies only to the courts. Unlike the courts, private providers such as electronic filing service providers (EFSPs) are not limited to actual costs except for payment processing fees. For example, an EFSP could build profit into its pricing model for services it provides to its users. It is unclear how the proposal “misstates a significant purpose of the proposal.” The purpose of the fee provisions of the proposal is to create consistency by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. Currently, the fee provisions vary as applied to the courts.

As to the second point, the proposal was not designed to impact EFSPs. There does not appear to be a need for the committee to address fees charged by EFSPs in a legislative proposal. When electronic filing and service are optional, litigants can simply choose not to use an EFSP. There is a stronger argument when electronic filing and service are mandated by court order, but even then, litigants must be exempted if electronic filing and service cause undue hardship or significant prejudice.

As to the third point, the fee provisions of section 1010.6 are found in subdivisions (b) and (d), which apply to the trial courts, not the appellate courts. Therefore, the appellate rules would not need to be changed.

4. CSDA comments

CSDA agreed with the proposal if modified. CSDA recommended that the organization of section 1010.6(b)(7) and (8) be altered. Specifically:

Grouping like provisions may make the code section clearer. Keep the fees discussion in one area and waivers in another. CCP Sec. 1010.6(b)(7) as proposed speaks to fees that can be charged by electronic filing manager or electronic filing service manager to process payment for filing fees. This section seems out of place and doesn’t clearly link to the section before or after as each of those sections is speaking to fee waiver options. Can subsection (7) be located elsewhere or swapped with (8) so there’s some continuity to provision topics?

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CSDA also suggested that where section 1010.6 requires fees charged by EFSPs to be “reasonable,” what is reasonable should be defined. Specifically:

CCP Sec. 1010.6(d)(2) as proposed notes “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. Any fees charged by an electronic filing service provider shall be reasonable. . . .” More clearly defining the term reasonable or what is considered reasonable will help create more consistency between electronic filing service provider fees and costs.

Finally, CSDA commented on the impact on self-represented litigants:

This change will provide the opportunity of electronic filing and service for self-represented litigants, but it may be cost prohibitive depending upon the court’s discretion with and/or use of waivers. If electronic filing is mandated by the courts, then this may result in increased costs to the self-represented litigant. If it is offered as an option and/or waivers are allowable, then the anticipated impact will be diminished.

Staff Analysis: Regarding the order of the subsections, it may make sense organizationally to swap subsection (b)(7) and (b)(8) as CSDA suggests. Subsection (b)(6) is about fee waivers for court fees and costs. Proposed subsection (b)(8) also includes a waiver provision for the costs of electronic filing and service. It would be a non-substantive change to the proposal to switch the order of the subsections and would not require recirculation for additional public comment.

Regarding “reasonable” fees allowed to be charged by EFSPs, the language on reasonable fees is part of the current statute. The proposal did not include the meaning of the term within its scope of amendments to subsection (d)(2). Rather, the only amendment to (d)(2) was to strike language that was unnecessary because the language had been moved to proposed subsection (b)(8). If a definition of “reasonable” were added to the proposal, it would need to be recirculated for additional public comment. The subcommittee could invite CSDA to submit a separate proposal for consideration next year.

Regarding the impact on self-represented litigants, the commenter’s concern about imposing prohibitive costs on self-rep is already addressed in the current version of 1010.6. Subdivision (d)(4) specifically exempts “unrepresented persons” from mandatory electronic filing and service, and the proposed amendments do not change this exemption.

Information Technology Advisory Committee,
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Attachments and Links

1. Text of proposed amendments to Penal Code section 1203.01 at pages 7–9.
2. Chart of comments at pages 10–16.
3. Draft Judicial Council Report (minus attachments to the report) at pages 17–21.
4. Link A: Code of Civil Procedure section 1010.6,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6.

Section 1010.6 of the Code of Civil Procedure would be amended, effective January 1, 2021, to read:

1 § 1010.6

2

3 (a) * * *

4

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

7

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

10

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

15

16 (i) The filer is the signer.

17

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

19

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

23

24 (i) The person has signed a printed form of the document before, or on the same day as, the date
25 of filing. The attorney or other person filing the document represents, by the act of filing, that the
26 declarant has complied with this section. The attorney or other person filing the document shall
27 maintain the printed form of the document bearing the original signature until final disposition of
28 the case, as defined in subdivision (c) of Section 68151 of the Government Code, and make it
29 available for review and copying upon the request of the court or any party to the action or
30 proceeding in which it is filed.

31

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

34

35 (3) Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on
36 a court day shall be deemed filed on that court day. Any document that is received electronically
37 on a noncourt day shall be deemed filed on the next court day.

38

39 (4) The court receiving a document filed electronically shall issue a confirmation that the
40 document has been received and filed. The confirmation shall serve as proof that the document
41 has been filed.

1
2 (5) Upon electronic filing of a complaint, petition, or other document that must be served with a
3 summons, a trial court, upon request of the party filing the action, shall issue a summons with the
4 court seal and the case number. The court shall keep the summons in its records and may
5 electronically transmit a copy of the summons to the requesting party. Personal service of a
6 printed form of the electronic summons shall have the same legal effect as personal service of an
7 original summons. If a trial court plans to electronically transmit a summons to the party filing a
8 complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party
9 that a summons will be electronically transmitted to the electronic address given by the person
10 filing the complaint.

11
12 (6) The court shall permit a party or attorney to file an application for waiver of court fees and
13 costs, in lieu of requiring the payment of the filing fee, as part of the process involving the
14 electronic filing of a document. The court shall consider and determine the application in
15 accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the
16 Government Code and shall not require the party or attorney to submit any documentation other
17 than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the
18 Government Code. Nothing in this section shall require the court to waive a filing fee that is not
19 otherwise waivable.

20
21 (7) A fee, if any, charged by ~~the court~~, an electronic filing manager, or an electronic filing
22 service provider to process a payment for filing fees and other court fees shall not exceed the
23 costs incurred in processing the payment.

24
25 (8) The court may charge fees of no more than the actual cost of the electronic filing and service
26 of the documents. The court shall waive any fees charged if the court deems a waiver
27 appropriate, including in instances when a party has received a fee waiver.

28
29 (c) If a trial court adopts rules conforming to subdivision (b), it may provide by order, subject to
30 the requirements and conditions stated in subdivision (b) and the rules adopted by the Judicial
31 Council under subdivision (f), that all parties to an action file and serve documents electronically
32 in a class action, a consolidated action, a group of actions, a coordinated action, or an action that
33 is deemed complex under Judicial Council rules, provided that the trial court's order does not
34 cause undue hardship or significant prejudice to any party in the action.

35
36 (d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to
37 the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial
38 Council under subdivision (f), and the following conditions:

39
40 (1) The court shall have the ability to maintain the official court record in electronic format for
41 all cases where electronic filing is required.

42

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

8
9 (3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent
10 the program from causing undue hardship or significant prejudice to any party in an action,
11 including, but not limited to, unrepresented parties. The Judicial Council shall make a form
12 available to allow a party to seek an exemption from mandatory electronic filing and service on
13 the grounds provided in this paragraph.

14
15 (4) Unrepresented persons are exempt from mandatory electronic filing and service.

16
17 (5) Until January 1, 2021, a local child support agency, as defined in subdivision (h) of Section
18 17000 of the Family Code, is exempt from a trial court's mandatory electronic filing and service
19 requirements, unless the Department of Child Support Services and the local child support
20 agency determine it has the capacity and functionality to comply with the trial court's mandatory
21 electronic filing and service requirements.

22
23 (e) The Judicial Council shall adopt uniform rules for the electronic filing and service of
24 documents in the trial courts of the state, which shall include statewide policies on vendor
25 contracts, privacy, and access to public records, and rules relating to the integrity of electronic
26 service. These rules shall conform to the conditions set forth in this section, as amended from
27 time to time.

28
29 (f) The Judicial Council shall adopt uniform rules to permit the mandatory electronic filing and
30 service of documents for specified civil actions in the trial courts of the state, which shall include
31 statewide policies on vendor contracts, privacy, access to public records, unrepresented parties,
32 parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating
33 to the integrity of electronic service. These rules shall conform to the conditions set forth in this
34 section, as amended from time to time.

