



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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**Date**

July 5, 2019

**Action Requested**

Please review before July 10 committee meeting

**To**

Members of the Information Technology Advisory Committee

**Deadline**

July 10, 2019

**From**

Eric Long,  
Attorney, Legal Services

**Contact**

Eric Long  
Attorney, Legal Services  
415-865-7691  
eric.long@jud.ca.gov

**Subject**

Appellate Procedure: Service Copy of a Petition for Review

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#### **Executive Summary**

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal amending the appellate rule regarding petitions for review to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. The proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal without modification.

#### **Background**

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that “[t]he petition must also be served on the superior court clerk and the clerk/executive officer of the Court of Appeal.” This service requirement has existed in the rule since it was adopted in 2003. However, under California Rules of Court, rule 8.71 and rules 3

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and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the existing rule. The proposal clarifies that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served, and in all instances, a copy of the petition must be served on the superior court clerk.

The proposal circulated for public comment amends rule 8.500(f)(1) as follows:

The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

As stated above, the two comments received were both in support of the proposal without modification.

### **Committee Task**

The committee's task with respect to this proposal is to:

- Approve the proposal and drafts;
- Modify or reject the proposal and drafts; or
- Ask staff or committee members for further information/analysis.

### **Attachments**

1. Draft Report to the Judicial Council
2. Draft comment chart
3. Invitation to comment, SPR19-08



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

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### **Title**

Appellate Procedure: Service Copy of a  
Petition for Review

### **Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 8.500

### **Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Information Technology Advisory  
Committee  
Hon. Sheila F. Hanson, Chair  
Hon. Louis R. Mauro, Vice-Chair

### **Agenda Item Type**

Action Required

### **Effective Date**

January 1, 2020

### **Date of Report**

July 5, 2019

### **Contact**

Eric Long, 415-865-7691  
eric.long@jud.ca.gov

Christy Simons, 415-865-7694  
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## **Executive Summary**

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

## **Recommendation**

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, add language to California Rules of Court, rule 8.500(f)(1) that requires a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

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

## **Relevant Previous Council Action**

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerks of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

## **Analysis/Rationale**

Recognizing that the courts of appeal are automatically receiving copies of petitions for review when they are filed electronically this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically-filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the courts of appeal.

## **Policy implications**

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

## **Comments**

This proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

**Alternatives considered**

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

**Fiscal and Operational Impacts**

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

**Attachments and Links**

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

**SPR19-08****Appellate Procedure: Service Copy of a Petition for Review  
(Amend Cal. Rules of Court, rule 8.500)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter's support for the proposal.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> <li>•Does the proposal appropriately address the stated purpose? <b>Yes.</b></li> </ul> <p>The committees also seek comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>•Would the proposal provide cost savings? If so, please quantify. <b>Yes. It would save the costs of printing copies for the parties.</b></li> <li>•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? <b>Implementation requirements for court would be: Training for staff at the COC I, II, III &amp; Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working the counter in Appeals. Procedures would need to be revised to indicate the change.</b></li> <li>•Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></li> </ul>	The committees note the commenter's support for the proposal, and appreciate the commenter's input on these questions.

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

**SPR19-08****Appellate Procedure: Service Copy of a Petition for Review  
(Amend Cal. Rules of Court, rule 8.500)**

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

	Commenter	Position	Comment	DRAFT Committees Responses
			<ul style="list-style-type: none"> <li>•How well would this proposal work in courts of different sizes? <b>Fine.</b></li> </ul>	

DRAFT

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

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

## INVITATION TO COMMENT SPR19-08

<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Service Copy of a Petition for Review	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 8.500	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kristi Morioka 916-643-7056 kristi.morioka@jud.ca.gov
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Hon. Louis R. Mauro, Vice-Chair	

### Executive Summary and Origin

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This proposal originated from a suggestion submitted by an appellate court administrator.

### Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that “[t]he petition must also be served on the superior court clerk and the

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



clerk/executive officer of the Court of Appeal.”<sup>1</sup> This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.<sup>2</sup> However, under rule 8.71 of the California Rules of Court and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its webpage, the Supreme Court provides this advisement:

Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

### **The Proposal**

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer, and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

### **Alternatives Considered**

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

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<sup>1</sup> An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

<sup>2</sup> Rule 28 was renumbered as rule 8.500 in 2007.

## Fiscal and Operational Impacts

This proposal should not have appreciable implementation costs, and should save court resources by eliminating duplicate electronic filings.

### Request for Specific Comments

In addition to comments on the proposal as a whole, the committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4

Rule 8.500 of the California Rules of Court would be amended, effective January 1, 2020, to read:

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**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 9. Proceedings in the Supreme Court**

**Rule 8.500. Petition for review**

**(a)–(e)** \* \* \*

**(f) Additional requirements**

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)–(3) \* \* \*

**(g)** \* \* \*



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### MEMORANDUM

**Date**

July 5, 2019

**Action Requested**

Please review before July 10 committee meeting

**To**

Members of the Information Technology Advisory Committee

**Deadline**

July 10, 2019

**From**

Eric Long  
 Attorney, Legal Services

**Contact**

Eric Long  
 Attorney, Legal Services  
 415-865-7691 phone  
 eric.long@jud.ca.gov

**Subject**

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

#### Introduction

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal to amend rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, regarding formatting of electronic documents, to create uniform standards in the appellate courts. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 11 to June 10, 2019 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials.) This memo discusses the background to this proposal and the public comments received on the proposal.

#### Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing format requirements for electronic documents and leaving the format requirements for paper documents in place.

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While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice. A more limited rules amendment project began in 2017, but that project was deferred. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The proposal that was circulated for public comment, a copy of which is included in your materials, would amend seven rules. Staff has identified three additional rules that would require technical changes if the committees recommend adopting the proposal as modified.

### **Public Comments & Staff Recommendations**

In total, eighteen individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, four indicated that they agreed with the proposal if modified, six did not take a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules, and four indicated that they were against one specific provision of the proposal: the prohibition on Times New Roman font. Several comments were extensive, with responses to the questions asked by the committees and suggestions for modifying the proposal. A chart with the text of the comments received and staff's draft responses is attached.<sup>1</sup> The main issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so please review the draft comment chart carefully. Broadly speaking, the comments address three areas: (1) rule language, scope, and clarity, (2) technology, and (3) page layout and content. Also attached are drafts of the proposed rule amendments showing staff's suggested modifications. The suggested changes to the rule amendments are shown using yellow highlighting.

### **Rule language, scope, and clarity**

#### **Rule 8.40's exceptions and cross-references to other rules**

Two commenters asked for clarity on rule 8.40(a), which addresses the form of filed documents. One noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the provision does not reference any specific exceptions. Another commenter indicated that subdivision (a) requires compliance with "the relevant format provisions" of this rule and other rules, but that the rules are not entirely clear about which format provisions are relevant to electronic filing.

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<sup>1</sup> Two comment letters are annotated for space. A complete copy of the two letters is attached to the chart for the committee's reference.

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Because the proposal uses already existing rules to implement uniform formatting, subdivision (a) is entirely duplicative of several other rules. Under the circumstances, it is recommended that Rule 8.40 be amended to simply reflect cover requirements for paper documents, thereby eliminating confusing cross-references to rules concerning mandatory electronic filing, limited exceptions, and format provisions. Other options might include accepting rule 8.40(a) as proposed, making it more general, or expanding it to cross-reference specific exceptions and relevant format provisions. Staff notes that cross-references make future amendments more challenging. Staff suggests changes to rules 8.74 and 8.204 that make the limited cross-references easier to discern, which are discussed in more detail below.

### **Rule 8.74's scope and complexity**

Several commenters observed that, as written, rule 8.74(a) (format of electronic documents) applies to all electronic documents, and as a result it imposes formatting requirements on documents that are not prepared for filing in the first instance in a reviewing court. The commenters noted that such documents, including appendices, transcripts, trial exhibits, and other attachments, may already have margins, text, and line spacing that cannot, or should not, be reformatted to comply with the rule. The commenters suggest modifying the proposal to make clear that only certain parts of rule 8.74(a), namely subdivisions (1)–(7), apply to all documents filed electronically. Some of the more detailed comments addressed the complexity of rule 8.74, focusing on proposed subdivision (b)'s requirements for certain electronic documents and the cross-references to other rules in those provisions. The e-filing working group staff of the Supreme Court commented that the text-searchable PDF provision set out in rule 8.74(a)(1) requires e-filers to convert rather than scan documents to ensure text searchability, but that certain documents, including handwritten documents, forms, photographs, diagrams, etc., may not be amenable to being “converted” by a means other than scanning.

Based on these comments, staff proposes substantive and structural changes to rule 8.74. To address the concerns identified by the e-filing working group of the Supreme Court for some documents that can be filed electronically but which may not be converted to a text-searchable PDF, staff proposes expanding the exception in subdivision (a)(1) for documents an electronic filer possesses only in paper format to include documents that cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based. To make this allowance clearer, the committees may want to recommend including an advisory committee comment explaining subdivision (a)'s exceptions. Staff has suggested language in the attached rules document.

Staff also proposes moving several subparts of subdivision (a) into a new subdivision (b), titled “Additional format requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court.” Subdivision (a) would continue to set out the format

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requirements applicable to all electronic documents, as its title denotes: “Format requirements applicable to all electronic documents.” The new subdivision (b) would set out additional format requirements for documents prepared for electronic filing in the reviewing court, and would house five of the provisions previously located in proposed subdivision (a). As modified, the rule would treat documents prepared for filing in the reviewing court differently from other documents. Staff also suggests including an advisory committee comment explaining subdivision (b)’s scope.

Staff further suggests adding to rule 8.74 each of the relevant format provisions for documents filed in paper form from rule 8.204(b), and the relevant cover or first-page information contained in rule 8.40(c). To accomplish this, staff proposes eliminating any cross-references and overlap between formatting rules for briefs among the three rules. By adding all relevant format provisions presently located in rules 8.40(c) and 8.204(b) to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs filed in paper form, the rules will more clearly provide the format requirements for electronic filings and paper filings. Finally, if the format requirements located in rules 8.40(c) and 8.204 are added to 8.74, staff proposes eliminating as unnecessary the introductory sentence of rule 8.204(b): “Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.” These changes are intended to eliminate overlap and inconsistencies between the three rules. Again, these suggested changes are in **yellow highlighting** in the attached rule document.

### **Suggested changes to rules outside the proposal**

Two commenters noted that other rules related to electronic filing in Title 8 have not been amended. One commenter suggested updating all existing provisions, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new authorities (rule 8.254). Another commenter echoed the suggestion that the electronic service rules be updated. Neither commenter identified any specific inconsistencies or immediately necessary changes based on the proposal, but one commenter suggested that either rule 8.72 or rule 8.74 cross-reference rule 8.78’s electronic service provisions. (As discussed in more detail below, staff suggests technical amendments to rules 8.77 and 8.78 to update two existing cross-references to rule 8.74(a)(4), because that provision has been relocated to rule 8.72(b)(2).) The comment from the e-filing working group staff of the Supreme Court noted that the proposal does not amend rule 8.78(a)(2)(B)’s provision concerning consent to electronic service, even though the equivalent rule in the trial court rules, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. This issue is addressed in part by adding rule 8.74(a)(9)(A), which provides that “inclusion of a fax number or e-mail address on any electronic document does not constitute consent to service by fax or e-mail unless otherwise provided by law,” but

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rule 8.78(a)(2)(B) still provides: “The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.74(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.” At this time, staff proposes only a technical amendment to update the existing cross-reference.

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, staff suggests that the committees retain the commenters’ suggestions concerning other rules in Title 8 for future consideration. With respect to consent and electronic service, staff proposes the committees consider amending rule 8.78 during the next rules cycle. As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, staff suggests that the committees consider additional changes if experience with electronic filing warrants amendments to these other rules. On the basis of these comments, however, the committees may want to consider adding now a cross-reference to the e-service rule (rule 8.78) in either rule 8.72 or 8.74 if a cross-reference would potentially be helpful to electronic filers. Staff does not suggest the addition of a cross-reference because it would be beyond the scope of both rules, and rule 8.78 may be amended in the near term. However, the committees may come up with other alternatives to this staff suggestion.

### **Manual filings, paper copies, and sealed materials**

One commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings might be helpful. A comment from the e-filing working group staff of the Supreme Court identified a potential need for clarity in the provision concerning sealed and confidential records. Specifically, the e-filing working group staff suggested amendments to proposed rule 8.74(b)(7) (rule 8.74(c)(7) in the attached rule document), offering more consistent terminology and expanding the provision to address both the filing of pages that have redactions and the filing of documents with multiple-page omissions.

Staff suggests implementing the suggestions from the e-filing working group staff of the Supreme Court, with minor changes, as follows:

*Sealed and confidential records:* Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page must identify the type of pages omitted. Each omission page must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for each omission page must



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match the page number of the page omitted from the publicly filed record. Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.

With respect to the bar association's comments concerning manual filings and courtesy paper copies, staff suggests retaining these comments for future consideration. If courts' experience with electronic filing warrants action, the committees could address these provisions in the future.

## **Technology**

### **File-size restrictions**

Several commenters questioned rule 8.74's 25 megabytes filing-size restriction. Commenters asked whether the 300-page limit for certain appendices was necessary if it is possible for e-filers to prepare those volumes within the 25 megabytes file-size restriction. Commenters also questioned the wisdom of requiring manual filing for filings containing over five volumes, which are common in complex cases, when only one court has such a volume limitation in place.

Staff suggests that the committees maintain the 25 megabytes file-size restriction at this time. The principle reason staff does not propose deferring action on the file-size restriction is that the 25 megabytes limit is uniform across the state. Staff suggests, however, two minor changes to the related restrictions concerning page limits and multiple-volume filings. First, rather than impose a 300-page limit on certain electronic documents, staff suggests that the rule permit filers to exceed the 300-page limit applicable to certain documents contained in other rules (e.g., rule 8.124(d)(1) (appendices), rule 8.144(b)(6) (clerks' and reporters' transcripts), and rule 8.144(g) (agreed or settled statements)). Those rules imposing a 300-page limit on volumes would still apply, but electronic filings would be permitted as long as the component volumes of an electronic filing comply with those rules' page limitations and the electronic filing is 25 megabytes or smaller. As drafted, the rule does not seem to permit this. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than five files. Staff suggests increasing this restriction to ten files, because the Appellate Court Case Management System (ACCMS) has capability for (1) a maximum of twenty-five documents per filings, and (2) a maximum of 250 megabytes per multiple-document filing. Under existing limits, increasing the restriction from five to ten files would relieve electronic filers of the burden of manual filing in more cases, and the multi-volume filing limit would not exceed the file-size restrictions currently in place.

