



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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

### MINUTES OF OPEN MEETING

July 6, 2021

12:00 PM to 1:30 PM

Videoconference

**Advisory Body Members Present:** Hon. Julie Culver, Chair; Hon. Samantha Jessner; Hon. Louis R. Mauro; Hon. Kim Menninger; Mr. Darrel Parker; Hon. Bruce Smith; Mr. Don Willenburg

**Advisory Body Members Absent:**

**Others Present:** Judicial Council Staff

#### OPEN MEETING

##### Call to Order and Roll Call

The chair called the meeting to order at 12:01 PM and took roll call.

The January 12, 2021 and January 21, 2021 Rules and Policy Subcommittee minutes were approved with amendments to the January 12 minutes.

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

##### Item 1

##### **Trial Court Rule Revisions: Proposed Amendments to Add Criminal Cases to the Electronic Filing and Electronic Service Rules of the California Rules of Court (Action Required)**

Review public comments and decide whether to recommend the Judicial Council amend the California Rules of Court to add criminal cases to the electronic filing and electronic service rules.

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

**Action:** There were six public comments received for this proposal. Three of the commenters were opposed to the defendant being required to pay fees for electronic filing services. The proposal indicates that fees would not be charged to prosecutors or indigent defendants and their counsel. There were no comments from any electronic service providers.

Options for this rule include, leave it as circulated; waive fees for all; charge fees to all, but this option could impact indigent defendants; or remove prosecutors from rule and only waive fees for indigent defendants. Ms. Jaramillo spoke to Ms. Pettit the CIO for

Judicial Council Information Technology who agreed that this topic would be suited for the E-filing Workstream as they look at new electronic filing options for the judicial branch. One issue that was not raised by commenters, but Ms. Jaramillo noted that electronic filing deadline is 11:59:59 PM, where filing in paper would be court clerk hours or drop box, giving e-filing users more time to file.

The subcommittee's discussion noted that state or government entities do not currently pay filing fees, so waiving prosecutor e-filing fees would be the same as paper filing. Also, the focus on a person's ability to pay is a priority of government statewide. By providing e-filing to court users they have more access to the court. One remark was to make sure language is consistent with other rules that waive fees for prosecutors or government entities. If changed, the rules may need to be recirculated for public comment during the winter legislative cycle. Ms. Jaramillo added that there needs to be a distinction in the council report clarifying why the non-indigent defendant would not pay a filing fee at the court but would pay for e-filing.

**Motion to adopt the proposal as is and bring to the Information Technology Advisory Committee.**

**Approved.**

**Item 2**

**Trial Court Statutes Revisions: Legislative Proposal Concerning Vendor Storage of Exhibits and Evidence in Electronic Format (Action Required)**

Review staff memoranda and consider whether to recommend the proposal proceed to the Judicial Council.

Presenters: Hon. Julie R. Culver, Chair, Rules and Policy Subcommittee

Ms. Andrea Jaramillo, Attorney II, Legal Services

Ms. Jaramillo advised members that they will need to decide if this proposal will move forward. One court comment asked if this rule is necessary as many courts already use vendor storage. Ms. Jaramillo researched if statutes prohibit a court from using vendor storage and there is nothing in the statutes. Proceeding with a statute proposal has some risk as the Legislature could say no and if courts proceeded anyway, the Legislature could move to expressly prohibit it. Also, this statute may be construed as meaning only storing electronic exhibits and paper would no longer be allowed. Given the additional research, it may be prudent to not move forward with a legislative proposal and change it to a rule of court to address compliance with judicial branch security and address deletion of exhibits. The *Trial Court Records Manual* briefly addresses using vendor storage; however, not in entirety and applies only to exhibits that meet the definition of court records. The subcommittee decided to recommend converting the proposal to a rule proposal Ms. Jaramillo will confirm the rules cycle timeline. She will also include any substantive comments received during public comment when the subcommittee considers proposal language. Once the new rule is drafted the subcommittee will review again before bringing to the Information Technology Advisory Committee.

**Motion to convert from a statute to a rule of court and recirculate for a future rules cycle.**

Approved.

**Item 3**

**Trial Court Rule Revisions: Rule Proposal to Add a Rule about Lodged Electronic Exhibits to the California Rules of Court (Action Required)**

Review public comments and decide whether to recommend the Judicial Council adopt rule 2.901 of the California Rules of Court to govern “lodged electronic exhibits.”

Presenters: Hon. Julie R. Culver, Chair, Rules and Policy Subcommittee

Ms. Andrea Jaramillo, Attorney II, Legal Services

(a) Definition of “lodged electronic exhibits. There were several public comments received for this proposal. Most were agreeable but there were two objections about using the term “lodged”. The proposal uses the definition of lodged to remain consistent with other rules already in use.

(b) Access to lodged electronic exhibits admitted into evidence. Commenters suggested using another term such as marked for identification or offered into evidence. Other suggestions were introduced or introduced on the record. Introduced is already used in statutes and would be consistent. Subcommittee members unanimously agreed the language as written should remain and conveys the necessary information.

(c) Deletion of lodged electronic exhibit (title edited to remove ~~if not admitted into evidence~~). Should this remain in the proposal? Two commenters expressed it was a huge administrative burden on court staff. Subcommittee members believe the phrase “the clerk *must* delete” might feel burdensome if the court were unable to get to it immediately. The subcommittee also edited the paragraph to remove unnecessary wording.

Additional comments were discussed that were not specifically apart of this proposal. An advisory committee comment will be added to address the comment that the rule does not require acceptance of lodged electronic exhibits. Another comment was around returning lodged electronic exhibits, but the subcommittee agreed this was out of scope for this proposal.

**Motion to move forward Rule 2.901. Lodged electronic exhibits as edited and bring to the Information Technology Advisory Committee.**

Approved.

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

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There being no further business, the meeting was adjourned at 1:25 PM.

Approved by the advisory body on enter date.

Ongoing Project	
9.1 Trial Court Rules and Statutes Revisions	<i>Priority 1</i>
	<i>Scope category(ies):</i> <b>Policies</b>
<p><b>Project Summary:</b> Revise statutes and the California Rules of Court for the trial courts to support e-business. In collaboration with other advisory committees, as needed, review rules and statutes and develop recommendations for amendments to align with modern business practices.</p> <p><b>Proposals within the scope of this item include:</b></p> <ul style="list-style-type: none"> <li>(a) Develop legislative and rule proposals for electronic exhibits and evidence based on the needs identified by the Digital Evidence Workstream including defining "lodged electronic exhibits," permitting courts to use vendors for storage of electronic exhibits and evidence; and removing requirements that clerks return exhibits if they are in electronic format.</li> <li>(b) Assist the Criminal Law Advisory Committee (CLAC) with the development of legislative and rule proposals for remote video proceedings in criminal matters including having a Rules and Policy Subcommittee member serve on the CLAC working group.</li> <li>(c) Develop a proposal to amend permissive electronic filing and electronic service rules to reference Penal Code section 690.5.</li> </ul> <p><b>Origin of Project:</b> <i>Tactical Plan for Technology</i> 2019-20 and 2021-22. Public comments. Standing item on the agenda.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact:</b></p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <i>ITAC:</i> Rules &amp; Policy Subcommittee, Chair: Hon. Julie R. Culver</li> <li>• <i>Judicial Council Staffing:</i> Legal Services, Information Technology, Office of Governmental Affairs,</li> <li>• <i>Collaborations:</i> Appellate, Civil &amp; Small Claims, Criminal Law, Traffic, Family and Juvenile Law, and Probate and Mental Health advisory committees; TCPJAC, CEAC and their Joint Technology, Rules, and Legislative Subcommittees</li> </ul>	

## 9.1. Trial Court Rules and Statutes Revisions

★ Highlight: One rule proposal will proceed to the Judicial Council. One rule proposal and one legislative proposal have been deferred pending a recommendation of the Rules and Policy Subcommittee on whether to revise and re-circulate them in 2022.