35
36 (g) * * *

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
1.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	AM	The OCBA believes that (a) this proposal does not achieve its purpose of creating consistency in the fee provisions for electronic filing and service, and (b) it does properly account for signatures not made under penalty of perjury by persons other than the filer. The proposal as to fees is inconsistent, ambiguous, and creates more ambiguities for unexplained reasons: (1) as proposed the statute still only allows an electronic service provider to charge a fee “for the costs incurred in processing the payment” of filing and other fees, but changes the legislation to now allow the court to charge a fee “no more than the actual cost of the electronic filing and service of the documents”; as currently written the fees charged by the court and the service provider under CCP §1010.6(b)(7) have the same limitations to the “costs incurred in processing the payment”; perhaps there are logical and fiscal reasons for treating the courts and the service provider differently, but this proposal does not explain, justify, nor analyze any of those difference and misstates a significant purpose of this proposal; and (2) as proposed, only in the case of an electronic service provider functioning under a trial court’s mandatory local rule requirements of CCP §1010.6(d) is the provider limited to charging “reasonable” fees; but a provider operating under the optional local rules of CCP §1010.6(b) has no such limitation nor does a provider operating under the court order rules of CCP §1010.6(c); it is also seemingly inconsistent to not place a similar “reasonable” fee requirement on the courts if such a rule is to exist at all (the	<p>The committee appreciates the support and the comments.</p> <p>As to the first point made by OCBA, the “costs in processing a payment” apply only to those costs. “Actual costs” is a broader term and can therefore encompass more than payment processing fees. The actual cost provision in the proposal applies only to the courts. Unlike the courts, private providers such as electronic filing service providers (EFSPs) are not limited to actual costs except for payment processing fees. For example, an EFSP could build profit into its pricing model for services it provides to its users. The purpose of the fee provisions of the proposal is to create consistency by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. Currently, the fee provisions vary as applied to the courts.</p> <p>As to the second point, the proposal was not designed to impact EFSPs. There does not appear to be a need for the committee to address fees charged by EFSPs in a legislative proposal. When electronic filing and service are optional, litigants can simply choose not to use an EFSP. There is a stronger argument when electronic filing and service are mandated by court order, but even then, litigants must be exempted if electronic</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>“reasonable” fee rule seems fair to litigants but is ambiguous and difficult to interpret); and (3) although a statutory amendment would take precedence, the Judicial Council should reference and explain that Rule 8.73 of the California Appellate Rules would have to be changed since it now allows an electronic service provider to charge a “reasonable fee” in addition to the court’s own filing fees and several other rules provisions such as Rule 8.76 pertaining to filing fees would be rendered inconsistent or superfluous with this legislation.</p> <p>The Judicial Council request for comment on what impact the proposal would have on self-represented litigants is answered by a simple reference to CCP §1010.6(d)(4) which provides that “unrepresented persons are exempt from mandatory electronic filing and service.” This provision should be added to CCP §1010.6(c), which deals with court-ordered mandatory filing and service, for purposes of consistency.</p>	<p>filing and service cause undue hardship or significant prejudice.</p> <p>As to the third point, the fee provisions of section 1010.6 are found in subdivisions (b) and (d), which apply to the trial courts, not the appellate courts. Therefore, the appellate rules would not need to be changed.</p>
2.	<p>Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court</p>	NI	No specific comments.	<p><i>Staff have contacted the court to find out if the court has a position. The proposal title was included with other comments submitted by the court, but no position or comments were stated about this particular proposal. It’s unclear if there was an accidental omission by the court. This row of the comment chart will be deleted if the court has no position or comments.</i></p>
3.	<p>Superior Court of California, County of San Diego</p>	A	<p>1. Does the proposal appropriately address the stated purpose?</p>	<p>The committee appreciates the support and the comments.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
	<p>By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101</p>		<p>Yes.</p> <p>2. What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>May increase e-filings by self-represented litigants in courts that directly providing e-filing.</p> <p>3. Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p> <p>4. If the court does not currently have local rules permitting electronic filing and service, would the proposal make it more feasible for the court to do so?</p> <p>Potentially, provided a court has the resources to implement e-filing.</p> <p>5. If the court currently has local rules permitting electronic filing and service, would the proposal help the court to improve or expand electronic filing and service?</p> <p>It may, if the court directly provides e-filing. It does not appear that it would impact courts that utilize an electronic filing service provider.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
4.	California Department of Child Support Services By Lara Racine, Attorney III P.O. Box 419064 Rancho Cordova, California 95741	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation.</p> <p>REQUEST FOR SPECIFIC COMMENTS:</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal is clear as to intent and purpose. The background section was well stated, especially as to the proposed amendment to Code of Civil Procedure Section 1010.6.</p> <p>2. What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>The proposal provides further clarity and consistency as to fees for electronic filing and service, as well as the process and requirements for electronically filing documents with signature components. Should a self-represented litigant choose to electronically file documents with the court, this proposal will serve them in that it clarifies language that was not accurate for all e-filing scenarios.</p> <p>GENERAL COMMENTS: Cost Recovery</p>	The committee appreciates the support and the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>DCSS, as a government entity, is not subject to filing fees per Government Code Section 6103.9.</p> <p>SIGNATURES ONE-FILED DOCUMENTS NOT SIGNED UNDER PENAL TY OF PERJURY</p> <p>DCSS is a current e-filer with several Superior Courts statewide. When our LCSAs e-file legal documents today, the signature lines on the enabled forms are meant to be signed by the worker generating the form; therefore, the current language of Code of Civil Procedure Section 1010.6(b)(2)(A) works. However, with the expansion of our e-filing program, and in the future when we begin toe-file documents such as stipulations, where the signature lines will be signed by other parties, the current language will be incorrect and the clarifying language proposed will account for those situations. As these scenarios will occur frequently once stipulations and other similar forms are added to e-filing via DCSS, this will have a significant impact on the child support program and the clarity in the law will be necessary and extremely helpful.</p>	
5.	<p>Child Support Directors Association By Terrie Porter Sacramento, California</p>	AM	<p>General comments: Grouping like provisions may make the code section clearer. Keep the fees discussion in one area and waivers in another.</p> <p>CCP Sec. 1010.6(b)(7) as proposed speaks to fees that can be charged by electronic filing manager or</p>	<p>The committee appreciates the support and the comments.</p> <p>Regarding the order of the subsections, [to be updated with committee decision on the ordering].</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>electronic filing service manager to process payment for filing fees. This section seems out of place and doesn't clearly link to the section before or after as each of those sections is speaking to fee waiver options. Can subsection (7) be located elsewhere or swapped with (8) so there's some continuity to provision topics?</p> <p>CCP Sec. 1010.6(d)(2) as proposed notes "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. Any fees charged by an electronic filing service provider shall be reasonable..." More clearly defining the term reasonable or what is considered reasonable will help create more consistency between electronic filing service provider fees and costs.</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose?</p> <p>As proposed, this change will create consistent court fees when courts are allowing electronic filing. As noted, the courts are only able to recover actual costs of the electronic filing. It does not necessarily create consistency between electronic filing service providers, see General Comments regarding CCP Sec. 1010.6(d)(2).</p>	<p>Regarding "reasonable" fees allowed to be charged by EFSPs, the language on reasonable fees is part of the current statute. The proposal did not include the meaning of the term within its scope of amendments to subsection (d)(2). Rather, the only amendment to (d)(2) was to strike language that was unnecessary because the language had been moved to proposed subsection (b)(8).</p> <p>Regarding the impact on self-represented litigants, the concern CSDA raises about imposing prohibitive costs on self-rep is already addressed in the current version of 1010.6. Subdivision (d)(4) specifically exempts "unrepresented persons" from mandatory electronic filing and service, and the proposed amendments do not change this exemption.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

LEG19-01

Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury (Amend Code Civ. Proc., § 1010.6)

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>This change will provide the opportunity of electronic filing and service for self-represented litigants, but it may be cost prohibitive depending upon the court's discretion with and/or use of waivers. If electronic filing is mandated by the courts, then this may result in increased costs to the self-represented litigant. If it is offered as an option and/or waivers are allowable, then the anticipated impact will be diminished.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



JUDICIAL COUNCIL OF CALIFORNIA
 455 Golden Gate Avenue · San Francisco, California 94102-3688
 www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

Commented [JA1]: Note: This draft report has not yet been proofread by the Judicial Council Editing and Graphics Group. It will be before it is submitted to PCLC.

<p>Title Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury</p> <p>Rules, Forms, Standards, or Statutes Affected Amend Code Civ. Proc., § 1010.6</p> <p>Recommended by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair</p>	<p>Agenda Item Type Action Required</p> <p>Effective Date January 2, 2021</p> <p>Date of Report June 26, 2019</p> <p>Contact Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov</p>
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Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to amend Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil matters in the trial courts. The purpose of the proposal would be twofold: (1) to create consistency in the fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule; and (2) to account for signatures made not under penalty of perjury by persons other than the filer.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to amend Code of Civil Procedure section 1010.6 effective January 1, 2021, to:

1. Allow courts to recover no more than the actual costs they incur for permissive electronic filing and electronic filing by court order.

2. Account for electronic signatures not made under penalty of perjury by persons other than the filer.

The text of the statute as amended is attached at pages [X]–[XX].

Commented [JA2]: The page numbers will be updated in the final version.