Concerns have been raised about stating a file-size limit in rules when capacity may change. One alternate option for the committees to consider would be to recommend that the file-size and related restrictions be delegated to the courts to address by local rule. The provision could provide: "An electronic filing may not be larger than the maximum file size imposed by local

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rule. A reviewing court must specify a maximum file size for each filing. The maximum file size is based on how much disk space it consumes and not the number of pages.” Another alternative would be to add file-size restriction to the court’s responsibilities in rule 8.71(a): “A court must have a published rule establishing an electronic file size limitation.”

Staff recognizes that there are drawbacks to codifying technological parameters such as file size when technological changes outpace the Judicial Council’s rules cycles. However, as a practical matter, an increase in file size could be done by technical change outside a normal rules cycle. And ultimately, the motivating purpose of this proposal is uniformity. That goal would be lost if each court were permitted to impose unique file-size limits on e-filers. Although commenters suggested that an increased file size might be helpful, none indicated that the existing 25 megabytes restriction was unworkable or regularly compromised their electronic filings.

### **Color component prohibition**

Two commenters asked whether rule 8.74’s prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. They emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment indicated that color components were not supported in ACCMS. Staff has confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, staff proposes moving the color component provision to subdivision (a), which is applicable to all electronic documents, and permitting electronic documents with color components as long as they do not exceed the file-size limit:

- (8) *Color*: An electronic document with a color component may be electronically filed or manually filed on electronic media, depending on its file size. An electronically filed document must not have a color cover.

Although the color cover provisions of rule 8.40, as modified, would apply only to paper filings, staff suggests retaining the prohibition on color covers in the electronic document rule to avoid needlessly large file sizes due to color covers.

Another rule impacted by the color component restriction is rule 8.74(a)(6)’s manual filing provision. Based on the comments, staff suggests deleting the references to PowerPoint and “documents containing photographs or any color component.” The rule should still provide a format for photographs, because color photographs may require manual filing on electronic media if the file exceeds the 25MB file-size limit. The new subdivisions to rule 8.74(a)(6) would provide:

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- (B) Electronic media files such as audio or video must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format.
- (C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf format.

At the Joint Appellate Technology Subcommittee meeting on July 1, 2019, members of the subcommittee expressed concern about original electronic files if an e-filer has to convert the format of an electronic media file. Based on this concern, staff suggests adding another subdivision to the manual filing provision:

- (D) If an original electronic media file is converted to a required format for manual filing, the electronic filer must retain the original.

### **Filing problems**

One commenter requested that rule's 8.72's court responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address extensions of time in any notice of filing problems required by the provision. Staff suggests that the committees decline to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by the problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek relief from the court. Staff suggests that the committees retain this comment for future consideration if experience supports reallocating responsibility from the electronic filer to the courts.

### **Virus/harmful software requirement**

One commenter protested that rule 8.72(b)'s "all reasonable steps" requirement for electronic filers was likely to cause confusion.<sup>2</sup> The commenter suggested that rule 8.72(b)(1) be rewritten to state that "[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

Based on this comment, staff suggests adding an advisory committee comment to rule 8.72 explaining that one way an electronic filer may take reasonable steps to ensure that a filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system is to use a commercial virus scan program. Staff

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<sup>2</sup> The relevant provision of rule 8.72 provides: "Each electronic filer must: (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system[.]"

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does not advise adding a mental-state requirement to the provision. Staff also suggests that the advisory committee comment state that lack of intent is not sufficient to comply with the responsibilities of an electronic filer. The committees should consider whether this provision is reasonably clear, and whether it should be modified to include an advisory committee comment.

### **Hyperlinks**

One commenter noted that rule 8.74 encourages the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendices. Some commenters, in response to the questions presented in the invitation to comment, indicated that “hyperlinks” might not be commonly understood, but one court commented that the term is sufficiently clear and does not warrant further explication.

Based on these comments, staff suggests amending the hyperlinks provision as follows:

Hyperlinks to legal authorities and appendices or exhibits are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and if the hyperlink is to a legal authority, it should be formatted to standard citation format as provided in the California Rules of Court.

With respect to defining the term hyperlinks, the committee could conclude that the term is sufficiently clear or could recommend an advisory committee comment defining it.

### **Page Layout and Content**

The proposal addresses various formatting standards, including font, line spacing, page alignment, margins, page numbering, and bookmarking. As mentioned above, some commenters expressed concerns about how certain documents filed in the appellate courts could not be formatted in the manner set forth in rule 8.74. Staff therefore proposes addressing these issues by adding a subdivision and an advisory committee comment, as discussed in more detail above. With respect to documents prepared for filing in reviewing courts, several commenters addressed font and page layout issues, including font style, font size, footnote size, emphasis, line spacing, page alignment, margins, page numbering, and bookmarking.

### **Font**

As circulated for public comment, the proposed amendments to rule 8.74 require a proportionally-spaced serif font such as Century Schoolbook, and expressly prohibit use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District’s local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two commenters questioned whether the prohibition on this particular font, which itself is a proportionally-spaced font, was necessary. Just one commenter

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supported the ban of Times New Roman. Based on these comments, staff suggests that the committees recommend modifying the proposal to allow for use of Times New Roman, because it is an example of a proportionally-spaced serif font as required by the provision, but that the proposal state the courts' preference for e-filers to prepare documents using Century Schoolbook.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter noted that 13-point Century Schoolbook font is "huge," and suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, staff does not recommend changing the rule based on these two comments concerning font size.

Several commenters requested that sans serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited because text in all caps is virtually unreadable. To promote readability, staff recommends modifying rule 8.74(b) to permit use of sans-serif fonts in headings, subheadings, and captions, and to prohibit the use of all capitals for emphasis.

### **Line Spacing**

One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read with rule 8.204(b)(5), which defines single spaced as "six lines to a vertical inch." Line spacing, or leading, is a typography term that describes the distance between each line of text. Staff suggests that the rule be clarified by setting the line spacing requirement as "1.5 spacing," rather than "1-1/2 spacing," because word processors use a decimal to define the line spacing option between single-spaced and double-spaced. Other than this minor change, staff does not advise additional changes to the line-spacing rule for electronic documents at this time. As discussed above, staff suggests modifications to rules 8.74 and 8.204 that make these two rules stand alone, which eliminates one of the inconsistencies identified by the commenter. The suggested changes remove some of the potential confusion as to whether a provision applies to paper or electronic documents. An alternate option would be to change the line spacing rule to allow some range because word processors offer numerous ways to set line spacing, such as "Lines of text must have line spacing of at least 170 percent of the font size but no more than 1.5 spaced."

### **Page alignment**

One commenter asked why rule 8.74 prohibits full page justification, and requested that the formatting rules allow for full justification with hyphenation. Staff suggests that the committees adopt the requirement for left aligned text, without modification. The rule was taken from the Second Appellate District's electronic formatting guidelines, which recognize that left aligned text is easier to read than justified text.

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### **Margins**

A commenter noted that Microsoft Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program (TAP) might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, staff suggests that the formatting rules carve out documents not prepared for electronic filing in appellate courts so that the margin requirements for clerk's and reporter's transcripts are not directly implicated by rule 8.74's margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. Staff also suggests modifying the rule to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The proposed 1-1/2 inch left and right margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. Staff suggests that the committees prioritize the readability and usability of a document over the default settings of Microsoft Word, which may be changed. Staff proposes that the committees reconsider the margin requirements for filings and transcripts after courts have more experience with mandatory electronic filing under the uniform rules or if technological changes warrant revision.

### **Page numbering**

The proposed rules for pagination in rule 8.74(a)(2) are consistent with the pagination requirements set by local rules around the state. Despite the existing uniformity in practice, one commenter advocated for "traditional" page numbering (i.e., the use of Roman numerals for prefatory pages like tables of contents and tables of authorities) in electronic documents. According to the commenter, Roman numeral pagination for tables is superior to the all-Arabic consecutive page numbering that the courts currently require by local rule, because the pagination of the main document can be finalized before any tables are created. Staff suggests that the committees decline to allow for Roman numeral page numbering for tables and Arabic numbering for the body of the document. As one court commenter noted, consecutive, all-Arabic pagination allows the court and the parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of page numbers on a document that match an electronic page counter (which cannot be re-set to match the page number when different numbering systems are employed) justifies any burden on electronic filers imposed by the pagination requirement.

The committees have been alerted to problems filers may face when they create tables of contents and authorities under this pagination rule. It has been suggested that once the tables are created, the tables change the pagination of the document, requiring the tables to be created a second time. It was suggested that tables be placed at the end of the document to avoid this problem. Staff recommends maintaining the status quo in this regard, as the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

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### **Bookmarking**

The comments concerning bookmarking were uniformly in favor of the requirement. Two commenters, however, suggested revisions. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time—where bookmarks might not be as helpful to readers. Another commenter requested that the rule make voluntary, instead of mandatory, the technical requirement that bookmarks be set to retain the reader’s selected zoom setting, because existing software requires several mouse clicks to set each and every bookmark.

Staff suggests that the committees decline to change the bookmarking provision for at least two reasons. First, attempting to draft an exception for shorter filings is likely to be simultaneously overinclusive and underinclusive, and in any event, fulfilling the bookmarking requirement for shorter documents will not be labor-intensive. Second, to fulfill their purpose, bookmarks must be user-friendly. If the zoom level requirement were merely voluntary, many e-filers would rely on default settings that do not preserve a reader’s preferred view. Although retaining a reader’s selected zoom setting for each bookmark will require e-filers to spend additional time formatting their filings, the utility of bookmarks for a reader outweighs the burdens placed on e-filers.

### **Implementation concerns**

One comment from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee & Court Executives Advisory Committee expressed support for the proposal, but raised a concern about the proposal’s impact on court operations. JRS noted that the proposal requires local rule changes, and asked whether a six-month time table, instead of three-months, is appropriate considering the local rule amendment process may be too short to accomplish the necessary changes. The committees may want to consider whether three months is adequate. Notably, no courts of appeal answered the question—either affirmatively or negatively—in the invitation to comment.

### **Technical amendments**

If the committees recommend the proposal with the suggested changes, four rules—one originally addressed by the proposal (rule 8.204) and three others (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The changes to rule 8.40 makes cross-references in rules 8.46 and 8.204 to that rule’s cover provisions inaccurate. Staff suggests minor changes to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for records in electronic form. Two additional technical amendments are necessary because of relocating the electronic filer responsibilities. Rules 8.77(a)(3) and 8.78(a)(2)(B) cross-reference the requirement that an electronic filer furnish electronic service addresses, which was moved into rule 8.72(b)(2) from rule 8.74(a)(4). These four technical changes are reflected in yellow highlighting in the attached draft rules.

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### **Committee Task**

The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal;
- Discuss and approve or modify staff suggestions for responding to the comments, as reflected in the draft comment chart and draft modifications to the rule amendments; and
- Discuss and resolve how to address the comments regarding the rules.

### **Attachments**

1. Draft amendments to rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252
2. Draft comment chart
3. Invitation to comment, SPR19-07



**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
1.	Jessica Coffin Butterick, Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	<p>I would agree with the new rules if modified. Please see my comments below.</p> <p>Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you're banning it, but there are lots of terrible system fonts out there. If you're going to ban TNR, please also ban Cambria, which is even worse, and will be people's next choice if they don't have Century Schoolbook installed on their machines.</p> <p>Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered "lines of text" that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the "1.5 lines" spacing option yields spacing of about 175% of point size, and many people seem to think that's what 1.5 spacing means. (See explanation at <a href="https://practicaltypography.com/line-spacing.html">https://practicaltypography.com/line-spacing.html</a>) On its own, that doesn't matter all that much, but it becomes a big problem if we're supposed to</p>	<p>The committees thank the commenter and note the support for the proposal.</p> <p>The committees appreciate the commenter's concerns. The committees decline to allow differing font sizes, or to ban additional proportional-spaced fonts. [For committee discussion. Staff recommendation: Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman, but the committees have preserved the rule's preference for Century Schoolbook.]</p> <p>The committees agree that headings should be added to the list of things that may be single-spaced, and have made this change. To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have amended rules 8.74 and 8.204(b).</p>

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	Commenter	Position	Comment	DRAFT Committees Responses
			<p>interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as “six lines to a vertical inch.” Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter’s document not attached to comment chart.]</p> <p>Or are we supposed to disregard rule 8.204(b)(5)? I can’t tell.</p> <ul style="list-style-type: none"> <li>· Proposed rule 8.40(a) tells us we must comply with “relevant format provisions” of rule 8.204. This certainly seems relevant.</li> <li>· Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it’s impossible to do so. It’s possible to comply with rule 8.204(b)(5), even if it’s not advisable.</li> <li>· Proposed rule 8.74(b)(1) tells us we must comply with rule 8.204 “except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b) (2), (4), (5), and (6).” I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn’t</li> </ul>	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have amended the rule to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p>

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

**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	Commenter	Position	Comment	DRAFT Committees Responses
			<p>comply with the 6-lines-per-vertical-inch definition of line spacing, the consequence is that we'll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that's better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule.</p> <p>Rule 8.74(a)(11) — Alignment Why can't paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we're going to regulate things like justification, while we're at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.)</p> <p>Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you're not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don't. For example: “Electronic filers must still comply with rule</p>	<p>The committees thank the commenter for this input. The committees decline to add an allowance for justified alignment because left aligned text is easier to read than justified text. Based on this comment, the committees have added a prohibition on the use of all caps for emphasis.</p> <p>The committees thank the commenter for this input. Based on this and other comments, the committees have amended rule 8.204 to clarify that subdivision (b) does not apply to electronic filings. The relevant requirements are now set out in rule 8.74.</p>

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
			<p>8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper filers.” I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does “including the provisions in rule 8.204(b)(2), (4), (5), and (6)” refer to the requirements electronic briefs must also comply with? Or, since there’s no comma after the word “format,” is that text part of the “except for” clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out.</p> <p>Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don’t need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don’t know what the relevant portions of rule 8.204 are.</p>	<p>Based on this and other comments, the committees have eliminated the cross-references between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p>
2.	California Academy of Appellant Lawyers by John Taylor, Jr., President	AM	As the current president of the California Academy of Appellate Lawyers, I’m writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court	The committees thank the commenter, and note the California Academy of Appellant Lawyers’ support for the proposal.

