



# 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

February 23, 2022

12:00 PM to 1:30 PM

Videoconference

**Advisory Body Members Present:** Hon. Julie Culver, Chair; Hon. Kim Menninger; Mr. Darrel Parker; Hon. Bruce Smith; and Mr. Don Willenburg

**Advisory Body Members Absent:** Hon. Samantha Jessner; Hon. Louis R. Mauro

**Others Present:** Judicial Council Staff

#### OPEN MEETING

##### Call to Order and Roll Call

The chair called the meeting to order at 12:00 PM and took roll call.

The February 3, 2022, Rules and Policy Subcommittee minutes were approved.

No public comments were received for this meeting.

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

##### Item 1

##### **Trial Court Rules Revisions: Remote Access to Electronic Records by Private Criminal Defense Attorneys**

Consider proposed amendments to the California Rules of Court on remote access to electronic records to authorize remote access by private criminal defense attorneys' remote access to any criminal electronic.

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

**Action:** Ms. Jaramillo reviewed proposed amendments to rule 2.519 to authorize the court to allow an attorney representing a party in a criminal action to remotely access any criminal electronic records the attorney would be legally entitled to view at the courthouse. Also added specific questions in the public invitation to comment specifically addressed to the trial courts around their capabilities.

Subsection (d) (1) was edited to clarify that a party refers to the attorney's client.

Subsections (d) (2) and (3) had the word "party" removed.

Members approved recommending the proposal for consideration by ITAC.

**Item 2**

**Remote Access to Electronic Records**

Consider a proposed rule amendments to the California Rules of Court rules 2.515, 2.251, 2.523, and 2.540 on remote access to electronic records to authorize remote access by appellate courts, appellate appointed counsel administrators, and the Habeas Corpus Resource Center.

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

**Action:** Revisions made to the proposed amendment include expressly naming the appellate appointed counsel administrators in the rules as well as including a link for more information in the advisory committee comment. .  
Members approved recommending the proposal for consideration by ITAC.

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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.

Approved by the advisory body on enter date.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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**Date**

May 27, 2022

**Action Requested**

Please review

**To**

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

**Deadline**

June 2, 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**

Review and respond to public comments, and  
make recommendations on amending the  
California Rules of Court

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### Background

The Information Technology Advisory Committee (ITAC) circulated three rule proposals for public comment this spring. The first proposal is to amend rule 2.253 of the California Rules of Court<sup>1</sup> 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 second proposal is to amend rule 2.519 to authorize trial courts to provide private criminal defense attorneys with broader remote access to criminal electronic records. The final proposal is to amend rules 2.515, 2.521, 2.523, and 2.540 to authorize trial courts to provide remote access to electronic records to administrators contracted to run programs for appointed counsel on appeal, the 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.

## **Discussion**

### **A. Proposal to amend rule 2.253 to remove mandatory electronic filing reporting requirement**

Four commenters responded to the invitation to comment. Three agreed with the proposal, and one did not indicate a position. Two commenters, including the one that did not indicate a position, agreed that the proposal appropriately addresses its stated purpose. There were no detailed substantive comments.

A copy of the proposal is attached at page 8, and a draft comment chart is attached at page 9. None of the comments appeared to call for a response. Staff have populated the comment chart accordingly and will update the chart following the subcommittee's discussion if the subcommittee has any additions.

### **B. Proposal to amend rule 2.519 to authorize trial courts to provide private criminal defense attorneys broader remote access to criminal electronic records**

Seven commenters responded to the invitation to comment. Five agreed with the proposal, and two did not indicate a position. In addition to comments received through the public comment process, staff gathered internal comments from the Criminal Law Advisory Committee (CLAC), which discussed the proposal at its April 4, 2022 meeting.

#### **1. Comments on the benefits of the proposal**

One private attorney, the Orange County Bar Association, and the Joint Rules Subcommittee of the Court Executives Advisory Committee (CEAC) and Trial Court Presiding Judges Advisory Committee (TCPJAC) commented on the impact on defense counsel and the benefits of providing remote access. These benefits include ensuring defense counsel can access the most current information, check if information is accurate, promptly seek correction of errors, and verify court dates so clients do not miss court appearances. The bar association noted that clients often do not understand some court orders and mix up their court dates. The bar association stated, “[r]emote access immediately solves such common problems and can cut down on needless court continuances.” The Joint Rules Subcommittee of CEAC and TCPJAC noted that the proposal should be implemented “because it enhances the fairness and effectiveness of the criminal process.”