Relevant Previous Council Action

Since January 1, 2000, section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) Over the years, the Judicial Council has sponsored legislation to amend section 1010.6. In 2012, the Legislature enacted Assembly Bill (AB) 2073 (Stats. 2012, ch. 320), which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320.) AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. In 2017, the Judicial Council sponsored AB 976, which the Legislature enacted and which, among other things, provided for use of electronic signatures under penalty of perjury on electronically filed documents and codified provisions on mandatory electronic service that had been in the California Rules of Court.

Analysis/Rationale

Cost recovery

Section 1010.6 provides statutory authority for electronic filing and service. The 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 by local rule, it may charge a fee for payment processing not to exceed the costs of processing a payment. (§ 1010.6(b)(7).) If a court permits electronic filing by local rule, it may also require electronic filing and service by court order, but the provision on ordering electronic filing and service does not directly address costs. (§ 1010.6(c).) A court may also require electronic filing and service by local rule, and in that case, 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 a court can recover vary depending on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule.

The provisions for electronic filing and service permitted by local rule are found in subdivision (b) of section 1010.6 while the provisions for electronic filing and service required by court order and required by local rule are found in subdivisions (c) and (d), respectively. The proposed amendments would add a new subdivision (b)(8) to allow courts to recover actual costs when electronic filing and service is permitted by local rule. The language of proposed subdivision (b)(8) is taken from existing subdivision (d). Because subdivision (d) is subject to the requirements and conditions of subdivision (b), the proposal removes the existing language from subdivision (d) that would be identical to the new language in proposed subdivision (b)(8).

The proposal also strikes “the court” from the existing language in subdivision (b)(7), which covers recovery of payment processing fees. Because the language in subdivision (b)(8) is broad enough to encompass payment processing fees, it would not be necessary to keep “the court” in subdivision (b)(7). Finally, the proposal adds to subdivision (c) that it is subject to the requirements and conditions of subdivision (b) and subdivision (f), which cover rulemaking for mandatory electronic filing. This is the same as language in existing subdivision (d) and makes subdivisions (c) and (d) more consistent.

Document signing provisions

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).) Although 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 when someone signs a document not under penalty of perjury, the document is to be filed electronically, and the filer and signer are different people.

The proposed amendment would preserve the status quo when the filer is the signer, but also account for documents not signed under penalty of perjury when the filer and signer are different people. The amendment would leave the specific processes for signatures not under penalty of perjury when the filer and signer are different people to be described in a rule of court just as is the case for documents electronically signed under penalty of perjury.

Policy implications

The proposal is consistent with two of the goals of the Judicial Council’s Strategic Plan for Technology. One goal is to promote to the digital court to increase access to the courts, administer justice in a timely and efficient manner, and optimize case processing by supporting a foundation for the digital court and by implementing comprehensive digital services for the public and for justice partners. Another goal is to promote the modernization of statutes to facilitate the use of technology in court operations and the delivery of court services. Electronic filing is available in about half of trial courts. Allowing recovery of actual costs for permissive electronic filing may facilitate courts’ expansion in this area either themselves or through the statewide electronic filing program.

As more courts that do have electronic filing make electronic filing mandatory, courts can reduce the burden on litigants to retain paper records by allowing electronic signatures on electronically filed documents. For example, the California Department of Child Support Services (DCSS) has noted that the ability to use electronic signatures would have a significant favorable impact on it and local child support agencies as they would no longer need to engage in a labor-intensive process of obtaining signatures in person or through the mail on the thousands of stipulations they file every year.

Comments

The committee circulated the proposal for public comments between April 11 and June 10, 2019. Four commenters responded to the invitation to comment: (1) Superior Court of San Diego County, which agreed with the proposal; (2) DCSS, which agreed with the proposal; (3) Orange County Bar Association (OCBA), which agreed with the proposal if modified; (4) Child Support Directors Association (CSDA), which agreed with the proposal if modified.

Commented [JA3]: I will update this section following the RPS meeting to include any significant discussion of the comments received.

Alternatives considered

Cost recovery provisions

The committee considered maintaining the status quo, which would continue different cost recovery provisions depending on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. The committee considered it preferable to make the cost recovery provisions consistent and allow courts to recover no more than actual costs. This may encourage more courts to offer electronic filing or expand the scope of their offerings. Currently, only about half of the trial courts provide electronic filing and service either directly, through vendor services, or a combination of vendor and in-house services.

Document signing provisions

The committee considered addressing this issue only in the rules of court. However, because section 1010.6 states that it governs the signature of *any person* not under penalty of perjury, but then specifically narrows to only address the filer, amending section 1010.6 would ensure there would be no potential inconsistency between the controlling statute and rules of court.

Fiscal and Operational Impacts

Cost recovery provisions

Courts can already recover actual costs when electronic filing and service is *required* by local rule. The main fiscal impacts therefore would be with electronic filing and service *permitted* by local rule. Where courts already permit electronic filing and service by local rule, the proposal may reduce costs for courts because those costs would be recoverable. The proposal may also make it more feasible for the court to expand the scope of electronic filing and service. Where courts already permit electronic filing and service by local rule, there may be an increase in costs to litigants already using permissive electronic filing because costs are currently limited to recovery of payment processing fees. Where courts do not currently permit electronic filing and service, the proposal may make it more feasible for more courts to do so. Because electronic filing and service permitted by local rule is optional, litigants would still have the choice to file in paper.

The committee sought specific comments from the courts on fiscal and operational impacts. The Superior Court of San Diego County commented that did not believe the proposal would provide a cost savings, but thought it could potentially make it more feasible for courts that do not have local rules to permit electronic filing and service to do so “provided the court has the resources to implement e-filing.” The court thought the proposal could encourage improvement or expansion

of electronic filing and service and could increase e-filing by self-represented litigants, but specifically only in courts that have direct electronic filing.

Finally, the Judicial Council has been developing a statewide electronic filing program on behalf of the trial courts. Through the program, the council is establishing master agreements with electronic filing manager vendors and courts can participate in the agreements if they choose. There are court program costs that are currently recoverable with mandatory electronic filing by local rule. The amendments would that would also allow recovery of actual costs for permissive electronic filing and mandatory electronic filing by court order.

Commented [JA4]: I will update this in the final version. I understand the JCC has entered master agreements with two vendors and is working on finalizing the agreement with the third and final vendor.

Document signing provisions

DCSS noted that it expects to increasingly need to electronically file document where the signature lines will be signed by other parties such as stipulations. DCSS commented, “As these scenarios will occur frequently. . . this will have a significant impact on the child support program and the clarity in the law will be necessary and extremely helpful.”

Attachments and Links

1. Code of Civil Procedure section 1010.6, at pages ~~XX~~-YY.
2. Chart of comments, at pages XX-YY.

Commented [JA5]: These page numbers will be updated in the final version.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 24, 2019

Action Requested

Please review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee
Hon. Peter J. Siggins, Chair

Deadline

July 2, 2019

Contact

Andrea L. Jaramillo
916-263-0991 phone
andrea.jaramillo@jud.ca.gov

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Subject

Rule Proposal: Review public comments and
make recommendation on amending rules
2.251, 2.255, and 2.257 of the California
Rules of Court

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a proposal for public comment to amend rules 2.251, 2.255, and 2.257 of the California Rules of Court. The purpose of the proposed amendments to rules 2.251 and 2.255 is to (1) specify how notice of consent to electronic service is to be given, (2) provide example language for consent, and (3) require electronic filing service providers and electronic filing managers to transmit a person’s consent to the court. The proposed amendments to rules 2.251 and 2.255 originated with comments received from the Superior Court of San Diego County. The purpose of the proposed amendments to rule 2.257 is to reduce the reliance on paper for signatures on electronically filed documents and include other persons in addition to parties within the scope of the rule. The proposed amendments to rule 2.257 originated with comments received from the

Information Technology Advisory Committee
Rules and Policy Subcommittee
June 24, 2019
Page 2

Department of Child Support Services and Judicial Council staff. More detailed background information is included in the attached draft Judicial Council report.

Discussion

Six commenters responded to the invitation to comment:

1. Superior Court of San Diego County, which agreed with the proposal.
2. Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position on the proposal.
3. Joint Rules Subcommittee (JRS) of the Judicial Council Trial Court Presiding Judges and Court Executives Advisory Committees, which disagreed with the proposal.
4. Orange County Bar Association, which agreed with the proposal.
5. California Department of Child Support Services (DCSS), which agreed with the proposal.
6. Executive Committee of the Family Law Section of the California Lawyers Association, which agreed with the proposed amendments to rule 2.257, but took no position on the proposed amendments to rules 2.251 and 2.255.

The discussion of comments below is split into three sections (1) comments on rules 2.251 and 2.255 (2) comments on rule 2.257, and (3) general overall comments about the entire proposal.