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	Commenter	Position	Comment	DRAFT Committees Responses
			<p>system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts' technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing.</p> <p>1. File number/size limitation. Proposed rules 8.74(a)(5) &amp; (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) “an electronic document consisting of more than</p>	<p>The committees appreciate the commenter's concern, and [For discussion. Staff proposal:] have amended the manual filing requirement and the 300-page limit if an electronic filing can satisfy the 25 megabytes file-size limit. The committees also amended the manual filing requirement for multiple volumes, changing the</p>

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**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	Commenter	Position	Comment	DRAFT Committees Responses
			<p>five files” must be manually filed (in electronic form, but manually rather than e-filed).</p> <p>In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file.</p> <p>Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.</p> <p>2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of “an electronic document with any color component.” While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests</p>	<p>limit to ten rather than five. The committees will consider additional changes in the future if they are supported by technological changes.</p> <p>The committees agree that color components may be helpful and persuasive in appellate filings, and have modified the proposal to allow for color components in electronic filings as long as the file complies with the file-size limit.</p>

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	Commenter	Position	Comment	DRAFT Committees Responses
			<p>that the courts may not wish to discourage documents with color that can make the document more useful to the court.</p> <p>The invitation to comment says that color “causes problems with ACCMS” (p. 4), but doesn’t explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary.</p> <p>3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.</p> <p>4. Paper copies</p>	<p>No further response required.</p> <p>The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts’ experience with manual delivery of electronic media warrants additional action.</p>

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**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
			<p>We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked.</p> <p>In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.</p>	<p>The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings.</p> <p>No response required.</p>
3.	Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer	AM	<p>In regard to: “Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.”</p> <p>Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be resolved on its own rather soon or does another</p>	<p>The committees appreciate the commenter’s concern. Based on this and other comments, the committees have modified the proposal to allow</p>

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**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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			<p>technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed?</p> <p>In regard to: “Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.”</p> <p>Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk’s transcript assembly and therefore be in compliance of the rule.</p>	<p>for color components in electronic filings as long as the file complies with the file-size limit.</p> <p>The committees thank the commenter for this input. With respect to the commenter’s suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. The margin requirement set forth in 8.144(b)(2)(E) remains unchanged for clerk’s and reporter’s transcripts. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk’s and reporter’s transcripts. To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74, the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Microsoft Word is not the only word processing software that practitioners use to create electronic filings,</p>

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				and default settings change and can be adjusted. Based on this and other comments, however, the committees have added a subdivision to rule 8.74 providing that the margin provision applies to documents prepared for filing in the first instance in the reviewing court, not to documents like transcripts generated in the superior courts.
4.	Criminal Justice League Foundation by Kent Scheidegger, Legal Director and General Counsel	AM	<p>The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.</p> <p>Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.” * * *</p> <p>What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees considered but declined to allow for Roman numeral page numbering for tables and Arabic numbering for the body of the document. The proposal’s pagination requirement implements rules that already exist in California’s appellate courts. All six appellate districts and the Supreme Court use consecutive Arabic-numbering as set forth in rule 8.74. The committees appreciate that numbering all pages, including preliminary pages like tables, in this manner may require additional preparation time, but consecutive pagination allows courts and parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page numbers that match</p>

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			<p>CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted:</p> <p>(2) <i>Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.</i></p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>an electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.</p>
5.	Jeffrey Ehrlich Ehrlich Law Firm	AM	<p>I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA's "Leap from E-filing" publication, which</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p>

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			<p>in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable.</p> <p>First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires.</p> <p>Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face.</p> <p>When I started in appellate practice, Horvitz &amp; Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.</p>	<p>No further response required.</p> <p>The committees appreciate the commenter's input on this issue. Because a PDF retains the image quality of a printed document, readers can display a PDF as intended. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but the committees have added an allowance for sans serif type face in headings, subheadings, and captions.</p>
6.	Horvitz & Levy by Andrea Russi, Senior Counsel	A	<p>We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone.</p> <p>One suggestion:</p>	The committees thank the commenter for this input and note the agreement with the proposal.

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			The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
7.	Hon. Jo-Lynne Lee, Superior Court of Alameda County	N	I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don't understand the reason why it should be prohibited.  Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.
8.	Lynn Loschin, Senior Research Attorney Court of Appeal, Fourth Appellate District	AM	As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes.  Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than	The committees thank the commenter for providing input on this proposal.  The committees note the commenter's support for 8.74's pagination requirements.

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			<p>scrolling to the bottom of the page, saves a great deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change.</p> <p>Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change.</p> <p>Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned.</p> <p>I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going.</p> <p>I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three</p>	<p>The committees note the commenter's support for 8.74's bookmarking requirements, including retention of a reader's selected zoom setting.</p> <p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p> <p>Because PDFs retain the image quality of a printed document, all readers can display a PDF as intended—even on screens. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but the committees have added an allowance for sans serif type face in headings, subheadings, and captions.</p> <p>See responses above.</p>

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			others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.	
9.	Steven Murray	N	<p>The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken.</p> <p>If any changes are needed (and I seriously doubt that), make them optional. Or better yet, as now, let each Division of the Court of Appeal or the Supreme Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.</p>	<p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. The committees decline, however, to allow font sizes other than 13 point.</p> <p>The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>
10.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing "unless these rules provide otherwise" but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the "exceptions" to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme	<p>The committees thank the commenter and note the OCBA's support for the proposal.</p> <p>With respect to rule 8.44(c)'s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principle goal of this proposal. However, the requirement here applies</p>

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			<p>Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by allowing “by local rule” for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).</p>	<p>only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings.</p> <p>With respect to amending additional rules in Title 8 that are applicable to electronic filing, service, signatures, and other documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.</p>
11.	Daniel Repp	N	<p>I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.</p> <p>* * *</p> <p>(1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice</p> <p>I do not see how the specific proscription against Times New Roman furthers the purpose of</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.</p> <p>No response required.</p>

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			<p>uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far. * * *</p> <p>Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).</p> <p>(5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them</p> <p>I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.</p>	<p>No response required.</p> <p>The committees appreciate the commenter's input. The committees decline to allow sans serif fonts in body and footnote text because of its more limited readability. However, the committees have added an allowance for sans serif type face in headings, subheadings, and captions.</p>

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			<p>* * *</p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	
12.	San Diego County Bar Association by Heather Guarena, Chair, Appellate Practice Section	AM	<p>The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section has the following comments about those proposed changes:</p> <p>General Comments: The Invitation to Comment requested comments on these two general topics.</p> <p>1. Does the proposal appropriately address the stated purposes?</p> <p>The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated</p>	<p>The committees thank the commentator for this input and note the Appellate Practice Section of the San Diego County Bar Association's agreement with the proposal if modified.</p> <p>The committees appreciate this feedback.</p>

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			<p>purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts' experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they understand that these changes are designed to ease reading on electronic reading devices.</p> <p>Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself.</p>	<p>The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council's Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers and court personnel. CJER does not organize or provide education for practitioners.</p>

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			<p>2. Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? The terms “omission page” and “hyperlink” in particular may not be well-known to all electronic filers, especially those who have limited experience to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section’s comments to specific proposed rule changes.</p> <p>Specific Comments:  The Appellate Practice Section’s specific comments to the proposed rule changes are as follows:  Rule 8.40 No comments.  Rule 8.44 No comments.  Rule 8.71(a) No comments.</p> <p>Rule 8.72  Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.</p> <p>Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or</p>	<p>The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. [For committee discussion: define further “hyperlink” or leave alone.]</p> <p>No response required.</p> <p>The committees thank the commenter for this input.</p> <p>The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties</p>

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			<p>precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also state something like: “Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended.”</p> <p>Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires each filer to “take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.” This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that “Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not</p>	<p>because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek appropriate relief from the court.</p> <p>The committees thank the commenter for this input. The committees decline to add a mental-state requirement to this provision. Based on this comment, however, the committees have added an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.</p>

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			<p>intentionally file any document containing computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”</p> <p>Rule 8.74            Rule 8.74(a): The title to proposed Rule 8.74(a) is “Format requirements applicable to all electronic documents.” Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to “Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court.”</p> <p>Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, “All bookmarks must be set to retain the reader’s selected zoom setting.” This requirement is not likely to be understood by all users, especially those without experience with</p>	<p>The committees agree with the commenter that, as drafted and circulated for comment, rule 8.74 unintentionally encompassed documents that are not prepared for electronic filing in the first instance in the reviewing court. Based on this and other comments, the committees have made changes to the proposal, and have included an advisory committee comment to make this requirement clearer.</p> <p>The committees appreciate the commenter’s input on this proposal. The committees will recommend that courts publish instructions on how to comply with the bookmarking requirement.</p>

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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			<p>electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as “custom” and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to “inherit zoom.” Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting for each bookmark, each such change requires a number of “clicks” to accomplish the change.</p> <p>The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of “inherit zoom” either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as “To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen</p>	<p>The committees appreciate the commenter’s input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. [For committee discussion: Appellate Practice Section’s request that the Judicial Council request third parties make changes to their products] The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the bookmarking view voluntary.</p>

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			<p>retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document.”</p> <p>Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below.</p> <p>Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color components as follows: “Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format.”</p> <p>Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a “proportionally spaced serif face” font. The only example given of an acceptable font is “Century Schoolbook,” and the only example given of a prohibited font is “Times New Roman.” The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion</p>	<p>Based on this and other comments, the committees have amended this provision and the color component provision.</p> <p>Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman, but the committees have preserved the rule’s preference for Century Schoolbook. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>

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			<p>because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules.</p> <p>Rule 8.74(a)(12): This rule may cause some confusion as written. Because “hyperlink” is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified.</p> <p>Also, it has been the experience of some members of the Appellate Practice Section that commercially</p>	<p>Based on this and other comments, the committees have clarified the provision relating to hyperlinks.</p> <p>[For committee discussion: define further “hyperlink” or leave alone.]</p> <p>The committees acknowledge the suggestion concerning vendors of hyperlink software and will</p>

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			<p>available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked. Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be determined once the cost of any such software is known.</p> <p>Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on</p>	<p>forward it to appropriate Judicial Council staff for consideration. [For committee discussion: Appellate Practice Section's request that the Judicial Council request third parties make changes to their products.]</p> <p>Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for documents with color components. Under the</p>

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			<p>any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary.</p> <p>This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as “volumes no larger than 25 megabytes.” The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if the purpose of this rule is to limit the size of files by limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5).</p> <p>At present, it appears that only the Third Appellate District restricts filers’ ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions</p>	<p>modified provisions, manual filing will be required only when the filing exceeds the file-size requirements or in other limited circumstances under the rule.</p> <p>No response required.</p>

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			<p>of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents.</p> <p>Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): “Except for cover pages, tables, or indices prepared for an appellate court, . . .” In addition, for each of 8.74(b)(3) and (5), the phrase “must comply with this rule” should be changed to “must comply with parts (a)(1) through (a)(7) of this rule . . .” If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6).</p>	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have amended the rule to clarify the line-spacing requirements of 8.74, and to eliminate the cross-reference between rule 8.74 and rule 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.</p>

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			<p>Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page.</p> <p>Rule 8.204 No comment.</p> <p>Rule 8.252 No comment.</p>	<p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.</p> <p>The committees thank the commenter for this input. To the extent the commenter seeks additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.</p>
13.	Superior Court of Los Angeles County	A	<p>Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts.</p> <p>Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms.</p>	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question. <b>[For committee discussion: define further “hyperlink” or leave alone.]</b></p>

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			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents.</p> <ul style="list-style-type: none"> <li>• 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?</li> </ul> <p>Implementation requirements include training for staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted.</p> <ul style="list-style-type: none"> <li>• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed.</li> </ul>	<p>The committees appreciate the commenter's input on this question.</p> <p>The committees appreciate the commenter's input on this question.</p> <p>The committees appreciate the commenter's input on this question.</p>
14.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li> </ul>	The committees appreciate the commenter's input on this question.

