



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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ITAC RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

November 4, 2020
12:10 PM – 1:10 PM
Videoconference

Advisory Body Members Present: Hon. Peter J. Siggins, Chair; Hon. Samantha Jessner; Hon. Louis R. Mauro; Mr. Darrel Parker; Mr. Don Willenburg

Advisory Body Members Absent: Hon. Julie Culver; Hon. Kim Menninger

Others Present: Judicial Council Staff

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:13 PM and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the July 1, 2020 ITAC Rules and Policy Subcommittee meeting.

There were no public comments received.

DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

Item 1

Rules and Policy Subcommittee 2020 Project Updates (Discussion Item)

Report on end of year Rules and Policy Subcommittee 2020 projects.

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

Discussion: Justice Siggins noted that the subcommittee met all their work objectives for 2020, which included amendments to the California Rules of Court that would allow electronic filers to file even though they did not consent to electronic service. The changes were approved and will become effective January 2021.

Item 2

Rules and Policy Subcommittee 2021 Work Plan (Discussion Item)

Review, prioritize and plan ITAC's 2021 Annual Agenda projects assigned to the subcommittee.

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

Action: Justice Siggins noted from the Information Technology Advisory Committee (ITAC) held on November 2, 2020 that due to the COVID-19 pandemic there is a need for prioritization to all advisory committee work in 2021. Priority should be given to changes being mandated by legislation, otherwise urgent needs, or assist justice partners, the courts, or parties coping with the COVID-19 pandemic.

Ms. Jaramillo reviewed potential projects for the subcommittee for the upcoming 2021 rules cycle. These include developing legislative and rule proposals for digital/electronic evidence identified by the ITAC Digital Evidence Workstream at the November 2 meeting. This item is consistent with the prementioned priorities and will assist courts and court users with accessing the court during and following the COVID-19 pandemic with some overlap with remote video proceedings and will be easier than paper or another format. Additionally, this is consistent with "otherwise urgent needs" as the Judicial Council has approved funding for court modernization for digital evidence projects. Not all recommendations fall within the prioritization, staff recommend the following three, with the remainder to be considered in the 2022 legislation and rules cycle:

- Defining "lodged electronic exhibits" in the California Rules of Court and making them confidential until the court has acted on them. This provides critical clarity on the issue of public access, which is helpful to the court, the public, and the litigants. This should also help smooth the path for more remote proceedings since the court would not need to devote resources to providing public access to material that the court may never use, and likewise, the litigants would not have to be concerned about material becoming public if they ultimately decided not to offer it up for the court's consideration.
- Advancing statutory amendments to clearly allow the use of vendors for storage of electronic exhibits and evidence.
- Advancing statutory amendments to remove the requirement that a clerk return an exhibit if it is an electronic format.

The workstream on remote video proceedings in civil cases, also made recommendations regarding rule changes being necessary.

An additional item for the subcommittee's consideration would be to assist the Criminal Law Advisory Committee with the legislation and rules for video remote proceedings in criminal matters. They would like to join in this subcommittee's statutory proposal that will probably be introduced to the legislator next year. Currently, emergency rules of the California Rules of Court, rules 3 and 5 permit video proceedings in criminal matter. Development of permanent legislation and rules would assist courts, justice partners, and parties with access to justice during and following the COVID-19 pandemic. The Criminal Law Advisory Committee is taking the lead on this item but have requested that the ITAC

be involved and that a member of the Rules and Policy Subcommittee join the working group they are forming to develop proposals. Judge Menninger who is also the liaison with that committee and is a member of this subcommittee will take the lead.

Motion to advance development of legislative and rule proposals for digital/electronic evidence and assisting Criminal Law Advisory Committee with development of legislation and rules for remote video proceedings in criminal matter.

Approved.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:31 PM.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date January 7, 2021	Action Requested Please review
To Information Technology Advisory Committee, Rules and Policy Subcommittee	Deadline January 12, 2021
From Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	Contact Andrea Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject Legislative and Rule Proposals Related to Exhibits and Evidence in Electronic Format	

On November 4, 2020, 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 2021 rule and legislative proposal cycle. RPS recommended ITAC develop proposals related to electronic exhibits and electronic evidence based on the needs identified by the Digital Evidence Workstream, including defining “lodged electronic exhibits” and permitting courts to use vendors for storage of electronic exhibits and electronic evidence.

Background

In 2020, the Rules and Statutes Track of the Digital Evidence Workstream was assigned to identify statutory and rule changes needed to facilitate the use of exhibits and evidence in electronic format. On November 2, 2020, ITAC met and received the workstream’s draft report with statute and rule recommendations. ITAC referred the recommendations to RPS to consider which recommendations ITAC should develop into proposals and circulate for public comment in 2021.

RPS considered the workstream recommendations and prioritized the following for development in 2021:

- Defining “lodged electronic exhibits” in the California Rules of Court and making them confidential until the court has acted on them. This provides critical clarity on the issue of public access, which is helpful to the court, the public, and the litigants. This should also help smooth the path for more remote proceedings since the court would not need to devote resources to providing public access to material that the court may never use, and likewise, the litigants would not have to be concerned about material becoming public if they ultimately decided not to offer it up for the court’s consideration.
- Advancing statutory amendments to provide courts with express authorization to use vendors for storage of exhibits and evidence in electronic format.
- Advancing statutory amendments to remove the requirement that a clerk return an exhibit if it is an electronic format.

Draft Proposal Language

A. Legislative Proposal for Express Statutory Authorization to Use Vendors for Storage of Exhibits and Electronic Evidence in Electronic Format

The law requires the court clerk to “safely keep or dispose of according to law all papers and records filed or deposited in any action or proceeding before the court.” (Gov. Code, § 69846.) In civil actions, the clerk is required to “retain in his or her custody, any exhibit, deposition, or administrative record” introduced at trial or filed in the action. (Code Civ. Proc., § 1952.) Likewise, in criminal actions, the clerk is required to retain all exhibits introduced or filed. (Pen. Code, § 1417.)

Staff recommend a new section 69846.1 be added to the Government Code to authorize the clerk of the court to use a vendor for exhibits and evidence in electronic format. Several provisions are modeled after suggestions in Appendix C of the draft report of the Digital Evidence Workstream, which is at page 19 of the attachments to this memorandum. Staff also recommend the existing code sections, addressing the clerk’s retention of exhibits, reference the proposed new section of the Government Code and authorize use of a vendor consistent with the new section.

Draft proposal language for the proposed new code section and amendments to existing sections begins at page 20 of the attachments to this memorandum. The draft proposal language includes staff comments to assist RPS in its discussion of the proposal language.

The proposed statutory language is relatively high level with the goal of addressing the following: an express grant of authority to use vendors, access to the material, who controls the material (ultimately, the court), and parties do not need to pay a fee. The proposal also includes a provision authorizing the Judicial Council to make rules. To the extent more detail may be needed if issues emerge with using vendors, the council could then develop rules of court to address them.

B. Rule Proposal for Lodged Electronic Exhibits

The draft report of the Digital Evidence Workstream recommended addressing electronic exhibits that must be transmitted to the court in advance of a proceeding but have not yet been offered as evidence. The workstream recommended that a rule be created to define a “lodged electronic exhibit” and specify that it is confidential prior to its use in a court proceeding. Once it is used in court, it would lose its confidentiality and become subject to public access unless it was under seal or confidential by operation of another law.

The reason for making lodged electronic exhibits confidential is to treat parties the same regardless of whether they appear at the proceeding with hard copies of exhibits or whether they have uploaded electronic exhibits in advance. If lodged electronic exhibits are not treated as confidential, parties may be dissuaded from using electronic exhibits or participating in remote proceedings where uploading in advance may be a necessity for conducting a smooth proceeding. Furthermore, public interest is likely nonexistent or at most de minimis in exhibits that have played no part in a proceeding. They are not the basis for adjudication, are not part of the official record of a proceeding, and they do not help the public understand how the court operates because the court has not acted on them.

Draft proposal language for the proposed new rule sections begins on page 24 of the attachments to this memorandum. The draft proposal language includes staff comments to assist RPS in its discussion of the proposal language.

C. Statutes Do Not Require the Court to Return Exhibits, Therefore No Amendments May Be Needed to Address Return of Electronic Exhibits

The workstream report suggested addressing any statutes that require the return of electronic exhibits and electronic evidence. However, it appears most statutes do not require the return of exhibits, rather it is the court’s decision whether an exhibit will be returned. (Code Civ. Proc., § 1952(a) [“the court *may* order the exhibit . . . returned,” emphasis added], § 1952.2 [“the court, in its discretion . . . *may* order the clerk to return all of the exhibits,” emphasis added]; Pen. Code, § 1417.2 (“the court *may*, on application of the party . . . order an exhibit delivered to that party,” emphasis added), § 1417.3 (upon the clerk’s recommendation, the court has authority to order the return of an exhibit that poses a “security, storage, or safety problem”; this provision appears

geared toward physical exhibits as it describes the physical size of any portion of an exhibit retained). Accordingly, no amendments may be needed to address electronic exhibits specifically.

Subcommittee's Tasks

- 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.

Attachments and Links

1. Draft Digital Evidence Workstream Rules and Statutes Subcommittee Report, pages 5–19.
2. Draft proposal to sponsor enactment of Government Code section 69846.1 and amendment of Government Code section 69846, Code of Civil Procedure section 1952, and Penal Code section 1417, pages 20–23.
3. Draft proposal to adopt rule 2.901 of the California Rules of Court, pages 24–28.
4. Link A: Code of Civil Procedure section 1952.2,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1952.2.
5. Link B: Penal Code section 1417.2,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1417.2&lawCode=PEN.
6. Link C: Penal Code section 1417.3,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1417.3.&lawCode=PEN.

Digital Evidence Workstream Rules and Statutes Subcommittee Report

SUBCOMMITTEE REPORT
RECOMMENDING RULES AND
STATUTES TO BE ADOPTED OR
CHANGED TO ALLOW COURTS TO
IMPLEMENT AND RECEIVE
ELECTRONIC EVIDENCE



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A. EXECUTIVE SUMMARY AND INTRODUCTION

The Rules and Statutes Track of the Digital Evidence Workstream was assigned to identify rules and statutes that need to change to allow courts to implement and receive electronic evidence and to identify and create new rules and/or statutes where appropriate. The Subcommittee developed this draft report to recommend changes to rules and statutes. Because the rules and statutes should be implemented to enable the other tracks to proceed, and based on the Judicial Council legislative and rule proposal timelines, the Subcommittee's work was spun off from the rest of the Workstream. Consequently, this Report is submitted as a stand-alone document.