1. Comments about Rules 2.251 and 2.255

The proposed amendments to rule 2.251 would require parties or other persons who have “manifested affirmative consent [to electronic service] through electronic means” to serve notice of this consent on all parties and other persons required to be served. The proposed amendments to rule 2.255 would require electronic filing service providers (EFSPs) and electronic filing managers (EFMs) to promptly transmit to the court, a party or other person’s acceptance of consent to receive electronic service. The goal is to ensure that parties, other persons, and the court have a way to know about the consent.

a. JRS: JRS did not associate the following comments with any specific rules, but the context indicates they are about rules 2.251 and 2.255:

Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes. Systems would need to be re-designed to support this process and allow court staff to easily identify who consented. This will likely be a complicated change that involves the EFSP systems as well as the core CMS and will be a cost impact to the court.

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...

Furthermore, the JRS believes that courts should not serve as the custodian of eService consent. If there is a dispute between the parties as to the consent to eservice between them, they can bring that dispute before the courts and submit their evidence of notice at that time without having the courts go through an onerous administrative process of receiving, storing and tracking electronic service consents between the parties that is rarely challenged.

For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService.

Staff Analysis: The proposed amendments are limited. Effectively, all that they do is ensure that parties, other persons, and the court receive notice that someone has “manifested consent [to electronic service] through electronic means.” By statute, parties must expressly consent to electronic service and one of the ways that they may do so is 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.

(Code Civ. Proc., § 1010.6(a)(2)(A)(ii).) This went into effect January 1, 2019, and eliminated the prior option of allowing the act of electronic filing alone to serve as evidence of consent. (*Ibid.* [“The act of electronic filing shall not be construed as express consent”].) The Legislature did not elaborate on what it meant to “manifest affirmative consent through electronic means” and last year, ITAC recommended and the Judicial Council adopted rule amendments that conformed the rules to the new Code of Civil Procedure provisions and that allowed parties to “manifest consent through electronic means” by filing a form or by agreeing to electronic service through an EFSP. One of the objectives of the EFSP option was to create something similar to the prior process of consenting by the act of electronic filing while also ensuring, consistent with legislative direction, that parties expressly consented to electronic service. This was a recommendation of the EFSPs. ITAC asked for specific comments last year on how notice should be given to the parties and the court. One court commented to address this specifically and proposed that the parties would need to serve one another, and that for the court, EFSPs

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should transmit the acceptance to the court. This recommendation formed the basis of the proposal.

JRS commented that it “believes that courts should not serve as the custodian of eService consent.” This is a statutory problem more than a rule problem. Code of Civil Procedure section 1010.6(a)(2)(A)(ii) 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. . . .” (Emphasis added.)

JRS’s comment that “Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes” means that the proposal may present technical and financial challenges given costs for addressing the issue.

Finally, JRS commented “For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService.”

As long as there has been electronic service, consent has been required. By statute, where electronic service is permitted, but not required, the court can only electronically serve documents issued by the court if the person being served has consented. (Code Civ. Proc, § 1010.6(a)(2)(A)(ii), (a)(3).) Unless electronic service is mandatory, the clerk should only be electronically serving the parties that have consented to it. The proposed rule amendments do not change this process; therefore, it is uncertain how the proposal would increase the workload.

JRS also submitted comments on specific subdivisions of rules 2.251 and 2.255.

Rule 2.251(b)(1)(B) comments:

verbiage was added “a party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either”

Clarification is requested as to whether the EFSP, EFM, individual parties or their attorney(s) are required to provide electronic service.

Staff Analysis: Service can be accomplished through any legal means. No one is required to provide electronic service unless a court order or local rule mandates it.

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Rule 2.251 comments:

For rule 2.251, clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.

Staff Analysis: This is out of scope to the proposed amendment, but an important consideration to rule 2.251 in general. The rule does not address this issue. Staff can present this to the subcommittee as a potential proposal for next year.

Rule 2.255(a)(2), (c)(2) comments:

For Rule 2.255 § (a)(c)(2)—clarification is requested. Is the intent of the transmittal to be a filed judicial council form document filed into each individual case or data transmitted back to the case management system for each individual case? Additionally, would attorneys be able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis?

Staff Analysis: Consent would be applicable to each individual case. It could be recorded on a Judicial Council form or in data transmitted from the EFSP. Attorneys cannot file consent at the attorney level or party level. Code of Civil Procedure section 1010.6 requires consent to be in the “specific action.” (Code Civ. Proc., § 1010.6(a)(2)(A)(2).)

b. Superior Court of Orange County, Juvenile Court and Family Law Divisions:

Rule 2.251 comments:

Clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.

Staff Analysis: This is the same comment that JRS made, above. Staff can present this to the subcommittee as a potential proposal for next year.

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c. DCSS:

Rule 2.251 comments:

This rule requires the manifestation of affirmative consent to accept electronic service and specifies how notice of consent to electronic service is to be given as well as provides examples via the EFSP and EFM of language for consent. The proposal addresses the stated purpose and provides clarity to the affirmative consent process.

The proposed changes are supported by the DCSS and our [local child support agencies (LCSAs)]. DCSS maintains the e-filing platform by which participating LCSAs e-file their legal documents. The local agency, however, is necessarily the party accepting service. While DCSS has not been advised that e-service is a widespread issue throughout our e-filing counties, it has been reported as problematic for those local agencies that have received some sort of e-service. DCSS has not yet established statewide protocols and electronic addresses for electronic service and so the counties getting e-served are receiving those documents inconsistently, i.e. individual staff email accounts, etc. The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent and effective approach that protects the due process of all parties involved.

2. Rule 2.257

The proposed amendments to rule 2.257(b) would add requirements for electronic signatures on electronically filed documents signed under penalty of perjury when the declarant is not the filer. The proposed amendments to rule 2.257(d) would add similar requirements for signatures of opposing parties made not under penalty of perjury.

a. JRS comments: JRS had several comments about the proposed amendments:

On the signature side of the proposal, if the court is required to validate signatures, besides the cost and challenges of implementing a technical solution to validate signature authentication and data integrity, we have concerns about the public understanding how to implement the digital protections that ensures no data is changed. Just doing research on the issue, we had to have an expert in the field of digital discovery explain to us step by step how this process would work. This rule change adds technical validation requirements for compliance that courts are not prepared to handle and puts courts in the position of rejecting

documents for non-compliance for an issue that has other avenues of resolution. If a document's signature authenticity is challenged, the parties should be required to address these challenges through a motion process.

...

For rule 2.257(b)(1): Will clarification be provided on who will be expected to verify the electronic signature, if needed? The court does not currently verify signatures of documents it has received. Any ambiguity in the rule that could place a burden on the court to verify signatures should be clarified to indicate that it is not the court's responsibility to verify signatures on documents it accepts for filing. Any rule that requires the court to verify signatures will have a tremendous fiscal impact on the court. The rule should be modified to require the parties to maintain the metadata for the electronic signature and the court is not responsible for this process.

The requirements for signatures poses significant challenges because our case management system "flattens" documents when they are filed, so if I am correct, the court would likely be unable to determine whether an electronic signature is valid. The proposed amendment to Rule 2.257(b)(1) for documents signed under penalty of perjury reads in part: "If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court." A court cannot verify a signature that simply reads "-s- "and the data behind it showing who signed it, when, and where, is not stored by the filing system. Also, if any electronically filed document is unsigned that is required to be signed under penalty of perjury, would the court simply assume that there is a wet-signed copy of the document under Rule 2.257(b)(2)? Please see comments in above-paragraph relating to court's inability to verify signatures.

The California's Uniform Electronic Signatures Act contains less stringent requirements for signatures under penalty of perjury than the proposed new rule and should be considered in modifying the signature requirements:
Civil Code section 1633.11 subdivision (b) reads:

In a transaction, if a law requires that a statement be signed under penalty of perjury, the addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty

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of perjury by the person who submits the electronic signature that the information is true and correct.

Civil Code section 1633.2 subdivision (h) defines an “electronic signature” to mean “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 the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.”

Staff Analysis: The proposal was not intended to require the court to validate or otherwise verify signatures when they are filed. Rather, it was intended to ensure that ensure the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people.

The confusion here may be an issue with the way the rule is drafted. It injects a possible court decision about the signature, which JRS may be reading as necessitating court involvement in validating the electronic signature. It adds to what is otherwise a list of technical attributes of the signature itself, something that is not an attribute of the signature.

The proposal adds to rule 2.257(b)(1), “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 linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court[.]” (This same language is also in the proposed subsection (c) of rule 2.257.)

The subcommittee considered a version of this language in which the last part stated, “the electronic signature is invalidated.” That was modeled after one of the attributes of a digital signature,¹ and would have been a function of the electronic signature technology itself. Effectively, the document would no longer be signed if the document were altered after the signer applied the electronic signature. This would have been a distinct attribute of the electronic signature applied.