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
			<ul style="list-style-type: none"> <li>• Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? No.</li> <li>• Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown.</li> <li>• 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? Implementation requirements for court would be: Training for staff at the COC I, II, III &amp; Lead positions. The expected number of hours are unknown; however, it should be very minimal training for staff. Possible need to adopt procedures for non-compliance.</li> <li>• Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes. No additional comments.</li> </ul>	<p>The committees appreciate the commenter’s input on this question. [For committee discussion: define further “hyperlink” or leave alone.]</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>
15.	Supreme Court of California by e-filing working group staff	NI	<p>Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07</p> <p><b>1) Rule 8.74(a)(1), requirement to “convert” paper documents:</b> The description of the proposed</p>	<p>The committees thank the commenter for this input. Based on this comment and others, the</p>

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			<p>rule states, “To ensure text searchability, the proposal requires a filer to ‘convert’ a paper document to electronic form, <i>rather than scanning a printed document.</i>” (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being “converted” by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g., having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows:</p> <p>If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. <u>Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted</u></p>	<p>committees have amended rule 8.74 to address PDF conversion and scanning of paper-only documents. The committees also have recommended an advisory committee comment on this provision addressing the types of documents mentioned by the commenter.</p>

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			<p><u>into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based.</u> The printing of an electronic document must not. . . .</p> <p><b>2) Rule 8.74(b)(7), additional requirements for sealed and confidential records:</b> The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In order to maintain the same page numbering in the two versions of the document, there should be an “omission page” for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows.</p> <p>Proposed Rule 8.74(b)(7) as revised:</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from</p>	<p>Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.</p>

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			<p>a publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are <u>sealed or confidential</u> <del>or under seal</del> must be filed separately from publicly filed records. If one or more pages are omitted from a <del>source document</del> <u>publicly filed record</u> and filed separately as a sealed or confidential record, an omission page <u>or pages</u> must be inserted in the <del>source document</del> <u>publicly filed record</u> at the location of the omitted page or pages. The omission page(s) must <del>identify</del> <u>provide a title for the type of page(s) omitted; that does not disclose the substance of the page(s).</u> The omission page(s) must be paginated consecutively with the rest of the <del>source document, it</del> <u>publicly filed record</u>, must be bookmarked, and <del>it</del> must be listed in any indexes included in the <del>source document</del> <u>publicly</u></p>	<p>The committees appreciate the suggested changes submitted by the e-filing working group staff, and have recommended adopting most of them.</p>

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## SPR19-07

## Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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			<p><u>filed record.</u> The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed <u>sealed or confidential</u> <del>or sealed</del> records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><b>3) Rule 8.78(a)(2)(B), consent to electronic service:</b> The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 &amp; 9, available at <a href="https://jcc.legistar.com/View.ashx?M=F&amp;ID=6612001&amp;GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3">https://jcc.legistar.com/View.ashx?M=F&amp;ID=6612001&amp;GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3</a>) Must or should rule 8.78(a)(2)(B) be similarly revised?</p>	<p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.</p>
16.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS)	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Requires development of local rules and/or forms.</li> </ul> <p>The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing</p>	<p>The committees appreciate the commenter's input and note JRS's support for the proposal. [For committee discussion: JRS expressed concerns that amendment of the courts' local rules will require more time than the January 2020, effective date for the proposal.]</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
			requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.	
17.	Kristin Traicoff Law Office of Kristin Traicoff	AM	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: "Each electronic document must include..." It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.	The committees thank the commenter for providing input on this proposal. The proposal's bookmarking requirements apply to documents with certain components. The bookmarking requirements are intended to aid the reader of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks for readers justifies any burden on filers imposed by this requirement.
18.	Norm Vance	N	The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.

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

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
			and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?	

DRAFT

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





# Criminal Justice Legal Foundation

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June 6, 2019

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Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Via Electronic Mail

Re: Invitation to Comment SPR19-07, Appellate Procedure:  
Uniform Formatting Rules for Electronic Documents

Judicial Council:

The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.

Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.” There are two ways to achieve that match. The proposal oddly *forbids* the superior method and *requires* the inferior method. No reason is given for this inversion. None is apparent. The lack of a reason suggests that it is the product of simple ignorance.

For good reasons, lawyers and book publishers have traditionally begun the Arabic numbering of pages (1, 2, ...) on the first page of text and numbered preliminary pages, such as tables of contents and authorities, with Roman numerals (i, ii, iii, ...). However, programs that create PDF documents will number the pages with sequential Arabic numbers from cover to end unless directed otherwise. This mismatch is inconvenient for the reader. Hence, many courts have issued rules to prevent the mismatch. They have generally required numbering the pages to match the PDF numbers rather than the other way around. I have never seen an explanation for forbidding numbering the PDF



Judicial Council of California  
June 6, 2019  
Page 2

document in the traditional manner. I suspect that many of the courts that have issued such rules are simply unaware that it can be done.

Numbering the pages of a PDF file in the traditional way is quite easily done with Adobe Acrobat. CJLF has been numbering its electronic briefs this way for years in courts that allow it. See, for example, our brief in *Virginia House of Delegates v. Bethune-Hill*, No. 18-281, <http://cjlif.org/program/briefs/VAHouse.pdf> in the United States Supreme Court. The high court itself numbers the recent PDF versions of the bound volumes of its reports this way. See, for example, 569 U.S., <https://www.supremecourt.gov/opinions/boundvolumes/569BV.pdf>.

The traditional numbering has conveniences for both the reader and the author. The reader can easily skip to the first page of text simply by entering “1” in the page number box at the top of either the full Adobe Acrobat or the free Adobe Reader. The proposed rule requires electronic bookmarks, which can also be used for this purpose of course, but just entering “1” may be more convenient, particularly if the bookmark panel is not yet open.

The primary convenience, though, is for the authors. The final preparation of a brief is sometimes hectic with a deadline approaching. Although the tables appear first in the brief, they are created after the text. The text is generally written and paginated first, often with internal cross-references to page numbers, at a time when the number of preliminary pages is unknown. The tables refer to page numbers in the text, but the creation of the tables forces changes in the page numbers to which they refer, causing a “chicken and egg” problem. This additional complication in the sometimes stressful “home stretch” of brief preparation would seem to require a substantial justification.

What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of *any* reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.

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Page 3

CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted:

(2) Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. *This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match.* The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

Thank you for your consideration of this suggestion.

Very truly yours,



Kent S. Scheidegger

KSS:iha

**Daniel Repp**

1001 Los Molinos Way  
Sacramento, CA 95864

---

June 10, 2019

To: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

In re: Comments on SPR-19-07

Dear Gentle Person,

I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.

Abstract

Times New Roman *is* readable. The law offices I've worked in use it exclusively, and I actually find it somewhat jarring to see anything but Times New Roman (or Courier) in a pleading or a ruling. I once helped prepare a brief (using Times New Roman) that was filed in the Third District Court of Appeal, and that District issued its opinion using Times New Roman. (What a coincidence that Justice Mauro from the Third District is proposing this rule!)

We never gave any thought over whether to use a font other than Times New Roman, and we would have scratched our heads if we were forced to use something *other* than Times New Roman. (We were conscientious enough to check the briefing requirements under the local rules and the California Rules and would have honored any such requirement).

The Part of the Rule With Which I Disagree

“Font: The font style must be a proportionally spaced serif face, such as Century Schoolbook. Do not use Times New Roman. Font size must be 13-point, including in footnotes.” (Proposed Rule 8.74(a)(8); underline added.)

The Committee's Question

Does the proposal appropriately address the stated purpose?

My Answer and Comments in Support of That Answer to the Committee's Question

As I'm sure you've already guessed, my answer is no.

### Reasons Why I Disagree

- (1) *There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice*

I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far.

One could argue that there's a lack of uniformity, because not all Districts have the same rule (it's the Second District versus all others who have yet to venture an opinion) regarding font style (proportional or not-proportional), but, again, I think the portion of the rule banning Times New Roman is a step too far, and is simply the latest incursion in what can only be described as a kind of culture war over font choice in the legal profession (that I want no part of).

- (2) *Whether One Uses Times New Roman (or Something Else) in a Brief Should Not Be Important So Long as You're Not Writing the Brief in Your Own Sloppy, Unreadable Handwriting*

Readability is the proffered reason for requiring a proportionally spaced serif font like Century Schoolbook but, again, Times New Roman is readable.

I mean this in the best way possible: it really shouldn't matter whether you're using a proportional or non-proportionally spaced serif font in an appellate brief so long as a type-written font is being used. Objectively, both are readable. (Much more readable than the handwriting of some lawyers!) Remember, it could always be worse. *(Can you imagine reading a brief in Lucida Handwriting? I can imagine a pro per thinking it would be.)*

- (3) *Readability is More Than Just One Font*

A readable document is more than just one font. I've found that creating space between lines (one and a half or double), making regular paragraph indentations (to avoid the one, big, never-ending paragraph), increasing font size (to 14-point), and using left-aligned justification (“ragged right”) does more for readability in pleadings by avoiding sameness and monotony than the use of a font ever could on its own.

That's the problem with proportionally spaced mono-type fonts: they come off as monotonous. Each letter takes up the same amount of width as all the others, which means you have a font that essentially offers no kind

of diversity in word length beyond the length of the word itself. If you justify the line spacing, it becomes even more uninviting because that indescribable feeling of sameness just increases all the more.

(4) *What's Convenient For a Few Should Not Come at the Expense of What's Suitable for Everyone Else*

Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on *their* eyes).

At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).

(5) *People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them*

I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.

(6) *Aren't The Merits of the Case More Important? (Warning: Unkind Remark About Matthew Butterick Appears Below.)*

There are simply more important things to worry about. Like meeting deadlines. Or deciding how to frame the case in a way that's sympathetic to your client without getting called a liar. Or resisting the urge to write that opposing counsel "has decided to go slumming" because they've cited a federal case from the United States District Court in Mississippi even though the case is being litigated in Superior Court here in California and concerns an issue of state law (FEHA). Again, the merits of the case are what's important, not whether you're using Times New Roman.

And I know I'm going to piss somebody off by saying this, but in the interest of honesty I'm just going to say it: Matthew Butterick is a professional menace to those of us who do not want to be judged by the kind of font we use. For every person like Butterick who exalts typography, there's a philistine like me who just doesn't see the difference and wants to avoid getting dragged into it because the workload is more than enough to keep busy.

///

(7) *Typography Guru Matthew Butterick Agrees That Times New Roman is Readable Even Though He Seems to Hate It*

On the subject of Times New Roman, Butterick has admitted that “[o]bjectively, there's nothing wrong with Times New Roman”. This hasn't stopped Butterick from dismissing the font with the kind of presumptuous disdain that drives me nuts whenever I see it. “To look at Times New Roman,” says Butterick, “is to gaze into the void.” It's simply over-the-top.)

I apologize for being mean to Butterick (a man whom I've never met), but typography isn't where all the ink needs to be spilled. It's stressful enough just to meet deadlines in the legal profession without needing to worry about the kind of font you're using.

Conclusion

Please don't ban the use of Times New Roman. It's been around forever and some people swear by it. At the end of the day, the font that's most readable is a matter of taste and opinion.

Thank you for permitting members of the legal community to offer comment.

Yours sincerely,

Daniel Repp,  
Lincoln Law School of Sacramento  
Class of 2018, Co-Salutatorian

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 8.40. ~~Form of filed documents~~Cover requirements for documents filed in**  
2 **~~paper form~~**

3  
4 **(a) ~~Form of electronic documents~~**

5  
6 Except as these rules provide otherwise, documents filed in a reviewing court may  
7 be either produced on a computer or typewritten and must comply with the relevant  
8 provisions of rule 8.204(b).

9  
10 ~~Under rule 8.71(a), a document filed in a reviewing court must be in electronic~~  
11 ~~form unless these rules provide otherwise. An electronic document must comply~~  
12 ~~with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.~~

13  
14 **(b) ~~Form and~~Cover color of paper documents**

15  
16 ~~(1) — To the extent these rules authorize the filing of a paper document in a~~  
17 ~~reviewing court, the document must comply with the relevant format~~  
18 ~~provisions of this rule and rules 8.144 and 8.204.~~

19  
20 (1) As far as practicable, the covers of briefs and petitions filed in paper form must  
21 be in the following colors:  
22

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

1  
2  
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9

- (2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.
- (3) A paper brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).



**(eb) Cover information for electronic and paper documents**

(1)–(2) \* \* \*

~~(3) The covers of electronic documents must also comply with the provisions of rule 8.74.~~

**Rule 8.44. Number of copies of filed documents****(a)–(b) \* \* \*****(c) Electronic copies of paper documents**

~~A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition, Even when filing a paper document is permissible, a court may provide by local rule for the submission of an electronic copy of a document that is not electronically filed the paper document either in addition to the copies of the document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must specify the format of the electronic copy and provide for an exception if it would cause undue hardship for a party to submit an electronic copy.~~

**Rule 8.46. Sealed records****(a)–(c) \* \* \*****(d) Record not filed in the trial court; motion or application to file under seal**

(1)–(2) \* \* \*

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule ~~8.40(e)~~8.40(b) if the record is in paper form or rule 8.74(a)(9) if the record is in electronic form, and labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper format, it must be placed in a sealed envelope or other appropriate sealed container.

**(e)–(g) \* \* \***

1 **Rule 8.71. Electronic filing**

2  
3 **(a) Mandatory electronic filing**

4  
5 Except as otherwise provided by these rules, the Supreme Court Rules Regarding  
6 Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all  
7 parties are required to file all documents electronically in the reviewing court.  
8

9 **(b)–(g) \* \* \***

10  
11 **Rule 8.72. Responsibilities of court and electronic filer**

12  
13 **(a) ~~Publication of electronic filing requirements~~ Responsibilities of court**

14  
15 (1) The court will publish, in both electronic and print formats, the court's  
16 electronic filing requirements.  
17

18 **(b) ~~Problems with electronic filing~~**

19 (2) If the court is aware of a problem that impedes or precludes electronic filing,  
20 it must promptly take reasonable steps to provide notice of the problem.  
21

22 **(b) Responsibilities of electronic filer**

23  
24 Each electronic filer must:

- 25  
26 (1) Take all reasonable steps to ensure that the filing does not contain computer  
27 code, including viruses, that might be harmful to the court's electronic filing  
28 system and to other users of that system;  
29  
30 (2) Furnish one or more electronic service addresses, in the manner specified by  
31 the court, at which the electronic filer agrees to accept service; and  
32  
33 (3) Immediately provide the court and all parties with any change to the  
34 electronic filer's electronic service address.  
35

36 **Advisory Committee Comment**

37  
38 **Subdivision (b)(1).** One example of a reasonable step an electronic filer may take is to use a  
39 commercial virus scanning program. Compliance with this subdivision requires more than an  
40 absence of intent to harm the court's electronic filing system or other users' systems.  
41

1 **Rule 8.74. Responsibilities of electronic filer Format of electronic documents**

2  
3 **~~(a) — Conditions of filing~~**

4  
5 Each electronic filer must:

- 6  
7 (1) ~~Comply with any court requirements designed to ensure the integrity of~~  
8 ~~electronic filing and to protect sensitive personal information;~~  
9  
10 (2) ~~Furnish information that the court requires for case processing;~~  
11  
12 (3) ~~Take all reasonable steps to ensure that the filing does not contain computer~~  
13 ~~code, including viruses, that might be harmful to the court's electronic filing~~  
14 ~~system and to other users of that system;~~  
15  
16 (4) ~~Furnish one or more electronic service addresses, in the manner specified by~~  
17 ~~the court, at which the electronic filer agrees to accept service; and~~  
18  
19 (5) ~~Immediately provide the court and all parties with any change to the electronic~~  
20 ~~filer's electronic service address.~~