Recommendations:

1. Use the descriptive term "electronic evidence" rather than "digital evidence."
2. Revise statutes requiring the clerk to maintain custody of exhibits to permit a third party vendor to maintain exhibits.
3. Address destruction and return of electronic evidence.
4. Create rules addressing access to electronic exhibit and electronic evidence.
 - a. Litigant access
 - b. Public access
 - c. Electronic evidence submitted during remote video proceedings
 - d. Status of lodged electronic exhibits
 - e. Access rules should apply only while court has possession
5. Address confidential records, sealed records, and harmful matter.
6. Maintain the security, integrity, and chain of custody.
7. Modify various other statutes and rules addressing exhibits.
8. Other recommended guidelines for lodged electronic exhibits and evidence.

B. OBJECTIVES

The Rules & Forms Subcommittee of the Digital Evidence Workstream was tasked with:

1. Identifying any and all rules and statutes that need to change to allow courts to implement and receive electronic evidence; and
2. Identifying and creating new rules and/or statutes where appropriate.

C. ACTIVITIES

The Subcommittee identified numerous issues to be addressed concerning the courts' receipt of electronic evidence.

Standards Governing Court Held Electronic Evidence

The Branch should have appropriate standards governing court held electronic evidence and its:

- identification
- organization
- timing and methods of receipt, return and destruction
- security protocols
- preservation in original form
- handling and confidentiality of sealed and confidential electronic evidence

During discussion it was noted that these standards should address all stages of the courts' holding of electronic evidence, including the transmission, introduction, retention, return, and destruction of electronic evidence.

Methods and Locations for Holding Electronic Evidence

Current statutes require the court clerk to hold all evidence received by the court. The Subcommittee discussed that electronic evidence may be held by outside third-party vendors. Statutes addressing evidence retention must provide for evidence submission and retention with a third-party vendor.

Public Access Standards

Although rules and statutes treat public access to exhibits that are *filed* in court as court records¹, no statutes or rules clearly address public access to exhibits that are offered or received into evidence.² Public access to electronic evidence will need to be considered and addressed. Appropriate (but limited) access should be allowed. Public access to an electronic exhibit that has been provided to the court before it is offered or received into evidence should be restricted. As a general rule, the public has a right of access to exhibits used as a basis for adjudication while they are in the possession or control of the court. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 91.)

D. RECOMMENDATIONS

1. Use the descriptive term “electronic evidence” instead of “digital evidence.”

The Subcommittee recommends using the term “electronic evidence” rather than “digital evidence” to refer to evidence that has been sent to, communicated with, received by, or presented to the court in an electronic format. “Electronic evidence” fits within the scope of a “writing” as that term is used in the Evidence Code.³ Specifically:

“Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Evid. Code, § 250, emphasis added.)

An exhibit does not become evidence until it is admitted by the court. Accordingly, an exhibit not yet marked or admitted into evidence, but sent to, communicated with, or received by the court in an electronic format is a “lodged electronic exhibit.” The use of the term “electronic” rather than “digital” is consistent with the use of “electronic” in other court contexts, including electronic records, electronic filing, and electronic service.

¹ See e.g., Gov. Code, § 68151, subd. (a)(1); Cal. Rules of Court, rules 2.3(2), 2.502(3), 2.551, 3.1112(b).

² The statutes addressing retention and return or destruction of evidence differ from the statute addressing retention of court records. (Compare Pen. Code, § 1417 et seq. and Code Civ. Proc., § 1952, et seq. with Gov. Code, § 68152.)

³ The language “recording upon any tangible thing” as used in Evidence Code section 250 encompasses electronic evidence stored in the cloud, because the evidence is actually stored on an electronic storage device.

2. Revise statutes requiring the clerk to maintain custody of exhibits to permit a third party vendor to maintain exhibits

To the extent Penal Code section 1417, Code of Civil Procedure section 1952, and Government Code section 69846 require the clerk to maintain custody of exhibits, the Subcommittee recommends the statutes be amended to expressly permit, but not require, a third party vendor to handle and maintain custody of electronic exhibits on behalf of the court clerk.⁴ If a third party vendor is permitted to store and manage a court's electronic evidence, the Subcommittee recommends that there be an exception for or special provisions governing the confidential nature of a "harmful matter" described in Penal Code section 1417.8.

3. Address the Destruction and Return of Electronic Evidence

The Subcommittee recommends addressing statutes concerning the return and destruction of exhibits, and determine whether electronic exhibits need to be "returned" to the party submitting them.⁵

4. Create rules addressing access to electronic exhibit and electronic evidence.

Exhibits that are "filed" in connection with motions or petitions are part of the court record. The Subcommittee recommends development of rules of court to define types of exhibits, who has access, when, and where.

a. Litigant Access

The Subcommittee recommends rules address whether, when, and to what extent remote access to lodged electronic exhibits and electronic evidence is authorized for parties, attorneys, and other specified individuals. California Rules of Court, rules 2.515 to 2.528, could serve as a model, allowing remote access to electronic court records by a party, a party's attorney, a court-appointed person, or authorized person working in a legal organization or qualified legal services project. (See also Cal. Rules of Court, rule 2.540 to 2.545 [similar rules for government entities].) Access should also require identity verification similar to California Rules of Court, rules 2.523 and 2.541.

b. Public Access

The Subcommittee recommends that rules address whether and when electronic evidence becomes a record subject to public access. As a general rule, the public has a right of access to exhibits used as a basis for adjudication while they are in the possession or control of the court. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 91.) The Judicial Council should determine whether remote public access should be granted to electronic exhibits and electronic evidence, to the extent it is feasible to do so, except for exhibits or evidence that is sealed or confidential. The rules should provide a

⁴ The Court could use the language of Government Code section 69955 as a guide. (See appendix C.)

⁵ Code Civ. Proc., §§ 1952, subs. (c & d), 1952.2, and 1952.3; Pen. Code, §§ 1417.1, 1417.2, and 1417.3.

method to prevent public access to private information of witnesses and victims and harmful matter. (See section 5 below.) The rule should identify any proceedings in which remote access should be precluded or limited to a courthouse-only access rule. Rules governing public access to electronic court records could serve as a model. (See Cal. Rules of Court, rules 2.503(c) and 8.83.) The rules might address time, place, and manner restrictions on public access to lodged electronic exhibits and electronic evidence. (See *Courthouse News Service v. Planet* (9th Cir. 2020) 947 F.3d 581, 595.)

c. Electronic Evidence Submitted during Remote Video Proceedings

Electronic exhibits or electronic evidence that is not submitted in advance of a hearing, and is merely held up to the screen, or screen-shared by the litigant or attorney during a remote video proceeding poses unique issues. The Court does not receive a copy of the exhibit, only views it. It potentially could include information that should be redacted or sealed from public view, but may be viewed by the public watching remote proceedings. In that case, a screen capture could be taken of improper material and result in broad dissemination.

The Subcommittee recommends that the Judicial Council's Remote Video Workstream address the issue of electronic exhibits and electronic exhibits in remote video proceedings.

d. Lodged Electronic Exhibits

The court or rules may require that potential electronic exhibits be transmitted to the court in advance of the proceeding in which the material is anticipated to be used. With hard copy exhibits, the court never acquires access to the exhibit until it is offered into evidence. The Subcommittee recommends that during the time the court only serves as a bailee of a potential electronic exhibit, before the evidence is offered into evidence, the potential evidence be considered confidential to maintain the status it would have had prior to the promulgation of procedures addressing electronic evidence.

The Subcommittee recommends a rule defining a "lodged electronic exhibit" to be confidential prior to its use in any court proceeding, and it only becomes subject to public access if it is offered in court or used as a basis for adjudication, and it is not otherwise confidential or sealed. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 94.) Once a lodged electronic exhibit is used as a basis for adjudication or offered as evidence, a rule should specify that it loses its character as a confidential lodged electronic exhibit.

The Subcommittee recommends rules to address who has access to lodged electronic exhibits. The Subcommittee recommends that only parties and attorneys for the side lodging the exhibit should have remote access to lodged electronic exhibits.

The Subcommittee recommends a rule or method to allow a court or third party vendor to destroy or permanently delete a lodged electronic exhibit that has been provided electronically but not used as a basis for adjudication or offered as evidence. The rule addressing destruction of conditionally lodged exhibits may provide guidance. (Cal. Rules of Court, rule 2.551(b)(6).) The rules should identify how the court should hold lodged electronic exhibits that are not used.

e. Access Rules Should Apply Only While Court Has Possession

Because the Court may not retain custody of exhibits after the case is completed, the Subcommittee recommends that litigant access or public access rules only apply while electronic evidence is in the possession or control of the court. Once the court no longer has possession of an exhibit or evidence, it should have no obligation to provide access to it.

5. Address Confidential Records, Sealed Records, and Harmful Matter

The Subcommittee recommends that the rules of court specifically address maintaining the confidentiality of any sealed or confidential electronic evidence. “Lodged electronic exhibits” may retain their confidential nature under other statutes or rules even after being used as a basis for adjudication or offered as evidence, for example a psychiatric report could be a lodged electronic exhibit, but may continue to be a confidential record after it has been offered as evidence. (See Evid. Code, § 1014.)

The Subcommittee recommends that the rules address redaction of sensitive personal information including social security numbers, financial information, arrest warrant and search warrant information, victim information, witness information, ethnicity, age, gender, government-issued identification card numbers, California Driver's license numbers, birth dates, confidential documents; sealed records; and harmful matter in electronic exhibits. (See e.g. Cal. Rules of Court, rule 8.83(d)(2).⁶) Redaction requirements may also be imposed to redact GPS metadata from the electronic files and/or blurring faces of bystanders and witnesses.

When redacted electronic evidence or an electronic exhibit is submitted to the court, the parties and/or their attorneys must submit both an original unredacted version and a redacted version for public access purposes.

The Subcommittee recommends amending California Rules of Court, rule 1.201(b) to require the parties and their attorneys to redact information not only from filed documents, but also from electronic evidence or electronic exhibits submitted to the court.

⁶ California Rules of Court, rule 8.83(d)(2) provides:

The following information must be redacted from records to which the court allows remote access under (d): driver's license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. Subdivision (d)(2) does not apply to any document in the original court file; it applies only to documents that are made available by remote electronic access.

Proposal: It may also be appropriate to permit the Court to redact information that should not be in the public record.

The court has discretion to seal or redact personal identifying information in electronic evidence that are part of the public court record if the court makes findings that it would protect constitutionally-protected privacy interests of parties, victims, and witnesses.

The Subcommittee recommends special provisions protecting the confidential nature of Harmful Matter described in Penal Code section 1417.8.