¹ A digital signature is a specific type of electronic signature that has attributes identified in Government Code section 16a and is applied using technology prescribed in California Code of Regulations, title 2, sections 22000–22005.

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The proposed language may also be problematic if it effectively precludes the use of digital signatures. Digital signatures are a known standard for written communication with the government codified in the Government Code and the Code of Regulations. All digital signatures must have the attribute of being “linked to data in such a manner that if the data are changed, the digital signature is invalidated.” (Gov. Code, § 16.5(a)(4).)

The proposed language would benefit from revision. Some options include:

1. Reconsidering the language that an attribute of the electronic signature is that it “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.”
 - Though it is ultimately up to the Rules and Projects Committee (RUPRO) to decide, using this version may not necessitate recirculation for public comment because it was within the scope of the invitation to comment. ITAC noted that it had considered different versions of the wording and sought specific comments on “the electronic signature *is invalidated*” vs “the electronic signature *may be declared invalid by the court.*”
 - Parties could use digital signatures with this wording. The only difference between a digital signature under Government Code section 16.5(a) and an electronic signature that would be compliant the rule wording would be that the rule wording does not require the signature to adhere to the Secretary of State Regulations digital signature regulations, which prescribe the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)
2. Requiring digital signatures, which the rule expressly does not require, but for reasons that are no longer applicable on the availability of digital signature technology.
 - This would likely require recirculation.
 - Digital signature is a known standard in the state though it does require the use of specific technologies.
 - The rule currently states that digital signatures are not required. This dates back to when the rule language originally became effective on January 1, 2003. In its report to the Judicial Council, the Court Technology Advisory Committee recommended not requiring the use of digital signatures because the technology had not yet been standardized at that time. This is no longer the case.

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3. Requiring the parties to maintain the metadata for the electronic signature, which is JRS's suggestion.
 - This would likely require recirculation.
4. Imposing less stringent requirements, which is also a suggestion of JRS. There are a couple of languages this may be accomplished:
 - Allow use of an electronic signature as the term is defined in the rule, but without requiring the additional attributes. The language JRS cites and suggests is from the Uniform Electronic Transactions Act (UETA) and was the basis for the standard used in rule 2.257 where a filer and declarant are the same person. Revising this would likely require recirculation with respect to signatures of opposing parties.
 - Eliminate the language of “linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court” do not replace it with anything else. This change may not necessarily require recirculation for public comment as, within the scope of the invitation to comment, ITAC asked for specific comments on whether the requirement was necessary.

The subcommittee was concerned that the initial draft language or a digital signature could take away a power of the court on the validity of signatures. This should not be the case an advisory committee comment on this topic. Potential language for an advisory committee comment could include, “The requirements for electronic signatures that are compliant with the rule do not remove the power of the court to resolve disputes about the validity of a signature.”

b. Superior Court of Orange County, Juvenile Court and Family Law Divisions:

Rule 2.257 comments:

If the electronic signature is declared invalid, will the court be expected to set a hearing on their own motion for the parties to appear or proceed in another manner?

Staff Analysis: This would be up to the court.

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c. DCSS:

Rule 2.257 comments:

The Invitation to Comment proposes to amend Rule 2.257, to allow electronic signatures on e-filed documents containing signatures of opposing parties not under penalty of perjury. As this change was at the request of DCSS, and the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments. The proposal addresses the stated purpose and provides language that will enhance the way DCSS does business with our case participants and the court.

d. Superior Court of San Diego County: ITAC asked for specific comments regarding the requirement that the electronic signature be “linked to data in such a manner that if the data are changed, the electronic signature *may be invalidated*” vs “*is invalidated.*” The Superior Court of San Diego County commented, “The proposed language is preferable, as it leaves authority with the judicial officer.”

3. General overall comments about the proposal

a. JRS comments: JRS noted the following impact to court operations:

- Significant fiscal impact;
- 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;
- Impact on local or statewide justice partners.

Staff Analysis: These comments will be included in the “Fiscal and Operational Impacts” section of the Judicial Council report. The comments detail more on the fiscal, automated system, and workload impacts, but do not further explain the impact on local and statewide justice partners.

b. Superior Court of San Diego County: The court commented that implementation requirements would include, “Notifying/training staff and updating internal procedures.”

Attachments and Links

1. Text of proposed amendments to rules 2.251, 2.255, and 2.257 of the California Rules of Court at pages 13-16

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2. Chart of comments at pages 17–25.
3. Draft Judicial Council Report (minus attachments to the report) at pages 25–31.
4. Link A: Code of Civil Procedure section 1010.6
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6.
5. Link B: Government Code section 16.5 (digital signatures)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=16.5.
6. Link C: California Code of Regulations, Title 2, section 22000-22005 (digital signature regulations) [https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Rules 2.251, 2.255, and 2.257 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 2.251. Electronic service**

2
3 (a) * * *

4
5 (b) **Electronic service by express consent**

6
7 (1) A party or other person indicates that the party or other person agrees to
8 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) Manifesting affirmative consent through electronic means with the
16 court or the court’s electronic filing service provider, and concurrently
17 providing the party’s electronic service address with that consent for
18 the purpose of receiving electronic service. A party or other person may
19 manifest affirmative consent by serving notice of consent to all parties
20 and other persons and either:

21
22 ~~(C) A party or other person may manifest affirmative consent under (B) by:~~

23
24 (i) Agreeing to the terms of service ~~agreement~~ with an electronic
25 filing service provider, which clearly states that agreement
26 constitutes consent to receive electronic service ~~electronically~~; or

27
28 (ii) Filing Consent to Electronic Service and Notice of Electronic
29 Service Address (form EFS-005-CV).

30
31 (2) * * *

32
33 (c)–(k) * * *

34
35 **Advisory Committee Comment**

36 Subdivisions (b)(1)(B). The rule does not prescribe specific language for a provision of a term of
37 service when the filer consents to electronic service, but does require that any such provision be
38 clear. *Consent to Electronic Service and Notice of Electronic Service Address (form EFS-005-*
39 *CV)* provides an example of language for consenting to electronic service.

40
41 **Subdivisions (c)–(d).** * * *

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

4
5 (a)–(b) * * *

6
7 (c) **Transmission of filing to court**

8
9 (1) An electronic filing service provider must promptly transmit any electronic
10 filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent
11 to receive electronic service to the court directly or through the court’s
12 electronic filing manager.

13
14 (2) An electronic filing manager must promptly transmit an electronic filing, ~~and~~
15 any applicable filing fee, and any applicable acceptance of consent to receive
16 electronic service to the court.

17
18 (d)–(f) * * *

19
20 **Rule 2.257. Requirements for signatures on documents**

21
22 (a) **Electronic signature**

23
24 An electronic signature is an electronic sound, symbol, or process attached to or
25 logically associated with an electronic record and executed or adopted by a person
26 with the intent to sign a document or record created, generated, sent,
27 communicated, received, or stored by electronic means.

28
29 (b) **Documents signed under penalty of perjury**

30
31 When a document to be filed electronically provides for a signature under penalty
32 of perjury of any person, the document is deemed to have been signed by that
33 person if filed electronically provided that either of the following conditions is
34 satisfied:

35
36 (1) The declarant has signed the document using an electronic signature and
37 declares under penalty of perjury under the laws of the state of California that
38 the information submitted is true and correct. If the declarant is not the
39 electronic filer, the electronic signature must be unique to the declarant,
40 capable of verification, under the sole control of the declarant, and linked to
41 data in such a manner that if the data are changed, the electronic signature
42 may be declared invalid by the court; or

1 (2) The declarant, before filing, has physically signed a printed form of the
 2 document. By electronically filing the document, the electronic filer certifies
 3 that the original, signed document is available for inspection and copying at
 4 the request of the court or any other party. In the event this second method of
 5 submitting documents electronically under penalty of perjury is used, the
 6 following conditions apply:

- 7
- 8 (A) At any time after the electronic version of the document is filed, any
 9 party may serve a demand for production of the original signed
 10 document. The demand must be served on all other parties but need not
 11 be filed with the court.
- 12
- 13 (B) Within five days of service of the demand under (A), the party or other
 14 person on whom the demand is made must make the original signed
 15 document available for inspection and copying by all other parties.
- 16
- 17 (C) At any time after the electronic version of the document is filed, the
 18 court may order the filing party or other person to produce the original
 19 signed document in court for inspection and copying by the court. The
 20 order must specify the date, time, and place for the production and must
 21 be served on all parties.
- 22
- 23 (D) Notwithstanding (A)–(C), local child support agencies may maintain
 24 original, signed pleadings by way of an electronic copy in the statewide
 25 automated child support system and must maintain them only for the
 26 period of time stated in Government Code section 68152(a). If the local
 27 child support agency maintains an electronic copy of the original,
 28 signed pleading in the statewide automated child support system, it may
 29 destroy the paper original.

