



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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

### MINUTES OF OPEN MEETING

November 4, 2019  
12:10 PM – 1:20 PM  
Teleconference

**Advisory Body Members Present:** Hon. Peter J. Siggins; Hon. Louis R. Mauro; Hon. Kimberly Menninger; Mr. Don Willenburg, Mr. Darrel Parker

**Advisory Body Members Absent:** Hon. Julie Culver; Hon. Samantha Jessner

**Others Present:** Judicial Council Staff

#### OPEN MEETING

##### Call to Order and Roll Call

The chair called the meeting to order at 12:11 PM and took roll call.

##### Approval of Minutes

The advisory body reviewed and approved the minutes of the October 1, 2019, TAC Rules and Policy Subcommittee meeting.

There were no public comments received.

#### DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

##### Item 1

##### Rules and Policy Subcommittee 2019 Project Updates

Report on end of year Rules and Policy Subcommittee 2019 projects.

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

**Discussion:** Justice Siggins gave a recap of subcommittee workplan for 2019. Currently there are two statutory legislative proposals before the Judicial Council for their consideration at the November 2019 meeting. They are amendments to the Code of Civil Procedures to section 1010.6 and the second is a clarification to allow mailing and electronic submission of certain Penal Code section 1203.01.

The proposals to amend electronic filing and service and remote access rules were approved by the Judicial Council at their September meeting and are now complete.

Another item on the subcommittee workplan was electronic court records as data, following the Court Executive Advisory Committee's lead (CEAC). CEAC has determined they won't need and rules or revisions from this subcommittee. They will add a definition in the Trial Courts Record Manual to make clear that trial court records will include records that are in the form of data.

Also completed and published is the Privacy Resources Guide and is available on the internet. Justice Siggins will discuss with ITAC chairs how the ongoing maintenance will be handled going forward. Mr. Richard Blalock, Judicial Council staff spoke with executive leadership about future guide ownership. They shared that the guide has benefits to trial and appellate courts and perhaps a joint ownership may work or collaborative effort between several committees. It might be helpful to get an idea of how often the guide will need to be updated, for instance, it was accessed 186 times on website in the past year. Mr. Rob Oyung suggested to the ITAC chairs that this guide should be managed by an advisory committee. Justice Siggins feel's having staff resources to do the actual updates is critical and he will reach out to Mr. Oyung. This conversation will continue at the ITAC December meeting.

## Item 2

### **Rules and Policy Subcommittee 2020 Work Plan**

Review, prioritize and plan ITAC's 2020 Annual Agenda projects assigned to the subcommittee.

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

**Discussion:** Justice Siggins advised members that RUPRO has suggested priority levels for new projects. They are category 1, items that are urgent and category 2 is for items that are useful, but not urgent.

There are two project suggestions for the 2020 workplan. The first is to amend the California Rules of Court to indicate that an electronic filing service provider must allow the party to proceed with an electronic filing even if the party does not consent to receive electronic service. Justice Siggins and Justice Mauro both suggested this item be added to the workplan with a priority 2a.

**Motion to recommend ITAC add to its annual agenda a proposal to amend the California Rules of Court to require an electronic service provider to allow the party to proceed with an electronic filing even if the party does not consent to receive electronic service. Item to be added to the Rules & Policy Subcommittee workplan under priority 2a.**

**Approved.**

The second workplan item is to devise a form to capture changes to Penal Code 1203.01 as part of the suggestions to the legislature and currently with the Judicial Council for

approval. This item is a result of suggestions received during the public comment period. Justice Siggins believes this item is premature since statutory changes have not yet been enacted. Members agreed, and this item will not be added at this time. The subcommittee will review again once that has been done.

Judge Menninger expressed concerns regarding confusion on Rule 2.540 being a CCPOR record and not a judicial council record. Her suggestion to quickly resolve confusion is to amend the rule to specially state it is for CCPOR. This will be explored at a future meeting and to discuss if it needs to be added to the workplan.

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

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There being no further business, the meeting was adjourned at 12:32 PM.

Approved by the advisory body on enter date.