The Subcommittee recommends that confidential and sealed lodged electronic evidence must be provided through a secure platform, and transmission of the information must be encrypted. (See Cal. Rule of Court, rule 2.542 as it relates to confidential or sealed electronic records, and Cal. Rules of Court, rule 2.256 regarding responsibilities of an electronic filer.)

6. Maintain security, integrity, and chain of custody of electronic evidence

The Subcommittee recommends that the holder of electronic evidence or electronic exhibits, whether it is the court or a third party vendor, be required to maintain the records in a secure manner that preserves confidentiality, and to strictly limit public access either by having separate repositories or digital rights management that limits access based on security levels.

The Subcommittee recommends the Judicial Council develop technical guidance or best practices to establish roles, digital rights management, and security levels to determine who can submit, access, retrieve lodged electronic exhibits and electronic evidence. Third party vendors must be required to comply with Judicial Council guidelines, and be subject to identify verification, identity management and user access provisions such as California Rules of Court, rules 2.523 and 2.541.

Safeguards will be required to protect the confidentiality and integrity of electronic evidence at all points where it is received, processed, stored, and maintained. This requires a broad set of management, operations, and technology specific security controls that must be in place to protect the data and ensure that privacy rights, safety and security protocols, chain-of-custody, and confidentiality requirements are maintained.

This will also require cloud security controls to protect the full lifecycle of data and ensure appropriate background screening of personnel with potential access to personal identifying information and criminal justice information (CJI).

The FBI's Criminal Justice Information Services (CJIS) requires all private contractors who process CJI to sign the CJIS Security Addendum, a uniform agreement that helps ensure the security and confidentiality of CJI in compliance with the CJIS Security Policy. It also commits the contractor to maintaining a security program consistent with federal and state laws, regulations, and standards, and limits the use of CJI to the purposes for which a government agency provided it.

7. Modify various other statutes and rules addressing exhibits.

The Subcommittee recommends amending Evidence Code section 1560 subdivisions (c) and (d) to permit electronic submission of subpoenaed business records from nonparty entities under seal and treating as confidential until they are introduced as evidence or entered into the record. Currently, Evidence Code section 1560 requires such evidence to be enclosed in a sealed “envelope or wrapper.”

Adopting a comprehensive set of rules addressing electronic exhibits may render subdivisions (c) and (d) of rule 2.400 of the California Rules of Court moot. Those rules address the clerk’s return of exhibits, and access to exhibits in the possession of temporary judges. The Subcommittee recommends that subdivisions (c) and (d) of California Rules of Court, rule 2.400 either be moved to the new rules addressing access to exhibits or cross-referenced in such rules.

Several rules of court require exhibits to be submitted to higher courts for writ and appeal purposes. If electronic evidence or electronic exhibits are maintained on the server of a court third party vendor, the Judicial Council should consider revising the rules to permit hyperlinks to the stored exhibits rather than actual submission of the exhibits. (See Cal. Rules of Court, rules 8.122, 8.204, 8.224, 8.320, 8.407, 8.483, 8.486, 8.504, 8.610, 8.622, 8.634, 8.832, and 8.931.)

8. Other Recommended Guidelines for Lodged Electronic Exhibits and Evidence

The Subcommittee recommends that statutes, rules and standards be flexible to address local court needs and capacities.

The Subcommittee recommends that electronic exhibits and electronic evidence file formats should be universally playable regardless of native format.

Guidelines or best practices should be established for the timing of submission of lodged electronic exhibits that precedes the date of any hearing or trial in which they will be offered.

APPENDIX A - Subcommittee Roster

Judge Kimberly Menninger

Orange County Superior Court

Presiding Judge Julie R. Culver

Monterey County Superior Court

Andrea L. Jaramillo, Attorney

Legal Services | Leadership Services Division

Robin Brandes-Gibbs, Deputy General Counsel

Orange County Superior Court

Kelley Heffelfinger, IT Project Manager I

Los Angeles Superior Court

Fred Acosta, Court Operations Manager

Orange County Superior Court

APPENDIX B – Statutes and Rules Proposed To Be Modified

Rule	What it Does	What changes are necessary or issues should be resolved
Create definitions		Define lodged electronic exhibits that are potentially evidence, but have not been offered or admitted into evidence.
Define how lodged electronic exhibits are treated		Where are lodged electronic exhibits stored? Who has access? How do we address it once proceeding is over and we have not admitted it or used it for an offer of proof?
Code Civ. Proc., § 1952	In civil cases, the clerk must retain any exhibit introduced or filed in a civil action or proceeding for 60 days following the judgment or the final determination of any appeal.	Address the "custody of the clerk" language in the statutes. Can outside vendors retain the evidence? A model for this might be the TCRM - case management systems hosted by vendor.
Code Civ. Proc., § 1952.2	Procedure for ordering the return of trial exhibits.	
Code Civ. Proc., § 1952.3	Any exhibit contained in a sealed civil case must be retained for 2 years beyond the date they would have been destroyed if not sealed.	Address the "custody of the clerk" language in the statutes.
Pen. Code, § 1417	All exhibits that have been introduced or filed in any criminal action or proceeding shall be retained by the clerk of the court who shall establish a procedure to account for the exhibits properly until final determination of the action or proceedings.	Address "retention by the clerk" language. Need to call out exhibits that may be electronic. May want to have the Rules of Court amended to address what types of evidence is where, and give the Judicial Council authority to do so.
Pen. Code, § 1417.3	The clerk may recommend that the court order the return of exhibits that pose security, storage, or safety problems prior to the final determination of a criminal action or proceeding. But the clerk is supposed to substitute it with a photographic record. (Pen. Code, § 1417.3, subd. (a).)	For electronic evidence, because there can be multiple originals, laws addressing return of exhibits may be changed to reduce court workload. Statutes or rules should provide notice to parties that they should download their exhibits prior to destruction. This would make parties responsible for retaining/destroying their own evidence.

Rule	What it Does	What changes are necessary or issues should be resolved
Pen. Code, § 1417.8(a)	Addresses exhibits that are photographs of minors found to be harmful matter.	"Retained by the clerk of the court" and "any duplication of the photograph of the exhibit in the possession of the parties" shall be delivered to the clerk" (Pen. Code, § 1417.8, subd. (a)(2).) How do we address harmful matter? Should we prohibit this from going to a vendor if we use a vendor to store evidence? Should the court retain possession and control to protect privacy? If it does go to a third party, what type of controls should protect it?
Gov. Code, § 69846	"The clerk of the superior court shall safely keep or dispose of according to law all papers and records filed or deposited in any action or proceeding before the court."	This should permit a third party vendor to handle exhibits.
Evid. Code, § 1560	The rule addresses business records subpoenaed from a witness. Subdivisions (c) requires the records to be delivered to the court in a sealed envelope, and subdivision (d) addresses the return of the records to the party.	This statute should be amended to permit the subpoenaed records to be electronically filed conditionally under seal with the court.
CRC rule 1.201(b)	The parties and their attorneys are responsible for excluding or redacting personal identifiers, including social security numbers or financial account numbers from "filed" documents.	This applies to documents "filed" in the court's public file. There should be a similar requirement for redaction with respect to exhibits. But the original should be filed as a confidential document.
CRC rule 2.250	Defines terms for electronic service and electronic filing and transmission.	This does not address exhibits. We should have a process to electronically provide exhibits.
CRC rule 2.400(c)(1)	The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit.	What does this mean with respect to electronic evidence?

Rule	What it Does	What changes are necessary or issues should be resolved
CRC rule 2.400(c)(2) & (d)	These paragraphs address exhibits in the possession of temporary judges or referees.	Adoption of a comprehensive set of rules addressing electronic exhibits may render subdivisions (c) and (d) of rule 2.400 of the California Rules of Court moot. The Subcommittee recommends that California Rules of Court, rule 2.400(d) and (d) either be moved to the new rules addressing access to exhibits or cross-referenced in such rules.
CRC rule 2.502	Subdivision (c) defines "court record" for purposes of chapter to mean "any document, paper, or exhibit filed in an action or proceeding; any order or judgment of the court... "	Chapter 2 addresses public access to court records. Should the rule specifically exclude lodged electronic exhibits? Should we exclude "Exhibits that are not filed or admitted into evidence?" Do we need rules addressing public access to electronic exhibits? Do we want to permit remote access to such exhibits?
CRC rule 2.503(c)	Records in criminal proceedings, juvenile, guardianship, conservatorship, mental health proceedings, family law proceedings, civil harassment, workplace violence, elder abuse, and minor's compromises may not be made available remotely.	Should we preclude remote public access to electronic evidence in these case types?
CRC rules 2.515 to 2.528	Remote access is allowed for a party, a party's attorney, a court-appointed person, or authorized person working in a legal organization or qualified legal services project.	Does this apply to electronic evidence? When? We need rules to address lodged electronic exhibits and electronic evidence. Who has access to them, how it is handled, and how it is destroyed or removed. "After X days, we can destroy it."
CRC rule 2.516	To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515 subject to the limitations of the law.	These rules are designed to provide access to specified people, create uniformity among trial courts.
CRC rules 2.540 to 2.545	Remote access for government entities. Confidential and sealed records must be provided through a secure platform, and transmission of the information must be encrypted.	Does this apply to electronic evidence? When?

APPENDIX C – Potential Digital Evidence Storage Vendor Rule

Using the language of Government Code section 69955 (which addresses electronic storage of official reporting notes) as a guide, the Judicial Council could create a rule addressing Digital Evidence Storage Vendors. Proposed language based on that rule follows:

- (a) Electronic Evidence admitted into evidence shall be stored and maintained by the [Digital Evidence Storage Vendor] for the time periods specified for evidence preservation under California Penal Code, section 1417 et seq. and California Code of Civil Procedure, sections 1952 and 1952.2. The evidence shall be accessible to the court, court personnel, and authorized persons.
- (b) Electronic Evidence accepted into evidence shall be kept by the [Digital Evidence Storage Vendor] in a place designated by the court, or, upon order of the court, delivered to the clerk of the court.
- (c) The electronic evidence shall be maintained by the [Digital Evidence Storage Vendor].
- (d) The electronic evidence shall be labeled with the case name, case number, the date admitted, the exhibit number. The electronic evidence shall be indexed for convenient retrieval and access. Instructions for access to electronic evidence shall be documented.
- (e) At least one duplicate backup copy of the electronic evidence shall be stored in a manner and place that reasonably assures its preservation.
- (f) Electronic transmissions that have not been marked for identification or admitted, but have been transmitted to the court through the Digital Evidence Storage Vendor shall be immediately deleted after the hearing, proceeding, or trial for which the transmissions were submitted, and email confirmation of such deletion shall be sent to the submitting party.
- (g) Electronic transmissions that have not been offered, marked for identification, or admitted in evidence are not a court record and are not subject to public access rules.
- (h) [Reserved for a section addressing evidence marked for identification, but not admitted.]
- (i) Electronic evidence that is admitted may be destroyed by the Digital Evidence Storage Vendor after the periods established by California Penal Code, section 1417 et seq. and California Code of Civil Procedure, sections 1952 and 1952.2 upon notice to the Court and parties.
- (j) A periodic review of the media on which the evidence is stored shall be conducted to assure that a storage medium is not obsolete and that current technology is capable of accessing and reproducing the evidence during the required retention period.
- (k) If the agreement with the Digital Evidence Service Provider terminates, the evidence maintained by the Digital Evidence Service Provider shall be returned to the clerk of the court.
- (l) The fees for the storage of evidence by the Digital Evidence Service Provider shall be paid by the court.

