



# 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

October 25, 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. Samantha Jessner; Hon. Kim Menninger; Hon. Bruce Smith; and Mr. Don Willenburg

**Advisory Body Members Absent:** Mr. Darrel Parker

**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 July 6, 2021, Rules and Policy Subcommittee minutes were approved.

There were no public comments for this meeting.

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

##### Item 1

##### Rules and Policy Subcommittee 2021 Project Updates (Discussion Item)

Report on end of year Rules and Policy Subcommittee 2021 projects.

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

**Discussion:** Ms. Jaramillo provided an update on the projects on 2021 projects. Of note were two items not submitted in the rules cycle. Judge Culver further expanded on the reasons they were not included. The rule to add vendor storage of electronic exhibits and evidence in electronic format, it was felt that it wasn't necessary at this time. After additional discussion, the rule to add lodged exhibits might cause confusion and conflict with the other appellate and trial court existing rules.

**Item 2**

**Rules and Policy Subcommittee 2022 Work Plan (Discussion Item)**

Review, prioritize and plan ITAC's 2022 Annual Agenda projects assigned to the subcommittee.

Presenter: Hon. Julie Culver, Chair, Rules and Policy Subcommittee

Ms. Andrea Jaramillo, Attorney II, Legal Services

**Discussion:** Judge Culver reiterated the priority list from the Judicial Council for future project workplans that focus on the highest benefits for the public and Judicial Council goals. Ms. Jaramillo went through suggested projects for members to review for the 2022 workplan.

**Action:** Members approved two items for the 2022 Annual Agenda workplan.

Priority 1 was assigned to amend the California Rules of Court on remote electronic court records to authorize remote access by appellate courts and appellate projects, that would reduce delays in obtaining records from trial courts. This would allow courts that have the ability to provide remote access to do so, but not require it if not feasible.

Priority 2 was assigned to amend rule 2.253 of the California Rule of Court to remove the requirement that courts with mandatory electronic filing make semi-annual reports to the Judicial Council. This rule is no longer necessary as the information is gathered elsewhere.

Items not included in the 2022 Annual Agenda workplan:

- Priority 2 was assigned for future work to develop a legislative proposal to allow service of a summons by electronic means upon approval by the court. The Subcommittee agreed to wait until the Electronic Filing Workstream completes their report and recommendations before developing new proposals on electronic filing. This item will not be included in the 2022 Annual Agenda. The vendor storage proposal is no longer needed and will not be recirculated. The Subcommittee agreed to wait on the lodged electronic exhibit proposal to see what courts may need in the future. The Subcommittee will not recommend changes to the California Rules of Court based on Penal Code section 13202 as the code section does not appear to apply to courts. The Subcommittee agreed there is no need to amend the Penal Code to address the proof of electronic service in criminal cases. Rule changes effective January 1, 2022 will address this issue.

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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 1:12 PM.

Approved by the advisory body on enter date.

# JUDICIAL COUNCIL OF CALIFORNIA

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## DRAFT INVITATION TO COMMENT [ITC prefix as assigned]-\_\_

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**Title**

Rules: Remove Reporting Requirement for Courts with Mandatory Electronic Filing

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 2.253

**Proposed by**

Information Technology Advisory  
Committee  
Hon. Sheila F. Hanson, Chair

**Action Requested**

Review and submit comments by May 13, 2022

**Proposed Effective Date**

January 1, 2023

**Contact**

Andrea L. Jaramillo, 916-263-0991  
[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

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### Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) proposes the Judicial Council amend rule 2.253 of the California Rules of Court to remove a requirement that a trial court with mandatory electronic filing by local rule submit reports about its electronic filing program to the Judicial Council. The proposal originates with Judicial Council staff.

### Background

The Judicial Council adopted rule 2.253 of the California Rules of Court effective July 1, 2013. Rule 2.253 authorizes trial courts to require parties, by local rule, to file electronically in civil cases subject to conditions enumerated in the rule. One condition is that courts “report semiannually to the Judicial Council on the operation and effectiveness of the court’s [mandatory electronic filing] program.”<sup>1</sup> The purpose of requiring courts to submit reports to the Judicial Council 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>2</sup> When the Judicial Council adopted the rule, it also adopted guidelines for

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

<sup>2</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), p. 7, <https://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.

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

submitting the reports.<sup>3</sup> Under the guidelines, courts were to submit reports to the Judicial Council Technology Committee at a specified email address.<sup>4</sup>

## **The Proposal**

The proposal would eliminate the requirement that a trial court with mandatory electronic filing by local rule submit reports about its electronic filing program to the Judicial Council. The reports are no longer needed. Though the rule remains in effect, the email address where reports were to be submitted is no longer active. The Judicial Council Technology Committee is no longer receiving the reports.

When the Judicial Council adopted the reporting requirement, the purpose 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>5</sup> The issue of “what should be the effective time of electronic filing” is now resolved. 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. As to “evaluating different practices and procedures,” the Judicial Council has mechanisms to gather such data as needed without semi-annual reports. For example, the Information Technology Advisory Committee’s Electronic Filing Workstream surveyed the courts in fall 2021 to collect data about court electronic filing programs so the workstream could analyze the data and make recommendations.

## **Alternatives Considered**

The alternative to removing the reporting requirement would be to take no action. However, ITAC did not consider this a preferable alternative as the reporting requirement would necessitate courts to take on unnecessary workload.

## **Fiscal and Operational Impacts**

The proposal is not expected to result in any costs. Removing the requirement should ensure courts do not expend their resources to create the reports identified in the rule.

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<sup>3</sup> *Id.* at p. 56.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.* at p. 7.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.253, at page 4.
2. Link A: 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>.
3. Link B: AB 976 (2017-2018 Regular Session), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB976](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB976).