Key Objectives	Status	Description
(a) Develop legislative and rule proposals for electronic exhibits and evidence based on the needs identified by the Digital Evidence Workstream including defining "lodged electronic exhibits," permitting courts to use vendors for storage of electronic exhibits and evidence; and removing requirements that clerks return exhibits if they are in electronic format.	Complete	<p>A legislative proposal to authorize courts to use a vendor to store exhibits and evidence in electronic format was circulated for public comment. Following public comment, the committee decided not to advance the proposal. The Rules and Policy Subcommittee (RPS) will make a recommendation for the 2022 annual agenda on whether to revise and recirculate the proposal as a rule proposal.</p> <p>A rule proposal to create a new rule governing "lodged electronic exhibits" circulated for public comment. Following feedback from Rules Committee staff, the ITAC and RPS chairs decided to withdraw the proposal from the current rule cycle. RPS will make a recommendation for the 2022 annual agenda on whether to revise and re-circulate the proposal.</p>
(b) Assist the Criminal Law Advisory Committee (CLAC) with the development of legislative and rule proposals for remote video proceedings in criminal matters including having a Rules and Policy Subcommittee member serve on the CLAC working group.	In progress	Judge Menninger has been serving on the CLAC working group.
(c) Develop a proposal to amend permissive electronic filing and electronic service rules to reference Penal Code section 690.5.	In progress	Amendments to the electronic filing and electronic service rules circulated for public comment. The proposal will be on the consent agenda at the Judicial Council's October 1, 2021 meeting.

## 9.2 Remote Video Appearances in Civil Proceedings

*Priority 1**Scope category(ies):  
Policies*

**Project Summary:** Develop legislative and rule proposals to further the recommendations of the Commission on the Future of California's Court System (Futures Commission) relating to video remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings (pursuant to directive to ITAC from the Chief Justice).

**Key Objectives:**

- (a) Continue participating in a joint ad hoc subcommittee with Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees to develop legislative and rule proposals to allow video remote appearances in most civil court proceedings.
- (b) Work cooperatively with the ITAC Rules and Policy subcommittee, when needed.

**Origin of Project:** In April 2017, the Futures Commission recommended allowing remote video appearances at trials and evidentiary hearings in civil matters. In May 2017, the Chief Justice directed ITAC to consider feasibility and resource requirements for implementing pilot projects for remote video appearances. ITAC formed the Remote Video Appearances Workstream for this purpose, which issued its final report and recommendations to ITAC, including policy recommendations in August 2019.

**Status/Timeline:** December 2021, effective by January 2022 (Anticipate that legislative proposal would go to the council in January 2021, and to the Legislature in 2021, with rule proposals to be developed concurrently.)

**Fiscal Impact:**

This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.

**Resources:**

- *ITAC:* Hon. Julie R. Culver
- *Judicial Council Staffing:* Information Technology, Legal Services, Center for Families, Children & the Courts, Governmental Affairs
- *Collaborations:* ITAC Rules and Policy Subcommittee; Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees

## 9.2 Remote Video Appearances in Civil Proceedings

★ Highlight: As of September 1, 2021, legislation is still pending.

Key Objectives	Status	Description
(a) Continue participating in a joint ad hoc subcommittee with Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees to develop legislative and rule proposals to allow video remote appearances in most civil court proceedings.	In Progress	There is still trailer bill language broader in scope than the proposal the joint ad hoc subcommittee developed last year. The Legislature has until September 10, 2021 to pass any bills for this year.
(b) Work cooperatively with the ITAC Rules and Policy Subcommittee, when needed.	Complete	



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# MEMORANDUM

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<b>Date</b> October 18, 2021	<b>Action Requested</b> Please Review
<b>To</b> Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Julie R. Culver, Chair	<b>Deadline</b> October 25, 2021
<b>From</b> Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	<b>Contact</b> Andrea L. Jaramillo 916-263-0991 phone <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>
<b>Subject</b> Potential Topics for 2022 Rule and Legislation Cycle	

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The Information Technology Advisory Committee (ITAC) regularly recommends rule, form, or legislative proposals to the Judicial Council to advance council goals consistent with the Strategic Plan for Technology. Proposals can originate from a variety of sources, including committee members, council staff, courts, other government bodies, and the general public. The purpose of this memorandum is to brief the ITAC Rules and Policy Subcommittee (RPS) on potential proposal topics so the subcommittee can decide which, if any, it will recommend for inclusion on the 2022 ITAC annual agenda. The subcommittee is not limited to the topics addressed in this memorandum.

### **Guidance on Project Prioritization and Development**

#### **Internal Committee Guidance**

The Judicial Council internal committees, including the Technology Committee, which oversees ITAC and has final approval authority over ITAC's annual agenda, have asked that advisory bodies prioritize projects that:



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- Assist courts, justice partners, and parties with access to justice during and following the COVID-19 pandemic;
- Address otherwise urgent needs; or
- Are mandated by legislation.<sup>1</sup>

Proposals should be categorized as either “Priority Level 1” or “Priority Level 2.” The table below describes the priority level criteria:

Priority Level 1	Priority Level 2
(a) The proposal is urgently needed to conform to the law; (b) The proposal is urgently needed to respond to a recent law change; (c) A statute or council decision requires adoption or amendment of rules or forms by a specified date; (d) The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue; (e) The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or (f) The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.	(a) Useful, but not necessary, to implement changes in law; (b) Responsive to identified concerns or problems; or (c) Helpful in otherwise advancing Judicial Council goals and objectives.

For Priority Level 1 proposals, “the advisory body must provide a specific reason why it should be done this year and how it fits within the identified category.” The internal committees “do not anticipate approving many Priority Level 2 proposals.” Accordingly, to pursue a Priority Level 2 proposal, advisory bodies should “include justification as to why the proposal should be approved at this time.”

Finally, recommendations of the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) are expected to be high priority and each advisory body should “reserve capacity on your annual

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<sup>1</sup> A copy of the memorandum from the internal committee chairs to advisory body chairs is attached to this memorandum.

agenda to work on projects that may be assigned to you” by P3. It is unknown at this time what specific projects, if any, P3 may assign to ITAC or if any of those projects will necessitate rulemaking. However, ITAC and RPS staff will have additional information before the RPS meeting on October 25, 2021, and RPS staff will provide RPS members with an oral update.

### **Strategic Plan for Technology and Tactical Plan for Technology**

Projects should align with the branch Strategic Plan for Technology (Strategic Plan) and Tactical Plan for Technology (Tactical Plan).<sup>2</sup> The Strategic Plan identifies four high-level goals for information technology. One of the goals is to “promote the modernization of statutes, rules, and procedures to facilitate the use of technology in court operations and the delivery of court services.” The objectives of this goal are:

1. Proactively determine whether future technology solutions will require the addition or modification of rules or legislation.
2. Ensure current rules and legislation do not inhibit the use of technology solutions.
3. Ensure that rule and legislative changes supporting technology initiatives promote equal access to justice.
4. Ensure that rules and legislation are consistent with, and support, the four-year strategic plan and the two-year tactical plan.