In addition to the public comments received, ITAC solicited internal comments from CLAC. The members were supportive of the proposal, and one member remarked that the proposal would be a “huge benefit to the criminal justice system.”

## **2. Responses to a request for specific comments about sanctions for noncompliance**

ITAC, at the recommendation of the Technology Committee, asked for specific comments about whether there should be additional consequences, beyond termination of remote access, that should be specifically identified in the rule for failure to comply with the terms of remote access. The Orange County Bar Association commented that this was unnecessary as “[s]uffice it to say that the trial court may sanction counsel. Sanctions may thus be applied by the court on a case by case basis depending of the severity of noncompliance.” One court commented that failure to comply was a breach of trust and incidents of violations “should be accessible to potential future clients and other courts (maybe through Bar Association?).” Staff agree with the Orange County Bar Association that it is not necessary. The rules name termination of remote access as a possible sanction but not as an exclusive one. It does not seem there is a compelling need to add more to the rule at this time.

## **3. Comments on fiscal and operational impacts**

The Superior Court of Orange County and the Joint Rules Subcommittee of CEAC and TCPJAC commented on operational impacts on existing automated systems. The court detailed some of the necessary steps for a court to update technology systems and noted that it was possible for that court to implement the proposal. The Joint Rules Subcommittee of CEAC and TCPJAC commented that there “would potentially be significant fiscal impacts on those courts without the existing IT infrastructure” but that the rules take into account feasibility, and courts only need to implement the rule to the extent feasible to do so in light of the court’s resources and technical capability. (Cal. Rules of Court, rule 2.516; *Id.*, Advisory Committee Comment [“This rule takes into account the limited resources currently available in some trial courts. Many courts may not have the financial means, security resources, or technical capabilities necessary to provide the full range of remote access to electronic records authorized” by the rules].) In addition to the public comments received, ITAC solicited internal comments from CLAC. One member commented that building an online portal would require considerable cost and administrative effort to allow remote access as proposed.

In addition to the above, the Superior Court of Orange County commented that some costs would be reduced related to the production of paper copies of court records, such as the cost of paper, ink cartridges, and wear and tear on printing equipment. Similarly, when providing internal comments, one of the CLAC members noted there could be a reduction in costs associated with people coming into the courthouses to access court records.

#### **4. Comments that were beyond the scope of the proposal**

Three of the commenters recommended changes beyond the scope of the proposal. Two commenters recommended authorizing remote access to criminal electronic records by victim's counsel. One commenter recommended expanding the search terms attorneys can use when searching electronic records. While these comments are beyond the scope of the current proposal, they are topics the subcommittee can revisit when developing its next annual agenda.

#### **5. The proposal, comments, and comment charts with draft responses are attached**

A copy of the proposal is attached at pages 10–11, a draft comment chart is attached at pages 12–18, and the full comments are attached at pages 19–30. Staff have populated the comment chart with some draft responses and will update the chart following the subcommittee's discussion with the subcommittee's additions.

#### **C. Proposal to amend rules 2.515, 2.521, 2.523, and 2.540 to authorize trial courts to provide remote access to electronic records by administrators contracted to run appellate appointed counsel programs, the Courts of Appeal, and the Habeas Corpus Resource Center**

ITAC received five comments from 10 commenters on the proposal. The six appellate appointed counsel administrators submitted a joint comment. Nine commenters agreed with the proposal, and one commenter agreed if modified.

#### **1. Comments by the administrators on the benefits of the proposal**

The appellate appointed counsel administrators included detailed comments about the impact remote access would have on them and appointed counsel. It would significantly reduce the need to visit courthouses to view court records and reduce time spent on the phone trying to locate information. The administrators explained that in a “10-year period end[ing] June 30, 2020, panel attorneys statewide claimed compensation for review of superior court records in more than 11,000 appeals--more than 13% of all court appointed counsel appeals during that time period.” In addition, several of the administrators “offer the service of having project staff review superior court records for the benefit of appointed panel attorneys” and all of them have staff who:

regularly have contact with the superior court clerks regarding the superior court records on matters being appealed. Whether the time is spent visiting the superior court in person or on the telephone with superior court clerical staff to acquire information, valuable project staff

and superior court staff time would be saved if the appellate projects were given direct access to the electronic superior court records as described in the proposed amendments.