Rule 2.253 of the California Rules of Court are amended, effective January 1, 2023, to read:

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

3  
4 (a) \* \* \*

5  
6 (b) **Mandatory electronic filing by local rule**

7  
8 A court may require parties by local rule to electronically file documents in civil  
9 actions directly with the court, or directly with the court and through one or more  
10 approved electronic filing service providers, or through more than one approved  
11 electronic filing service provider, subject to the conditions in Code of Civil  
12 Procedure section 1010.6, the rules in this chapter, and the following conditions:

13  
14 (1)—(6) \* \* \*

15  
16 ~~(7) A court that adopts a mandatory electronic filing program under this~~  
17 ~~subdivision must report semiannually to the Judicial Council on the operation~~  
18 ~~and effectiveness of the court's program.~~

19  
20 (c) \* \* \*



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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<b>Date</b> January 27, 2022	<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> February 3, 2022
<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> Remote Access Rule Amendments	

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The Information Technology Advisory Committee (ITAC) 's 2022 annual agenda includes a rule proposal project to "Consider amending the California Rules of Court on remote access to electronic records to authorize remote access by appellate courts, appellate projects contracted to run appointed appellate counsel programs, and the Habeas Corpus Resource Center." The purpose of this memorandum is to brief the ITAC Rules and Policy Subcommittee (RPS) on the rule proposal in preparation for RPS's February 3, 2022 meeting to discuss the proposal.

### **The Proposal**

The proposal includes (1) a new rule of the California Rules of Court<sup>1</sup>, (2) rule amendments to authorize remote access by appellate appointed counsel administrators (also known as appellate projects), (3) renumbering of existing rules, and (4) amendments to rule 2.540 to authorize remote access by Courts of Appeal and the Habeas Corpus Resource Center.

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

### **A. Remote access by appellate appointed counsel administrators**

Under rule 8.300, 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>2</sup> Courts of Appeal are also required to evaluate the qualifications of appointed counsel, match appointed counsel with cases, and evaluate the performance of appointed counsel.<sup>3</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>4</sup> All Courts of Appeal contract with appellate projects to administer appointed counsel programs consistent with rule 8.300.<sup>5</sup> According to Sixth District Appellate Program (SDAP) staff, criminal matters constitute the bulk of the work for appointed appellate counsel though they also handle juvenile justice, child welfare, and civil commitment cases.<sup>6</sup>

One appellate contractor does not fall within the scope of rule 8.300: the California Appellate Project-San Francisco (CAP-SF). CAP-SF provides similar services as other appellate appointed counsel administrators, but only for indigent defendants sentenced to death. CAP-SF is funded through a contract with the Judicial Council and "assists in capital postconviction proceedings, supporting appointed counsel in challenging their clients' convictions and sentences on direct appeal and through habeas corpus proceedings."<sup>7</sup> Under the California Rules of Court, CAP-SF, in addition to the State Public Defender, is qualified to serve on death penalty appeals.<sup>8</sup> Furthermore, "[w]hen a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment" to CAP-SF and specified government entities.<sup>9</sup>

Under the current remote 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 their

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<sup>2</sup> Rule 8.300(a)(1).

<sup>3</sup> Rule 8.300(b)–(c).

<sup>4</sup> Rule 8.300(e)(1).

<sup>5</sup> A list of appellate projects is available online at <https://www.courts.ca.gov/13714.htm> (as of Jan. 19, 2022).

<sup>6</sup> *In re J.W.* (2002) 29 Cal.4th 200, 213 (indigent parents entitled to appointed counsel), *In re Kevin S.* (2003) 113 Cal.App.4th 97, 119 (indigent minors entitled to appointed counsel), *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 542 (conservatee entitled to appointed counsel).

<sup>7</sup> California Appellate Project-San Francisco, About CAP-SF, <https://www.capsf.org/public/about.aspx> (as of Jan. 19, 2022).

<sup>8</sup> Rule 8.604(g).

<sup>9</sup> Rule 8.603(b).



client's permission, counsel who are not counsel of record may access electronic court records remotely. However, according to SDAP staff, this rule is not sufficient to address access by appellate appointed counsel administrators, which may need access to court records before counsel is appointed or when appointed counsel becomes unavailable. For example, a potential client may contact an appellate appointed counsel administrator and the administrator would need access to records to determine if the client is entitled to appointed counsel. 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>10</sup> but there is no certificate, the administrator may need to work with the defendant and view the defendant's court records to resolve the certificate of probable cause issue before counsel can be appointed. According to SDAP staff, this happens often. As a third example, as part of their obligations, administrators need to view court records as part of their evaluation of the performance of appointed appellate counsel.<sup>11</sup> As a final example, appointed counsel may become unavailable during the appeal and, if that occurs, the administrator may need to access court records to act on behalf of the client before new counsel can be appointed or facilitate transferring information to new counsel.

The draft proposal creates new rule 2.523, which is structured similarly to rules 2.520 and 2.522, which also address access by persons working for specified organizations. The draft proposal also includes minor amendments to (renumbered) rule 2.524 to include appellate appointed counsel administrators. Detailed staff comments on the specific rule provisions are included with the draft proposal language on pages 6–12.

#### **B. Location of new rule 2.523 and renumbering of rules**

Adoption of new rule 2.523 would necessitate renumbering existing rule 2.523 and subsequent rules through rule 2.528. Though adopting a new rule 2.523 will require renumbering of existing rules, adopting the new rule in place of existing rule 2.523, rather than placing it near the end of the existing rules, will ensure there is a logical flow to the rules. Rules 2.517 through rule 2.522 all address remote access by users while existing rule 2.523 addresses identity verification and management. Renumbering rule 2.523 and replacing it with the new rule will keep "remote access by users" topically grouped together in the rules.

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<sup>10</sup> Pen. Code, § 1237.5.

<sup>11</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”).