21  
22 **~~(b) — Format of documents to be filed electronically~~**

- 23  
24 (1) ~~A document that is filed electronically with the court must be in a format~~  
25 ~~specified by the court unless it cannot be created in that format.~~  
26  
27 (2) ~~The format adopted by a court must meet the following minimum~~  
28 ~~requirements:~~  
29  
30 (A) ~~The format must be text searchable while maintaining original document~~  
31 ~~formatting.~~  
32  
33 (B) ~~The software for creating and reading documents must be in the public~~  
34 ~~domain or generally available at a reasonable cost.~~  
35  
36 (C) ~~The printing of documents must not result in the loss of document text,~~  
37 ~~format, or appearance.~~  
38  
39 (3) ~~The page numbering of a document filed electronically must begin with the~~  
40 ~~first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,~~  
41 ~~3). The page number may be suppressed and need not appear on the cover~~  
42 ~~page.~~  
43

1           ~~(4) If a document is filed electronically under the rules in this article and cannot be~~  
2           ~~formatted to be consistent with a formatting rule elsewhere in the California~~  
3           ~~Rules of Court, the rules in this article prevail.~~

4  
5   **(a) Format requirements applicable to all electronic documents**

6  
7   (1) *Text-searchable portable document format:* Electronic documents must be in  
8   text-searchable portable document format (PDF) while maintaining the  
9   original document formatting. **In the limited circumstances in which a**  
10   **document cannot practicably be converted into a text-searchable PDF, the**  
11   **document may be scanned or converted to non-text-searchable PDF.** An  
12   electronic filer is not required to use a specific vendor, technology, or  
13   software for creation of a searchable format document, unless the electronic  
14   filer agrees to such use. The software for creating and reading electronic  
15   documents must be in the public domain or generally available at a  
16   reasonable cost. ~~If an electronic filer must file a document that the electronic~~  
17   ~~filer possesses only in paper format, the electronic filer must convert the~~  
18   ~~document to an electronic document by a means that complies with this rule.~~  
19   The printing of an electronic document must not result in the loss of  
20   document text, format, or appearance. It is the electronic filer's responsibility  
21   to ensure that any document filed is complete and readable.

22  
23   (2) *Pagination:* The electronic page counter for the electronic document must  
24   match the page number for each page of the document. The page numbering  
25   of a document filed electronically must begin with the first page or cover  
26   page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may  
27   not contain more than one numbering system; for example, they may not  
28   contain Roman numerals for the table of contents and Arabic numerals for  
29   the body of the document. The page number for the cover page may be  
30   suppressed and need not appear on the cover page. When a document is filed  
31   in both paper and electronic formats, the pagination in both versions must  
32   comply with this subparagraph.

33  
34   (3) *Bookmarking:* An electronic bookmark is a descriptive text link that appears  
35   in the bookmarks panel of an electronic document. Each electronic document  
36   must include an electronic bookmark to each heading, subheading, and to the  
37   first page of any component of the document, including any table of contents,  
38   table of authorities, petition, verification, memorandum, declaration,  
39   certificate of word count, certificate of interested entities or persons, proof of  
40   service, exhibit, or attachment. Each electronic bookmark must briefly  
41   describe the item to which it is linked. For example, an electronic bookmark  
42   to a heading must provide the text of the heading, and an electronic  
43   bookmark to an exhibit or attachment must include the letter or number of the

1 exhibit or attachment and a brief description of the exhibit or attachment. An  
2 electronic appendix must have bookmarks to the indexes and to the first page  
3 of each separate exhibit or attachment. Exhibits or attachments within an  
4 exhibit or attachment must be bookmarked. All bookmarks must be set to  
5 retain the reader's selected zoom setting.

6  
7 (4) *Protection of sensitive information:* Electronic filers must comply with rules  
8 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive  
9 information, except for those requirements exclusively applicable to paper  
10 format.

11  
12 (5) *Size and multiple files:* An electronic filing may not be larger than 25  
13 megabytes. This rule does not change the limitations on word count or  
14 number of pages otherwise established by the California Rules of Court for  
15 documents filed in the court. Unless a 300-page limit applies to the volumes  
16 of an electronic document. Although certain provisions in the California Rules  
17 of Court require volumes of no more than 300 pages (see, e.g., rules  
18 8.124(d)(1), 8.144(b)(6), 8.144(g)), a file an electronic filing may exceed 300  
19 pages so long as its individual components comply with the 300-page volume  
20 requirement and the electronic filing does not exceed 25 megabytes. If a  
21 document exceeds the 25-megabyte file-size limitation, the electronic filer  
22 must submit the document in more than one file, with each file 25 megabytes  
23 or less. The first file must include a master chronological and alphabetical  
24 index stating the contents for all files. Each file must have a cover page  
25 setting forth (a) the file number for that file, (b) the total number of files for  
26 that document, and (c) the volumes and page numbers contained in that file.  
27 (For example: File 1 of 4, Volumes 1–2, pp. 1–400.) In addition, each file  
28 must be paginated consecutively across all files in the document, including  
29 the cover pages for each file. (For example, if the first file ends on page 400,  
30 the cover of the second file must be page 401.) If a multiple-file document is  
31 submitted to the court in both electronic and paper formats, the cover pages  
32 for each file must be included in the paper documents.

33  
34 (6) *Manual Filing:*

35  
36 (A) When an electronic filer seeks to file an electronic document consisting  
37 of more than **five**ten files, or when the document cannot or should not  
38 be electronically filed in multiple files, or when electronically filing the  
39 document would cause undue hardship, the document must not be  
40 electronically filed but must be manually filed with the court on  
41 electronic media such as a flash drive, DVD, or compact disc (CD).  
42 When an electronic filer files one or more documents on electronic  
43 media such as a flash drive, DVD, or CD with the court, the electronic

1            filer must electronically file, on the same day, a “manual filing  
2            notification” notifying the court and the parties that one or more  
3            documents have been filed on electronic media, explaining the reason  
4            for the manual filing. The electronic media must be served on the  
5            parties in accordance with the requirements for service of paper  
6            documents. To the extent practicable, each document or file on the  
7            electronic media must comply with the format requirements of this rule.

8  
9            (B) Electronic media files such as audio, or video, or PowerPoint, and  
10           documents containing photographs or any color component, must be  
11           manually filed. Audio files must be filed in .wav or mp3 format. Video  
12           files must be filed in .avi or mp4 format.

13  
14           (C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf  
15           format.

16  
17           (D) If an original electronic media file is converted to a required format for  
18           manual filing, the electronic filer must retain the original.

19  
20           (7) Page size: All documents must have a page size of 8-1/2 by 11 inches.

21  
22           (8) No eColor: Notwithstanding provisions to the contrary in the California  
23           Rules of Court, an electronic document with any color component may not  
24           be electronically filed or -It must be manually filed on electronic media,  
25           depending on its file size. An electronically filed document must not have a  
26           color covers, color signatures, or other color components absent leave of  
27           court. This requirement does not apply to the auto-color feature of hyperlinks.

28  
29           (9) Cover or first-page information:

30  
31           (A) Except as provided in (B), the cover—or first page if there is no  
32           cover—of every electronic document filed in a reviewing court must  
33           include the name, mailing address, telephone number, fax number (if  
34           available), e-mail address (if available), and California State Bar  
35           number of each attorney filing or joining in the document, or of the  
36           party if he or she is unrepresented. The inclusion of a fax number or e-  
37           mail address on any electronic document does not constitute consent to  
38           service by fax or e-mail unless otherwise provided by law.

39  
40           (B) If more than one attorney from a law firm, corporation, or public law  
41           office is representing one party and is joining in the document, the  
42           name and State Bar number of each attorney joining in the electronic  
43           document must be provided on the cover. The law firm, corporation, or

1 public law office representing each party must designate one attorney to  
2 receive notices and other communication in the case from the court by  
3 placing an asterisk before that attorney's name on the cover and must  
4 provide the contact information specified under (A) for that attorney.  
5 Contact information for the other attorneys from the same law firm,  
6 corporation, or public law office is not required but may be provided.

7  
8 **(b) Additional format requirements applicable to documents prepared for**  
9 **electronic filing in the first instance in a reviewing court**

- 10  
11 ~~(81)~~ *Font*: The font style must be a proportionally spaced serif face, such as  
12 Century Schoolbook is preferred. A sans-serif type face may be used for  
13 headings, subheadings, and captions. Do not use Times New Roman. Font  
14 size must be 13-point, including in footnotes. For emphasis, italics or  
15 boldface may be used or the text may be underscored. Case names must be  
16 italicized or underscored. Do not use all capitals (i.e., ALL CAPS) for  
17 emphasis.
- 18  
19 ~~(92)~~ *Spacing*: Lines of text must be 1-1/2 spaced. Footnotes, headings,  
20 subheadings, and quotations may be single-spaced. The lines of text must be  
21 unnumbered.
- 22  
23 ~~(103)~~ *Margins*: The margins must be set at 1-1/2 inches on all sides on the left and  
24 right and 1 inch on the top and bottom. Quotations may be block-indented.
- 25  
26 ~~(114)~~ *Alignment*: Paragraphs must be left-aligned, not justified.
- 27  
28 ~~(125)~~ *Hyperlinks*: Hyperlinks to legal authorities and appendices or exhibits are  
29 encouraged but not required. However, if an electronic filer elects to include  
30 hyperlinks in a document, the hyperlink must be active as of the date of filing  
31 and if the hyperlink is to a legal authority, it should be formatted to standard  
32 citation format as provided in the California Rules of Court.
- 33  
34 ~~(13)~~ *No color*: Notwithstanding provisions to the contrary in the California Rules  
35 of Court, an electronic document with any color component may not be  
36 electronically filed. It must be manually filed on electronic media. An  
37 electronically filed document must not have color covers, color signatures, or  
38 other color components absent leave of court. This requirement does not  
39 apply to the auto-color feature of hyperlinks.  
40

1 **(bc) Additional format requirements for certain electronic documents**

2  
3 (1) *Brief*: In addition to compliance with this rule, an electronic brief must also  
4 comply with the contents and length requirements set forth in rule 8.204,  
5 except for the requirements exclusively applicable to paper format including  
6 the provisions in rule 8.204(b)(2), (4), (5), and (6)(a) and (c). The brief need  
7 not be signed. In addition to providing the cover information required by rule  
8 8.40(e), †The cover must state:

9  
10 (A) The title of the brief;

11  
12 (B) The title, trial court number, and Court of Appeal number of the case;

13  
14 (C) The names of the trial court and each participating trial judge;

15  
16 (D) The name of the party that each attorney on the brief represents.

17  
18 (2) *Request for judicial notice or request or motion supported by documents*:  
19 When seeking judicial notice of documents or when a request or motion is  
20 supported by documents, the electronic filer must attach the documents to the  
21 request or motion. The request or motion and its attachments must comply  
22 with this rule.

23  
24 (3) *Appendix*: The format of an appendix must comply with this rule, rule  
25 8.124(d), and rule 8.144 pertaining to clerk's transcripts.

26  
27 (4) *Agreed statement and settled statement*: The format for an agreed statement  
28 or a settled statement must comply with this rule and rules 8.144 and  
29 8.124(d).

30  
31 (5) *Reporter's transcript and clerk's transcript*: The format for an electronic  
32 reporter's transcript must comply with Code of Civil Procedure section 271  
33 and rule 8.144. The format for an electronic clerk's transcript must comply  
34 with this rule and rule 8.144.

35  
36 (6) *Exhibits*: Electronic exhibits must be submitted in volumes no larger than 25  
37 megabytes, rather than as individual documents.

38  
39 (7) *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records  
40 that are sealed or confidential or under seal must be filed separately from  
41 publicly filed records. If one or more pages are omitted from a source  
42 document record and filed separately as a sealed or confidential record, an  
43 omission page or pages must be inserted in the source document publicly filed



record at the location of the omitted page or pages. The omission page must identify the type of pages omitted. The Each omission page must be paginated consecutively with the rest of the source document publicly filed record, it must be bookmarked, and it must be listed in any indexes included in the source document publicly filed record. The PDF counter for the each omission page must match the page number of the omission page omitted from the publicly filed record. Separately filed sealed or confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.

**(ed) Rejection of an electronic filing for noncompliance; exemptions**

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

**(de) This rule prevails over other formatting rules**

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

**Advisory Committee Comment**

**Subdivision (a)(1).** If an electronic filer must file a document that the electronic filer possesses only in paper format, use of a scanned image is a permitted means of conversion to PDF, but optical character recognition must be used if possible. If a document cannot practicably be converted into a text-searchable PDF file (e.g., if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based), the document may be converted to non-text-searchable PDF.

**Subdivision (a)(3).** An electronic bookmark's brief description of the item to which it is linked should enable the reader to easily identify the item. For example, if a declaration is attached to a document, the bookmark to the declaration might say "Robert Smith Declaration," and if a complaint is attached to a document as an exhibit, the bookmark to the complaint might say "Exhibit A, First Amended Complaint filed 8/12/17."

**Subdivision (b).** Subdivision (b) governs documents prepared for electronic filing in the first instance in a reviewing court, and does not apply to previously created documents (such as exhibits) as to which the formatting cannot or should not be altered.

**Subdivision (bc)(7).** In identifying the type of pages omitted, the omission page might say, for example, "probation report" or "Marsden hearing transcript."

**Rule 8.77. Actions by court on receipt of electronic filing**

(a) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) *Transmission of confirmations*

The court must arrange to send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule ~~8.74(a)(4)~~8.72(b)(2). The court or the electronic filing service provider must maintain a record of all receipt and filing confirmations.

(4) \* \* \*

**Rule 8.78. Electronic service**

(a) \* \* \*

(1) \* \* \*

(2) \* \* \*

(A) \* \* \*

(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule ~~8.74(a)(4)~~8.72(b)(2), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

(3) \* \* \*

(b)–(g) \* \* \*

1 **Rule 8.204. Contents and form of briefs**

2  
3 (a) \* \* \*

4  
5 (b) **Format of briefs filed in paper form**

6  
7 Briefs filed in electronic form must comply with the formatting provisions in rule  
8 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

9  
10 (1)–(9) \* \* \*

11  
12 (10) If filed in paper form, the cover must be in the color prescribed by rule  
13 8.40(ba). In addition to providing the cover information required by rule  
14 8.40(eb), the cover must state:

15  
16 (A) The title of the brief;

17  
18 (B) The title, trial court number, and Court of Appeal number of the case;

19  
20 (C) The names of the trial court and each participating trial judge;

21  
22 (D) The name of the party that each attorney on the brief represents.