## **2. Responses to a request for specific comments about expressly naming the administrators in the rule**

ITAC, at the recommendation of the Technology Committee, asked for specific comments about whether rule 2.521(a)(2)(B) should include both the general definition of “appellate appointed counsel administrators” as “organizations contracted with the Courts of Appeal or Judicial Council to administer programs for appointed counsel on appeal” *and* the list of current administrators by name. The concern raised by the Technology Committee was that if the administrators change, the rule will also need to be changed accordingly.

The administrators commented that both the general definition and the list of names should be included. In particular, listing the names should help “avoid confusion over whether an entity seeking remote access is one of the appellate projects contemplated by the rules. Given that some appeals are transferred to other districts, it is possible that superior court staff may not be familiar with the names of each of the appellate projects that might seek access, especially on only rare occasions.” The Superior Court of Orange County commented that “[t]he list of names of each organization makes the rule clear and concise.” The Joint Rules Subcommittee of CEAC and TCPJAC recommended removing the specific names if they are not required as “[t]he rule would need to be updated if the names of the appellate appointed counsel changed.” The Orange County Bar Association also indicated that the names should not be listed in the rule and that “the definition and the Advisory Committee Comment indicating where the list can be found are sufficient.”

The Technology Committee and the Joint Rules Subcommittee of CEAC and TCPJAC are correct that changing the rule would be necessary if an administrator changed. This would not be an onerous rule change but could take some time to complete. The administrators and one court have commented that including the names provides the greatest clarity. The Orange County Bar Association commented that the link to the names of the administrators in the advisory committee comment provides sufficient clarity. There does not appear to be a “best” solution. Including an organization by name in the rules is not unheard of; the California Appellate Project—San Francisco is included by name in several rules. (See, e.g., Cal. Rules of Court, rules 4.315(a), 8.603(a), & 8.619(f)(1)(B).) If needed, the Rules and Policy Subcommittee can raise the issue further discussion by the full committee at ITAC’s next meeting.

### **3. Comments that were beyond the scope of the proposal or request changes that would require recirculation for further public comment**

Some of the commenters recommended changes beyond the scope of the proposal or that would necessitate another cycle of public comments. First, the appellate appointed counsel administrators commented that the rules should specify that no use fees should be charged for the administrators to access electronic records remotely. Addressing fees is beyond the proposal's scope, but it is a topic the committee could consider in a future rules cycle. Second, the Superior Court of Riverside County recommended further amending rule 2.540 to add more case types for remote access by county child welfare agencies. In addition, the court recommended adding adult protective services and regional centers to the rule. The court commented that the "lack of this access causes operational issues for trial courts." Adding additional case types for county child welfare agencies and adding adult protective services and regional centers to rule 2.540 is beyond the proposal's scope, but it is another topic the committee can consider for a future rules cycle.

Finally, the Superior Court of Orange County commented that the Habeas Corpus Resource Center (HCRC) should be authorized to access electronic records related to mental health. The proposal specifies access to criminal electronic records and habeas corpus electronic records, consistent with HCRC's request for access to such records. Staff contacted HCRC in light of the court's comment, and HCRC staff agreed that mental health electronic records are the type of records it regularly needs to access in the course of its work. HCRC staff said HCRC also regularly needs access to juvenile records. HCRC staff did not realize it may be possible to access such records remotely, so they did not request that. As a practical matter, remote access would not be possible if a record exists only in a physical format. HCRC noted that it works on cases that may go back decades in which records are on paper or microfiche only. Nonetheless, it may be beneficial to include such records in the rule for HCRC as electronic records become more of a norm in the future. While this is within the proposal's scope, making this substantive change would necessitate recirculation for further public comment. Staff recommend moving the proposal forward as-is but that the subcommittee consider further amendments to HCRC remote access when planning its next annual agenda.