The Tactical Plan incorporates this goal and specifies that objectives include continuing “modernization of statutes, rules, and procedures to permit and enhance the use of technology in court operations and the delivery of court services,” and developing and updating “rules, standards, and guidelines in areas in which new technologies affect court operations and access to the courts.”

### **Potential Topics for 2022 ITAC Annual Agenda**

ITAC has received several rule and legislation project suggestions this year. In addition, one rule proposal and one legislative proposal ITAC considered in 2021 were deferred for potential additional development in 2022, should the subcommittee recommend it. Potential topics for the 2022 annual agenda include:

1. Amend the California Rules of Court on remote access to electronic court records to authorize remote access by appellate courts and appellate projects.

<sup>2</sup> A copy of the Strategic Plan is available at <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf> and a copy of the Tactical Plan is available at <https://www.courts.ca.gov/documents/jctc-Court-Technology-Tactical-Plan.pdf>.

2. Repeal rule 2.253(b)(7) of the California Rules of Court,<sup>3</sup> which requires courts that have implemented mandatory electronic filing to make semi-annual reports to the Judicial Council.
3. Develop a legislative proposal to allow service of a summons by electronic mail upon approval by the court.
4. Develop proposals based on information gathered by the Electronic Filing Workstream.
5. Revise and recirculate ITAC's 2021 vendor storage and lodged electronic exhibit proposals.
6. Amend the California Rules of Court on access to electronic court records to authorize bulk distribution of criminal electronic records to public agencies or bona fide research bodies concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders.
7. Amend the Penal Code to address proof of electronic service in criminal cases.

Each of these topics is addressed in detail below.

**1. Amend the California Rules of Court on remote access to electronic court records to authorize remote access by appellate courts and appellate projects**

This suggestion originates with Appellate Advisory Committee member Jonathan Grossman, a senior staff attorney with the Sixth District Appellate Program. Mr. Grossman proposes the remote access rules be amended to authorize remote access by appellate courts and appellate projects, which are currently unaccounted for in the rules. Appellate projects are organizations contracted by the Courts of Appeal to administer programs for appointment of counsel on appeal.

Courts of Appeal are required to “adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel.”<sup>4</sup> Courts of Appeal are also required to evaluate qualifications of appointed counsel, match appointed counsel with cases, and evaluate the performance of appointed counsel.<sup>5</sup> Rather than administering appointed counsel programs themselves, Courts of Appeal are authorized to “contract with an administrator having substantial experience in handling appellate court appointments to perform any of the duties prescribed[.]”<sup>6</sup> Courts of Appeal must “provide the administrator with the information needed to fulfill the administrator’s duties.”<sup>7</sup>

<sup>3</sup> All further rule references are to the California Rules of Court.

<sup>4</sup> Cal. Rules of Court, rule 8.300(a)(1).

<sup>5</sup> Cal. Rules of Court, rule 8.300(b)–(c).

<sup>6</sup> Cal. Rules of Court, rule 8.300(e)(1).

<sup>7</sup> Cal. Rules of Court, rule 8.300(e)(2).

Currently, all Courts of Appeal contract with appellate projects to administer appointed counsel programs consistent with rule 8.300.<sup>8</sup>

Under the access rules, courts are authorized to provide counsel on appeal with remote access to electronic court records under rule 2.519. Subdivision (c) of rule 2.519 was designed to address access by counsel who are not counsel of record in the trial court; with the permission of their client, counsel who are not counsel of record may access electronic court records remotely. However, according to Mr. Grossman and Appellate Advisory Committee lead staff, this rule is not sufficient to address access by appellate projects, which may need access to court records before counsel is appointed or when appointed counsel becomes available. For example, potential clients contact appellate projects wanting to appeal and the appellate project needs access to records. As a second example, if a criminal defendant files an appeal following a guilty plea, which requires a certificate of probable cause to appeal,<sup>9</sup> but there is no certificate, the appellate projects may need to work with the defendant and view the defendant's court records to resolve the issue before counsel can be appointed. According to Mr. Grossman, this happens often. As a third example, as part of their obligations, appellate projects need to view court records as part of their evaluation of the performance of appointed appellate counsel.<sup>10</sup> As a final example, appointed counsel may become unavailable during the course of the appeal and, if that occurs, appellate projects may need to access court records to take action on behalf of the client before new counsel can be appointed or facilitate transferring information to new counsel. Mr. Grossman noted it would also be beneficial for appellate courts to be able to have access to trial court records, particularly if there is a need to retrieve a document that should be in the case file, but is missing.

Mr. Grossman explained that the pandemic and staff shortages in trial courts have had a significant impact on obtaining timely access to court records in the Sixth Appellate District. Prior to the pandemic, the Sixth District Appellate Program would have staff make a weekly trip to the court to retrieve any needed court records, but some of the trial courts are now so backlogged that retrieving the court records can take months. This has a significant impact on the appellate project and clients being served through the appellate project because it delays processes and causes the appellate project to not have timely access to needed court records.

Most likely, the rules should be amended to address this issue. Such a project would likely be Priority Level 1(e) because “[t]he change is urgently needed to remedy a problem that is causing

<sup>8</sup> A list of appellate projects is available at <https://www.courts.ca.gov/13714.htm>.

<sup>9</sup> Pen. Code, § 1237.5.

<sup>10</sup> See rule 8.300(d) (obligation to “review and evaluate the performance of each appointed counsel to determine whether counsel’s name should remain on the list at the same level, be placed on a different level, or be deleted from the list”).

significant cost or inconvenience to the courts or the public.” There is justification to complete the work in 2022, as the problem appears in significant part to be pandemic-related and will alleviate pressure on trial court staff to retrieve records for appellate courts and appellate projects as the trial courts recover from pandemic-related backlogs. It will also ensure that appellate courts and their contracted appellate projects are able to timely address the needs of clients who are appointed counsel through the required appointed counsel programs.

## **2. Repeal rule 2.253(b)(7) of the California Rules of Court, which requires courts that have implemented mandatory electronic filing to make semi-annual reports to the Judicial Council**

Rule 2.253(b) of the California Rules of Court addresses mandatory electronic filing by local rule. The rule describes various conditions required for a court to mandate electronic filing by local rule.<sup>11</sup> Subdivision (b)(7) of rule 2.253 states that courts that mandate electronic filing by local rule “must report semiannually to the Judicial Council on the operation and effectiveness of the court’s program.” The requirement has been in place since the Judicial Council adopted the rule effective January 1, 2013, to allow courts to mandate electronic filing by local rule. At the time, the purpose of the requirement was to “provide a basis for evaluating different practices and procedures and for making future recommendations, including recommendations about what should be the effective time of electronic filing.”<sup>12</sup> At the time the Judicial Council adopted the rule, it also adopted guidelines for submission of the reports, which were to go to the Judicial Council Technology Committee at a specified email address.

The rule is no longer needed. Though the rule remains in effect, the Technology Committee is no longer receiving the reports, and the email address where reports were to be submitted is no longer active. Staff investigated whether courts may be submitting reports elsewhere and they are not.<sup>13</sup> The specific issue identified in the rationale for requiring the reports on “what should be the effective time of electronic filing” is no longer an issue. In 2017, the Judicial Council sponsored Assembly Bill 976, which, among other things, established that a document filed between 12:00 a.m. and 11:59:59 p.m. on a court day is deemed to have been filed that court day. The bill passed, and the updated effective time of electronic filing has been law since January 1, 2018. Finally, the Judicial Council now has other mechanisms to gather data on electronic filing such as through the work of ITAC’s workstreams. Presently, there is an Electronic Filing

<sup>11</sup> Cal. Rules of Court, rule 2.253(b)(1)–(7).