30

31 **(c) Documents not signed under penalty of perjury**

32

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

36

37 ~~**(d) Documents requiring signatures of opposing parties**~~

38

39 (2) When a document to be filed electronically, such as a stipulation, requires the
 40 signatures of opposing parties or other persons not under penalty of perjury, the
 41 following procedures ~~applies~~ apply:

42

1 ~~(1)(A)~~ The party filing the document must obtain the signatures of all parties
2 on a printed form of the document. The opposing party or other person
3 has signed a printed form of the document before, or on the same day
4 as, the date of filing.

5 ~~(2)~~—The ~~party filing the document~~ electronic filer must maintain the
6 original, signed document and must make it available for inspection
7 and copying as provided in ~~(a)(b)(2)~~ of this rule and Code of Civil
8 Procedure section 1010.6. The court and any other party may demand
9 production of the original signed document in the manner provided in
10 ~~(a)(b)(2)(A–C)~~.

11 ~~(3)~~—By electronically filing the document, the electronic filer indicates that
12 all parties have signed the document and that the filer has the signed
13 original in his or her possession; or

14
15 (B) The opposing party or other person has signed the document using an
16 electronic signature and that electronic signature is unique to the person
17 using it, capable of verification, under the sole control of the person
18 using it, and linked to data in such a manner that if the data are
19 changed, the electronic signature may be declared invalid by the court.
20

21 ~~(e)(d)~~ **Digital signature**

22
23 A party or other person is not required to use a digital signature on an electronically
24 filed document.

25
26 ~~(f)(e)~~ **Judicial signatures**

27
28 If a document requires a signature by a court or a judicial officer, the document
29 may be electronically signed in any manner permitted by law.

SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
1.	California Department of Child Support Services By Lara Chandler Racine Attorney III	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation.</p> <p>Rule 2.251</p> <p>This rule requires the manifestation of affirmative consent to accept electronic service and specifies how notice of consent to electronic service is to be given as well as provides examples via the EFSP and EFM of language for consent. The proposal addresses the stated purpose and provides clarity to the affirmative consent process.</p> <p>The proposed changes are supported by the DCSS and our LCSAs. DCSS maintains the e-filing platform by which participating LCSAs e-file their legal documents. The local agency, however, is necessarily the party accepting service. While DCSS has not been advised that e-service is a widespread issue throughout our e-filing counties, it has been reported as problematic for those local agencies that have received some sort of e-service. DCSS has not yet established statewide protocols and electronic addresses for electronic service and so the counties getting e-served are receiving those documents inconsistently, i.e. individual staff email accounts, etc. The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent</p>	The committee appreciates the support and comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-40**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			and effective approach that protects the due process of all parties involved. Rule 2.257 The Invitation to Comment proposes to amend Rule 2.257, to allow electronic signatures on e-filed documents containing signatures of opposing parties not under penalty of perjury. As this change was at the request of DCSS, and the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments. The proposal addresses the stated purpose and provides language that will enhance the way DCSS does business with our case participants and the court.	
2.	California Lawyers Association Executive Committee of the Family Law Section By Saul Bercovitch Director of Governmental Affairs	A	FLEXCOM agrees with the proposed amendments to Rule of Court 2.257. FLEXCOM has no comment on the proposed amendments to Rules of Court 2.254 and 2.255.	The committee appreciates the support.
3.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	A	The OCBA believes the proposal addresses the stated purpose.	The committee appreciates the support.
4.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán	NI	<input type="checkbox"/> Rule 2.251 Electronic Service <input type="checkbox"/> Clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the	The committee appreciates the comments. Regarding the comment on rule 2.251, the comment is out of scope to the proposed amendments, but raise an important issue for the

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
	Administrative Analyst Family Law and Juvenile Court		<p>terms requiring them to submit to “affirmative consent” for all documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Rule 2.257 Requirement for signatures on documents <input type="checkbox"/> If the electronic signature is declared invalid, will the court be expected to set a hearing on their own motion for the parties to appear or proceed in another manner? <p>Request for Specific Comments.</p> <ul style="list-style-type: none"> ▪ <i>What would the implementation requirements be for courts?</i> <p>Judges and staff would be informed of the changes. Updates to procedures and the case management system may be needed. Discussions will be needed with the case management system vendor, Tyler, to identify system and process changes needed for compliance.</p>	<p>committee’s consideration. The committee will consider addressing the issue in a future rule proposal.</p> <p>Regarding the comment on rule 2.257, how to proceed would be up to the court.</p>
5.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	A	<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Q: The committee considered including 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.” However, the committee was concerned that this would remove authority that would appropriately belong to the court and decided on changing “the electronic</p>	<p>The committee appreciates the support and the comments.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>signature is invalidated” to “the electronic signature may be declared invalid by the court.” Is the proposed language preferable? Is the particular requirement necessary?</p> <p>The proposed language is preferable, as it leaves authority with the judicial officer.</p> <p>Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>Notifying/training staff and updating internal procedures.</p>	
6.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	N	<p>Do not agree with proposed changes.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Significant fiscal impact • 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 • Impact on local or statewide justice partners. <p>Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes. Systems would need to be re-</p>	<p>The committee appreciates the comments and concerns raised</p> <p>Regarding the issues raised about consent to electronic service, as long as there has been electronic service, consent has been required. By statute, where electronic service is permitted, but not required, the court can only electronically serve documents issued by the court if the person being served has consented. (Code Civ. Proc. § 1010.6(a)(2)(A)(ii), (a)(3).) Unless electronic service is mandatory, the clerk should only be electronically serving the parties that have consented to it. The proposed rule amendments do not change this process.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>designed to support this process and allow court staff to easily identify who consented. This will likely be a complicated change that involves the EFSP systems as well as the core CMS and will be a cost impact to the court.</p> <p>On the signature side of the proposal, if the court is required to validate signatures, besides the cost and challenges of implementing a technical solution to validate signature authentication and data integrity, we have concerns about the public understanding how to implement the digital protections that ensures no data is changed. Just doing research on the issue, we had to have an expert in the field of digital discovery explain to us step by step how this process would work. This rule change adds technical validation requirements for compliance that courts are not prepared to handle and puts courts in the position of rejecting documents for non-compliance for an issue that has other avenues of resolution. If a document’s signature authenticity is challenged, the parties should be required to address these challenges through a motion process.</p> <p>Furthermore, the JRS believes that courts should not serve as the custodian of eService consent. If there is a dispute between the parties as to the consent to eservice between them, they can bring that dispute before the courts and submit their evidence of notice at that time without having the courts go through an onerous administrative process of receiving, storing and tracking electronic service consents between the parties that is rarely challenged.</p>	<p>Regarding the comment on rule 2.251 that clarification is needed to indicate if a filing portal should allow a party to proceed if they do not consent. This is out of scope to the proposed amendment, but an important consideration to rule 2.251 in general. The rule does not address this issue and the committee will consider it for a future rule amendment.</p> <p>JRS raised specific questions with respect to rule 2.255 asking whether (1) the transmission should be on a council form document filed into each individual case or data transmitted back to the case management system for each individual case, and (2) attorneys are able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis. Consent would be applicable to each individual case. It could be recorded on a Judicial Council form or in data transmitted from the EFSP. Attorneys cannot file consent at the attorney level or party level. Code of Civil Procedure section 1010.6 requires consent to be in the “specific action.” (Code Civ. Proc., § 1010.6(a)(2)(A)(2).)</p> <p>JRS raised a number of concerns about the electronic signature amendments. : The proposal was not intended to require the court to validate or otherwise verify signatures when they are filed. Rather, it was intended to ensure that ensure the electronic signature was the act of the signer and</p>

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SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService.</p> <p>Suggested modifications: It is important to note, that there is an option in the code, CCP 1010.6(d), to allow courts the option of implementing mandatory eService via local rule for Civil. As eService is critical for our day to day operations to serve court orders, our court has already received approval to implement such a local rule for Civil. The ability to have mandatory eService by local rule is NOT being impacted by this proposal. However, because the local rule option is not applicable to other case types such as Probate, the comments below are submitted for consideration, as the proposed process will impact staff workload.</p> <p>REQUESTED CLARIFICATION: 1) For Rule 2.251 §(b)(1)(B)—verbiage was added “a party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:...” Clarification is requested as to whether the EFSP, EFM, individual parties or their attorney(s) are required to provide electronic service.</p>	<p>not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. [TBD what the committee decides to do with the language on electronic signatures.]</p>