The bullet list below illustrates this point in context:

- Rule 2.517. Remote access by a party
- Rule 2.518. Remote access by a party's designee
- Rule 2.519. Remote access by a party's attorney
- Rule 2.520. Remote access by persons working in the same legal organization as a party's attorney
- Rule 2.521. Remote access by a court-appointed person
- Rule 2.522. Remote access by persons working in a qualified legal services project providing brief legal services
- **Rule 2.523. Remote access by persons working for an appellate appointed counsel administrator**
- Rule ~~2.523~~524. Identity verification, identity management, and user access
- Rule ~~2.524~~525. Security of confidential information
- Rule ~~2.525~~526. Searches; unauthorized access
- Rule ~~2.526~~527. Audit trails
- Rule ~~2.527~~528. Additional conditions of access
- Rule ~~2.528~~529. Termination of remote access

Rather than proposing the new rule be placed at rule 2.529, it more logically fits in the rule scheme in the place of existing rule 2.523.

### **C. Remote access by Courts of Appeal**

Courts of Appeal are responsible for operating a program for appellate appointed counsel under rule 8.300. However, as noted previously, that rule authorizes them to contract the work to an administrator, which all the Courts of Appeal have done. A Court of Appeal that uses a contract administrator is responsible for providing "the administrator with the information needed to fulfill the administrator's duties." (Cal. Rules of Court, rule 8.300(e)(2).) Extending remote access to Courts of Appeal should help facilitate information sharing to administrators if the administrators lack needed information. In addition, should a Court of Appeal choose to operate its own appointed counsel program rather than contracting with an administrator, the rule would facilitate the Court of Appeal meeting its rule 8.300 obligations. The draft proposal includes remote access to case types in which a party is entitled to appointed counsel on appeal.

### **D. Remote access by the Habeas Corpus Resource Center**

Like the California Appellate Project-San Francisco, the Habeas Corpus Resource Center only represents indigent defendants sentenced to death. In addition, it "recruits and trains attorneys to expand the pool of private counsel qualified to accept appointments in death penalty habeas

corpus proceedings and serves as a resource to appointed counsel[.]”<sup>12</sup> The Habeas Corpus Resource Center is a government entity. Accordingly, it makes sense to include it within the scope of rule 2.540, which addresses remote access by government entities. The draft proposal includes remote access to criminal electronic records and habeas corpus electronic records.

### **Subcommittee's Tasks**

- Review and discuss draft rule proposal
- Determine whether to make edits to the draft rule proposal
- Vote to recommend the proposal for ITAC's consideration

### **Attachments and Links**

1. Draft proposed rule 2.523, 2.524, 2.525, 2.526, 2.527, 2.528, 2.529, and 2.540 with staff comments, pages 6-12.
2. Link A: California Rules of Court, title 2, <https://www.courts.ca.gov/cms/rules/index.cfm?title=two>.
3. Link B: List of Appellate Projects, <https://www.courts.ca.gov/13714.htm>.
4. Link C: Habeas Corpus Resource Center, <https://www.hcrc.ca.gov/>.

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<sup>12</sup> Habeas Corpus Resource Center, <https://www.hcrc.ca.gov/> (as of Jan. 19, 2022).

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

1 **Article 3. Remote Access by a Party, Party's Designee, Party's Attorney, Court-**  
2 **Appointed Person, or Authorized Person Working in a Legal Organization, ~~or~~**  
3 **Qualified Legal Services Project, or Appellate Appointed Counsel Administrator**  
4

5 **Rule 2.523. Remote access by persons working for an appellate appointed counsel**  
6 **administrator**  
7

8 **(a) Application and scope**  
9

10 (1) This rule applies to appellate appointed counsel administrators. Appellate  
11 appointed counsel administrators include:  
12

13 (A) organizations contracted with courts of appeal to perform the duties  
14 prescribed in rule 8.300 of the California Rules of Court, and  
15

16 (B) the California Appellate Project-San Francisco.  
17

18 *Staff comments:* This is written to ensure that the scope of the rule is limited to these  
19 organizations. Ensuring the scope remained limited was a concern the subcommittee  
20 raised when discussing including the project on the annual agenda.  
21

22 (2) “Working for an appellate appointed counsel administrator” under this rule  
23 includes attorneys, employees, contractors, and volunteers.  
24

25 *Staff comments:* This is similar to organizational access authorized under rules 2.520 and  
26 2.522.  
27

28 (3) This rule does not apply to a person working for an appellate appointed  
29 counsel administrator who gains remote access to court records under a  
30 different rule.  
31

32 *Staff comments:* This is similar to other remote access rules. The rules can provide  
33 multiple paths to remote access. If a person gains access under a different rule (e.g., rule  
34 2.519, remote access by a party’s attorney), then that rule rather than this rule would  
35 apply.  
36

37 **(b) Designation and certification**  
38

39 (1) An appellate appointed counsel administrator may designate which persons it  
40 authorizes to have remote access; and  
41

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

- 1           (2) An appellate appointed counsel administrator must certify that the authorized  
2                 persons work for the appellate project.

3  
4 *Staff comments:* This is like organizational access under rules 2.520 and 2.522.

5  
6 **(c) Level of remote access**

7  
8                 Authorized persons may be provided remote access to the same electronic records  
9                 that the authorized persons would be legally entitled to inspect at the courthouse.

10  
11 *Staff comments:* This is like other remote access rules, which are all limited to the types  
12 of cases one could access at the courthouse.

13  
14 **(d) Terms of remote access**

15  
16           (1) Persons working for an appellate appointed counsel administrator may  
17                 remotely access electronic records only for purposes of carrying out the  
18                 duties

19  
20           (2) Any distribution for sale of electronic records obtained remotely under the  
21                 rules in this article is strictly prohibited.

22  
23           (3) All laws governing confidentiality and disclosure of court records apply to  
24                 the records obtained under this article.