<sup>12</sup> Judicial Council of Cal., Advisory Com. Rep., Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases (2013), <https://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.

<sup>13</sup> Staff inquired whether the following Judicial Council offices were receiving reports, and all replied that they were not: Information Technology, Legal Services, Leadership Support Services, and Office of Court Research.

Workstream that surveyed the courts about electronic filing and is developing recommendations for ITAC.

Because rule 2.253(b)(7) is no longer needed, it should be repealed. Such a project would likely be Priority Level 2 because it is “responsive to identified concerns or problems.” This could wait until after the 2022 rule cycle. However, addressing it in 2022 may be justified because (1) repeal would likely be simple and is unlikely to generate controversy, and (2) it will avoid courts using resources that could better be used elsewhere if court staff determine the court should develop reports to be in compliance with the rule. As the rule is not needed, it no longer furthers the goals and objectives of the Strategic Plan and Tactical Plan.

### **3. Develop a legislative proposal to allow service of a summons by electronic mail upon approval by the court**

ITAC member and RPS Chair Judge Julie Culver suggested RPS consider this project following publication of a column on the topic that appeared in the *Daily Journal*. In the column, Judge Michael Stern of the Superior Court of Los Angeles County recommended, “Where a party has a verifiable email address, [email] service could be authorized following court scrutiny and issuance of an order obtained in a process similar to a request for service by newspaper publication.”<sup>14</sup>

Judge Stern noted that when all other methods of service fail, courts may authorize service by publication in a newspaper of general circulation. However, parties usually never see such newspaper notices, especially as newspaper readership declines, and often, “this antiquated procedure is no better than someone standing on a street corner wearing a sandwich board and shouting that a party has been sued and should timely respond.” Judge Stern commented “pretty much everyone” has an email address and allowing the court to order service by email “would put many parties on notice of lawsuits about which they otherwise might never have known and better ensure that everyone has their day in court.”

Code of Civil Procedure sections 415.10 through 415.95 provide for methods of service of a summons in civil actions. Options include personal service, substituted service, service by mail, and service by publication.<sup>15</sup> In addition, there are other methods of service authorized in specific actions like service by posting in unlawful detainer actions.<sup>16</sup> Service by email is not currently an authorized method. To add service by email, it would be necessary to add a new section to the Code of Civil Procedure.

<sup>14</sup> Stern, *Service of Process by Email: A Modest 21st Century Proposal*, Daily J., (June 29, 2021) <https://www.dailyjournal.com/articles/363365-service-of-process-by-email-a-modest-21st-century-proposal>.

<sup>15</sup> Code Civ. Proc., §§ 415.10, 415.20, 415.30, 415.50.

<sup>16</sup> Code Civ. Proc., § 415.45.

This project would likely be Priority Level 2 because it is “[h]elpful in otherwise advancing Judicial Council goals and objectives.” In particular, it is consistent with ensuring that current legislation does not inhibit the use of technology solutions and using technology to facilitate access to the courts. This project likely can wait until after the 2022 rule cycle as there does not appear to be strong justification for needing to complete it in 2022.

#### **4. Develop proposals based on information gathered by the Electronic Filing Workstream**

The Electronic Filing Workstream is an ITAC workstream tasked with reviewing and evaluating electronic filing in California. Its goals include reviewing rules and statutes to clarify language and improve consistency across the branch. To that end, the workstream included questions about statutes and rules in a survey it sent to the courts to find out if there were statutes or rules that courts believed needed to be revised. As of the date of this memorandum, the workstream is still gathering survey results.<sup>17</sup> The workstream may need to gather additional data from responding courts to make formal, specific recommendations to ITAC.

None of these appear to be Priority Level 1 projects with the limited information available, but are potentially important nonetheless as Priority Level 2. The workstream is still considering how or whether it will gather additional information from survey respondents. Additional information will be needed to more thoroughly evaluate the responses for RPS’s and ITAC’s consideration.

A number of courts recommended changes or clarification to the Title 3 (Civil) and Title 8 (Appellate) Rules of Court. These should be referred to the appropriate advisory committees when the workstream’s work is complete. The most common comments addressing rules in ITAC’s purview were about the electronic filing and electronic service rules and its governing statute, Code of Civil Procedure section 1010.6. While more details are needed to more thoroughly evaluate the issues, the concern most often expressed was about consent to electronic service. Five courts raised issues concerning the requirement for consent to electronic service.

Express consent has been an issue since the Legislature began requiring it. Code of Civil Procedure section 1010.6 requires express consent to electronic service. This is a relatively new provision inserted by the Legislature in 2016, and effective January 1, 2019. Before that, the act of electronic filing by an attorney was considered proof of implied consent to electronic service (unrepresented parties needed to expressly consent). However, the Legislature forbade that

<sup>17</sup> A copy of the survey results as of October 13, 2021, is attached to this memorandum.

practice effective January 1, 2019.<sup>18</sup> Changing the express consent requirement would require development of a legislative proposal.

The requirements for electronic service have becoming increasingly confusing and Code of Civil Procedure section 1010.6 difficult to follow. In 2020, the Legislature added a new provision requiring parties represented by counsel to accept electronic service from other parties.<sup>19</sup> This provision omits courts from consideration as well as other persons who are not technically parties, e.g., a child represented by counsel in a custody dispute. In addition, in 2021, the Legislature amended Code of Civil Procedure section 1010.6 to require courts, starting July 1, 2024, to transmit documents electronically to a party or other person when they have consented to electronic service.<sup>20</sup> The Judicial Council's Governmental Affairs office anticipates there may be an opportunity to work with the Legislature in 2022 to clean up and better organize Code of Civil Procedure section 1010.6, including separating provisions related to electronic filing from those related to electronic service, and bringing courts within the scope of the new provision that currently only requires represented parties to accept electronic service from other parties.

Developing a legislative proposal to amend Code of Civil Procedure section 1010.6 would likely be a Priority Level 2 project because it is "responsive to identified concerns or problems." It does not appear to be a proposal project that is needed in 2022 (it would not reach the Legislature until 2023 at the earliest), especially considering the Judicial Council's Governmental Affairs office anticipates it may be possible to clean up Code of Civil Procedure section 1010.6 in 2022, including resolving inconsistent provisions on when electronic service requires consent and when it is mandatory.

#### **5. Revise and recirculate ITAC's 2021 vendor storage and lodged electronic exhibit proposals**

ITAC deferred two proposals it circulated in 2021: one was a legislative proposal to provide express statutory authority for courts to use vendors to store exhibits in electronic format; the second was a rule proposal to define and govern access to lodged electronic exhibits.

**Vendor storage proposal.** The vendor storage legislative proposal would have provided express statutory authority for courts to use vendors to store exhibits in electronic format.<sup>21</sup> Such express authority is not currently in statute. However, following comments questioning the need for the authority, staff analyzed whether there was anything *prohibiting* courts from using vendor storage for exhibits in electronic format. That analysis concluded that there was no such

<sup>18</sup> Code Civ. Proc., § 1010.6(a)(2)(A)(2) ("The act of electronic filing shall not be construed as express consent").

<sup>19</sup> Code Civ. Proc., § 1010.6(e).

<sup>20</sup> Stats. 2021, ch. 214, § 7.