23  
24 (11) \* \* \*

25  
26 (c)–(e) \* \* \*

27  
28 **Rule 8.252. Judicial notice; findings and evidence on appeal**

29  
30 (a) **Judicial notice**

31  
32 (1)–(2) \* \* \*

33  
34 (3) If the matter to be noticed is not in the record, the party must ~~serve and file a~~  
35 ~~copy with the motion or explain~~ attach to the motion a copy of the matter to  
36 be noticed or an explanation of why it is not practicable to do so. The pages  
37 of the copy of the matter or matters to be judicially noticed must be  
38 consecutively numbered, beginning with the number 1. The motion with  
39 attachments must comply with rule 8.74 if filed in electronic form.

40  
41 (b) \* \* \*

42

1 (c) Evidence on appeal

2

3

(1)–(2) \* \* \*

4

5

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted, an electronic copy,~~ or if filed in paper form, the original, a certified copy, or a photocopy.

6

7

8

The court may admit the document into evidence without a hearing.

DRAFT

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR19-07

<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Uniform Formatting Rules for Electronic Documents	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kristi Morioka, Attorney 916-643-7056 phone <a href="mailto:kristi.morioka@jud.ca.gov">kristi.morioka@jud.ca.gov</a>
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Hon. Louis R. Mauro, Vice-Chair	Christy Simons, Attorney 415-865-7694 phone <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>

### Executive Summary

To provide consistency and clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose revising California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts. The rules currently provide some formatting requirements for electronic documents, but they do not include various local rule requirements such as bookmarking. Moreover, local rules around the state differ in their requirements and scope. By establishing uniform, comprehensive rules for all appellate courts, this proposal will ease the burden on filers caused by differing format rules. This project initially focused on rules for exhibits and bookmarking, but was expanded in scope to include other formatting requirements. It originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

### Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing the formatting

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

requirements for electronic documents. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice.

A more limited rules amendment project began in 2017, but was deferred; the current proposal is expanded in scope. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

## **The Proposal**

Though this proposal recommends amendments to seven rules, most of the amendments are to rule 8.74. That rule currently sets forth responsibilities of electronic filers but also establishes certain minimum format requirements for electronic documents. This proposal would remove the filer responsibility provisions from rule 8.74 and add them to the court responsibility provisions in rule 8.72, and significantly expand the format provisions in rule 8.74. As expanded, rule 8.74 would establish the specific formatting requirements currently articulated in local rules, such as standards for cover pages, pagination, and bookmarks.

### **Rule 8.40. Form of filed documents**

Rule 8.40 governs the form of filed documents. The current rule provides that filed documents may be produced on a computer or be typewritten.

The proposed amendments would create different subdivisions for electronic and paper documents, would reference the formatting rules applicable to those different types of documents, and would clarify that certain unchanged formatting requirements only apply to paper. The rule would be amended to provide that e-filing is mandatory unless an exemption applies.

### **Rule 8.44. Number of copies of filed documents**

Rule 8.44 sets forth the rules for paper copies in the California Supreme Court and the Courts of Appeal, and in subdivision (c) addresses electronic copies. Among other things, it refers to a court that “permits” electronic filing, and it requires a local rule specifying the format of an electronic copy. Because e-filing is now mandatory, and the format of electronic documents is addressed in proposed rule 8.74, the proposal deletes those outdated references.

### **Rule 8.71. Electronic filing**

Rule 8.71 imposes mandatory e-filing, but it allows for various exemptions, including those established by local rule. The proposal would delete the reference to exemption by local rule, and add the Supreme Court Rules Regarding Electronic Filing in subdivision (a), as follows: “Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all parties are required to file all documents electronically in the reviewing court.”

**Rule 8.72. Responsibilities of the court**

Rule 8.72 sets forth the e-filing responsibilities of a court. The proposal takes the provisions for the responsibilities of electronic filers from current rule 8.74 and moves them to rule 8.72 in a new subdivision (b), thereby combining the responsibilities of court and filer into a single rule, and leaving rule 8.74 to address format. The proposal also deletes current rule subdivisions 8.72(b)(1) and (b)(2) as no longer needed.

**Rule 8.74. Responsibilities of electronic filer**

The proposal amends rule 8.74 to establish uniform formatting rules for electronic documents filed with the appellate courts and proposes to change the title of the section accordingly. Rule 8.74(a) currently establishes the responsibilities of an electronic filer. As previously discussed, this proposal moves the content of subdivision (a) to rule 8.72. Current rule 8.74(b) authorizes appellate courts to establish requirements for electronic documents, but it sets forth certain minimum format standards such as text searchability. The proposal retains some of the existing language, moves it to a new proposed subdivision (a), and significantly expands the formatting requirements by drawing from the best practices developed among the appellate courts through their local rules.

The expanded formatting rules address topics such as bookmarking, protection of sensitive information, file size, manual filing, font, spacing, margins, hyperlinks, and color. The proposal adds a new subdivision (b) to address specific formatting requirements for briefs, requests for judicial notice, appendices, agreed statements and settled statements, reporter's transcripts, clerk's transcripts, exhibits, and sealed and confidential records. Subdivision (c) provides that a court will reject an electronic filing if the formatting rules are not followed and provides that an electronic filer can file a motion for an exemption. Newly proposed subdivision (d) of rule 8.74 provides that this rule prevails over other formatting provisions if they are in conflict.

Proposed rule 8.74(a)(1) references portable document format (PDF), a file format used to present and exchange documents reliably, independent of software, hardware, or operating system. Existing California Supreme Court and Courts of Appeal local rules require documents to be in "text-searchable PDF." To ensure text searchability, the proposal requires a filer to "convert" a paper document to electronic form, rather than scanning a printed document.

The rules for pagination in proposed subdivision (a)(2) are consistent with the local rule pagination requirements around the state.

Proposed subdivision (a)(3) defines an electronic bookmark and includes requirements for bookmarking specified parts of a document. A new advisory committee comment provides examples of what is intended by the requirement that the bookmark contain a brief description of the item to which it is linked.

Proposed subdivision (a)(4) requires protection of sensitive information found in other rules, namely, rules 1.201, 8.45, 8.46, 8.47, and 8.401.

Proposed subdivision (a)(5) sets a file-size limit of 25 megabytes. The 25-megabyte limit is the current capacity of a file in the Appellate Court Case Management System (ACCMS).

Proposed subdivision (a)(6) describes manual filing of oversized documents or documents that otherwise cannot be electronically filed. The proposal permits the filer to file a flash drive, DVD, or compact disc (CD) with the court and then give notice of the filing. The term DVD is considered sufficiently descriptive that it is not spelled out, but the term CD is spelled out for clarity. The file types for video, audio, and photographs are based on local rules and the current capacity at the courts.

Proposed subdivision (a)(7) specifies that the page size for all electronic documents must be 8-1/2 by 11 inches.

Proposed subdivision (a)(8) describes the font type and font size for electronic documents. It requires a serif font such as Century Schoolbook. The suggestion comes from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability.

Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.

Proposed rule 8.74(b) addresses specific format requirements for certain documents. Proposed rule 8.74(b) does not repeat the general formatting rules when discussing the specific documents.

#### **Rule 8.204. Contents and form of briefs**

Rule 8.204 explains the requirements for briefs filed in the Courts of Appeal. There is only one amendment in this rule. The proposed amendment explains that briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in rule 8.204(b).

#### **Rule 8.252. Judicial notice; filings and evidence on appeal**

Rule 8.252 establishes the procedure for seeking judicial notice of a matter. The proposed amendment would require the moving party to attach to the motion a copy of the matter to be noticed or an explanation why it is not practicable to do so. In addition, the proposed amendment would specify that the motion with attachments must comply with rule 8.74 if filed in electronic form.

Proposed rule 8.252(c)(3) is reorganized to reflect the presumption of electronic filing unless an exemption applies.

#### **Alternatives Considered**

The committee considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The revised rules will provide uniform



guidance to litigants and practitioners, and will give the appellate courts time to amend their local rules accordingly.

Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.

### **Fiscal and Operational Impacts**

The proposed changes are intended to make electronic formatting rules consistent in the appellate courts. The committees anticipate efforts will be needed to amend local rules to make them consistent with these proposals.

#### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, at pages 6–15

Rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 8.40. Form of filed documents**

2  
3 **(a) Form of electronic documents**

4  
5 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~  
6 ~~be either produced on a computer or typewritten and must comply with the relevant~~  
7 ~~provisions of rule 8.204(b).~~

8  
9 Under rule 8.71(a), a document filed in a reviewing court must be in electronic  
10 form unless these rules provide otherwise. An electronic document must comply  
11 with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.

12  
13 **(b) Form and cover color of paper documents**

14  
15 (1) To the extent these rules authorize the filing of a paper document in a reviewing  
16 court, the document must comply with the relevant format provisions of this  
17 rule and rules 8.144 and 8.204.

18  
19 ~~(1)~~(2) As far as practicable, the covers of briefs and petitions filed in paper form  
20 must be in the following colors:

21

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

1  
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9

(2)(3) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(3)(4) A paper brief or petition not conforming to ~~(1) or (2)~~ or (3) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

1 (c) **Cover information for electronic and paper documents**

2  
3 (1)–(2) \* \* \*

4  
5 (3) The covers of electronic documents must also comply with the provisions of  
6 rule 8.74.

7  
8 **Rule 8.44. Number of copies of filed documents**

9  
10 (a)–(b) \* \* \*

11  
12 (c) **Electronic copies of paper documents**

13  
14 ~~A court that permits electronic filing will specify any requirements regarding~~  
15 ~~electronically filed documents in the electronic filing requirements published under~~  
16 ~~rule 8.74. In addition, Even when filing a paper document is permissible, a court~~  
17 ~~may provide by local rule for the submission of an electronic copy of a document~~  
18 ~~that is not electronically filed the paper document either in addition to the copies of~~  
19 ~~the document required to be filed under (a) or (b) or as a substitute for one or more~~  
20 ~~of these copies. The local rule must ~~specify the format of the electronic copy and~~~~  
21 ~~provide for an exception if it would cause undue hardship for a party to submit an~~  
22 ~~electronic copy.~~

23  
24 **Rule 8.71. Electronic filing**

25  
26 (a) **Mandatory electronic filing**

27  
28 Except as otherwise provided by these rules, the Supreme Court Rules Regarding  
29 Electronic Filing, ~~the local rules of the reviewing court~~, or by court order, all  
30 parties are required to file all documents electronically in the reviewing court.

31  
32 (b)–(g) \* \* \*

33  
34 **Rule 8.72. Responsibilities of court and electronic filer**

35  
36 (a) ~~Publication of electronic filing requirements~~ **Responsibilities of court**

37  
38 (1) The court will publish, in both electronic and print formats, the court's  
39 electronic filing requirements.

40  
41 (b) ~~Problems with electronic filing~~

42 (2) If the court is aware of a problem that impedes or precludes electronic filing,  
43 it must promptly take reasonable steps to provide notice of the problem.

1  
2 **(b) Responsibilities of electronic filer**

3  
4 Each electronic filer must:

- 5  
6 (1) Take all reasonable steps to ensure that the filing does not contain computer  
7 code, including viruses, that might be harmful to the court's electronic filing  
8 system and to other users of that system;  
9  
10 (2) Furnish one or more electronic service addresses, in the manner specified by  
11 the court, at which the electronic filer agrees to accept service; and  
12  
13 (3) Immediately provide the court and all parties with any change to the  
14 electronic filer's electronic service address.

15  
16 **Rule 8.74. Responsibilities of electronic filer Format of electronic documents**

17  
18 ~~**(a) Conditions of filing**~~

19  
20 ~~Each electronic filer must:~~

- 21  
22 ~~(1) Comply with any court requirements designed to ensure the integrity of~~  
23 ~~electronic filing and to protect sensitive personal information;~~  
24  
25 ~~(2) Furnish information that the court requires for case processing;~~  
26  
27 ~~(3) Take all reasonable steps to ensure that the filing does not contain computer~~  
28 ~~code, including viruses, that might be harmful to the court's electronic filing~~  
29 ~~system and to other users of that system;~~  
30  
31 ~~(4) Furnish one or more electronic service addresses, in the manner specified by~~  
32 ~~the court, at which the electronic filer agrees to accept service; and~~  
33  
34 ~~(5) Immediately provide the court and all parties with any change to the electronic~~  
35 ~~filer's electronic service address.~~

36  
37 ~~**(b) Format of documents to be filed electronically**~~

- 38  
39 ~~(1) A document that is filed electronically with the court must be in a format~~  
40 ~~specified by the court unless it cannot be created in that format.~~  
41  
42 ~~(2) The format adopted by a court must meet the following minimum~~  
43 ~~requirements:~~

1  
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9  
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11  
12  
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43

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

**(a) Format requirements applicable to all electronic documents**

(1) *Text-searchable portable document format:* Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer's responsibility to ensure that any document filed is complete and readable.

(2) *Pagination:* The electronic page counter for the electronic document must match the page number for each page of the document. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; for example, they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed

1           in both paper and electronic formats, the pagination in both versions must  
2           comply with this subparagraph.

3  
4           (3) *Bookmarking:* An electronic bookmark is a descriptive text link that appears  
5           in the bookmarks panel of an electronic document. Each electronic document  
6           must include an electronic bookmark to each heading, subheading, and to the  
7           first page of any component of the document, including any table of contents,  
8           table of authorities, petition, verification, memorandum, declaration,  
9           certificate of word count, certificate of interested entities or persons, proof of  
10           service, exhibit, or attachment. Each electronic bookmark must briefly  
11           describe the item to which it is linked. For example, an electronic bookmark  
12           to a heading must provide the text of the heading, and an electronic  
13           bookmark to an exhibit or attachment must include the letter or number of the  
14           exhibit or attachment and a brief description of the exhibit or attachment. An  
15           electronic appendix must have bookmarks to the indexes and to the first page  
16           of each separate exhibit or attachment. Exhibits or attachments within an  
17           exhibit or attachment must be bookmarked. All bookmarks must be set to  
18           retain the reader's selected zoom setting.