1 **Government Code § 69846**

2
3 The clerk of the superior court shall safely keep or dispose of according to law all papers
4 and records filed or deposited in any action or proceeding before the court. The clerk may
5 use a vendor to store exhibits lodged or introduced and evidence received by the court in
6 electronic format subject to the requirements of Government Code section 69846.1.

7
8 *Staff Comments: This would incorporate the proposed new code section*
9 *(immediately below).*

10
11 **Government Code § 69846.1**

- 12
13 (a) Except as provided for in (b), the clerk may use a vendor to store and maintain
14 exhibits lodged or introduced and evidence received by the court in electronic
15 format.
16
17 (b) The clerk may not use a vendor to store and maintain exhibits and evidence
18 received by the court in an electronic format when the exhibits or evidence are
19 photographs described in Penal Code section 1417.8.

20
21 *Staff Comments: This code section describes special handling of photographs*
22 *related to specified crimes. ITAC can ask for specific comments during public*
23 *comments about whether any other material should be excluded from vendor*
24 *storage. The committee can also seek feedback from the Criminal Law Advisory*
25 *Committee.*

26
27 *A copy of Penal Code section 1417.8 is available online at*
28 *[https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1417.8.&lawCode=PEN)*
29 *[417.8.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1417.8.&lawCode=PEN)*

- 30
31 (c) Exhibits and evidence in electronic format stored with a vendor shall be accessible
32 only by judicial officers, court personnel, and persons authorized by the court.

33
34 *Staff Comments: This is designed to keep court control over the materials stored*
35 *with the vendor.*

1 (d) If the court orders the clerk to destroy or otherwise dispose of an exhibit or
2 evidence in electronic format and that exhibit or evidence is stored with a vendor,
3 the clerk shall direct the vendor to destroy or dispose of the exhibit or evidence.
4

5 *Staff Comments: This is designed to keep court control over the materials stored*
6 *with the vendor.*
7

8 (e) The vendor shall only destroy or dispose of exhibits or evidence in electronic
9 format as directed by the court and its clerk.
10

11 *Staff Comments: This is designed to keep court control over the materials stored*
12 *with the vendor.*
13

14 (f) At least one duplicate backup copy of an exhibit or evidence in electronic format
15 shall be stored in a manner and place that reasonably assures its preservation.
16

17 *Staff Comments: This is designed to ensure an exhibit or evidence is not lost due to*
18 *some mistake or catastrophe that damages or destroys the originally uploaded file.*
19

20 (g) If a court's agreement with a vendor terminates, the vendor shall return all exhibits
21 and evidence to the clerk of the court, or transmit all exhibits and evidence to a new
22 vendor as directed by the court or its clerk.
23

24 *Staff Comments: This is designed to keep court control over the materials stored*
25 *with the vendor.*
26

27 (h) No party shall be charged a fee for the court's use of a vendor.
28

29 *Staff Comments: It is up to the court if it will use a vendor for storage so parties*
30 *should not incur fees for that storage.*
31

32 (i) The Judicial Council may adopt rules with additional requirements applicable to the
33 use of vendors for storage and maintenance of exhibits and evidence in electronic
34 format.
35

36 *Staff Comments: This will ensure additional flexibility for the Judicial Council to*
37 *respond to any emergent issues with vendor storage.*
38
39
40

1 **Code of Civil Procedure § 1952**

- 2
- 3 (a) The clerk shall either retain in his or her custody, or in the custody of a vendor
- 4 consistent with the requirements of Government Code section 69846.1, any
- 5 exhibit, deposition, or administrative record introduced in the trial of a civil action
- 6 or proceeding or filed in the action or proceeding until the final determination
- 7 thereof or the dismissal of the action or proceeding, except that the court may order
- 8 the exhibit, deposition, or administrative record returned to the respective party or
- 9 parties at any time upon oral stipulation in open court or by written stipulation by
- 10 the parties or for good cause shown.
- 11
- 12 (b) No exhibit or deposition shall be ordered destroyed or otherwise disposed of
- 13 pursuant to this section where a party to the action or proceeding files a written
- 14 notice with the court requesting the preservation of any exhibit, deposition, or
- 15 administrative record for a stated time, but not to exceed one year.
- 16
- 17 (c) Upon the conclusion of the trial of a civil action or proceeding at which any exhibit
- 18 or deposition has been introduced, the court shall order that the exhibit or
- 19 deposition be destroyed or otherwise disposed of by the clerk. The operative
- 20 destruction or disposition date shall be 60 days following final determination of the
- 21 action or proceeding. Final determination includes final determination on appeal.
- 22 Written notice of the order shall be sent by first-class mail to the parties by the
- 23 clerk.
- 24
- 25 (d) Upon the conclusion of any posttrial hearing at which any exhibit, deposition, or
- 26 administrative record has been introduced, the court shall order that the exhibit or
- 27 deposition be destroyed or otherwise disposed of by the clerk. The operative date of
- 28 destruction or disposition shall be 60 days following the conclusion of the hearing,
- 29 or if an appeal is taken, upon final determination of the appeal. Written notice of
- 30 the order shall be sent by first-class mail to the parties by the clerk.
- 31

32 *Staff Comments: Both (c) and (d) require the clerk to destroy or dispose of the*

33 *materials pursuant to a court order. These should be fine to leave as-is because the*

34 *clerk should have the ability to direct the vendor to destroy or otherwise dispose of*

35 *the exhibit under proposed Government Code section 68946.1(d). The same goes*

36 *for Penal Code section 1417.5, which addresses disposal in criminal matters*

37 *(available online at*

38 [http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1417.5)

39 [http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1417.5)

40 [http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1417.5)

1 **Penal Code § 1417**

2

3 All exhibits which have been introduced or filed in any criminal action or proceeding
4 shall be retained by the clerk of the court or in the custody of a vendor consistent with the
5 requirements of Government Code section 69846.1, ~~who~~ The clerk of the court shall
6 establish a procedure to account for the exhibits properly, subject to Sections 1417.2 and
7 1417.3 until final determination of the action or proceedings and the exhibits shall
8 thereafter be distributed or disposed of as provided in this chapter.

9

DRAFT

1 Title 2. Trial Court Rules

2
3 Division 7. Proceedings

4
5 Chapter 1. General Provisions

6
7 **Rule 2.901. Lodged electronic exhibits**

8
9 *Staff Comments: Where this rule should be located within the rules should be*
10 *addressed. Title 2, Division 7, Chapter 1 appears to be most logical place to insert*
11 *the new rule. It makes the rule applicable to trial courts and all proceedings. To*
12 *place it better in context, the layout of all the title 2 rules are available online here:*
13 *<https://www.courts.ca.gov/cms/rules/index.cfm?title=two>.*

14
15 **(a) Definition**

16
17 A lodged electronic exhibit is an exhibit in electronic format that is not filed, but is
18 transmitted to or received by the court for temporary storage pending use at trial or
19 other evidentiary hearing.

20
21 **(b) Confidentiality**

22
23 (1) Confidentiality under this rule

24
25 A lodged electronic exhibit is confidential under this rule until it is introduced
26 as evidence.

27
28 (2) Confidentiality or sealing independent of this rule

29
30 If a lodged electronic exhibit is confidential by law or sealed by court order
31 independent of this rule, it does not lose its confidential or sealed status by
32 operation of this rule.

33
34 *Staff Comments: The goal here is to treat people appearing at a proceeding with*
35 *hardcopies the same as people appearing who have lodged an electronic exhibit in*
36 *advance. In some courts, local rules may require all exhibits to be lodged in*
37 *advance regardless of format (see, e.g., Santa Clara local rules, rule 9D(9), page 8*
38 *at https://www.sccscourt.org/general_info/rules/pdfs/Civil.pdf). In those instances,*
39 *the goal of treating parties the same would not be achieved if a lodged electronic*
40 *exhibit is confidential, but a hardcopy is not. One option, therefore, is to allow a*
41 *local rule to deviate from statewide rule. Or, specify in the proposed rule that if a*
42 *court requires physical exhibits to be lodged in advance and those exhibits are not*
43 *treated as confidential, electronic exhibits shall be treated in the same manner.*

1 *ITAC can also request specific comments to address this issue in the Invitation to*
2 *Comment.*

3
4 **(c) Deletion of lodged electronic exhibit if not introduced**

5
6 If a lodged electronic exhibit is not introduced as evidence, the clerk must delete it
7 immediately after the hearing, proceeding, or trial for which the lodged electronic
8 exhibit was submitted, and email or mail confirmation of such deletion shall be sent
9 to the submitting party.

10
11 *Staff Comments: This is modeled this after subdivision (f) in the draft language in*
12 *Appendix C of the draft report of the Digital Evidence Workstream. This version*
13 *includes mail in addition to email for the confirmation. This provides more than*
14 *one way deliver the conformation if the party does not use email or an there is a*
15 *problem and an email bounces (e.g., account has been deleted, typo in the email*
16 *address).*

17
18 *The invitation to comment can request specific comments on the timing of deletion*
19 *and whether it should be immediately after the proceeding or at some other time.*

20
21 **(d) Exclusion or redaction of identifiers**

22
23 (1) Identifiers

24
25 To protect personal privacy and other legitimate interests, parties and their
26 attorneys must not include, or must redact where inclusion is necessary, the
27 following identifiers from all lodged electronic exhibits, unless otherwise
28 provided by law or ordered by the court:

29
30 (A) Social security numbers. If an individual's social security number is
31 required, only the last four digits of that number may be used.

32
33 (B) Account numbers. If account numbers are required, only the last four
34 digits of these numbers may be used.

35
36 (C) Dates of birth.

37
38 (D) Criminal Identification and Information numbers and National Crime
39 Information Center numbers.