<sup>21</sup> The most recent version of the proposal language is attached to this memorandum.



prohibition, and using vendor storage would not be inconsistent with courts' statutory obligations to maintain exhibits so long as the court maintained ultimate control over the exhibits. Following this analysis, ITAC decided to withdraw the proposal from the 2020 legislative proposal process, but defer certain provisions of the proposal for future consideration as a rule proposal. Those provisions include requiring the vendor to comply with any judicial branch standards and policies, limiting access to persons authorized by law, and requiring the vendor to comply with disposal of exhibits as directed by the court. These provisions were intended to address any security concerns when the proposal proceeded to the Legislature. However, there does not appear at this time to be a strong need to develop a rule mandating these requirements, particularly since the Judicial Council is in the process of establishing an Office of Information Security, which will be able to provide more education and guidance on security of information stored electronically. While last year, there was a sense of urgency to provide express authority for vendor storage considering the extensive ramping up of remote proceedings during the pandemic, there does not appear the same urgency or potential need for the remaining proposal provisions now that it turns out legislation is not needed. Accordingly, staff recommend against revising and recirculating the proposal.

**Lodged electronic exhibit proposal.** The lodged electronic exhibit rule proposal would have defined lodged electronic exhibits and would have governed access to and deletion of lodged electronic exhibits.<sup>22</sup> Ultimately, based on Rules Committee staff feedback, the provisions on access and deletion proved problematic as potentially conflicting with statutes regarding disposal of exhibits and rules concerning transmission of lodged exhibits to an appellate court. The rule would have limited access to lodged electronic exhibits to the parties and the court. The goal was to ensure exhibits did not become disseminated publicly before parties had their day in court so as to (1) not dissuade parties from availing themselves of appearing remotely, and (2) encourage parties to transmit exhibits electronically to the court for electronic storage rather than providing the court with physical media that the court would then have to store, such as paper, CDs, and flash drives.

This project would likely be Priority Level 2 because it is “[h]elpful in otherwise advancing Judicial Council goals and objectives.” In particular, it is consistent with the Tactical Plan objective of modernizing rules to “enhance the use of technology in court operations and the delivery of court services.” This project could wait until after the 2022 rule cycle to determine if there is more demand for such a rule from the courts, but there is also justification to proceed with the project in 2022, as the proposal has already circulated once for public comment and problems identified with the proposal could be remedied through further revision.

<sup>22</sup> The most recent version of the proposal language is attached to this memorandum.

**6. Amend the California Rules of Court on access to electronic court records to authorize bulk distribution of criminal electronic records to public agencies or bona fide research institutions concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders**

Rule 2.503(g) of the California Rules of Court only authorizes bulk distribution of a court's electronic "calendar, register of actions, and index," effectively prohibiting bulk distribution of any other electronic court records. This year, ITAC received multiple requests to amend rule 2.503(g) to authorize the bulk distribution of criminal court records to public agencies and bona fide research institutions concerned with the control and prevention of crime.<sup>23</sup>

The requesters contended the change is needed to conform rule 2.503(g) to Penal Code section 13202, which authorizes release of "criminal offender record information" to public agencies and bona fide research institutions "concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders."

Penal Code section 13202 does not clearly apply to the courts. Rather, it appears to apply to the California Department of Justice. The interpretation of Penal Code section 13202 is complex, however. RPS staff are consulting with internal resources about this issue and will provide RPS members with a supplemental memorandum addressing it or provide an oral update at the RPS meeting on October 25, 2021.

**7. Amend the Penal Code to address proof of electronic service in criminal cases.**

This topic originated with staff, but it appears it is likely unnecessary given the amendments to the electronic service rules that will be effective January 1, 2022. Early in the development of ITAC's rule proposal to incorporate criminal cases into the electronic service rules, Criminal Law Advisory Committee staff noted procedures applicable to civil cases are generally not applicable to criminal cases unless expressly made so.<sup>24</sup>

Penal Code section 690.5 applies certain provisions of Code of Civil Procedure section 1010.6 to criminal cases, including provisions on electronic service, except as otherwise provided in the Penal Code.<sup>25</sup> There is no existing provision of the Penal Code that addresses proof of electronic service. Penal Code section 690.5 further requires the Judicial Council to make rules for electronic service in criminal cases.<sup>26</sup> This year, ITAC developed a proposal to incorporate electronic service in criminal cases into the existing electronic service rules, and the Judicial

<sup>23</sup> Requests came from the Office of the District Attorney, City and County of San Francisco, Prosecutors Alliance of California, UnCommon Law, Measures for Justice, and Smart Justice California.

<sup>24</sup> *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 731 (certain provisions of the "Code of Civil Procedure do not govern criminal proceedings unless expressly made applicable to such proceedings).

<sup>25</sup> Pen. Code, § 690.5(a).

<sup>26</sup> Pen. Code, § 690.5(b).

Council adopted the proposal effective January 1, 2022.<sup>27</sup> Rule 2.251, which addresses electronic service, will expressly incorporate criminal within its scope. Subdivision (j)(1) of that rule requires proof of electronic service to be made “as provided in Code of Civil Procedure section 1013b.” Accordingly, because the rules will expressly account for proof of electronic service applicable to both civil and criminal cases, there does not appear to be a need to propose amending the Penal Code to address it.

### **Subcommittee’s Tasks**

- Determine which projects to recommend for ITAC’s 2022 annual agenda.
- Prioritize recommended projects as Priority Level 1 or Level 2.
- Provide justification for recommending projects for 2022, instead of a future year.

### **Attachments and Links**

1. Judicial Council of California, Internal Committee Chairs Memorandum to Advisory Body Chairs, Annual Planning Prioritization and Future Planning (July 27, 2021), pages 14-18.
2. Electronic Filing Workstream, Responses to Survey Questions on Statutes and Rules (as of October 13, 2021), pages 19-23.
3. Vendor storage legislative proposal, pages 24-25.
4. Lodged electronic exhibits rule proposal, page 26.
5. Link A: Judicial Council Strategic Plan for Technology 2019–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>.
6. Link B: Judicial Council Tactical Plan for Technology 2021–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Tactical-Plan.pdf>.
7. Link C: California Rules of Court, rule 8.300, [https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8\\_300](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_300).
8. Link D: California Rules of Court, rule 2.519, [https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_519](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_519).
9. Link E: California Rules of Court, rule 2.253, [https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_253](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_253).
10. Link F: Judicial Council of California, Advisory Committee Report, Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases (2013), <https://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.

<sup>27</sup> Judicial Council of Cal., Advisory Com. Rep., Judicial Branch Technology: Electronic Filing and Electronic Service in Criminal Cases (2021) <https://jcc.legistar.com/View.ashx?M=F&ID=9785482&GUID=E0376C0C-4BD6-45BF-ADA2-11B612319398>.

11. Link G: Stern, *Service of Process by Email: A Modest 21st Century Proposal*, Daily J., (June 29, 2021) <https://www.dailyjournal.com/articles/363365-service-of-process-by-email-a-modest-21st-century-proposal>.
12. Link H: Code of Civil Procedure sections 415.10–415.95, [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CCP&division=&title=5.&part=2.&chapter=4.&article=3](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=5.&part=2.&chapter=4.&article=3).
13. Link I: Code of Civil Procedure section 1010.6, [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP).
14. Link J: California Rules of Court, rule 2.503, [https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_503](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_503).
15. Link K: Penal Code section 13202, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=13202&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13202&lawCode=PEN).
16. Link L: Penal Code section 690.5, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=690.5&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5&lawCode=PEN).