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SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>2) For Rule 2.255 § (a)(c)(2)—clarification is requested. Is the intent of the transmittal to be a filed judicial council form document filed into each individual case or data transmitted back to the case management system for each individual case? Additionally, would attorneys be able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis?</p> <p>3) For rule 2.251, clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.</p> <p>4) For rule 2.257(b)(1): Will clarification be provided on who will be expected to verify the electronic signature, if needed? The court does not currently verify signatures of documents it has received. Any ambiguity in the rule that could place a burden on the court to verify signatures should be clarified to indicate that it is not the court’s responsibility to verify signatures on documents it accepts for filing. Any rule that requires the court to verify signatures will have a tremendous fiscal impact on the court. The rule should be modified to require the parties to maintain the metadata for the electronic signature and the court is not responsible for this process.</p> <p>5) The requirements for signatures poses significant challenges because our case management system “flattens” documents when they are filed, so if I am correct, the court would likely be unable to determine whether an electronic signature is valid. The proposed amendment to Rule 2.257(b)(1) for</p>	

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SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			<p>documents signed under penalty of perjury reads in part: “If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court.” A court cannot verify a signature that simply reads “-s- “and the data behind it showing who signed it, when, and where, is not stored by the filing system. Also, if any electronically filed document is unsigned that is required to be signed under penalty of perjury, would the court simply assume that there is a wet-signed copy of the document under Rule 2.257(b)(2)? Please see comments in above-paragraph relating to court’s inability to verify signatures.</p> <p>6) The California’s Uniform Electronic Signatures Act contains less stringent requirements for signatures under penalty of perjury than the proposed new rule and should be considered in modifying the signature requirements:</p> <p>Civil Code section 1633.11 subdivision (b) reads: In a transaction, if a law requires that a statement be signed under penalty of perjury, the addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.</p>	

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SPR19-40

**Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
			Civil Code section 1633.2 subdivision (h) defines an “electronic signature” to mean “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 the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.”	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



JUDICIAL COUNCIL OF CALIFORNIA
 455 Golden Gate Avenue · San Francisco, California 94102-3688
 www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

Commented [JA1]: Note: This draft report has not yet been proofread by the Judicial Council Editing and Graphics Group. It will be before it is submitted to RUPRO and JCTC.

<p>Title Rules: Electronic Filing and Service</p> <p>Rules, Forms, Standards, or Statutes Affected Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257</p> <p>Recommended by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair</p>	<p>Agenda Item Type Action Required</p> <p>Effective Date January 1, 2020</p> <p>Date of Report June 26, 2019</p> <p>Contact Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov</p>
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Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.255, and 2.257 of the California Rules of Court. The purpose of the proposed amendments to rules 2.251 and 2.255 is to (1) specify how notice of consent to electronic service is to be given, (2) provide example language for consent, and (3) require electronic filing service providers and electronic filing managers to transmit a person’s consent to the courts. The purpose of the proposed amendments to rule 2.257 is to reduce the reliance on paper for signatures on electronically filed documents and include other persons in addition to parties within the scope of the rule.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020:

1. Amend rule 2.251 to specify how notice of consent to electronic service is to be given, and add an advisory committee comment on example language for consent.

- 2. Amend rule 2.255 to require electronic filing service providers and electronic filing managers to transmit a person’s consent to the court.
- 3. Amend rule 2.257 to include requirements for electronic signatures on documents signed under penalty of perjury when the declarant and filer are not the same person, allow electronic signatures of opposing parties, and include other persons in addition to parties within the scope of the rule.

The text of the amended rules is attached at pages X-XX.

Commented [JA2]: Page numbers will be updated in the final version.

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 requiring that starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service. Effective January 1, 2019, the Judicial Council amended rules 2.251 and 2.257 to account for new requirements of Code of Civil Procedure section 1010.6.

Analysis/Rationale

Rules 2.251 and 2.255

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 previously allowed the act of electronic filing alone to act as evidence of consent to receive electronic service for represented persons, but the 2017 amendments to section 1010.6 eliminated this option. Section 1010.6 does, however, 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.” (Code Civ. Proc., § 1010.6(a)(2)(A)(ii).)

The Legislature did not provide for what it means 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 by allowing a party to file a form or consent through an electronic filing service provider (EFSP). One of the objectives of the EFSP option was to replicate the prior process of consenting by the act of electronic filing while also ensuring, consistent with Legislative direction, that parties and other persons expressly consented. Neither section 1010.6 nor the electronic filing and service rules of court detail how notice is to be given to the court, as well as to other parties or persons in

the case, that a party or other person has provided express consent. ITAC sought specific comments on these issues when the amendments to rule 2.251(b) circulated for comment in 2018. The Superior Court of San Diego County 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.

The committee found the recommendations helpful and added amending the rules to its annual agenda for 2019. The proposed amendments to rule 2.251 would require parties or other persons who have “manifested affirmative consent through electronic means” to serve notice of this consent on all parties and other persons. The proposal would also add an advisory committee comment citing an example of language for consenting to electronic service. The proposed amendments to rule 2.255 would require EFSPs and electronic filing managers (EFMs) to promptly transmit to the court a party or other person's acceptance of consent to receive electronic service.

Rule 2.257

Effective January 1, 2019, consistent with statutory requirement, the Judicial Council adopted an amendment to rule 2.257(b) 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).)

The proposed amendments to rule 2.257(b) would add requirements for electronic signatures on electronically filed documents signed under penalty of perjury when the declarant is not the filer. Because electronic signatures are simple to create, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. Under the proposed requirements, the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court. These requirements are designed to ensure that the application of the signatures is the act of the person

signing, can be proven as such, and may be invalidated if the document signed is found by the court to have been improperly altered after being electronically signed. The requirements in the proposed rule are similar to the requirements for digital signatures under Government Code section 16.5(a). A digital signature is a type of secure electronic signature that may be used in communications with public entities. (Gov. Code, § 16.5.) The first three requirements in the proposed rule are the same as for a digital signature, but the fourth is different. Under Government Code 16.5(a)(4), a digital signature must be “linked to data in such a manner that if the data are changed, the digital signature *is* invalidated.” (Emphasis added.) Under the proposed rule, instead of the electronic signature being invalidated automatically, the court has discretion to decide whether the signature should be declared invalid. Also unlike a digital signature, the proposed rule does not require electronic signatures to conform to the Secretary of State’s regulations, which prescribe the use of specific technologies. (Gov. Code, § 16.5(a)(5); see Cal. Code Regs., tit. 2, §§ 22000–22005.)

Even with the change to rule 2.257(b) to account for signatures under penalty of perjury, when an opposing party signature is needed, rule 2.257(d) still requires the use and retention of a printed document with ink signatures. According to the California Department of Child Support Services (DCSS), which recommended the committee address this issue, the requirement for continued retention of paper is a challenge for local child support agencies and the California Department of Child Support Services as more courts start requiring electronic filing. Currently, local child support agencies generate thousands of stipulations in child support cases that either 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.

The proposed amendments strike the subdivision (d) heading, “Documents requiring signatures of opposing parties,” and instead incorporate the requirements from subdivision (d) into subdivision (c), which governs documents not signed under penalty of perjury. Subdivision (d) would no longer be necessary for signatures of opposing parties under penalty of perjury as those requirements would be captured in subdivision (b). The proposal adds an option for electronic signatures when the electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court. This option would allow for an entirely paperless process.

Finally, the proposed amendments include “other persons” within the scope of the rules. Section 1010.6 includes “other persons” in addition to parties within its scope. Accordingly, “other persons” have been added to rule 2.257 where appropriate.

Policy implications

To be updated to reflect Rules and Policy Subcommittee discussion of the comments from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, which reviews proposals with potentially significant fiscal or operational impacts on the trial courts.

Commented [JA3]: This section will be updated as needed following the RPS meeting.

The significant policy issues are from the Joint Rules Subcommittee of TCPJAC/CEAC. I will update this section following the RPS meeting before submitting to ITAC. If there is significant discussion at the full ITAC meeting, I will make additions before submitting to RUPRO and JCTC.

Will also add citation to council strategic IT goals.

Comments

The proposal circulated for public comment from April 11 through June 10, 2019. The following six commenters responded to the invitation to comment:

1. Superior Court of San Diego County, which agreed with the proposal.
2. Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position on the proposal.
3. Joint Rules Subcommittee (JRS) of the Judicial Council Trial Court Presiding Judges and Court Executives Advisory Committees, which disagreed with the proposal.
4. Orange County Bar Association, which agreed with the proposal.
5. California Department of Child Support Services (DCSS), which agreed with the proposal.
6. Executive Committee of the Family Law Section -of the California Lawyers Association, which agreed with the proposed amendments to rule 2.257, but took no position on the proposed amendments to rules 2.251 and 2.255.

JRS raised the most significant issues in detailed comments, which are discussed under “Policy implications,” above.

Commented [JA4]: If there is significant discussion of the comments other than JRS at RPS and ITAC’s meetings, this section will be edited to reflect that.