40
41 (E) Addresses and phone numbers of parties, victims, witnesses, and court
42 personnel.

1 (F) Medical or psychiatric information.

2
3 (G) Global Positioning System metadata.

4
5 (H) Faces of bystanders and witnesses.

6
7 *Staff Comments: The draft report of the Digital Evidence Workstream*
8 *recommended redaction of sensitive personal information. The language above is*
9 *modeled this after rule 1.201 of the California Rules of Court*
10 *(https://www.courts.ca.gov/cms/rules/index.cfm?title=one&linkid=rule1_201),*
11 *which covers filings. That rule only covers Social Security numbers and financial*
12 *account numbers. This rule expands the scope of personal identifiers here as*
13 *recommended in the draft workstream report.*

14
15 *For background on the limited scope of identifiers in rule 1.201, the Judicial*
16 *Council report on the proposal to adopt rule 1.201 stated:*

17
18 *In developing this rules proposal on the list of identifiers that must be*
19 *excluded or redacted, the advisory committee considered including on the list*
20 *not only social security and financial account numbers, but also other*
21 *identifying information such as drivers' license numbers, dates of birth, and*
22 *names of minor children... But the advisory committee concluded that the*
23 *proposed rule should require the exclusion or redaction of only two types of*
24 *identifiers—social security and financial account numbers. Most of the*
25 *commentators on the rule proposal agreed.*

26
27 *Other information about parties besides their social security and financial*
28 *account numbers is useful and sometimes necessary in various types of cases*
29 *including traffic, family law, probate, or personal injury. The benefits of*
30 *continuing to include such additional information in court documents relied*
31 *on for adjudication and administration of cases outweigh the possible*
32 *additional privacy protection that excluding or redacting the information*
33 *might afford.*

34
35 *Nonetheless, the types of identifiers above are redacted for remote access to*
36 *electronic court records (see, e.g., rule 8.83(d)(2).) With electronic exhibits, one*
37 *issue is that they may be used in remote proceedings and displayed on a screen*
38 *visible to the public. As such, concerns about remote public access to sensitive*
39 *personal information may still apply.*

40
41 *The invitation to comment can request specific comments on whether any of the*
42 *identifiers should not be included or whether more identifiers should be included.*

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(2) Responsibility of the party lodging the electronic exhibit

The responsibility for excluding or redacting identifiers identified in (d)(1) from all electronic exhibits lodged with the court rests solely with the parties and their attorneys. The court clerk will not review each electronic exhibit for compliance with this provision.

Staff Comments: This is modeled after rule 1.201, which applies to filings.

(3) Confidential reference list

If the court orders on a showing of good cause, a party lodging an electronic exhibit containing identifiers listed in (d)(1) may lodge, along with the lodged electronic exhibit, a reference list. The reference list is confidential. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.

Staff Comments: This is modeled after rule 1.201, which applies to filings. That rule includes the following requirement: "A party filing a confidential reference list must use Confidential Reference List of Identifiers (form MC-120) for that purpose." Form MC-120 is available online <https://www.courts.ca.gov/documents/mc120.pdf>

The form and it is specific to rule 1.201 and filings. ITAC could create a specific form for lodged electronic exhibits or not require the use a specific form at this time. As drafted, the rule allows for the creation and lodging of the reference list, but does not require a particular format.

(d) Scope

The requirements of subdivision (d)(1) do not apply to lodged electronic exhibits that are sealed or otherwise confidential by law independent of this rule.

Staff Comments: If an exhibit is already sealed or confidential, then the need to protect against public disclosure of sensitive private information is obviated.

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Advisory Committee Comment

Advisory Committee comment would go here.

Staff Comments: There is an opportunity to include an advisory committee comment if it is needed.

DRAFT



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

January 6, 2021

Action Requested

Please review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee

Deadline

January 12, 2021

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Contact

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

Subject

Rule Proposal to Add Reference to Penal
Code section 690.5 to the Electronic Filing
and Service Rules

At its December 7, 2020 meeting, the Information Technology Advisory Committee (ITAC) included an item on its annual agenda for the Rules and Policy Subcommittee (RPS) to develop a proposal to include references to Penal Code section 690.5 in the electronic filing and electronic service rules of the California Rules of Court.

Penal Code section 690.5 expressly authorizes electronic filing and electronic service in criminal actions. This applies only to permissive electronic filing and electronic service by consent. Penal Code section 690.5 also requires the Judicial Council to adopt rules for electronic filing and electronic service of documents in criminal matters.

Draft Proposal Language

The proposal would add references to Penal Code section 690.5 to the electronic filing and electronic service rules of court to expressly bring Penal Code section 690.5 within the scope of those rules. The rule provisions on mandatory electronic filing and mandatory electronic service

clarify, where needed, that they apply only to civil actions, consistent with Penal Code section 690.5.

The following amendments are included with the proposal:

- **Rule 2.251(a):** This provision generally authorizes electronic service and states that service may be made electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds Penal Code section 690.5.
- **Rule 2.251(c)(1)–(2):** These provisions govern electronic service required by local rule or court order. The amendments specify that courts may only require electronic service in civil actions.
- **Rule 2.251(k):** This provision authorizes a court to serve documents electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds Penal Code section 690.5.
- **Rule 2.252(a):** This provision generally authorizes electronic filing as provided under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds Penal Code section 690.5.
- **Rule 2.253(a):** This provision specifically authorizes courts to permit electronic filing by local rule subject to the conditions in Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds Penal Code section 690.5.
- **Rule 2.258:** This rule governs the payment of filing fees. The amendment specifies the rule applies to civil actions as criminal actions do not have filing fees.

Though the draft only includes the amendments noted above, all the electronic filing and electronic service rules are included with the draft proposal attachment for RPS's consideration for full context. The amendments are underlined and highlighted in yellow. In the version circulated for public comment, the proposal will be pared down to include only the amendments rather than the full text of the electronic filing and electronic service rules.

Staff recommend seeking feedback from the Criminal Law Advisory Committee before the proposal is sent to ITAC.

Subcommittee's Tasks

- 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.

Attachments and Links

1. Draft proposal to amend rules 2.251, 2.252, 2.253, and 2.258 of the California Rules of Court, pages 4–27.
2. Link A: Penal Code section 690.5,
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5&lawCode=PEN.

Chapter 2. Filing and Service by Electronic Means

Rule 2.250. Construction and definitions

Rule 2.251. Electronic service

Rule 2.252. Documents that may be filed electronically

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order

Rule 2.254. Responsibilities of court

Rule 2.255. Contracts with electronic filing service providers

Rule 2.256. Responsibilities of electronic filer

Rule 2.257. Requirements for signatures on documents

Rule 2.258. Payment of filing fees

Rule 2.259. Actions by court on receipt of electronic filing

Rule 2.261. Authorization for courts to continue modifying forms for the purpose of electronic filing and forms generation

Rule 2.250. Construction and definitions

(a) Construction of rules

The rules in this chapter must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(Subd (a) adopted effective January 1, 2011.)

(b) Definitions

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

- (1) A “document” is a pleading, a declaration, an exhibit, or another writing submitted by a party or other person, or by an agent of a party or other person on the party’s or other person’s behalf. A document is also a notice, order, judgment, or other issuance by the court. A document may be in paper or electronic form.
- (2) “Electronic service” has the same meaning as defined in Code of Civil Procedure section 1010.6.
- (3) “Electronic transmission” has the same meaning as defined in Code of Civil Procedure section 1010.6.
- (4) “Electronic notification” has the same meaning as defined in Code of Civil Procedure section 1010.6.

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- (5) “Electronic service address” means the electronic address at or through which the party or other person has authorized electronic service.
- (6) An “electronic filer” is a party or other person filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.
- (7) “Electronic filing” is the electronic transmission to a court of a document in electronic form. For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed.
- (8) An “electronic filing service provider” is a person or entity that receives an electronic filing from a party or other person for retransmission to the court or for electronic service on other parties or other persons, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(Subd (b) amended effective January 1, 2019; adopted as unlettered subd effective January 1, 2003; previously amended and lettered effective January 1, 2011; previously amended effective July 1, 2013, and January 1, 2018.)

Rule 2.250 amended effective January 1, 2019; adopted as rule 2050 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, January 1, 2008, January 1, 2011, July 1, 2013, and January 1, 2018.

Advisory Committee Comment

The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

1 **Rule 2.251. Electronic service**

2
3 **(a) Authorization for electronic service**

4
5 When a document may be served by mail, express mail, overnight delivery, or fax
6 transmission, the document may be served electronically under Code of Civil
7 Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

8
9 *(Subd (a) amended effective July 1, 2013; previously amended effective January 1, 2007,*
10 *January 1, 2008, and January 1, 2011.)*

11
12 **(b) Electronic service by express consent**

13
14 (1) A party or other person indicates that the party or other person agrees to
15 accept electronic service by:

16
17 (A) Serving a notice on all parties and other persons that the party or other
18 person accepts electronic service and filing the notice with the court.
19 The notice must include the electronic service address at which the
20 party or other person agrees to accept service; or

21
22 (B) Manifesting affirmative consent through electronic means with the
23 court or the court's electronic filing service provider, and concurrently
24 providing the party's electronic service address with that consent for
25 the purpose of receiving electronic service. A party or other person may
26 manifest affirmative consent by serving notice of consent to all parties
27 and other persons and either:

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

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

35
36 (2) A party or other person that has consented to electronic service under (1) and
37 has used an electronic filing service provider to serve and file documents in a
38 case consents to service on that electronic filing service provider as the
39 designated agent for service for the party or other person in the case, until
40 such time as the party or other person designates a different agent for service.
41

1 (Subd (b) amended effective January 1, 2020; adopted as part of subd (a); previously
2 amended and relettered effective July 1, 2013; previously amended effective January 1,
3 2007, January 1, 2008, January 1, 2011, January 1, 2018, and January 1, 2019.)
4

5 **(c) Electronic service required by local rule or court order**
6

- 7 (1) A court may require parties to serve documents electronically in specified
8 **civil** actions by local rule or court order, as provided in Code of Civil
9 Procedure section 1010.6 and the rules in this chapter.
10
11 (2) A court may require other persons to serve documents electronically in
12 specified **civil** actions by local rule, as provided in Code of Civil Procedure
13 section 1010.6 and the rules in this chapter.
14
15 (3) Except when personal service is otherwise required by statute or rule, a party
16 or other person that is required to file documents electronically in an action
17 must also serve documents and accept service of documents electronically
18 from all other parties or persons, unless:
19
20 (A) The court orders otherwise, or
21
22 (B) The action includes parties or persons that are not required to file or
23 serve documents electronically, including self-represented parties or
24 other self-represented persons; those parties or other persons are to be
25 served by non-electronic methods unless they affirmatively consent to
26 electronic service.
27
28 (4) Each party or other person that is required to serve and accept service of
29 documents electronically must provide all other parties or other persons in the
30 action with its electronic service address and must promptly notify all other
31 parties, other persons, and the court of any changes under (g).
32

33 (Subd (c) amended effective January 1, 2018; adopted effective July 1, 2013.)
34

35 **(d) Additional provisions for electronic service required by court order**
36

- 37 (1) If a court has adopted local rules for permissive electronic filing, then the
38 court may, on the motion of any party or on its own motion, provided that the
39 order would not cause undue hardship or significant prejudice to any party,
40 order all parties in any class action, a consolidated action, a group of actions,
41 a coordinated action, or an action that is complex under rule 3.403 to serve all
42 documents electronically, except when personal service is required by statute
43 or rule.