# JUDICIAL COUNCIL OF CALIFORNIA

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## MEMORANDUM

**Date**

July 27, 2021

**Action Requested**

Review by Advisory Body Chair and Lead Staff

**To**

Judicial Council Advisory Body Chairs

**Deadline**

Before Preparing Annual Agenda

**From**

Hon. Marsha G. Slough, Chair, Executive and Planning Committee  
Hon. Harry E. Hull, Jr., Chair, Rules Committee  
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee  
Hon. Kyle S. Brodie, Chair, Technology Committee  
Hon. Marla O. Anderson, Chair, Legislation Committee

**Contact**

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**Subject**

Annual Agendas: Prioritization and Future Planning

Last year, the Judicial Council’s internal committee chairs worked with advisory bodies to coordinate efforts to maintain access to court proceedings and the fair administration and delivery of justice during COVID-19 pandemic public health concerns and related budget shortfalls. In light of the improvement in both the public health and the state budget, it is hoped that advisory committees can take on additional projects as appropriate, especially ones deferred from last year if they continue to be appropriate. At the same time, the improvement in the public health situation has fluctuated recently, so we continue to actively monitor the progress of the pandemic and its impact on the courts. We are, therefore, asking all advisory body chairs to

Judicial Council Advisory Body Chairs

July 27, 2021

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carefully evaluate projects planned for the coming year, and to continue to prioritize projects that:

- Assist courts, justice partners, and parties with access to justice during and following the COVID-19 pandemic;
- Address otherwise urgent needs; or
- Are mandated by legislative changes.

In addition, advisory bodies should, as they plan their annual agendas, retain some capacity to take on new projects that are expected to be assigned to various advisory bodies by the Ad Hoc Workgroup on Post-Pandemic Initiatives as it continues its work through the next several months.

For advisory bodies overseen by the Rules Committee, please apply the above-listed priorities as you develop the new annual agenda that is to be presented to the Rules Committee in October. For advisory bodies overseen by the Executive and Planning Committee, the Technology Committee, or the Judicial Branch Budget Committee, please apply them as you develop your annual agendas for 2022.

Specific guidelines for rules and forms projects are set out below.

## **Background**

The Judicial Council's internal committees oversee advisory bodies to ensure their activities are consistent with the council's goals, priorities, and policies and that annual agendas are consistent with advisory committee and task force charges. Annually, internal committees review, discuss, and approve advisory body annual agendas within their oversight responsibility.

## **Necessary Priorities**

The COVID-19 pandemic has significantly impacted the public, courts, justice partners, and access to justice, which in turn required a reevaluation of the work being done by advisory committees. Courts struggled to handle case backlogs with public health concerns requiring physical distancing of court staff and all court users. Courts have worked assiduously to continue to provide access to justice, often by providing ways for parties to appear remotely.

Simultaneously balancing all of these tasks raised many new issues for courts, justice partners, and parties and increased the workload and stresses of our advisory committee members, leaving many with less time for committee work. Judicial Council staff, in turn, was and continues to be asked to dedicate many of their efforts to supporting courts with pandemic-related issues and new laws and procedures and council initiatives arising from those issues.

As a result of all these factors, last year we asked you to focus on only those proposals that were legislatively mandated or that would provide immediate relief and support to the courts and

Judicial Council Advisory Body Chairs

July 27, 2021

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justice partners as they worked to maintain access to justice. We recognize that this refocus required many committees to defer or eliminate planned projects.

In the coming year, with the state reopening and many restrictions being eased, we are also easing the restrictions placed on advisory committees. We ask, however, that, as you plan your 2022 annual agendas, you continue to prioritize projects that further access to justice during this transitional period, as courts are struggling with backlogs. We also ask that, especially for those advisory bodies overseen by the Rules Committee, which will be developing new annual agendas in the near future, that you reserve capacity on your annual agenda to work on projects that may be assigned to you in coming months by the Ad Hoc Workgroup on Post-Pandemic Initiatives. That group is working currently to identify successful court practices that emerged during the COVID-19 pandemic. They expect to make recommendations soon, directing advisory bodies to work on proposals to refine and enhance some of these practices, in order to increase access to justice, modernize services, and promote uniformity in practices going forward.

The improvement in the public health situation has fluctuated recently, so we will continue to actively monitor the progress of the pandemic and its impact on the courts. As conditions change, therefore, we will remain flexible and may have to consider modifying these priorities, as appropriate.

### **Rules and Forms Proposals: Special Considerations**

In preparing annual agendas for the upcoming committee year, chairs should keep in mind that for rules and forms proposals, their relevant oversight committee will focus on established criteria in determining whether a proposal should proceed in the upcoming year and have a September 2022 or January 2023 effective date. This is not a significant change from the practice in recent years, and the goal in highlighting these criteria is to reduce burdens on courts and to be responsive to court concerns about limited resources. The oversight committees strive to reduce court burdens related to:

- (1) Time and limited availability of advisory committee members who are also judicial officers and/or court staff to participate in meetings to consider proposals while dealing with backlogs in the courts.
- (2) The review and comment process for rules and forms proposals, which takes time for court staff.
- (3) The effect of new and amended rules and forms on court administration and operations, and particularly their effect on court costs, both monetary and in terms of judicial officer and court staff time.

### **Priority Level 1**

Proposals that meet one of the criteria below will be considered Priority Level 1 proposals:

- (a) The proposal is urgently needed to conform to the law;

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- (b) The proposal is urgently needed to respond to a recent law change;
- (c) A statute or council decision requires adoption or amendment of rules or forms by a specified date;
- (d) The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
- (e) The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
- (f) The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

For the current cycle, proposals that address ways for courts to efficiently process cases in order to handle case backlogs related to the COVID-19 pandemic or that provide increased access to justice through remote technology should be prioritized. Such proposals would generally come within category (e) or (f). *For each Priority Level 1 proposal in its annual agenda, the advisory body must provide a specific reason why it should be done this year and how it fits within the identified category.*

### **Priority Level 2**

Given the many constraints on the judicial branch at this time, the oversight committees do not anticipate approving many Priority Level 2 proposals. *If an advisory committee is interested in pursuing any Priority Level 2 proposals, please include justification as to why the proposal should be approved at this time.* Lower-level priority proposals are proposals that are:

- (a) Useful, but not necessary, to implement changes in law;
- (b) Responsive to identified concerns or problems; or
- (c) Helpful in otherwise advancing Judicial Council goals and objectives.

In developing proposals to respond to a specific need, advisory committees should consider whether the need could be addressed in other ways, such as developing suggested practices for courts. Advisory committees should consider whether a proposal must have statewide application as a rule or whether a different solution tailored to specific courts or all courts of a particular size would address the matter.

### **Attachments and Links**

*Guidelines for the Judicial Council Advisory Body Annual Agenda Process*  
*Operating Standards for Judicial Council Advisory Bodies*

cc: Hon. Tani G. Cantil-Sakauye, Chief Justice of California  
Martin Hoshino, Administrative Director, Judicial Council  
Millicent Tidwell, Chief Deputy Director, Judicial Council  
Robert Oyung, Chief Operating Officer, Judicial Council



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John Wordlaw, Chief Administrative Officer, Judicial Council

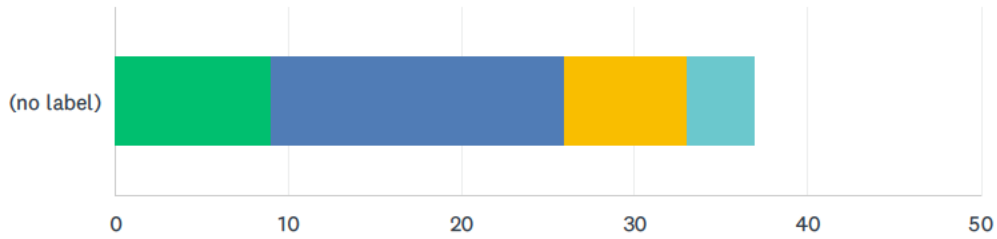
Deborah Brown, Chief Counsel, Legal Services