Alternatives considered

For rule 2.257, the committee considered the alternative of continuing to require the retention of ink signatures on printed forms for rule 2.257(d), but determined that creating an option for an entirely paperless process would be preferable. In considering the requirements for electronic signatures by persons other than the filer, the committee considered including 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.” For example, if the document were changed after being electronically signed, the signature would be invalidated. However, the committee was concerned that this would remove discretion that would appropriately belong to the court and decided on changing “the electronic signature *is* invalidated” to “the electronic signature *may be* declared invalid *by the court*.” (Emphases added.)

Fiscal and Operational Impacts

JRS noted the following impact to court operations:

- Significant fiscal impact;
- 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;
- Impact on local or statewide justice partners.

In particular, JRS noted that it would take significant resources to enable some courts' systems to accept information transmitted from an EFSP to the court about a person's consent. In addition, JRS had concerns that the court would be required to determine the validity of electronic signatures when they are included with a filing.

Commented [JA5]: The issues raised by JRS will be addressed in more detail in the "Policy implications" section above, which will be updated with that detail and related subcommittee and committee discussions.

The Superior Court of San Diego County commented that implementation requirements would include notifying and training staff, and updating internal procedures.

DCSS commented that it is working on establishing statewide protocols and electronic addresses for electronic service for local child support agencies (LCSAs) and noted, "The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent and effective approach that protects the due process of all parties involved."

Regarding electronic signatures, DCSS commented, "the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments." Further, DCSS stated, that the amendments "will enhance the way DCSS does business with our case participants and the court."

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.255, and 2.257, at pages XX-YY.
2. Chart of comments, at pages XX-YY.
3. Link A: Code of Civil Procedure section 1010.6, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6.

Commented [JA6]: Page numbers will be updated in the final version.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 21, 2019

Action Requested

Please review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee
Hon. Peter J. Siggins, Chair

Deadline

July 2, 2019

Contact

Andrea L. Jaramillo
916-263-0991 phone
andrea.jaramillo@jud.ca.gov

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Subject

Rules Proposal: Review public comments and
make recommendation on amending
California Rules of Court, rule 2.540

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a rules proposal for public comment that would add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain court 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 clearer and more comprehensive based on comments received when the rule was originally circulated for public comment in 2018.

Under the amendments, courts could permit (1) the county public administrator to have remote access to probate electronic records, and (2) the county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for the county public administrator is tailored to electronic records relevant to administering decedents’ estates. Remote access for the county public conservator is tailored to electronic records relevant

Information Technology Advisory Committee
Rules and Policy Subcommittee
June 12, 2019
Page 2

to serving as conservator of an estate or person. In addition, the proposal would amend the good cause provision under rule 2.540(b)(1) of the California Rules of Court. 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 clearer and more comprehensive.

Comments

Three commenters responded to the invitation to comment: (1) the Superior Court of San Diego County; (2) the Superior Court of Orange County; and (3) Orange County Bar Association (OCBA). All three commenters agreed that the proposal appropriately addressed its stated purpose. The Superior Court of San Diego County and OCBA both agreed with the proposal while the Superior Court of Orange County did not take a position one way or another.

Attachments and Links

1. Text of proposed amendments to the California Rules of Court, rule 2.540, at page 3.
2. Chart of comments, at page 4.
3. Draft Judicial Council Report (minus attachments to the report), at pages 5 through 7.

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

1 **Rule 2.540. Application and scope**

2
3 **(a) Applicability to government entities**

4
5 The rules in this article provide for remote access to electronic records by
6 government entities described in (b). The access allowed under these rules is in
7 addition to any access these entities or authorized persons working for such entities
8 may have under the rules in articles 2 and 3.
9

10 **(b) Level of remote access**

11
12 (1) A court may provide authorized persons from government entities with
13 remote access to electronic records as follows:

14
15 (A)–(M) * * *

16
17 (N) County public conservator: criminal electronic records, mental health
18 electronic records, and probate electronic records.

19
20 (O) County public administrator: probate electronic records.

21
22 ~~(N)~~(P) Federally recognized Indian tribe (including any reservation,
23 department, subdivision, or court of the tribe) with concurrent
24 jurisdiction: child welfare electronic records, family electronic records,
25 juvenile justice electronic records, and probate electronic records.

26
27 ~~(O)~~(Q) For good cause, a court may grant remote access to electronic
28 records in particular case types to government entities beyond those
29 listed in (b)(1)(A)–~~(P)~~(N). For purposes of this rule, “good cause”
30 means that the government entity requires access to the electronic
31 records in order to adequately perform its statutory legal duties or fulfill
32 its responsibilities in litigation.
33

34 ~~(P)~~(R) All other remote access for government entities is governed by
35 articles 2 and 3.
36

37 (2)–(3) * * *

38
39 **(c) * * ***
40

SPR19-41**Rules and Forms: Remote Access to Electronic Records by Government Entities
(Amend Cal. Rules of Court, rule 2.540)**

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

	Commenter	Position	Comment	[DRAFT] Committee Responses
1.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	A	Does the proposal appropriately address the stated purpose? By adding remote electronic access to the public administrator for court probate records and to the public conservator (aka public guardian) for remote access to court probate, criminal, and mental health records, the proposal fulfills its stated purpose.	The committee appreciates the support.
2.	Superior Court of California, County of Orange By Denise Parker Program Coordinator/Specialist IMPACT Team – Criminal/Traffic Operations West Justice Center, Orange County Superior Court	NI	Request for Specific Comments: No significant change, adds the two entities listed in the summary to the list of entities that can access court records electronically. The court is still exploring alternatives to comply with the rule of court changes that were effective January 2019 governing access for justice partners. The proposal does appropriately address the stated purpose.	The committee appreciates the comments.
3.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court	NI	No comments.	<i>There's no position taken and no comments. Staff contacted to commenter to find out if the commenter has a position or comments. If not, this row will be deleted from the comment chart.</i>
4.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	A	Q: Does the proposal appropriately address the stated purpose? Yes. No additional comments.	The committee appreciates the support.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



JUDICIAL COUNCIL OF CALIFORNIA
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

Commented [JA1]: Note: This draft report has not yet been proofread by the Judicial Council Editing and Graphics Group. It will be before it is submitted to RUPRO.

Title Rules: Remote Access to Electronic Records by Government Entities	Agenda Item Type Action Required
Rules, Forms, Standards, or Statutes Affected Amend Cal. Rules of Court, rule 2.540	Effective Date January 1, 2020
Recommended by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Date of Report June 21, 2019
	Contact Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends 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 court 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 comprehensive.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend rule 2.540(b)(1) to:

1. Add “county public administrator” to the list of government entities in the rule, and allow remote access to probate electronic records by county public administrators.
2. Add “county public conservator” to the list of government entities in the rule, and allow remote access to criminal, mental health, and probate electronic records by county public conservators.

3. Change “statutory duties” to “legal duties” in the standard for good cause.

The text of the amended rule is attached at page 4.

Relevant Previous Council Action

Rule 2.540 is one of several new rules addressing remote access to electronic records by government entities that the Judicial Council adopted effective January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. 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.

Analysis/Rationale

During the public comment period last year, a commenter recommended that rule 2.540 include county public administrators and county public conservators. When drafted, rule 2.540 was meant to include state and local government entities with regular business before the courts. The Information Technology Advisory Committee determined that county public administrators and county public conservators fell within this scope and the rule should be amended to include them. Under the amendments, courts could permit (1) a county public administrator to have remote access to probate electronic records, and (2) a county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for a county public administrator is tailored to electronic records relevant to administering decedents’ estates. Remote access for a county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person.

In addition to the listed state and local government entities, rule 2.540 includes a good cause provision under which a court may grant remote access to electronic court records to government entities and case types beyond those specifically identified in the rule. The standard for good cause is “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 committee received a recommendation to change “statutory duties” to “legal duties” to be more comprehensive as legal obligations may stem from more than statute.

Policy implications

The proposed amendments are non-controversial. No commenters raised policy issues with the proposal.

Comments

Three commenters responded to the invitation to comment. First, the Superior Court of San Diego, County of San Diego; (2) Superior Court of California, County of Orange; and (3) Orange County Bar Association (OCBA). All three commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court and OCBA both agreed with the proposal while the Orange County court did not take a position one way or another.

Commented [JA2]: If needed, this section will be updated following the RPS and ITAC meetings to reflect any significant points of discussion or comment by members.

Alternatives considered

The alternative would be to maintain the status quo, but the amendments would be preferable because they would make the rule more comprehensive.

Fiscal and Operational Impacts

Adding county public administrators and county public conservators 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 proposed amendments are not expected to result in any costs.

Attachments and Links

1. Text of proposed amendments to the California Rules of Court, rule 2.540, at page X.
2. Chart of comments, at page Y.

Commented [JA3]: Page numbers will be updated in the final version.

DRAFT