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- (2) A court may combine an order for mandatory electronic service with an order for mandatory electronic filing as provided in rule 2.253(c).
- (3) If the court proposes to make any order under (1) on its own motion, the court must mail notice to any parties that have not consented to receive electronic service. The court may electronically serve the notice on any party that has consented to receive electronic service. Any party may serve and file an opposition within 10 days after notice is mailed, electronically served, or such later time as the court may specify.
- (4) If the court has previously ordered parties in a case to electronically serve documents and a new party is added that the court determines should also be ordered to do so under (1), the court may follow the notice procedures under (2) or may order the party to electronically serve documents and in its order state that the new party may object within 10 days after service of the order or by such later time as the court may specify.

(Subd (d) adopted effective January 1, 2018.)

(e) Maintenance of electronic service lists

A court that permits or requires electronic filing in a case must maintain and make available electronically to the parties and other persons in the case an electronic service list that contains the parties' or other persons' current electronic service addresses, as provided by the parties or other persons that have filed electronically in the case.

(Subd (e) amended and relettered effective January 1, 2018; adopted effective January 1, 2008 as subd (b); previously amended and relettered as subd (d) effective July 1, 2013; previously amended effective January 1, 2010, and January 1, 2011.)

(f) Service by the parties and other persons

- (1) Notwithstanding (e), parties and other persons that have consented to or are required to serve documents electronically are responsible for electronic service on all other parties and other persons required to be served in the case. A party or other person may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.
- (2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

1
2 *(Subd (f) amended and relettered effective January 1, 2018; adopted as subd (c) effective*
3 *January 1, 2008; previously amended and relettered as subd (e) effective July 1, 2013;*
4 *previously amended effective January 1, 2011.)*
5

6 **(g) Change of electronic service address**
7

- 8 (1) A party or other person whose electronic service address changes while the
9 action or proceeding is pending must promptly file a notice of change of
10 address electronically with the court and must serve this notice electronically
11 on all other parties and all other persons required to be served.
12
13 (2) A party's or other person's election to contract with an electronic filing
14 service provider to electronically file and serve documents or to receive
15 electronic service of documents on the party's or other person's behalf does
16 not relieve the party or other person of its duties under (1).
17
18 (3) An electronic service address is presumed valid for a party or other person if
19 the party or other person files electronic documents with the court from that
20 address and has not filed and served notice that the address is no longer valid.
21

22 *(Subd (g) amended and relettered effective January 1, 2018; adopted as subd (d) effective*
23 *January 1, 2008; previously relettered as subd (f) effective July 1, 2013; previously*
24 *amended effective January 1, 2011.)*
25

26 **(h) Reliability and integrity of documents served by electronic notification**
27

28 A party or other person that serves a document by means of electronic notification
29 must:

- 30
31 (1) Ensure that the documents served can be viewed and downloaded using the
32 hyperlink provided;
33
34 (2) Preserve the document served without any change, alteration, or modification
35 from the time the document is posted until the time the hyperlink is
36 terminated; and
37
38 (3) Maintain the hyperlink until either:
39
40 (A) All parties in the case have settled or the case has ended and the time
41 for appeals has expired; or
42

1 (B) If the party or other person is no longer in the case, the party or other
2 person has provided notice to all other parties and other persons
3 required to receive notice that it is no longer in the case and that they
4 have 60 days to download any documents, and 60 days have passed
5 after the notice was given.
6

7 *(Subd (h) amended and relettered effective January 1, 2018; adopted as subd (e) effective*
8 *January 1, 2011, previously relettered as subd (g) effective July 1, 2013.)*
9

10 **(i) When service is complete**
11

- 12 (1) Electronic service of a document is complete as provided in Code of Civil
13 Procedure section 1010.6 and the rules in this chapter.
14
15 (2) If an electronic filing service provider is used for service, the service is
16 complete at the time that the electronic filing service provider electronically
17 transmits the document or sends electronic notification of service.
18

19 *Subd (i) amended and relettered effective January 1, 2018; adopted as subd (b); previously*
20 *amended effective January 1, 2007; previously relettered as subd (e) effective January 1,*
21 *2008; previously amended and relettered as subd (f) effective January 1, 2011, and as subd*
22 *(h) effective July 1, 2013.)*
23

24 **(j) Proof of service**
25

- 26 (1) Proof of electronic service shall be made as provided in Code of Civil
27 Procedure section 1013b.
28
29 (2) Under rule 3.1300(c), proof of electronic service of the moving papers must
30 be filed at least five court days before the hearing.
31
32 (3) If a person signs a printed form of a proof of electronic service, the party or
33 other person filing the proof of electronic service must comply with the
34 provisions of rule 2.257(a).
35

36 *(Subd (j) amended and relettered effective January 1, 2018; adopted as subd (c);*
37 *previously amended effective January 1, 2007, January 1, 2009, July 1, 2009, January 1,*
38 *2010; and January 1, 2017; previously amended and relettered as subd (g) effective*
39 *January 1, 2011; previously relettered as subd (f) effective January 1, 2008, and as subd*
40 *(i) effective July 1, 2013.)*
41

42 **(k) Electronic service by or on court**
43

1 (1) The court may electronically serve documents as provided in Code of Civil
2 Procedure section 1010.6, Penal Code section 690.5, and the rules in this
3 chapter.

4
5 (2) A document may be electronically served on a court if the court consents to
6 electronic service or electronic service is otherwise provided for by law or
7 court order. A court indicates that it agrees to accept electronic service by:

8
9 (A) Serving a notice on all parties and other persons in the case that the
10 court accepts electronic service. The notice must include the electronic
11 service address at which the court agrees to accept service; or

12
13 (B) Adopting a local rule stating that the court accepts electronic service.
14 The rule must indicate where to obtain the electronic service address at
15 which the court agrees to accept service.

16
17 *(Subd (k) amended and relettered effective January 1, 2018; adopted as subd (e);*
18 *previously amended effective January 1, 2007, and January 1, 2016; previously relettered*
19 *as subd (g) effective January 1, 2008, as subd (h) effective January 1, 2011, and as subd (j)*
20 *effective July 1, 2013.)*

21
22 *Rule 2.251 amended effective January 1, 2020; adopted as rule 2060 effective January 1, 2003;*
23 *previously amended and renumbered as rule 2.260 effective January 1, 2007, and as rule 2.251*
24 *effective January 1, 2011; previously amended effective January 1, 2008, January 1, 2009, July 1,*
25 *2009, January 1, 2010, July 1, 2013, January 1, 2016, January 1, 2017, January 1, 2018, and*
26 *January 1, 2019.*

27 28 **Advisory Committee Comment**

29
30 **Subdivision (b)(1)(B).** The rule does not prescribe specific language for a provision of a term of
31 service when the filer consents to electronic service, but does require that any such provision be
32 clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-
33 CV) provides an example of language for consenting to electronic service.

34
35 **Subdivisions (c)–(d).** Court-ordered electronic service is not subject to the provisions in Code of
36 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are
37 established by local rule, the court and the parties must have access to more than one electronic
38 filing service provider.

39 40 **Rule 2.252. General rules on electronic filing of documents**

41
42 **(a) In general**

1 A court may provide for electronic filing of documents in actions and proceedings
2 as provided under Code of Civil Procedure section 1010.6, **Penal Code section**
3 **690.5**, and the rules in this chapter.

4
5 *(Subd (a) amended effective July 1, 2013; previously amended effective January 1, 2007.)*

6
7 **(b) Direct and indirect electronic filing**

8
9 Except as otherwise provided by law, a court may provide for the electronic filing
10 of documents directly with the court, indirectly through one or more approved
11 electronic filing service providers, or through a combination of direct and indirect
12 means.

13
14 *(Subd (b) adopted effective July 1, 2013.)*

15
16 **(c) No effect on filing deadline**

17
18 Filing a document electronically does not alter any filing deadline.

19
20 *(Subd (c) amended effective January 1, 2018; adopted effective July 1, 2013.)*

21
22 **(d) Filing in paper form**

23
24 When it is not feasible for a party or other person to convert a document to
25 electronic form by scanning, imaging, or another means, a court may allow that
26 party or other person to file the document in paper form.

27
28 *(Subd (d) amended effective January 1, 2018; adopted effective July 1, 2013.)*

29
30 **(e) Original documents**

31
32 In a proceeding that requires the filing of an original document, an electronic filer
33 may file an electronic copy of a document if the original document is then filed
34 with the court within 10 calendar days.

35
36 *(Subd (e) relettered effective July 1, 2013; adopted as subd (b); previously amended*
37 *effective January 1, 2011.)*

38
39 **(f) Application for waiver of court fees and costs**

40
41 The court must permit electronic filing of an application for waiver of court fees
42 and costs in any proceeding in which the court accepts electronic filings.

1 *(Subd (f) amended effective January 1, 2018; adopted as subd (c); previously relettered as*
2 *subd (f) effective July 1, 2013; previously amended effective January 1, 2007.)*

3
4 **(g) Orders and judgments**

5
6 The court may electronically file any notice, order, minute order, judgment, or
7 other document prepared by the court.

8
9 *(Subd (g) relettered effective July 1, 2013; adopted as subd (d).)*

10
11 **(h) Proposed orders**

12
13 Proposed orders may be filed and submitted electronically as provided in rule
14 3.1312.

15
16 *(Subd (h) relettered effective July 1, 2013; adopted as subd (e) effective January 1, 2011.)*

17
18 *Rule 2.252 amended effective January 1, 2018; adopted as rule 2052 effective January 1, 2003;*
19 *previously amended and renumbered effective January 1, 2007; previously amended effective*
20 *January 1, 2011, and July 1, 2013.*

21
22 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**
23 **filing by court order**

24
25 **(a) Permissive electronic filing by local rule**

26
27 A court may permit parties by local rule to file documents electronically in any
28 types of cases, subject to the conditions in Code of Civil Procedure section 1010.6,
29 Penal Code section 690.5, and the rules in this chapter.