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# MEMORANDUM

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<b>Date</b> January 16, 2020	<b>Action Requested</b> Please review
<b>To</b> Information Technology Advisory Committee, Rules and Policy Subcommittee	<b>Deadline</b> January 22, 2020
<b>From</b> Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	<b>Contact</b> Andrea Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
<b>Subject</b> Rule Proposal: Amend rule 2.255 of the California Rules of Court	

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On November 4, 2019, the Rules and Policy Subcommittee (RPS) of the Information Technology Advisory Committee (ITAC) met and considered potential topics for proposals to be developed during the 2020 rules cycle. RPS recommended ITAC develop a proposal to amend the electronic service and filing rules to require an electronic filing service provider (EFSP) to allow a party to proceed with an electronic filing even if the party does not consent to receive electronic service. At its January 8, 2020 meeting, ITAC approved adding the project to its annual agenda.

### **Background**

In 2017, the Legislature amended Code of Civil Procedure section 1010.6 (section 1010.6) to require all persons who want to receive electronic service to provide express consent for cases filed on or after January 1, 2019. Rule 2.251(b) of the California Rules of Court<sup>1</sup> had previously

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<sup>1</sup> All further references to rules are to the California Rules of Court.

allowed the act of electronic filing alone to be evidence of consent to receive electronic service for represented persons, but the 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 either file a form or agree to a term of service with an EFSP that “clearly states that agreement constitutes consent” to receive electronic service. (Cal. Rules of Court, rule 2.251(b)(1)(B)(i).)

The rules do not require EFSPs to include a term for electronic filers to consent to electronic service. The rules also do not require an EFSP to allow an electronic filer who declines such a term to continue with using the EFSP’s electronic filing services. The Superior Court of Orange County and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees recommended ITAC consider amending the rules to require EFSPs to allow parties to proceed with an electronic filing even if the party does not consent to receive electronic service.

### **Draft Proposal Language**

Staff recommend adding the proposed amendment to rule 2.255, which includes additional requirements placed on EFSPs. Rule 2.255 is titled “Contracts with electronic filing service providers and electronic filing managers” and focuses on contracts with courts, but the scope of the rule also addresses the relationship between an EFSP and electronic filer. For example, rule 2.255(f) requires an EFSP to allow a filer to create an account without providing payment information. The subcommittee could consider amending the rule title to broaden it.

Staff have developed the following draft amendment language:

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

**(g) Optional term of service for an electronic filer's consent to electronic service**

An electronic service provider may include a term of service that clearly states the electronic filer's agreement to the term constitutes consent to receive electronic service. The electronic filer's agreement to any such term must be optional.

**Proposal Considerations**

**1. Should electronic filers be able to opt-out of electronic service?**

The potential benefit to electronic filers is that it could provide more options for electronic filing. The proposed amendment would continue to allow an EFSP to include a term for consent to electronic service, but would require the EFSP to allow a filer to decline that term and continue with the electronic filing. As such, a filer would not need to seek out a different EFSP or file with paper if they did not want to consent to electronic service. At its November 2019 meeting, members noted that this raises a policy question of whether an electronic filer *should* be able to opt-out of electronic service while availing themselves of the convenience of electronic filing.

This is a topic about which ITAC could benefit from receiving public comments. The invitation to comment includes an opportunity for ITAC to request specific comments from stakeholders and the public about the proposal. Staff recommend including the following questions in a request for specific comments: Should electronic filers be able to opt-out of electronic service? Why or why not?

**2. Feasibility for EFSPs**

EFSPs are not required to include a term for electronic filers to consent to electronic service. For EFSPs that choose to do so, this would require them to provide filers with an option to decline and proceed with an electronic filing. It is unknown what impact such a requirement would have on EFSPs, and the opportunity for public comment should shed light on whether it would present a significant issue. Staff recommend including the following questions in a request for specific comments: For EFSPs, is the proposal feasible?

### **Subcommittee's Tasks**

- Decide whether to recommend ITAC circulate a rule proposal.
- Consider the draft proposal language and decide what language, if any, to recommend for ITAC's consideration.
- Determine which questions, if any, to recommend ITAC include in a request for specific comments in an invitation to comment.

### **Links**

1. California Rules of Court, rule 2.255,  
[https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_255](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255)