19  
20           (4) *Protection of sensitive information:* Electronic filers must comply with rules  
21           1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive  
22           information, except for those requirements exclusively applicable to paper  
23           format.

24  
25           (5) *Size and multiple files:* An electronic filing may not be larger than 25  
26           megabytes. This rule does not change the limitations on word count or  
27           number of pages otherwise established by the California Rules of Court for  
28           documents filed in the court. Unless a 300-page limit applies to the volumes  
29           of an electronic document (see, e.g., rules 8.124(d)(1), 8.144(b)(6)), a file  
30           may exceed 300 pages so long as it does not exceed 25 megabytes. If a  
31           document exceeds the 25-megabyte file-size limitation, the electronic filer  
32           must submit the document in more than one file, with each file 25 megabytes  
33           or less. The first file must include a master chronological and alphabetical  
34           index stating the contents for all files. Each file must have a cover page  
35           setting forth (a) the file number for that file, (b) the total number of files for  
36           that document, and (c) the page numbers contained in that file. (For example:  
37           File 1 of 4, pp. 1–400.) In addition, each file must be paginated consecutively  
38           across all files in the document, including the cover pages for each file. (For  
39           example, if the first file ends on page 400, the cover of the second file must  
40           be page 401.) If a multiple-file document is submitted to the court in both  
41           electronic and paper formats, the cover pages for each file must be included  
42           in the paper documents.

43

1           (6) Manual Filing:  
2

3           (A) When an electronic filer seeks to file an electronic document consisting  
4 of more than five files, or when the document cannot or should not be  
5 electronically filed in multiple files, or when electronically filing the  
6 document would cause undue hardship, the document must not be  
7 electronically filed but must be manually filed with the court on  
8 electronic media such as a flash drive, DVD, or compact disc (CD).  
9 When an electronic filer files one or more documents on electronic  
10 media such as a flash drive, DVD, or CD with the court, the electronic  
11 filer must electronically file, on the same day, a “manual filing  
12 notification” notifying the court and the parties that one or more  
13 documents have been filed on electronic media, explaining the reason  
14 for the manual filing. The electronic media must be served on the  
15 parties in accordance with the requirements for service of paper  
16 documents. To the extent practicable, each document or file on the  
17 electronic media must comply with the format requirements of this rule.  
18

19           (B) Electronic media files such as audio, video, or PowerPoint, and  
20 documents containing photographs or any color component, must be  
21 manually filed. Audio files must be filed in .wav or mp3 format. Video  
22 files must be filed in .avi or mp4 format. Photographs must be filed in  
23 .jpg, .png, .tif, or .pdf format.  
24

25           (7) Page size: All documents must have a page size of 8-1/2 by 11 inches.  
26

27           (8) Font: The font style must be a proportionally spaced serif face, such as  
28 Century Schoolbook. Do not use Times New Roman. Font size must be 13-  
29 point, including in footnotes.  
30

31           (9) Spacing: Lines of text must be 1-1/2 spaced. Footnotes and quotations may  
32 be single-spaced.  
33

34           (10) Margins: The margins must be set at 1-1/2 inches on all sides.  
35

36           (11) Alignment: Paragraphs must be left-aligned, not justified.  
37

38           (12) Hyperlinks: Hyperlinks are encouraged but not required. However, if an  
39 electronic filer elects to include hyperlinks in a document, the hyperlink must  
40 be active as of the date of filing and should be formatted to standard citation  
41 format as provided in the California Rules of Court.  
42



1           (13) No color: Notwithstanding provisions to the contrary in the California Rules  
2           of Court, an electronic document with any color component may not be  
3           electronically filed. It must be manually filed on electronic media. An  
4           electronically filed document must not have color covers, color signatures, or  
5           other color components absent leave of court. This requirement does not  
6           apply to the auto-color feature of hyperlinks.

7  
8           **(b) Additional format requirements for certain electronic documents**

- 9  
10          (1) Brief: In addition to compliance with this rule, an electronic brief must also  
11          comply with the requirements set forth in rule 8.204, except for the  
12          requirements exclusively applicable to paper format including the provisions  
13          in rule 8.204(b)(2), (4), (5), and (6).  
14  
15          (2) Request for judicial notice or request or motion supported by documents:  
16          When seeking judicial notice of documents or when a request or motion is  
17          supported by documents, the electronic filer must attach the documents to the  
18          request or motion. The request or motion and its attachments must comply  
19          with this rule.  
20  
21          (3) Appendix: The format of an appendix must comply with this rule, rule  
22          8.124(d), and rule 8.144 pertaining to clerk's transcripts.  
23  
24          (4) Agreed statement and settled statement: The format for an agreed statement  
25          or a settled statement must comply with this rule and rules 8.144 and  
26          8.124(d).  
27  
28          (5) Reporter's transcript and clerk's transcript: The format for an electronic  
29          reporter's transcript must comply with Code of Civil Procedure section 271  
30          and rule 8.144. The format for an electronic clerk's transcript must comply  
31          with this rule and rule 8.144.  
32  
33          (6) Exhibits: Electronic exhibits must be submitted in volumes no larger than 25  
34          megabytes, rather than as individual documents.  
35  
36          (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records  
37          that are confidential or under seal must be filed separately. If one or more  
38          pages are omitted from a source document and filed separately as a sealed or  
39          confidential record, an omission page must be inserted in the source  
40          document at the location of the omitted page or pages. The omission page  
41          must identify the type of pages omitted. The omission page must be  
42          paginated consecutively with the rest of the source document, it must be  
43          bookmarked, and it must be listed in any indexes included in the source

1 document. The PDF counter for the omission page must match the page  
 2 number of the omission page. Separately filed confidential or sealed records  
 3 must comply with this rule and rules 8.45, 8.46, and 8.47.

4  
 5 **(c) Rejection of an electronic filing for noncompliance; exemptions**

6  
 7 The court will reject an electronic filing if it does not comply with the requirements  
 8 of this rule. However, if the requirements of this rule cause undue hardship or  
 9 significant prejudice to any electronic filer, the electronic filer may file a motion for  
 10 an exemption from the requirements of this rule.

11  
 12 **(d) This rule prevails over other formatting rules**

13  
 14 If a document is filed electronically and cannot be formatted to be consistent with a  
 15 formatting provision elsewhere in the California Rules of Court, the provisions of  
 16 this rule prevail.

17  
 18 **Advisory Committee Comment**

19  
 20 **Subdivision (a)(3).** An electronic bookmark’s brief description of the item to which it is linked  
 21 should enable the reader to easily identify the item. For example, if a declaration is attached to a  
 22 document, the bookmark to the declaration might say “Robert Smith Declaration,” and if a  
 23 complaint is attached to a document as an exhibit, the bookmark to the complaint might say  
 24 “Exhibit A, First Amended Complaint filed 8/12/17.”

25  
 26 **Subdivision (b)(7).** In identifying the type of pages omitted, the omission page might say,  
 27 for example, “probation report” or “Marsden hearing transcript.”

28  
 29 **Rule 8.204. Contents and form of briefs**

30  
 31 **(a) \* \* \***

32  
 33 **(b) Form**

34  
 35 Briefs filed in electronic form must comply with the formatting provisions in rule  
 36 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

37  
 38 (1)–(11) \* \* \*

39  
 40 **(c)–(e) \* \* \***

41  
 42 **Rule 8.252. Judicial notice; findings and evidence on appeal**

43

1 **(a) Judicial notice**

2  
3 (1)–(2) \* \* \*

4  
5 (3) If the matter to be noticed is not in the record, the party must ~~serve and file a~~  
6 ~~copy with the motion or explain~~ attach to the motion a copy of the matter to  
7 be noticed or an explanation of why it is not practicable to do so. The pages  
8 ~~of the copy of the matter or matters to be judicially noticed must be~~  
9 ~~consecutively numbered, beginning with the number 1. The motion with~~  
10 attachments must comply with rule 8.74 if filed in electronic form.  
11

12 **(b) \* \* \***

13  
14 **(c) Evidence on appeal**

15  
16 (1)–(2) \* \* \*

17  
18 (3) For documentary evidence, a party may offer ~~the original, a certified copy, a~~  
19 ~~photocopy, or, in a case in which electronic filing is permitted, an electronic~~  
20 ~~copy, or if filed in paper form, the original, a certified copy, or a photocopy.~~  
21 The court may admit the document into evidence without a hearing.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

Date	Action Requested
July 3, 2019	Please Review
To	Deadline
Hon. Sheila F. Hanson, Chair Information Technology Advisory Committee	July 10, 2019
From	Contact
Andrea L. Jaramillo, Attorney Legal Services	Andrea L. Jaramillo Legal Services 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject	
Rule and Legislative Proposals	

This spring, the Information Technology Advisory Committee (ITAC) circulated two legislative proposals and two rule proposals for public comment. On July 2, 2019, the Rules and Policy Subcommittee (RPS) met to discuss the comments received and make recommendations to ITAC. RPS recommended revisions to three of the proposals. The first was the proposal to amend Penal Code section 1203.01, the second was the proposal to amend Code of Civil Procedure section 1010.6, and the third was the proposal to amend rule 2.257 of the California Rules of Court. This memorandum details RPS's recommended revisions. Additional details about the comments are included in draft Judicial Council reports<sup>1</sup> and comment charts with draft committee responses. Finally, subsequent to the ITAC meeting, staff received a couple of late comments, which have been added to the relevant comment charts..

<sup>1</sup> The draft reports have not yet been proofread by the Judicial Council Editing and Graphics Group, but will be prior to submission of the reports to the Rules and Projects Committee, Policy Coordination and Liaison Committee, and Judicial Council Technology Committee.

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Penal Code section 1203.01

For the proposed amendments to Penal Code section 1203.01, ITAC sought 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?

The San Diego County court recommended that the statutory language include written consent. Staff also presented the option of oral consent on the record. Both options present effective mechanisms to document the consent from the recipient. RPS recommended, therefore, the Penal Code section 1203.01(c)(1) proposal be revised to include the italicized language below:

(c)(1) With the consent of the recipient *expressed in writing or orally on the record, 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.*

Code of Civil Procedure section 1010.6

For the proposed amendments to Code of Civil Procedure section 1010.6 (section 1010.6), RPS edited the language in the proposed amendment to section 1010.6(b)(2)(A)(ii) for accuracy by replacing “a rule of court” with “the California Rules of Court.” Specifically, the italicized language in the following is the replacement for the language that is stricken: “The person has signed the document pursuant to the procedure set forth in ~~a rule of court~~ *the California Rules of Court.*”

The Child Support Directors Association (CSDA) recommended that the order of subdivision 1010.6(b)(7) be changed to improve the continuity of the fee topics in the surrounding provisions. Specifically, the CSDA commented:

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

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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?

RPS discussed the issue and agreed that moving existing subdivision (b)(7) before existing subdivision (b)(6) would improve the flow of the topics. This revision re-orders the numbering and does not alter the substance of the proposed amendments.

The Orange County Bar Association expressed confusion over the differing treatment of courts and electronic filing service providers on the topic of actual costs. The proposal was intended to make the fee provisions more consistent as applied to the courts. To avoid any confusion of whose actual costs the court could recover, RPS made a clarifying edit to proposed subdivision (b)(8) to add the italicized language: "The court may charge fees of no more than the *court's* actual cost..."

California Rules of Court, rule 2.257

For electronic signatures made by a non-filer, the proposal required:

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

The committee had considered alternative language and sought specific comments about it in the invitation to comment. Specifically:

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 signature *is* invalidated" to "the electronic signature *may be* declared invalid *by the court.*" Is the proposed language preferable? Is the particular requirement necessary?

The committee received a couple brief comments in support of the proposed language and extensive comments in opposition from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. JRS raised concerns about whether courts are expected to verify or technically validate signatures on electronically filed documents that they accept for filing. This could present significant challenges for courts.

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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 may be an issue with the proposed rule was 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.

Staff presented several options to address these issues for RPS's consideration. The option RPS chose was to return to the language that the committee had originally considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature is invalidated." The benefit of this language is that it is a technical attribute of a digital signature, which is a known standard in California. Digital signatures are 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 only difference between a digital signature under Government Code section 16.5(a) and an electronic signature that would be compliant rule 2.257 would be that the rule wording does not require the signature to adhere to the Secretary of State's digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)

The technical attributes and technology underpinning a compliant electronic signature should not impact the court's authority to resolve disputes about an electronic signature. RPS recommended adding the following advisory committee comment on this point: "The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature."

#### Late comments

There was an issue with the comment form received from the Orange County court, Juvenile Court and Family Law Divisions. The form contained the headings for the proposed amendments to Code of Civil Procedure section 1010.6 and California Rules of Court, rule 2.540, but the submission stated "no comments" and no position was indicated. Staff contacted the court for clarification. Subsequent to the RPS meeting, the court clarified with brief comments, which have been incorporated into the appropriate comment charts. The comments did not suggest any changes to the proposals.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 1203.01	January 1, 2021
Recommended by	Date of Report
Information Technology Advisory Committee	July 3, 2019
Hon. Sheila F. Hanson, Chair	Contact
	Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary

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 (ITAC) 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 6-7.



## 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.<sup>1</sup>

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

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<sup>1</sup> Penal Code section 1203.01(a) would still require material sent to CDCR to be certified. Courts are permitted to certify their records “by electronic or other technological means.” (Gov. Code, § 68150(f).)

still require the court to mail the materials to an incarcerated recipient upon request of that recipient or their counsel even if they 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 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 a court than mailing documents. First, inmate efforts to demonstrate good cause would likely to result in individual filings that would be lengthy in nature. Second, 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 this 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 would be an effective way to document consent, but in addition, oral consent on the record would also be effective. The committee revised the proposed language consistent with these determinations. 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 6-7.
2. Chart of comments, at pages 8-15.
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>

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 expressed in writing or orally on the record, the  
39   clerk of the court may deliver the documents, or the data contained in the documents,  
40   described in subdivisions (a) and (b) by electronic means rather than by mail.