25  
26           (4) Persons working for an appellate project must comply with any other terms  
27                 of remote access required by the court.

28  
29           (5) Failure to comply with these rules may result in the imposition of sanctions,  
30                 including termination of access.

31  
32 *Staff comments:* These terms are included with other remote access rules.

33  
34 **Rule 2.523524. Identity verification, identity management, and user access**

35  
36 **(a) Identity verification required**

37  
38                 Except for remote access provided to a party's designee under rule 2.518, before  
39                 allowing a person who is eligible under the rules in article 3 to have remote access  
40                 to electronic records, a court must verify the identity of the person seeking access.

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

1 **(b) Responsibilities of the court**

2  
3 A court that allows persons eligible under the rules in article 3 to have remote  
4 access to electronic records must have an identity verification method that verifies  
5 the identity of, and provides a unique credential to, each person who is permitted  
6 remote access to the electronic records. The court may authorize remote access by a  
7 person only if that person’s identity has been verified, the person accesses records  
8 using the credential provided to that individual, and the person complies with the  
9 terms and conditions of access, as prescribed by the court.

10  
11 **(c) Responsibilities of persons accessing records**

12  
13 A person eligible to be given remote access to electronic records under the rules in  
14 article 3 may be given such access only if that person:

- 15  
16 (1) Provides the court with all information it directs in order to identify the  
17 person to be a user;  
18  
19 (2) Consents to all conditions for remote access required under article 3 and by  
20 the court; and  
21  
22 (3) Is authorized by the court to have remote access to electronic records.  
23

24 **(d) Responsibilities of the legal organizations, ~~or~~ qualified legal services projects,  
25 or appellate appointed counsel administrators**

- 26  
27 (1) If a person is accessing electronic records on behalf of a legal organization,  
28 ~~or~~ qualified legal services project, or appellate appointed counsel  
29 administrator, the organization or project must approve granting access to  
30 that person, verify the person’s identity, and provide the court with all the  
31 information it directs in order to authorize that person to have access to  
32 electronic records.  
33  
34 (2) If a person accessing electronic records on behalf of a legal organization, ~~or~~  
35 qualified legal services project, or appellate appointed counsel administrator  
36 leaves his or her position or for any other reason is no longer entitled to  
37 access, the organization or project must immediately notify the court so that it  
38 can terminate the person’s access.  
39

40 *Staff comments:* This brings the same responsibilities to appellate appointed counsel  
41 administrators that other organizations have under the rules.

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

1  
2 **(e) Vendor contracts, statewide master agreements, and identity and access**  
3 **management systems**  
4

5 A court may enter into a contract with a vendor to provide identity verification,  
6 identity management, or user access services. Alternatively, courts may use a  
7 statewide identity verification, identity management, or access management  
8 system, if available, or a statewide master agreement for such systems, if available.  
9

10 **Rule 2.524525.** \* \* \*

11  
12 **Rule 2.525526.** \* \* \*

13  
14 **Rule 2.526527.** \* \* \*

15  
16 **Rule 2.527528.** \* \* \*

17  
18 **Rule 2.528529.** \* \* \*

19  
20 *Staff comments:* There are no substantive changes to the above five rules. They are being  
21 re-numbered only.  
22

23 **Rule 2.540. Application and scope**  
24

25 **(a) Applicability to government entities**  
26

27 The rules in this article provide for remote access to electronic records by  
28 government entities described in (b). The access allowed under these rules is in  
29 addition to any access these entities or authorized persons working for such entities  
30 may have under the rules in articles 2 and 3.  
31

32 **(b) Level of remote access**  
33

34 (1) A court may provide authorized persons from government entities with  
35 remote access to electronic records as follows:  
36

37 (A) Office of the Attorney General: criminal electronic records and juvenile  
38 justice electronic records.  
39

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

- 1 (B) California Department of Child Support Services: family electronic  
2 records, child welfare electronic records, and parentage electronic  
3 records.
- 4
- 5 (C) Office of a district attorney: criminal electronic records and juvenile  
6 justice electronic records.
- 7
- 8 (D) Office of a public defender: criminal electronic records and juvenile  
9 justice electronic records.
- 10
- 11 (E) Office of a county counsel: criminal electronic records, mental health  
12 electronic records, child welfare electronic records, and probate  
13 electronic records.
- 14
- 15 (F) Office of a city attorney: criminal electronic records, juvenile justice  
16 electronic records, and child welfare electronic records.
- 17
- 18 (G) County department of probation: criminal electronic records, juvenile  
19 justice electronic records, and child welfare electronic records.
- 20
- 21 (H) County sheriff's department: criminal electronic records and juvenile  
22 justice electronic records.
- 23
- 24 (I) Local police department: criminal electronic records and juvenile  
25 justice electronic records.
- 26
- 27 (J) Local child support agency: family electronic records, child welfare  
28 electronic records, and parentage electronic records.
- 29
- 30 (K) County child welfare agency: child welfare electronic records.
- 31
- 32 (L) County public guardian: criminal electronic records, mental health  
33 electronic records, and probate electronic records.
- 34
- 35 (M) County agency designated by the board of supervisors to provide  
36 conservatorship investigation under chapter 3 of the Lanterman-Petris-  
37 Short Act (Welf. & Inst. Code, §§ 5350–5372): criminal electronic  
38 records, mental health electronic records, and probate electronic  
39 records.
- 40



Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

1 (N) County public conservator: criminal electronic records, mental health  
2 electronic records, and probate electronic records.

3  
4 (O) County public administrator: probate electronic records.

5  
6 (P) Federally recognized Indian tribe (including any reservation,  
7 department, subdivision, or court of the tribe) with concurrent  
8 jurisdiction: child welfare electronic records, family electronic records,  
9 juvenile justice electronic records, and probate electronic records.