30
31 *(Subd (a) amended effective January 1, 2018; adopted effective July 1, 2013.)*

32
33 **(b) Mandatory electronic filing by local rule**

34
35 A court may require parties by local rule to electronically file documents in civil
36 actions directly with the court, or directly with the court and through one or more
37 approved electronic filing service providers, or through more than one approved
38 electronic filing service provider, subject to the conditions in Code of Civil
39 Procedure section 1010.6, the rules in this chapter, and the following conditions:

- 40
41 (1) The court must specify the types or categories of civil actions in which
42 parties or other persons are required to file and serve documents

1 electronically. The court may designate any of the following as eligible for
2 mandatory electronic filing and service:

- 3
- 4 (A) All civil cases;
- 5
- 6 (B) All civil cases of a specific category, such as unlimited or limited civil
7 cases;
- 8
- 9 (C) All civil cases of a specific case type, including but not limited to,
10 contract, collections, personal injury, or employment;
- 11
- 12 (D) All civil cases assigned to a judge for all purposes;
- 13
- 14 (E) All civil cases assigned to a specific department, courtroom or
15 courthouse;
- 16
- 17 (F) Any class actions, consolidated actions, or group of actions,
18 coordinated actions, or actions that are complex under rule 3.403; or
19
- 20 (G) Any combination of the cases described in subparagraphs (A) to (F),
21 inclusive.

- 22
- 23 (2) Self-represented parties or other self-represented persons are exempt from
24 any mandatory electronic filing and service requirements adopted by courts
25 under this rule and Code of Civil Procedure section 1010.6.
- 26
- 27 (3) In civil cases involving both represented and self-represented parties or other
28 persons, represented parties or other persons may be required to file and serve
29 documents electronically; however, in these cases, each self-represented
30 party or other person is to file, serve, and be served with documents by non-
31 electronic means unless the self-represented party or other person
32 affirmatively agrees otherwise.
- 33
- 34 (4) A party or other person that is required to file and serve documents
35 electronically must be excused from the requirements if the party or other
36 person shows undue hardship or significant prejudice. A court requiring the
37 electronic filing and service of documents must have a process for parties or
38 other persons, including represented parties or other represented persons, to
39 apply for relief and a procedure for parties or other persons excused from
40 filing documents electronically to file them by conventional means.
- 41
- 42 (5) Any fees charged by the court or an electronic filing service provider shall be
43 consistent with the fee provisions of Code of Civil Procedure section 1010.6.

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(6) The effective date of filing any document received electronically is prescribed by Code of Civil Procedure section 1010.6. This provision concerns only the effective date of filing. Any document that is received electronically must be processed and satisfy all other legal filing requirements to be filed as an official court record.

(7) A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court's program.

(Subd (b) amended effective January 1, 2018; adopted effective July 1, 2013.)

(c) Electronic filing by court order

(1) If a court has adopted local rules for permissive electronic filing, then the court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403 to file all documents electronically.

(2) A court may combine an order for mandatory electronic filing with an order for mandatory electronic service as provided in rule 2.252(d).

(3) If the court proposes to make any order under (1) on its own motion, the court must mail notice to any parties that have not consented to receive electronic service. The court may electronically serve the notice on any party that has consented to receive electronic service. Any party may serve and file an opposition within 10 days after notice is mailed or electronically served or such later time as the court may specify.

(4) If the court has previously ordered parties in a case to electronically file documents and a new party is added that the court determines should also be ordered to do so under (1), the court may follow the notice procedures under (2) or may order the party to electronically file documents and in its order state that the new party may object within 10 days after service of the order or by such later time as the court may specify.

(5) The court's order may also provide that:

(A) Documents previously filed in paper form may be resubmitted in electronic form; and

1
2 (B) When the court sends confirmation of filing to all parties, receipt of the
3 confirmation constitutes service of the filing if the filed document is
4 available electronically.
5

6 *(Subd (c) amended effective January 1, 2018; adopted as subd (a) and part of subd (b);*
7 *previously amended and relettered as subd (c) effective July 1, 2013; previously amended*
8 *effective January 1, 2007, January 1, 2008, and January 1, 2011.)*
9

10 *Rule 2.253 amended effective January 1, 2018; adopted as rule 2053 effective January 1, 2003;*
11 *previously amended and renumbered effective January 1, 2007; previously amended effective*
12 *January 1, 2008, January 1, 2011, and July 1, 2013.*
13

14 **Advisory Committee Comment** 15

16 **Subdivision (b)(1).** This subdivision allows courts to institute mandatory electronic filing and
17 service in any type of civil case for which the court determines that mandatory electronic filing is
18 appropriate. The scope of this authorization is meant to be broad. It will enable courts to
19 implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating
20 mandatory electronic filing, courts should take into account the fact that some civil case types
21 may be easier and more cost-effective to implement at the outset while other types may require
22 special procedures or other considerations (such as the need to preserve the confidentiality of
23 filed records) that may make them less appropriate for inclusion in initial mandatory e-filing
24 efforts.
25

26 **Subdivision (b)(2).** Although this rule exempts self-represented parties from any mandatory
27 electronic filing and service requirements, these parties are encouraged to participate voluntarily
28 in electronic filing and service. To the extent feasible, courts and other entities should assist self-
29 represented parties to electronically file and serve documents.
30

31 **Subdivision (c).** Court-ordered electronic filing under this subdivision is not subject to the
32 provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where mandatory
33 electronic filing and service are established by local rule, the court and the parties must have
34 access to more than one electronic filing service provider.
35

36 **Rule 2.254. Responsibilities of court** 37

38 **(a) Publication of electronic filing requirements** 39

40 Each court that permits or mandates electronic filing must publish, in both
41 electronic and print formats, the court's electronic filing requirements.
42

1 *(Subd (a) amended effective July 1, 2013; adopted as subd (b); previously amended*
2 *effective January 1, 2007; previously relettered effective January 1, 2011.)*

3
4 **(b) Problems with electronic filing**

5
6 If the court is aware of a problem that impedes or precludes electronic filing, it
7 must promptly take reasonable steps to provide notice of the problem.

8
9 *(Subd (b) amended effective January 1, 2018; adopted as subd (c); previously relettered as*
10 *subd (b) effective January 1, 2011; previously amended effective January 1, 2007.)*

11
12 **(c) Public access to electronically filed documents**

13
14 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed
15 document is a public document at the time it is filed unless it is sealed under rule
16 2.551(b) or made confidential by law.

17
18 *(Subd (c) amended and relettered effective January 1, 2011; adopted as subd (d);*
19 *previously amended effective January 1, 2007.)*

20
21 *Rule 2.254 amended effective January 1, 2018; adopted as rule 2054 effective January 1, 2003;*
22 *previously amended and renumbered effective January 1, 2007; previously amended effective*
23 *January 1, 2011, and July 1, 2013.*

24
25 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**
26 **managers**

27
28 **(a) Right to contract**

- 29
30 (1) A court may contract with one or more electronic filing service providers to
31 furnish and maintain an electronic filing system for the court.
32
33 (2) If the court contracts with an electronic filing service provider, it may require
34 electronic filers to transmit the documents to the provider.
35
36 (3) A court may contract with one or more electronic filing managers to act as an
37 intermediary between the court and electronic filing service providers.
38
39 (4) If the court contracts with an electronic service provider or the court has an
40 in-house system, the provider or system must accept filing from other
41 electronic filing service providers to the extent the provider or system is
42 compatible with them.
43

1 (Subd (a) amended effective January 1, 2019; previously amended effective January 1,
2 2007, and January 1, 2011.)

3
4 **(b) Provisions of contract**

- 5
6 (1) The court's contract with an electronic filing service provider may:
7
8 (A) Allow the provider to charge electronic filers a reasonable fee in
9 addition to the court's filing fee;
10
11 (B) Allow the provider to make other reasonable requirements for use of
12 the electronic filing system.
13
14 (2) The court's contract with an electronic filing service provider must comply
15 with the requirements of Code of Civil Procedure section 1010.6.
16
17 (3) The court's contract with an electronic filing manager must comply with the
18 requirements of Code of Civil Procedure section 1010.6.
19

20 (Subd (b) amended effective January 1, 2019; previously amended effective January 1,
21 2018.)

22
23 **(c) Transmission of filing to court**

- 24
25 (1) An electronic filing service provider must promptly transmit any electronic
26 filing, any applicable filing fee, and any applicable acceptance of consent to
27 receive electronic service to the court directly or through the court's
28 electronic filing manager.
29
30 (2) An electronic filing manager must promptly transmit an electronic filing, any
31 applicable filing fee, and any applicable acceptance of consent to receive
32 electronic service to the court.
33

34 (Subd (c) amended effective January 1, 2020; previously amended effective January 1, 2011, and
35 January 1, 2019.)

36
37 **(d) Confirmation of receipt and filing of document**

- 38
39 (1) An electronic filing service provider must promptly send to an electronic filer
40 its confirmation of the receipt of any document that the filer has transmitted
41 to the provider for filing with the court.
42

1 (2) The electronic filing service provider must send its confirmation to the filer's
2 electronic service address and must indicate the date and time of receipt, in
3 accordance with rule 2.259(a).
4

5 (3) After reviewing the documents, the court must promptly transmit to the
6 electronic filing service provider and the electronic filer the court's
7 confirmation of filing or notice of rejection of filing, in accordance with rule
8 2.259.
9

10 *(Subd (d) amended effective January 1, 2011; previously amended effective January 1,*
11 *2007.)*
12

13 **(e) Ownership of information**
14

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

19 *(Subd (e) amended effective January 1, 2019; previously amended effective January 1,*
20 *2007.)*
21

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

24 (1) An electronic filing service provider may not require a filer to provide a
25 credit card, debit card, or bank account information to create an account with
26 the electronic filing service provider.
27

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

34 *(Subd (f) adopted effective January 1, 2019.)*
35

36 *Rule 2.255 amended effective January 1, 2020; adopted as rule 2055 effective January 1, 2003; previously*
37 *amended and renumbered effective January 1, 2007; previously amended effective January 1, 2011,*
38 *January 1, 2018, and January 1, 2019.*
39