Laura Speed, Director, Leadership Support Services

Advisory Body Lead Staff

## Q129 Do you consider California Rules of Court and Statutes to be clear for electronic filing?

Answered: 37 Skipped: 30



■ Very Clear      ■ Somewhat Clear      ■ Neutral  
■ Somewhat Unclear      ■ Very Unclear

	VERY CLEAR	SOMEWHAT CLEAR	NEUTRAL	SOMEWHAT UNCLEAR	VERY UNCLEAR	TOTAL	WEIGHTED AVERAGE
(no label)	24.32% 9	45.95% 17	18.92% 7	10.81% 4	0.00% 0	37	2.16

#	IF UNCLEAR, PLEASE EXPLAIN YOUR RATING	DATE
1	Update and consolidation would be helpful.	9/30/2021 11:31 AM
2	See answer to #2 below	9/28/2021 5:26 PM
3	Rules always need clarifying	9/27/2021 4:38 PM
4	The law has not kept up with technological advancements and needs clarification.	9/21/2021 4:41 PM
5	I believe the rules of court as applicable to Title 8 for the appellate courts are very clear.	9/14/2021 9:36 AM

## Q130 Which California Rules of Court and Statutes relative to electronic filing would you change and why?

Answered: 17 Skipped: 71

#	RESPONSES	DATE
1	Honestly, I lack enough knowledge on this topic to comment.	10/12/2021 10:20 AM
2	None at this time.	10/12/2021 9:08 AM
3	No change at this time.	10/8/2021 9:44 AM
4	Here are a couple examples for Family Law and Juvenile: CRC 2.254(c) – clarification on when a document is “filed” (e.g. once submitted by filer or when court processes the filing) CRC 8.74 – the statute requires efile documents to be in a certain format, however we have experienced filers using their cellphones to capture scans or photos of things and submitting them, so this should be revisited	9/28/2021 5:26 PM
5	For Civil/Probate Ops o Clarity on the applicability of NSF/partial payment rejections when fee is paid by efilng versus check (see e.g. CCP 411.21) o CRC 3.55-3.56 – Improve clarity on 1) whether vendor fees are included in fee waivers and 2) whether government entities are also excluded from paying vendor fees.	9/28/2021 3:47 PM
6	Rule 3.1312. Preparation and submission of proposed order needs to change. Most efilng systems do not take Word documents. In addition, the Proposed Order (Cover Sheet) (form EFS-020) causes processes issues in efilng.	9/28/2021 7:57 AM
7	None.	9/27/2021 10:34 AM
8	None.	9/27/2021 10:25 AM
9	N/A	9/23/2021 10:48 AM
10	25MB file limit for electronic documents in Rule 8.74 (a) 5.	9/21/2021 4:41 PM
11	None	9/21/2021 11:16 AM
12	None at this time.	9/21/2021 9:34 AM
13	2.257(c)(1) - Signatures on documents not signed under penalty of perjury. This rule was originally written at a time when electronic signatures were less common and difficult for many filers. Electronic signatures are now commonplace and easy for filers to apply to their documents. The current rule provides that eFiled documents need not be signed at all, which is confusing to outside parties viewing the resultant Court record, and not particularly desirable by Judicial Officers and Court staff. In addition, the supposition in the Rule that the document is deemed signed “by the person who filed it electronically” is erroneous in that, in most cases, the document is being submitted by attorney staff, not by the attorney themselves, and being deemed signed by attorney staff rather than the attorney is not appropriate. 2.261 - Modifications of JC forms. This Rule is outdated (last updated 2007) and refers to then “pilot project” Courts. The Rule should be generalized to allow all Court to make non-substantive changes to JC forms to meet the stated purpose, and should also provide that the JC shall make modifiable versions of forms available to Court in order to accomplish that goal. 3.1312(c) - Electronic Submission of Proposed Orders. This Rule is outdated and presupposes what local Courts will want or need when it comes to Proposed Orders (e.g. requiring a ‘cover sheet’ and a separate Word version of the Proposed Order). This Rule should be eliminated or modified to allow local Courts to set those requirements according to their business processes. For example, in our Court neither a Coversheet nor a Word version are desired, so when they're submitted in that fashion it serves no purpose, places an unnecessary burden on the Filer, and complicates the Court's processing of the Order.	9/21/2021 7:56 AM
14	CRC 3.1312 and form EFS-020. We don't need the order in an editable word-processing format, we are able to annotate the PDF document. We also don't like the cover sheet EFS-020 which	9/20/2021 12:13 PM

## E-filing Workstream - Court Survey

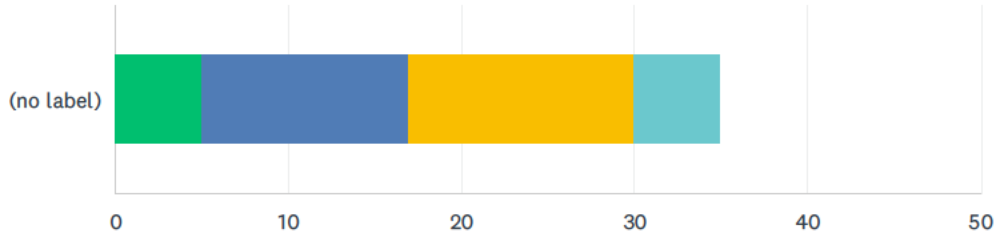
**PDF Page 28**

seems unnecessary and makes orders harder to locate as we can't separate the document from the final order once signed.

15	None at this time	9/16/2021 2:18 PM
16	N/A	9/15/2021 2:47 PM
17	I would like to see rule 8.77(c) changed to 4:59PM rather than 11:59PM because it creates unnecessary issues for the courts when documents are filed on the last day of jurisdiction. I don't have an issue with the 11:59PM language for routine filings, so perhaps amending the language to be more clear that filings will not be deemed timely filed after 4:59PM if it is the last day of jurisdiction in any given case.	9/14/2021 9:36 AM

### Q131 Do you consider California Rules of Court and Statutes to be clear for electronic service?

Answered: 35 Skipped: 32



■ Very Clear      ■ Somewhat Clear      ■ Clear  
■ Somewhat Unclear      ■ Very Unclear

	VERY CLEAR	SOMEWHAT CLEAR	CLEAR	SOMEWHAT UNCLEAR	VERY UNCLEAR	TOTAL	WEIGHTED AVERAGE
(no label)	14.29% 5	34.29% 12	37.14% 13	14.29% 5	0.00% 0	35	2.51

#	IF UNCLEAR, PLEASE EXPLAIN YOUR RATING	DATE
1	Same applies. Don't know if CRCs and statutes have kept up with e-filing advances.	9/30/2021 11:31 AM
2	See answer to #4 below	9/28/2021 5:26 PM
3	Rules always need clarifying	9/27/2021 4:38 PM
4	1010.6 - there has been discussion on this statute in the past and cannot recall how that ended. This will require additional time to research again to appropriately respond.	9/15/2021 2:47 PM