10  
11 (Q) California Courts of Appeal: child welfare electronic records, criminal  
12 electronic records, juvenile justice electronic records, and mental health  
13 electronic records.

14  
15 *Staff comments:* This reflects the types of cases for which parties are entitled to  
16 appointed counsel on appeal. Courts of Appeal could provide this information to their  
17 contracted appointed counsel administrators. If a Court of Appeal chose to operate its  
18 own appointed counsel program instead of contracting it to an administrator, this would  
19 also ensure remote access to the appropriate records.

20  
21 (R) Habeas Corpus Resource Center: criminal electronic records and  
22 habeas corpus electronic records.

23  
24 *Staff comments:* According to Habeas Corpus Resource Center staff, some courts keep  
25 habeas records with the criminal records, but others keep them as separate habeas corpus  
26 records.

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

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

37  
38 (2) Subject to (b)(1), the court may provide a government entity with the same  
39 level of remote access to electronic records as the government entity would  
40 be legally entitled to if a person working for the government entity were to  
41 appear at the courthouse to inspect court records in that case type. If a court

Rule 2.523 of the California Rules of Court is adopted, rules 2.524 (re-numbered) and 2.540 of California Rules of Court is amended, and rules 2.523, 2.524, 2.525, 2.526, 2.527, and 2.528 of the California Rules of Court are re-numbered, effective January 1, 2023, to read:

1 record is confidential by law or sealed by court order and a person working  
2 for the government entity would not be legally entitled to inspect the court  
3 record at the courthouse, the court may not provide the government entity  
4 with remote access to the confidential or sealed electronic record.  
5

- 6 (3) This rule applies only to electronic records. A government entity is not  
7 entitled under these rules to remote access to any documents, information,  
8 data, or other types of materials created or maintained by the courts that are  
9 not electronic records.

10  
11 **(c) Terms of remote access**

- 12  
13 (1) Government entities may remotely access electronic records only to perform  
14 official duties and for legitimate governmental purposes.  
15  
16 (2) Any distribution for sale of electronic records obtained remotely under the  
17 rules in this article is strictly prohibited.  
18  
19 (3) All laws governing confidentiality and disclosure of court records apply to  
20 electronic records obtained under this article.  
21  
22 (4) Government entities must comply with any other terms of remote access  
23 required by the court.  
24  
25 (5) Failure to comply with these requirements may result in the imposition of  
26 sanctions, including termination of access.  
27

28 *Rule 2.540 amended effective January 1, 2020; adopted effective January 1, 2019.*

29  
30 **Advisory Committee Comment**

31  
32 The rule does not restrict courts to providing remote access only to local government entities in  
33 the same county in which the court is situated. For example, a court in one county could allow  
34 remote access to electronic records by a local child support agency in a different county.  
35

36 **Subdivision (b)(3).** As to the applicability of the rules on remote access only to electronic  
37 records, see the advisory committee comment to rule 2.501.  
38



## JUDICIAL COUNCIL OF CALIFORNIA

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---

# MEMORANDUM

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**Date**

January 31, 2022

**Action Requested**

Please Review

**To**

Information Technology Advisory  
Committee, Rules and Policy Subcommittee  
Hon. Julie R. Culver, Chair

**Deadline**

February 3, 2022

**From**

Andrea L. Jaramillo, Attorney  
Legal Services, Judicial Council

**Contact**

Andrea L. Jaramillo  
916-263-0991 phone  
[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

**Subject**

Remote Access Rule Amendments Proposed  
by California Attorneys for Criminal Justice

---

The California Attorneys for Criminal Justice (CACJ), an advocacy organization comprised of criminal defense lawyers and associated professionals,<sup>1</sup> has submitted a rule proposal to amend the California Rules of Court to expand remote access to criminal electronic records by private attorneys. The Information Technology Advisory Committee (ITAC) voted on January 26, 2022, to amend its 2022 annual agenda to allow the Rules and Policy Subcommittee (RPS) to consider the project. The purpose of this memorandum is to brief RPS on the project. RPS will need to recommend to ITAC whether it should advance the proposal and, if so, whether to advance it as-is or revise it.

---

<sup>1</sup> CACJ, About Us, <https://cacj.org/page/AboutUs> (as of Jan. 26, 2022).

## **The Proposal**

A copy of CACJ’s proposal is attached at pages 9–10. In brief, CACJ proposes that rule 2.540 of the California Rules of Court<sup>2</sup> be amended to authorize trial courts to provide “private counsel” with remote access to all “criminal electronic records.”

CACJ contends that exclusion of private counsel from this rule “is fundamentally unfair, creates an unreasonable burden on the private bar, and lacks any reasonable justification for excluding and treating one type of counsel differently than all others.”<sup>3</sup>

Rule 2.519 addresses remote access by a party’s attorney. CACJ contends that the remote access authorized under that rule is inadequate because it:

- does not provide parity between private defense counsel and public defenders,
- requires an attorney to get permission from the court if they are not the attorney of record, and
- does not allow an attorney to review relevant cases where they are not attorney of record such as “prior cases of the client, cases of key witnesses, cases involving the primary officer, co-defendant etc.”<sup>4</sup>

CACJ states that addressing this issue is urgent because:

Courts are moving more towards electronic file systems, and counties are developing or implementing new updated court access systems. While doing so, courts should be building into their systems, at the very least, a criminal defense attorney portal for remote access commensurate with that of the prosecutors they are facing, or that of co-defendants’ counsel who have court appointed attorneys.<sup>5</sup>

CACJ has alerted the Office of Governmental Affairs that it will seek legislation to close the gap if it is not addressed in the California Rules of Court.

---

<sup>2</sup> All further references to rules are to the California Rules of Court.

<sup>3</sup> CACJ, *Proposed Rule Change: Authorize private defense counsel equal access to electronic court record system*, attached at p. 8.