### **4. The proposal, comments, and comment charts with draft responses are attached**

A copy of the proposal is attached at pages 31–35, a draft comment chart is attached at pages 36–43, and the full comments are attached at pages 44–52. Staff have populated the comment chart with some staff comments and draft committee responses. Staff will update the chart following the subcommittee's discussion with the subcommittee's additions.



### **Subcommittee's Tasks**

- Consider the comments received on the proposals.
- Determine appropriate committee responses to the comments.
- Decide whether to recommend to ITAC that the Judicial Council approve the proposals.

### **Attachments and Links**

1. Text of proposed amendments to California Rules of Court, rule 2.253, at page 8.
2. Draft chart of comments addressing proposed amendments to rule 2.253, at page 9.
3. Text of proposed amendments to California Rules of Court, rule 2.519, at pages 10–11.
4. Draft chart of comments addressing proposed amendments to rule 2.519, at pages 12–18.
5. Comments submitted about proposed amendments to rule 2.519, at pages 19–30.
6. Text of proposed amendments to California Rules of Court, rules 2.515, 2.521, 2.523, and 2.540, at pages 31–35.
7. Draft chart of comments addressing proposed amendments to rules 2.515, 2.521, 2.523, and 2.540, at pages 36–43
8. Comments submitted about proposed amendments to rules 2.515, 2.521, 2.523, and 2.540, at pages 44–52.
9. Link A: California Rules of Court, Title 2,  
<https://www.courts.ca.gov/cms/rules/index.cfm?title=two>

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) \* \* \***

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
1.	Orange County Bar Association By Daniel S. Robinson, President	A	* In response to a request for specific comments about whether the proposal appropriately addresses the state purpose, the comment replied that it does.	No response required.
2.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	No specific comment.	No response required.
3.	Superior Court of Orange County, Family Law Division (no name provided)	NI	* In response to a request for specific comments about whether the proposal appropriately addresses the state purpose, the comment replied that it does.	No response required.
4.	Superior Court of Placer County by Jake Chatters, Executive Officer	A	No specific comment.	No response required.

1 **Rule 2.519. Remote access by a party's attorney**

2  
3 **(a) Remote access generally permitted**

4  
5 (1) A party's attorney may have remote access to electronic records ~~in the party's~~  
6 ~~actions or proceedings~~ under this rule or under rule 2.518. If a party's  
7 attorney gains remote access under rule 2.518, the requirements of rule 2.519  
8 do not apply.

9  
10 (2) If a court notifies an attorney of the court's intention to appoint the attorney  
11 to represent a party in a criminal, juvenile justice, child welfare, family law,  
12 or probate proceeding, the court may grant remote access to that attorney  
13 before an order of appointment is issued by the court.

14  
15 **(b) Level of remote access**

16  
17 (1) A party's attorney may be provided remote access to the same electronic  
18 records in the party's actions or proceedings that the party's attorney would  
19 be legally entitled to view at the courthouse.

20  
21 (2) An attorney representing a party in a criminal action may be provided remote  
22 access to any electronic criminal records that the attorney would be legally  
23 entitled to view at the courthouse.

24  
25 **(c) Terms of remote access applicable to an attorney who is not the attorney of**  
26 **record**

27  
28 Except as provided in subdivision (b)(2), an attorney who represents a party, but  
29 who is not the party's attorney of record in the party's actions or proceedings, may  
30 remotely access the party's electronic records, provided that the attorney:

31  
32 (1) Obtains the party's consent to remotely access the party's electronic records;  
33 and

34  
35 (2) Represents to the court in the remote access system that he or she has  
36 obtained the party's consent to remotely access the party's electronic records.

37  
38 **(d) Terms of remote access applicable to all attorneys**

39  
40 (1) ~~A party's~~ An attorney may remotely access the electronic records only for the  
41 purpose of assisting ~~the~~ a party with ~~the~~ that party's court matter.