## Q132 Which California Rules of Court and Statutes relative to electronic service would you change and why?

Answered: 18 Skipped: 72

#	RESPONSES	DATE
1	Honestly, I lack enough knowledge on this topic to comment.	10/12/2021 10:20 AM
2	None at this time.	10/12/2021 9:08 AM
3	No change at this time.	10/8/2021 9:44 AM
4	Here are a couple examples for Family Law and Juvenile: CRC 2.251(e) – challenge around providing electronic service when not all parties have electronic access; consider having parties/attorneys responsible for providing the updated service addresses, as they would be with keeping everyone informed of a mailing address CCP 1010.6(a)(2)(B) – if a document is required to be served by certified or registered mail, electronic service of the document is not authorized; would like to see this changed so there is an equivalent electronic process Clarification whether electronic service is required through email, whether providing electronically through other means would also be applicable (e.g. interface to an agency, posting to a portal/site for retrieval, etc.) Clarification if consent for electronic service is per case, or could it be a “blanket” agreement by an agency or attorney	9/28/2021 5:26 PM
5	For Civil/Probate Ops: o Rules to facilitate justice partners accepting electronically signed/issued writs and abstracts, rather than insistence on wet signature. o CRC 2.251 – Strengthen/facilitate court to party eservice (e.g. minute orders) without reliance on opt-in consent	9/28/2021 3:47 PM
6	We have to fix the “consent/no consent” scheme for efilng and service (e.g., CRC 2.251). It is unneeded, onerous and nearly impossible to manage (unless the court mandates efilng).	9/28/2021 11:47 AM
7	Remove affirmative requirement for electronic service by court when the part efiles.	9/27/2021 4:34 PM
8	None.	9/27/2021 10:34 AM
9	None.	9/27/2021 10:25 AM
10	None	9/23/2021 3:57 PM
11	Clarification of 2.251(b) - Express Consent.	9/23/2021 10:48 AM
12	N/A	9/21/2021 4:41 PM
13	None	9/21/2021 11:16 AM
14	None at this time.	9/21/2021 9:34 AM
15	2.251(b)(1)(B)(i) - Electronic Service via EFSP Agreement. The Court has no access to or insight on the private agreements executed between a Filer and an EFSP. As such, the Court has no reasonable way to verify "consent" pursuant to this Rule.	9/21/2021 7:56 AM
16	We constantly get questions regarding the need to file a proof of service form when the person was served electronically through the EFM. Parties think that is sufficient but don't understand the efilng service is separate from the court case and without the filing of a proof of service we can't see the document was electronically served.	9/20/2021 12:13 PM
17	The rules and statutes involving implied and explicit consent for electronic service (CRC 2.251). The reason for change would be that in previous years, a filer was implying electronic consent by filing a document electronically into a case. At the present, a filer has to provide specific explicit consent to receive electronic service. This rule is not always clear to all filers, so there are a number of attempts in electronic service and technical issues with filing into cases that may not become apparent until the hearing	9/16/2021 2:18 PM
18	See above as it relates to 1010.6. This will require follow-up discussion.	9/15/2021 2:47 PM

1 **§ 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 **§ 69846.1**

- 9
- 10 (a) The clerk may use a vendor to store and maintain exhibits lodged or introduced and  
11 evidence received by the court in electronic format. For purposes of this section,  
12 “exhibits lodged or introduced and evidence received by the court in electronic  
13 format” means exhibits and evidence that are transmitted electronically directly to  
14 the court or the court’s electronic storage vendor.  
15
- 16 (b) The vendor shall comply with any judicial branch security standards and policies  
17 mandated by the Judicial Council and by any court with which the vendor  
18 contracts.  
19
- 20 (c) Exhibits and evidence in electronic format stored with a vendor shall be accessible  
21 only by persons authorized by law or court order.  
22
- 23 (d) If the court orders the clerk to destroy or otherwise dispose of an exhibit or  
24 evidence in electronic format and that exhibit or evidence is stored with a vendor,  
25 the clerk shall direct the vendor to destroy or dispose of the exhibit or evidence.  
26
- 27 (e) The vendor shall only destroy or dispose of exhibits or evidence in electronic  
28 format as directed by the court.  
29
- 30 (f) The Judicial Council may adopt rules to facilitate implementation of this section.  
31

32 **§ 1952**

- 33
- 34 (a) The clerk shall either retain in his or her custody, or in the custody of a vendor  
35 consistent with the requirements of Government Code section 69846.1, any exhibit,  
36 deposition, or administrative record introduced in the trial of a civil action or  
37 proceeding or filed in the action or proceeding until the final determination thereof  
38 or the dismissal of the action or proceeding, except that the court may order the  
39 exhibit, deposition, or administrative record returned to the respective party or

1 parties at any time upon oral stipulation in open court or by written stipulation by  
2 the parties or for good cause shown.

3  
4 (b) No exhibit or deposition shall be ordered destroyed or otherwise disposed of  
5 pursuant to this section where a party to the action or proceeding files a written  
6 notice with the court requesting the preservation of any exhibit, deposition, or  
7 administrative record for a stated time, but not to exceed one year.

8  
9 (c) Upon the conclusion of the trial of a civil action or proceeding at which any exhibit  
10 or deposition has been introduced, the court shall order that the exhibit or  
11 deposition be destroyed or otherwise disposed of by the clerk. The operative  
12 destruction or disposition date shall be 60 days following final determination of the  
13 action or proceeding. Final determination includes final determination on appeal.  
14 Written notice of the order shall be sent by electronic means or first-class mail to  
15 the parties by the clerk.

16  
17 (d) Upon the conclusion of any posttrial hearing at which any exhibit, deposition, or  
18 administrative record has been introduced, the court shall order that the exhibit or  
19 deposition be destroyed or otherwise disposed of by the clerk. The operative date of  
20 destruction or disposition shall be 60 days following the conclusion of the hearing,  
21 or if an appeal is taken, upon final determination of the appeal. Written notice of  
22 the order shall be sent by electronic means or first-class mail to the parties by the  
23 clerk.

24  
25 **§ 1417**

26  
27 All exhibits which have been introduced or filed in any criminal action or proceeding  
28 shall be retained by the clerk of the court or in the custody of a vendor consistent with the  
29 requirements of Government Code section 69846.1., who The clerk of the court shall  
30 establish a procedure to account for the exhibits properly, subject to Sections 1417.2 and  
31 1417.3 until final determination of the action or proceedings and the exhibits shall  
32 thereafter be distributed or disposed of as provided in this chapter.  
33



Rule 2.901 of the California Rules of Court is adopted, effective January 1, 2022, to read:

1 **Rule 2.901. Lodged electronic exhibits**

2  
3 **(a) Definition**

4  
5 A “lodged electronic exhibit” is an exhibit in electronic format that is not filed, but  
6 rather is electronically transmitted to or received by the court for temporary storage  
7 pending use at a trial or other evidentiary hearing.  
8

9 **(b) Access to lodged electronic exhibits**

10  
11 (1) A lodged electronic exhibit may be accessible only by the parties and the  
12 court until it is admitted into evidence. For purposes of this subdivision,  
13 “accessible” means able to access the exhibit outside a public court  
14 proceeding. This subdivision does not preclude in-person public viewing of a  
15 proceeding, a court’s public livestream of a proceeding, or court-authorized  
16 media coverage of a proceeding.  
17

18 (2) If a lodged electronic exhibit is confidential by law or sealed by court order,  
19 it does not lose its confidential or sealed status by operation of this rule.  
20

21 **(c) Deletion of lodged electronic exhibits**

22  
23 Unless otherwise ordered by the court, the clerk may delete a lodged electronic  
24 exhibit after the hearing, proceeding, or trial.  
25

26 **Advisory Committee Comment**

27  
28 The rule applies only if a court accepts exhibits lodged in electronic rather than physical format.  
29 For example, if a party lodged an exhibit contained on external storage media such as a flash  
30 drive or disc, the exhibit would be in physical format and the rule would not apply.  
31