<sup>4</sup> CACJ, Email re: Proposed Rule Change: Authorize Private Defense Counsel Equal Access to Electronic Court Records, attached at p. 11.

<sup>5</sup> CACJ, *Proposed Rule Change: Authorize private defense counsel equal access to electronic court record system*, attached at p. 8.)

## Discussion

CACJ is correct that private attorney access to criminal electronic records is more limited than government entity access. For example, while prosecutors and public defenders are authorized to access all criminal electronic records that they would be able to access if they had gone to the courthouse,<sup>6</sup> private counsel are limited to remotely accessing their own clients' criminal electronic records.<sup>7</sup> Thus, a public defender could remotely access electronic criminal records of a nonclient, such as a witness, but a private attorney could not. The benefit of CACJ's proposal is that it resolves the issue of the lack of parity between the private criminal defense bar and prosecutors and public defenders.

CACJ is incorrect that rule 2.519 requires an attorney who was not the attorney of record to get permission from the court to remotely access their client's records (e.g., records in a prior case). Rather, rule 2.519 requires the attorney to get permission *from the client* and represent "to the court in the remote access system that he or she has obtained the party's consent to remotely access the party's electronic records."<sup>8</sup> This could be accomplished, for example, by clicking a box when remotely accessing the system. The proposal would remove this step for attorneys representing clients in criminal cases as they would no longer be limited to remotely accessing only their clients' criminal electronic records.

While the proposal resolves the parity issue between private counsel and government entities with respect to remote access, as written, it does not logically fit within the scope of rule 2.540. Rule 2.540 is in a section of the rules that applies to remote access government entities only. Parity could be achieved by amending rule 2.519 or creating a separate rule rather than altering the scope of rule 2.540 and its related rules.

There are a few alternatives to the proposal:

1. The status quo/make no change. This may be undesirable because it does not resolve the parity of the remote access issue identified. RPS staff consulted Criminal Justice Services (CJS) staff, who commented that there may generally be more opportunities for accountability in instances of misuse or unauthorized access with the status quo, but that this may be insufficient justification to limit access to the extent that the quality of a defendant's representation may be impacted by ease of access issues. Courts can terminate a user's remote access if misuse occurs. (See, e.g., rule 2.519(d)(4).)

---

<sup>6</sup> Rule 2.540(b)(1)(A), (C)–(D).

<sup>7</sup> Rule 2.519.

<sup>8</sup> Rule 2.519(c).

2. Revise the proposal for a better logical fit in the structure of the rules. This could be accomplished through an amendment to rule 2.519 or adoption of a new rule focused on remote access to criminal electronic records. If RPS agrees the proposal should advance, revising it would be the best path forward since it would substantively accomplish the proponent's goal while also preserving the structure and flow of the existing rules.
3. Instead of expanding the scope of electronic records that private counsel can access remotely, limit the scope of remote access by government entities. For example, limit public defenders to only the records of those clients represented by the public defender's office.

This approach may be undesirable for a few reasons. First, it may be impractical and controversial, especially for courts that have already established a remote access for government entities. Second, it may also create a new parity issue: all criminal defense attorneys would have access that is less than what prosecutors could get. Finally, it is inconsistent with the intent expressed in the Advisory Committee comment that the rule does "not restrict courts to providing remote access only to local government entities in the same county in which the court is situated."

The proposal may raise the question of whether attorney access should be broader generally. However, that is beyond the scope of this proposal. It may warrant consideration in the future, however, particularly if other stakeholders raise similar issues to CACJ.

### **Subcommittee's Tasks**

- Review and discuss CACJ's proposal.
- Recommend to ITAC whether the project should be on the 2022 annual agenda.
- If the recommendation is to keep the project, determine whether the proposal should advance as-is or be revised.

### **Attachments and Links**

1. Letter from CACJ to the Judicial Council recommending a rule amendment, pages 6–7.
2. CACJ, *Proposed Rule Change: Authorize private defense counsel equal access to electronic court record system*, page 8.
3. CACJ’s proposed amendment to rule 2.540, pages 9–10.
4. Email from CACJ to the Judicial Council’s Governmental Affairs office, page 11.
5. Link A: 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).
6. Link B: California Rules of Court, rule 2.540,  
[https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_540](https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_540).



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California Attorneys for Criminal Justice

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[www.cacj.org](http://www.cacj.org)

December 30, 2021

Chief Justice Tani G. Cantil-Sakauye

Chair, Judicial Council of California

455 Golden Gate Avenue

San Francisco, CA 94102-3688

**Re: Proposed Rule Change: Authorize private defense counsel equal access to electronic court record system**

Dear Council and Chief Justice,

The California Attorneys for Criminal Justice (CACJ) is a statewide association of criminal defense attorneys in private practice or working in public defender offices. CACJ members have identified an inequity in California's rules of court, which allows public defenders, but not private counsel, remote access to court records. CACJ requests that the rules of court be updated to allow private counsel remote access to court records, as is already the case for most justice system participants.

The rules of court currently restrict remote access to court records in criminal cases, as well as other types of cases. CRC 2.503(c) (5) specifically says that a court may not provide public remote access to records in a criminal proceeding. However, in order to permit an effective legal system and proper representation, CRC 2.540 specifically carves out exceptions so that most justice system participants can access these records. Offices of the District Attorney, City Attorney, Public Defender, County Counsel, the Attorney General, local police departments and County Sheriff's department are all provided exceptions.

CACJ proposes that CRC 2.540 be modified to allow a court to grant remote access to private counsel, in addition to the other governmental entities already listed. (See draft changes document) This will give all criminal defense attorneys remote access commensurate with that of the prosecutors they are facing, and that of co-defendants' counsel who have court appointed attorneys.

A system of this nature has been in place for some time in Orange County, and has worked very well. The court established a specific online portal to allow access to electronic records in criminal matters. To gain access to the portal, a one page application must be filled out by the requesting attorney, and they must provide at least one open criminal case in which that requesting attorney is the attorney of record.