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9

- (2) ~~A party's~~ An attorney may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.
- (3) ~~A party's~~ An attorney must comply with any other terms of remote access required by the court.
- (4) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

DRAFT

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
1.	California Victims Legal Resource Center by Mariam El-menshawi, Director	NI	* The commenter recommended victim’s counsel be granted remote access to electronic criminal records and included amendment language to that effect.	Adding victim’s counsel is beyond the scope of the current proposal. However, the committee appreciates the issue being raised and this is a topic the committee may consider for development in a future rule cycle.  Any additional committee comments? TBD at RPS meeting.
2.	Joint Rules Subcommittee (JRS) of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee	A	The JRS notes that this proposal should be implemented because it enhances the fairness and effectiveness of the criminal process.	The committee agrees.  Any additional committee comments? TBD at RPS meeting.
			<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on existing automated systems. <ul style="list-style-type: none"> <li>o There would potentially be significant fiscal impacts on those courts without the existing IT infrastructure to provide this access, except that the Rule 2.516 already makes the following exception: “To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515, subject to the conditions and limitations stated in this article and otherwise provided by law.”</li> </ul> </li> </ul>	The committee appreciates the potential for significant fiscal impacts to update technology systems and will include it in the final report. The committee agrees that feasibility will impact whether a court can implement the technological solutions to allow access described in the rule.  Any additional committee comments? TBD at RPS meeting.
3.	Loyola Law School Rights In Systems Enforced (RISE) Clinic by Stephanie Richard, Director	NI	* The commenter recommended victim’s counsel be granted remote access to electronic criminal	Adding victim’s counsel is beyond the scope of the current proposal. However, the committee appreciates the issue being raised and this is a

			records and included amendment language to that effect.	topic the committee may consider for development in a future rule cycle.  Any additional committee comments? TBD at RPS meeting.
4.	Marc McBride Attorney	A	I fail to see the potential harm with allowing private defense attorneys to have the same electronic access that they would get if either (1) they were Public Defenders or (2) they physically walked into a courthouse clerk's office. However, denying this access leads to the potential that interests of a client will be compromised because, for instance, the lawyer has a delay in finding out that a case has been filed or an arrest warrant was issued. It can cause problems where court dates are missed because the lawyer cannot quickly verify that courts/clerks have inputted information accurately. It also makes it more difficult to determine whether, for instance, a client's name has been misspelled which could result in additional warrants. I just see absolutely no downside and significant areas that count as an upside.	The comments about the impact on representation of criminal defendants are helpful for the committee's understanding of the issue.  Any additional committee comments? TBD at RPS meeting.
5.	Orange County Bar Association by Daniel S. Robinson, President	A	* In response to the invitation to comment's question, "Does the proposal appropriately address its stated purpose?", the commenter responded: "Yes, the proposal appropriately addresses the stated purpose and is long overdue."  Immediate and timely access to comprehensive electronic criminal records by private defense counsel is part of access to justice for their clients. There is absolutely no practical or ethical reason why only government lawyers should have special	No response required.  The comments about the impact on representation of criminal defendants are helpful for the committee's understanding of the issue.

		<p>electronic access to court files. The continuing limited facility access brought on by Covid-19, the downsizing of many clerk's offices, the electronic filing of criminal motions and the expansion of remote appearances in criminal cases underscores the need to provide remote access to electronic criminal records.</p> <p>Private criminal defense attorneys frequently represent clients throughout California. For example, it is not uncommon for a lawyer to have their office in southern California yet be retained to represent a defendant in Northern California. While attorney services do exist for lawyers to have criminal records pulled and copied from a particular Superior Court jurisdiction, such services are expensive. In counties that do not have comprehensive electronic record systems, the physical pulling of a court file and the actual copying of records by the clerk's office can also be costly, unduly time consuming and is simply inefficient for both the lawyer and the court. Many defendants do not retain private counsel until they have first appeared in court. Often defendants are misinformed or do not understand what they are charged with or by any special orders the court has made with regard to them. They frequently are wrong about the next appearance date the court has ordered or if any outstanding warrants have been issued. Appearance notices issued by Sheriff's Departments upon release from jail are often lost. Remote access immediately solves such common problems and can cut down on needless court continuances.</p>	<p>Any additional committee comments? TBD at RPS meeting.</p>
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		<p>Sometimes, court clerks inadvertently enter the wrong term which the court has not ordered. Where counsel has electronic access to court records, counsel can review such entries and if an error exists seek immediate amelioration of the mistake.</p> <p>The list of potential impacts is endless as to privately retained clients no matter how diligent a defense counsel tries to be. Even appellate counsel has need for immediate remote access to the complete record of what occurred in the trial court when preparing an appeal in a criminal case. One need only compare the amount of information available to counsel by the outstanding Criminal Defense Attorney Portal maintained by the Orange County Superior Court and compare it with the embarrassing paucity of that offered for a fee by the Los Angeles Superior Court. The OC Criminal Defense Attorney Portal should be the model for all trial court jurisdictions to adopt.</p>	
		<p>* In response to the invitation to comment's question, "Does the proposal appropriately address its stated purpose?" the commenter stated, "A proper balance is struck. Even where counsel has not been retained remote access is still possible (c) and (d)."</p>	<p>No response required.</p>
		<p>* In response to the invitation to comment's question, "Should remote access be broader than what the proposal provides?" the commenter stated:</p>	<p>The committee agrees that it would be more effective if all the court records counsel could view at the courthouse were available remotely. However, what courts are able to provide remotely depends on their resources and technical</p>