40 **Rule 2.256. Responsibilities of electronic filer**
41

42 **(a) Conditions of filing**
43

1 Each electronic filer must:

- 2
- 3 (1) Comply with any court requirements designed to ensure the integrity of
4 electronic filing and to protect sensitive personal information.
5
- 6 (2) Furnish information the court requires for case processing.
7
- 8 (3) Take all reasonable steps to ensure that the filing does not contain computer
9 code, including viruses, that might be harmful to the court's electronic filing
10 system and to other users of that system.
11
- 12 (4) Furnish one or more electronic service addresses, in the manner specified by
13 the court. This only applies when the electronic filer has consented to or is
14 required to accept electronic service.
15
- 16 (5) Immediately provide the court and all parties with any change to the
17 electronic filer's electronic service address. This only applies when the
18 electronic filer has consented to or is required to accept electronic service.
19
- 20 (6) If the electronic filer uses an electronic filing service provider, provide the
21 electronic filing service provider with the electronic address at which the filer
22 is to be sent all documents and immediately notify the electronic filing
23 service provider of any change in that address.
24

25 *(Subd (a) amended effective January 1, 2018; previously amended effective January 1,*
26 *2007, January 1, 2011, and July 1, 2013.)*
27

28 **(b) Format of documents to be filed electronically**
29

30 A document that is filed electronically with the court must be in a format specified
31 by the court unless it cannot be created in that format. The format adopted by a
32 court must meet the following requirements:
33

- 34 (1) The software for creating and reading documents must be in the public
35 domain or generally available at a reasonable cost.
36
- 37 (2) The printing of documents must not result in the loss of document text,
38 format, or appearance.
39
- 40 (3) The document must be text searchable when technologically feasible without
41 impairment of the document's image.
42

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

4
5 *(Subd (b) amended effective January 1, 2017; previously amended effective January 1,*
6 *2006, January 1, 2008, and January 1, 2010.)*

7
8 *Rule 2.256 amended effective January 1, 2018; adopted as rule 2056 effective January 1, 2003;*
9 *previously amended and renumbered effective January 1, 2007; previously amended effective*
10 *January 1, 2006, January 1, 2008, January 1, 2010, January 1, 2011, July 1, 2013, and January*
11 *1, 2017.*

12 13 **Advisory Committee Comment**

14
15 **Subdivision (b)(3).** The term “technologically feasible” does not require more than the
16 application of standard, commercially available optical character recognition (OCR) software.

17 18 **Rule 2.257. Requirements for signatures on documents**

19 20 **(a) Electronic signature**

21
22 An electronic signature is an electronic sound, symbol, or process attached to or
23 logically associated with an electronic record and executed or adopted by a person
24 with the intent to sign a document or record created, generated, sent,
25 communicated, received, or stored by electronic means.

26
27 *(Subd (a) adopted effective January 1, 2019.)*

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

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 *(Subd (b) amended effective January 1, 2020; adopted as subd (a); previously amended*
32 *effective January 1, 2007, July 1, 2016, and January 1, 2018; previously relettered and*
33 *amended as subd (b) effective January 1, 2019.)*
34

35 **(c) Documents not signed under penalty of perjury**
36

37 (1) If a document does not require a signature under penalty of perjury, the
38 document is deemed signed by person who filed it electronically.
39

40 (2) When a document to be filed electronically, such as a stipulation, requires the
41 signatures of opposing parties or persons other than the filer not under
42 penalty of perjury, the following procedures apply:
43

1 (A) The opposing party or other person has signed a printed form of the
2 document before, or on the same day as, the date of filing. The
3 electronic filer must maintain the original, signed document and must
4 make it available for inspection and copying as provided in (b)(2) of
5 this rule and Code of Civil Procedure section 1010.6. The court and any
6 other party may demand production of the original signed document in
7 the manner provided in (b)(2)(A)–(C). By electronically filing the
8 document, the electronic filer indicates that all parties have signed the
9 document and that the filer has the signed original in his or her
10 possession; or

11
12 (B) The opposing party or other person has signed the document using an
13 electronic signature and that electronic signature is unique to the person
14 using it, capable of verification, under the sole control of the person
15 using it, and linked to data in such a manner that if the data are
16 changed, the electronic signature is invalidated.

17
18 *(Subd (c) amended effective January 1, 2020; adopted as subd (b); previously amended*
19 *effective January 1, 2007; relettered as subd (c) effective January 1, 2019.)*

20
21
22 **(d) Digital signature**

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

26
27 *(Subd (d) amended and relettered effective January 1, 2020; adopted as subd (d);*
28 *previously relettered as subd (e) effective January 1, 2019.)*

29
30 **(e) Judicial signatures**

31
32 If a document requires a signature by a court or a judicial officer, the document
33 may be electronically signed in any manner permitted by law.

34
35 *(Subd (e) relettered effective January 1, 2020; adopted as subd (e) effective January 1,*
36 *2008; previously relettered as subd (f) effective January 1, 2019.)*

37
38 *Rule 2.257 amended effective January 1, 2020; adopted as rule 2057 effective January 1, 2003;*
39 *previously amended and renumbered effective January 1, 2007; previously amended effective*
40 *January 1, 2008, July 1, 2016, January 1, 2018, and January 1, 2019.*

41
42 **Advisory Committee Comment**

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

3
4 **Rule 2.258. Payment of filing fees in civil actions**

5
6 **(a) Use of credit cards and other methods**

7
8 A court may permit the use of credit cards, debit cards, electronic fund transfers, or
9 debit accounts for the payment of civil filing fees associated with electronic filing,
10 as provided in Government Code section 6159, rule 10.820, and other applicable
11 law. A court may also authorize other methods of payment.

12
13 *(Subd (a) amended effective January 1, 2007.)*

14
15 **(b) Fee waivers**

16
17 Eligible persons may seek a waiver of court fees and costs, as provided in
18 Government Code sections 68630–68641, rule 2.252(f), and division 2 of title 3 of
19 these rules.

20
21 *(Subd (b) amended effective July 1, 2013; previously amended effective January 1, 2007,
22 and January 1, 2010.)*

23
24 *Rule 2.258 amended effective July 1, 2013; adopted as rule 2058 effective January 1, 2003;
25 previously amended and renumbered effective January 1, 2007; previously amended effective
26 January 1, 2010.*

27
28 **Rule 2.259. Actions by court on receipt of electronic filing**

29
30 **(a) Confirmation of receipt and filing of document**

31
32 **(1) Confirmation of receipt**

33
34 When a court receives an electronically submitted document, the court must
35 promptly send the electronic filer confirmation of the court’s receipt of the
36 document, indicating the date and time of receipt. A document is considered
37 received at the date and time the confirmation of receipt is created.

38
39 **(2) Confirmation of filing**

40
41 If the document received by the court under (1) complies with filing
42 requirements and all required filing fees have been paid, the court must
43 promptly send the electronic filer confirmation that the document has been

1 filed. The filing confirmation must indicate the date and time of filing and is
2 proof that the document was filed on the date and at the time specified. The
3 filing confirmation must also specify:

- 4
5 (A) Any transaction number associated with the filing;
6
7 (B) The titles of the documents as filed by the court; and
8
9 (C) The fees assessed for the filing.

10
11 (3) *Transmission of confirmations*

12
13 The court must send receipt and filing confirmation to the electronic filer at
14 the electronic service address the filer furnished to the court under rule
15 2.256(a)(4). The court must maintain a record of all receipt and filing
16 confirmations.

17
18 (4) *Filer responsible for verification*

19
20 In the absence of the court's confirmation of receipt and filing, there is no
21 presumption that the court received and filed the document. The electronic
22 filer is responsible for verifying that the court received and filed any
23 document that the electronic filer submitted to the court electronically.

24
25 *(Subd (a) amended effective January 1, 2011; previously amended effective January 1,*
26 *2007, and January 1, 2008.)*

27
28 **(b) Notice of rejection of document for filing**

29
30 If the clerk does not file a document because it does not comply with applicable
31 filing requirements or because the required filing fee has not been paid, the court
32 must promptly send notice of the rejection of the document for filing to the
33 electronic filer. The notice must state the reasons that the document was rejected
34 for filing.

35
36 *(Subd (b) amended effective January 1, 2007.)*

37
38 **(c) Delayed delivery**

39
40 If a technical problem with a court's electronic filing system prevents the court
41 from accepting an electronic filing on a particular court day, and the electronic filer
42 demonstrates that he or she attempted to electronically file the document on that
43 day, the court must deem the document as filed on that day. This subdivision does

1 not apply to the filing of a complaint or any other initial pleading in an action or
2 proceeding.

3
4 *(Subd (c) amended and relettered effective January 1, 2018; adopted as subd (d);*
5 *previously amended effective January 1, 2007.)*

6
7 **(d) Endorsement**

8
9 (1) The court’s endorsement of a document electronically filed must contain the
10 following: “Electronically filed by Superior Court of California, County of
11 _____, on _____ (date),” followed by the name of the court clerk.

12
13 (2) The endorsement required under (1) has the same force and effect as a
14 manually affixed endorsement stamp with the signature and initials of the
15 court clerk.

16
17 (3) A complaint or another initial pleading in an action or proceeding that is filed
18 and endorsed electronically may be printed and served on the defendant or
19 respondent in the same manner as if it had been filed in paper form.

20
21 *(Subd (d) relettered effective January 1, 2018; adopted as subd (e); previously amended*
22 *effective January 1, 2007.)*

23
24 **(e) Issuance of electronic summons**

25
26 (1) On the electronic filing of a complaint, a petition, or another document that
27 must be served with a summons, the court may transmit a summons
28 electronically to the electronic filer in accordance with this subdivision and
29 Code of Civil Procedure section 1010.6.

30
31 (2) The electronically transmitted summons must contain an image of the court’s
32 seal and the assigned case number.

33
34 (3) Personal service of the printed form of a summons transmitted electronically
35 to the electronic filer has the same legal effect as personal service of a copy
36 of an original summons.

37
38 *(Subd (e) amended and relettered effective January 1, 2018; adopted as subd (f);*
39 *previously amended effective January 1, 2007.)*

40
41 *Rule 2.259 amended effective January 1, 2018; adopted as rule 2059 effective January 1, 2003;*
42 *previously amended and renumbered effective January 1, 2007; previously amended effective*
43 *January 1, 2008, January 1, 2011, and July 1, 2013.*

1
2 **Rule 2.261. Authorization for courts to continue modifying forms for the purpose of**
3 **electronic filing and forms generation**

4
5 Courts that participated in pilot projects for electronic filing and forms generation under
6 former rule 981.5 are authorized to continue to modify Judicial Council forms for the
7 purpose of accepting electronic filing or providing electronic generation of court
8 documents provided that the modification of the forms is consistent with the rules in this
9 chapter.

10
11 *Rule 2.261 amended and renumbered effective January 1, 2007; adopted as rule 2061 effective*
12 *July 1, 2004.*

DRAFT