*Fighting for justice since 1973*

**California Attorneys for Criminal Justice**

Almost everyone working in our justice system is given remote access to court records other than private counsel. This is fundamentally unfair, creates an unreasonable burden on the private bar, and lacks any reasonable justification for excluding and treating one type of counsel differently than all others. This inequity will only grow worse as many courts move more towards electronic filing systems and counties implement new updated court access systems.

CACJ members understand the goal of CRC 2.503 is to help maintain a semblance of privacy and prevent the mass disclosure and dissemination of court records. This is an incredibly important goal, and our clients are often those hurt the most by the dissemination of criminal court records. We believe, however, that the electronic access systems can be designed to prevent the data from being downloaded in mass, and can also provide clear indicators when someone is trying to do so.

CACJ requests that this change to the rules of court be made to ensure that defense attorneys are not unnecessarily hampered by this restriction, while others already enjoy remote access. If you have any questions regarding this request, please contact Hernandez Strategy Group, 916-302-1001, [Ignacio@HernandezStrategy.com](mailto:Ignacio@HernandezStrategy.com).

Sincerely,

Ignacio Hernandez  
CACJ Legislative Advocate

## **Proposed Rule Change: Authorize private defense counsel equal access to electronic court record system.**

California Attorneys for Criminal Justice (CACJ) Proposed Change

### **Current Rules:**

Rules of court restrict remote access to court records in criminal cases, as well as other types of cases. CRC 2.503(c) (5) specifically says that a court may not provide public remote access to records in a criminal proceeding.

### **Problem:**

Current rules, if evenly applied, would have severe consequences for productivity and the functioning of criminal courts. For that reason, CRC 2.540 specifically carves out exceptions so that most of the justice system participants can continue on, as access to these records are critical. Offices of the District Attorney, City Attorney, Public Defender, County Counsel, the Attorney General, local police departments and County Sheriff's department all are provided exceptions. Furthermore, a reading of CRC 2.540(b)(1)(Q) could be (and has been) interpreted to also provide access to conflict panels functioning to provide indigent defense services as a pseudo government agency or working under a governmental contract.

In essence, this allows everyone working in our justice system remote access to court records other than private counsel. It is fundamentally unfair, creates an unreasonable burden on the private bar, and lacks any reasonable justification for excluding and treating one type of counsel differently than all others.

### **Urgency:**

This is an issue that cannot wait for any number of reasons. Courts are moving more towards electronic file systems, and counties are developing or implementing new updated court access systems. While doing so, courts should be building into their systems, at the very least, a criminal defense attorney portal for remote access commensurate with that of the prosecutors they are facing, or that of co-defendants' counsel who have court appointed attorneys.

### **Solution:**

This change can be implemented through a change of the rules of court, rather than a legislative fix. CRC 2.540 could be modified to allow a court to grant remote access to counsel in addition to the other governmental entities listed. (See draft changes document)

The practical considerations of how to enforce the rules of CRC 2.540(c) should also be acknowledged. Defense attorneys are cognizant of the fact that the goal of CRC 2.503 is to help maintain a semblance of privacy and prevent the mass disclosure and dissemination of court records. This is an incredibly important goal, as their clients are often those hurt the most by the dissemination of criminal court records.

CACJ believes, however, that the electronic access systems can be designed to prevent the data from being downloaded in mass, and can also provide clear indicators when someone is trying to do so.

A system of this nature has been in place for some time in Orange County, and has worked very well. The court established a specific online portal to allow access to electronic records in criminal matters. To gain access to the portal, a one page application must be filled out by the requesting attorney, and they must provide at least one open criminal case in which that requesting attorney is the attorney of record.

## Rule 2.540. Application and scope

### (a) Applicability to government entities and counsel

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

### (b) Level of remote access

- (1) A court may provide authorized persons from government entities or counsel with remote access to electronic records as follows:
  - (A) Office of the Attorney General: criminal electronic records and juvenile justice electronic records.
  - (B) California Department of Child Support Services: family electronic records, child welfare electronic records, and parentage electronic records.
  - (C) Office of a district attorney: criminal electronic records and juvenile justice electronic records.
  - (D) Office of a public defender: criminal electronic records and juvenile justice electronic records.
  - (E) Office of a county counsel: criminal electronic records, mental health electronic records, child welfare electronic records, and probate electronic records.
  - (F) Office of a city attorney: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.
  - (G) County department of probation: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.
  - (H) County sheriff's department: criminal electronic records and juvenile justice electronic records.
  - (I) Local police department: criminal electronic records and juvenile justice electronic records.
  - (J) Local child support agency: family electronic records, child welfare electronic records, and parentage electronic records.
  - (K) County child welfare agency: child welfare electronic records.
  - (L) County public guardian: criminal electronic records, mental health electronic records, and probate electronic records.
  - (M) County agency designated by the board of supervisors to provide conservatorship investigation under chapter 3 of the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5350-5372): criminal electronic records, mental health electronic records, and probate electronic records.
  - (N) County public conservator: criminal electronic records, mental health electronic records, and probate electronic records.
  - (O) County public administrator: probate electronic records.

- (P) Federally recognized Indian tribe (including any reservation, department, subdivision, or court of the tribe) with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.
- (Q) For good cause, a court may grant remote access to electronic records in particular case types to government entities beyond those listed in (b)(1)(A)-(P). For purposes of this rule, "good cause" means that the government entity requires access to the electronic records in order to adequately perform its legal duties or fulfill its responsibilities in litigation.

(R) Private counsel: criminal electronic records

(S) All other remote access for government entities and counsel is governed by articles 2 and 3.