41

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).

5  
6  
7  
8

**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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
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.</p> <p>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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
	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

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
	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"> <li>• Does the proposal appropriately address the stated purpose? Yes, purpose is stated clearly.</li> <li>• 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"> <li>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.</li> <li>(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).</li> </ul> </li> </ul>	<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>

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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"> <li>• Would the proposal provide cost savings? If so, please quantify. Postage costs for transcripts in particular would be significant.</li> <li>• 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.</li> <li>• 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</li> </ul>	

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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"> <li>• 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.</li> <li>• 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?</li> </ul>	
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>

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

	Commenter	Position	Comment	<b>[DRAFT]</b> 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 determined that such a provision would increase workload. First, inmate efforts to demonstrate good cause would likely result in individual filings that would be lengthy in nature. Second, the court would have to make a good cause determination in every instance, even where good cause is not found, in addition to mailing documents where good cause is found. Accordingly, the committee decided against adding a good cause provision.</p> <p>The court also recommended the proposed amendment require consent to be in writing. The committee considered this and determined written consent would be an effective means of documenting consent. In addition, the committee discussed oral consent on the record as an alternative. The committee will recommend a revision where consent must be written or made on the record.</p>

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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>	

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation:	Action Required
Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury	Effective Date
Rules, Forms, Standards, or Statutes Affected	January 2, 2021
Amend Code Civ. Proc., § 1010.6	Date of Report
Recommended by	July 3, 2019
Information Technology Advisory Committee	Contact
Hon. Sheila F. Hanson, Chair	Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

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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 6-8.

### **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).



To improve the continuity of the fee provisions, the proposal also reorders subdivision (b)(7) to be placed before existing subdivision (b)(6). The language in the proposed new subdivision (b)(6) is the same as existing subdivision (b)(7), which covers recovery of payment processing fees, except that it strikes “the court” from the subdivision. 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 proposed subdivision (b)(6). 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 the rules 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 2019-2022*. 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 `0, 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.

The CSDA recommended that the order of subdivision (b)(7) be changed to improve the continuity of the fee topics relative the surrounding provisions. The committee agreed and moved existing subdivision (b)(7) above existing subdivision (b)(6). This revision re-orders the numbering and does not alter the substance of the proposed amendments.

Internally, the committee discussed the accuracy of using the term “a rule of court” in the proposed amendment to section 1010.6(b)(2)(A)(ii) and determined “the California Rules of Court” was the more appropriate term and edited the language accordingly.

## 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.

#### **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. Proposed amendments to Code of Civil Procedure section 1010.6, at pages 6-8.
2. Chart of comments, at pages 9-15.
3. Link A: Judicial Council of California, *Strategic Plan for Technology 2019-2022*, <https://www.courts.ca.gov/documents/jtc-Court-Technology-Strategic-Plan.pdf>

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 the California  
19 Rules of Court.

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

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

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

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

1 (4) The court receiving a document filed electronically shall issue a confirmation that the  
2 document has been received and filed. The confirmation shall serve as proof that the document  
3 has been filed.

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

14  
15 (6) A fee, if any, charged by an electronic filing manager, or an electronic filing service provider  
16 to process a payment for filing fees and other court fees shall not exceed the costs incurred in  
17 processing the payment.

18  
19 ~~(7)(6)~~ The court shall permit a party or attorney to file an application for waiver of court fees and  
20 costs, in lieu of requiring the payment of the filing fee, as part of the process involving the  
21 electronic filing of a document. The court shall consider and determine the application in  
22 accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
23 Government Code and shall not require the party or attorney to submit any documentation other  
24 than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
25 Government Code. Nothing in this section shall require the court to waive a filing fee that is not  
26 otherwise waivable.

27  
28 ~~(7) A fee, if any, charged by the court, an electronic filing manager, or an electronic filing~~  
29 ~~service provider to process a payment for filing fees and other court fees shall not exceed the~~  
30 ~~costs incurred in processing the payment.~~

31  
32 (8) The court may charge fees of no more than the court's actual cost of the electronic filing and  
33 service of the documents. The court shall waive any fees charged if the court deems a waiver  
34 appropriate, including in instances when a party has received a fee waiver.

35  
36 (c) If a trial court adopts rules conforming to subdivision (b), it may provide by order, subject to  
37 the requirements and conditions stated in subdivision (b) and the rules adopted by the Judicial  
38 Council under subdivision (f), that all parties to an action file and serve documents electronically  
39 in a class action, a consolidated action, a group of actions, a coordinated action, or an action that  
40 is deemed complex under Judicial Council rules, provided that the trial court's order does not  
41 cause undue hardship or significant prejudice to any party in the action.

42

1 (d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to  
2 the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial  
3 Council under subdivision (f), and the following conditions:  
4

5 (1) The court shall have the ability to maintain the official court record in electronic format for  
6 all cases where electronic filing is required.  
7

8 (2) The court and the parties shall have access to more than one electronic filing service provider  
9 capable of electronically filing documents with the court or to electronic filing access directly  
10 through the court. ~~The court may charge fees of no more than the actual cost of the electronic~~  
11 ~~filing and service of the documents.~~ Any fees charged by an electronic filing service provider  
12 shall be reasonable. ~~The court, an~~ An electronic filing manager, or an electronic filing service  
13 provider shall waive any fees charged if the court deems a waiver appropriate, including in  
14 instances where a party has received a fee waiver.  
15

16 (3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent  
17 the program from causing undue hardship or significant prejudice to any party in an action,  
18 including, but not limited to, unrepresented parties. The Judicial Council shall make a form  
19 available to allow a party to seek an exemption from mandatory electronic filing and service on  
20 the grounds provided in this paragraph.  
21

22 (4) Unrepresented persons are exempt from mandatory electronic filing and service.  
23

24 (5) Until January 1, 2021, a local child support agency, as defined in subdivision (h) of Section  
25 17000 of the Family Code, is exempt from a trial court's mandatory electronic filing and service  
26 requirements, unless the Department of Child Support Services and the local child support  
27 agency determine it has the capacity and functionality to comply with the trial court's mandatory  
28 electronic filing and service requirements.  
29

30 (e) The Judicial Council shall adopt uniform rules for the electronic filing and service of  
31 documents in the trial courts of the state, which shall include statewide policies on vendor  
32 contracts, privacy, and access to public records, and rules relating to the integrity of electronic  
33 service. These rules shall conform to the conditions set forth in this section, as amended from  
34 time to time.  
35

36 (f) The Judicial Council shall adopt uniform rules to permit the mandatory electronic filing and  
37 service of documents for specified civil actions in the trial courts of the state, which shall include  
38 statewide policies on vendor contracts, privacy, access to public records, unrepresented parties,  
39 parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating  
40 to the integrity of electronic service. These rules shall conform to the conditions set forth in this  
41 section, as amended from time to time.  
42

43 (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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
1.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	AM	<p>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>	<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. The committee has added a clarifying edit on this point that actual cost is <i>the court’s</i> actual cost. 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</p>

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



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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
			<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>then, litigants must be exempted if electronic 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	<p>After review, it was determined this change would not impact our Family Law or Juvenile case types. Our case management system vendor, Tyler Technologies, is our electronic filing manager. All signatures and fees are collected through them, then directed to the Court.</p>	The committee appreciates the comments.
3.	<p>Superior Court of California, County of San Diego</p>	A	<p>1. Does the proposal appropriately address the stated purpose?</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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
	By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101		<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>	

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**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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
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><b>REQUEST FOR SPECIFIC COMMENTS:</b></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><b>GENERAL COMMENTS:</b> Cost Recovery</p>	The committee appreciates the support and the comments.

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**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	<b>[DRAFT]</b> 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 subdivisions, based the comment, the committee considered whether there was a more logical ordering to the proposed amendments. The committee agreed to move</p>

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**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	<b>[DRAFT] Committee Responses</b>
			<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>subdivision (b)(7) before subdivision (b)(6) to improve the continuity of the topics.</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	<b>[DRAFT]</b> 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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

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Title	Agenda Item Type
Rules: Electronic Filing and Service	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257	January 1, 2020
Recommended by	Date of Report
Information Technology Advisory Committee	July 3, 2019
Hon. Sheila F. Hanson, Chair	Contact
	Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

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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, include other persons in addition to parties within the scope of the rule, and add an advisory committee comment about electronic signatures.

The text of the amended rules is attached at pages 8-11.

### **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

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee raised several issues with the proposed amendments. With respect to the proposed amendments to rules 2.251 and 2.255, JRS raised concerns about the courts' ability to maintain records of parties' consent to electronic service transmitted through EFSPs. The committee considered these concerns, but they relate more to issues with Code of Civil Procedure section 1010.6 requirements that went into effect on January 1, 2019 than with the proposed rule amendments, which are limited. Effectively, all the proposed amendments do is ensure that parties, other persons, and the court receive notice that someone has, as stated in Code of Civil Procedure section 1010.6, "manifested consent [to electronic service] through electronic means with the court or the court's electronic filing service provider." The overarching policy implication of the issues JRS raised with respect to rules 2.251 and 2.255 is that the Judicial Council may need to consider sponsoring additional amendments to Code of Civil Procedure section 1010.6's requirements for express consent to electronic service.

JRS also raised concerns about the amendments for electronic signatures of non-filers under rule 2.257. JRS was concerned that courts would be expected to verify or technically validate electronic signatures on electronically filed documents that they accept for filing. This could present significant challenges for courts. The committee considered these concerns. The proposal was not intended to require the courts to validate or otherwise verify electronic 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 may be an issue with the way proposed rule was drafted. Under the proposed rule as circulated, an 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.*" That last emphasized portion of the proposed language 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 committee had originally considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *is invalidated.*" In the invitation to comment, the committee sought specific comments on the language "the electronic signature *may be declared invalid by the court*" vs. "the electronic signature *is invalidated.*" After discussing JRS' comments and the options to address the concerns, the committee decided to return to the original language it considered where the electronic signature is invalidated.

The benefit of this language is that it is an attribute of a digital signature, which is a known standard in California. Digital signatures are 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 only difference between a digital signature under Government Code section 16.5(a) and an electronic signature that would be compliant rule 2.257 would be that the rule wording does not require the signature to adhere to the Secretary of State’s digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)

The technical attributes and technology underpinning a compliant electronic signature should not impact the court’s authority to resolve disputes about an electronic signature. The committee determined this could be addressed in clarifying advisory committee comment stating, “The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.”

### **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.

### **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 and sought specific comments on 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” vs. “linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court.” These two options are discussed in detail in the “Policy implications” section, above.

## 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.

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 8-11
2. Chart of comments, at pages 12-20.
3. Link A: Code of Civil Procedure section 1010.6, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6).
4. Link B: Government Code section 16.5, [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=16.5](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=16.5).
5. Link C: California Code of Regulations, Title 2, section 22000-22005, [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 is  
42 invalidated; or  
43

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 is invalidated.

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.

30  
 31 **Advisory Committee Comment**

32 The requirements for electronic signatures that are compliant with the rule do not impair  
 33 the power of the courts to resolve disputes about the validity of a signature.



**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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
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.

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
			<p>and effective approach that protects the due process of all parties involved.</p> <p>Rule 2.257</p> <p>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.</p>	
2.	<p>California Lawyers Association Executive Committee of the Family Law Section By Saul Bercovitch Director of Governmental Affairs</p>	A	<p>FLEXCOM agrees with the proposed amendments to Rule of Court 2.257.</p> <p>FLEXCOM has no comment on the proposed amendments to Rules of Court 2.254 and 2.255.</p>	The committee appreciates the support.
3.	<p>Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658</p>	A	The OCBA believes the proposal addresses the stated purpose.	The committee appreciates the support.
4.	<p>Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán</p>	NI	<p><input type="checkbox"/> Rule 2.251 Electronic Service</p> <p><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</p>	<p>The committee appreciates the comments.</p> <p>Regarding the comment on rule 2.251, the comment is out of scope to the proposed amendments, but raise an important issue for the</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
	Administrative Analyst Family Law and Juvenile Court		<p>terms requiring them to submit to “affirmative consent” for all documents.</p> <p><input type="checkbox"/> Rule 2.257 Requirement for signatures on documents</p> <p><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> <p><b>Request for Specific Comments.</b></p> <ul style="list-style-type: none"> <li>▪ <i>What would the implementation requirements be for courts?</i></li> </ul> <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>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
			<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"> <li>• Significant fiscal impact</li> <li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li> <li>• Increases court staff workload</li> <li>• Impact on local or statewide justice partners.</li> </ul> <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>

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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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	Commenter	Position	Comment	<b>[DRAFT]</b> 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. The committee considered several options, including those suggested by JRS. Ultimately, the committee decided to return to the alternative language that it had considered stating the electronic signature must be “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.” The benefit of this language is that it is an attribute of a digital signature, which is a known standard in California. Digital signatures are 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 only difference between a digital signature under Government Code section 16.5(a) and an electronic signature that would be compliant rule 2.257 would be that the rule wording does not require the signature to adhere to the Secretary of State’s digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)</p>

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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	<b>[DRAFT]</b> 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>	

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



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(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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	Commenter	Position	Comment	<b>[DRAFT]</b> 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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23-24, 2019

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Title	Agenda Item Type
Rules: Remote Access to Electronic Records by Government Entities	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 2.540	January 1, 2020
Recommended by	Date of Report
Information Technology Advisory Committee	July 3, 2019
Hon. Sheila F. Hanson, Chair	Contact
	Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

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### 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**

Four 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; (3) Juvenile Court and Family Law Divisions of the 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 though court’s Juvenile

Court and Family Law Divisions commented that they would be in agreement when the court is able to offer remote access.

**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 4.
2. Chart of comments, at page 5.

DRAFT

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 (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>[DRAFT] Committee Responses</b>
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	A	Currently, Orange County does not offer remote access to electronic records on Family Law or Juvenile case files. However, if/when we do, we would be in agreement with the changes. It would require major enhancements to our case management system.	The committee appreciates the comments.
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.

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