- (2) Subject to (b)(1), the court may provide a government entity or counsel with the same level of remote access to electronic records as the government entity or counsel would be legally entitled to if a person working for the government entity or counsel were to appear at the courthouse to inspect court records in that case type. If a court record is confidential by law or sealed by court order and a person working for the government entity or counsel would not be legally entitled to inspect the court record at the courthouse, the court may not provide the government entity or counsel with remote access to the confidential or sealed electronic record.
- (3) This rule applies only to electronic records. A government entity or counsel is not entitled under these rules to remote access to any documents, information, data, or other types of materials created or maintained by the courts that are not electronic records.

*(Subd (b) amended effective January 1, 2020.)*

**(c) Terms of remote access**

- (1) Government entities or counsel may remotely access electronic records only to perform official duties and for legitimate governmental purposes or work related to their representation.
- (2) Any distribution for sale of electronic records obtained remotely under the rules in this article is strictly prohibited.
- (3) All laws governing confidentiality and disclosure of court records apply to electronic records obtained under this article.
- (4) Government entities and counsel must comply with any other terms of remote access required by the court.
- (5) Failure to comply with these requirements may result in the imposition of sanctions, including termination of access.

**From:** HSG

**Sent:** Thursday, January 6, 2022 4:25 PM

**To:** Reilly, Sharon

**Cc:** Daniel Gutierrez Jaspersen, Cory

**Subject:** Re: Proposed Rule Change: Authorize Private Defense Counsel Equal Access to Electronic Court Records

Sharon - thx for sharing this rule.

1. Private defense attorneys want parity with public defenders and conflict appointed attorneys. 2.159 does NOT provide parity. Is there a concern with granting equal access whether public defender or private attorney?
2. 2.159 is much more limited than the other rule including requiring an attorney to get permission from the court if they are not yet the attorney of record which could be because it is after a consultation or because someone is contracted to represent but has not yet appeared in court.
3. 2.159 does not allow an attorney to review relevant cases where they are not attorney of record. This could include prior cases of the client, cases of key witnesses, cases involving the primary officer, co-defendant etc.

Is this helpful ?

Sent from my iPhone

On Jan 4, 2022, at 6:52 PM, Reilly, Sharon wrote:

Hi Daniel –

Based on a preliminary review by our Rules staff, we are wondering why private defense counsel isn't getting access pursuant to Rule 2.519 – which allows a court to grant remote access to records to a party's attorney, including in criminal matters.

Please let us know your thoughts.

Thanks!

Sharon Reilly  
520 Capitol Mall, Suite 600  
Sacramento CA 95816



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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<b>Date</b> January 28, 2021	<b>Action Requested</b> Provide guidance on possible policy and fiscal impacts
<b>To</b> Hon. Julie R. Culver, Chair ITAC's Rules & Policy Subcommittee	<b>Deadline</b> N/A
<b>From</b> Mark Neuburger Legislative Advocate, Governmental Affairs	<b>Contact</b> Mark Neuburger, Governmental Affairs 916-323-3121 <a href="mailto:mark.neuburger@jud.ca.gov">mark.neuburger@jud.ca.gov</a>
<b>Subject</b> Legislative Update <ul style="list-style-type: none"><li>• AB 1706 (Bonta)</li><li>• SB 848 (Umberg)</li></ul>	

---

Governmental Affairs staff would benefit from input from members of the Rules & Policy Subcommittee (RPS) on the following bill(s). Where appropriate, RPS may wish to recommend that the Judicial Council/Legislation Committee take a position on a bill.

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[AB 1706 \(Bonta\)](#) as introduced: For purposes of Proposition 64, deems a case to have been reduced or dismissed as of January 1, 2023 if the prosecution has not challenged a case or if the case has not been reviewed and requires the court to update its records accordingly and to notify the Department of Justice. Requires the Department of Justice, on or before July 1, 2023, to complete the update of the state summary criminal history information database and notify all third parties that access that data to ensure that inaccurate criminal history is not reported. Requires the DOJ to conduct a broad public awareness campaign so that individuals impacted by this process become aware of updates to their criminal history. Requires the Judicial Council to monitor the process and produce a monthly report to the Legislature, as specified.

This bill appears to be related to court efforts to implement and complete the provisions of [AB 1793 \(Stats, 2018, Ch. 993\)](#). The workload to support AB 1793 was provided in the 2019-20 budget, with the branch receiving a total of \$16.8 million (\$13.9 million in 2019-20 and \$2.9 million in 2020-21) to address workload related to AB 1793. Additionally, Provision 17 of item 0250-101-0932 of the 2020-21 Budget (AB 74, 2020) carried over the expenditure authority for AB 1793 funds to the 2020-21 fiscal year. Finally, a similar carryover provision was included in the 2021-22 Budget. As of 10/8/21 courts had expended approximately \$5.0 million (\$4.96 million) of the funding provided for AB 1793. This means that approximately 30% of the total \$16.8 million in funding provided by the legislature has been spent since FY 19-20. Courts currently have expenditure authority until June 30, 2022 to utilize the funds provided to complete the provisions of AB 1793.

In 2021 a similar bill ([AB 997](#)) was introduced. The Joint Legislation Subcommittee of the Joint Subcommittees between Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (JLS) reviewed that bill and did not raise concerns with the language of that bill and did not recommend a position for the branch to consider adopting.

**Action requested:** Staff requests committee members to review the language to determine if it creates any concerns or issues with court technology operations.

Would you recommend any language to address the issues you have identified?

---

[SB 848](#) (Umberg) as introduced: This is currently a spot bill but the intent language for the measures indicates the author is seeking to create reforms to the state's civil court system to encourage the use of technology, reduce litigation costs, shorten trial length, improve trial pace, and improve access to justice. This bill is authored by Senator Umberg who is the chair of the Senate Judiciary Committee and a member of the Judicial Council.

**Action requested:** None, we are bringing this bill to the committee's attention and providing the information we have to date.

---