		<p>The proposed rule does not delineate exactly which court records will be available remotely. Different counties who already provide some form of access vary in how much information is available remotely. Some only provide court dates while others permit access to all minute orders of the court, charging documents, motions, witnesses called, jury instructions etc.. As a practical matter to be effective, the electronic records available remotely should be the same as counsel could view at the courthouse.</p>	<p>capability. Accordingly, there will be variability on what is available remotely from each court.</p> <p>Any additional committee comments? TBD at RPS meeting.</p>
		<p>Additionally, although not part of the rule per se, the remote electronic records should be searchable by private counsel not only case number but also by an individual's name and birth date.</p>	<p>Rule 2.252 of the California Rules of Court currently limits searches to case caption or case number. Amending the rules to allow for additional search terms is beyond the scope of the current proposal. However, it is a topic the committee may consider for a future rule cycle.</p> <p>Any additional committee comments? TBD at RPS meeting.</p>
		<p>* In response to the invitation to comment's question, "Should remote access be narrower than what the proposal provides?", the commenter stated, "No."</p>	<p>No response required.</p>
		<p>* In response to the invitation to comment's question, "Should there be any additional consequences identified in the rule for failure to comply with the terms of remote access? If yes, what consequences should be included?" the commenter stated, "Identification of individual sanctions for noncompliance need not be listed by</p>	<p>The committee [agrees/disagrees, TBD RPS meeting].</p>

			the rule. Suffice it to say that the trial court may sanction counsel. Sanctions may thus be applied by the court on a case by case basis depending of the severity of noncompliance.”	
6.	Superior Court of Los Angeles County by Bryan Borys	A	<p>If the rule is not amended, the quality of representation by private counsel may be impacted if they are forced to make greater efforts to obtain records, even though they would not completely be denied access to them.</p> <p>The proposal adequately strikes a balance between the privacy of the subject of the record and accessibility of the record for private counsel. Because the records would be accessible if the attorney made an in-person request, the privacy concern is not increased simply because of remote accessibility. Moreover, the attorney would still be bound by rules of ethics and professional responsibility.</p> <p>At a minimum, notice of termination of remote access as a sanction for non-compliance should be explicitly stated. We take no position as to whether additional consequences should be identified.</p>	<p>The committee appreciates the response to its request for specific comments on the impact on representation. The committee agrees that regardless of the proposal, court records would not be denied to private counsel as they would still be accessible at the courthouse or remotely within the limitations of the current version of rule 2.519.</p> <p>Any additional committee comments? TBD at RPS meeting.</p> <p>No response required.</p> <p>Rule 2.519(d)(4) includes express provision of termination of access for non-compliance as a possible sanction.</p>
7.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor		Failure to comply is a breach of trust with the defendant and with the court. Violation incidents	The committee agrees that violating the rules is a breach of trust. The committee has decided [insert RPS comments]

		<p>should be accessible to potential future clients and other courts (maybe through Bar Association?)</p> <p>The courts would save about \$55.00 for each paper box. Less money would be spent on ink cartridges and minor wear and tear of the printer.</p> <p>An implementation requirement for the courts would be to have technological updates to their case management systems. Each county would have to secure its software program for technical capabilities and security. The court's IT Department would set its process by verifying the user, having a California bar number, and accepting the court's disclaimer to access records remotely. Each court should have a strategy if any counsel cannot retrieve confidential or sealed documents. Each court's website should provide instructions on gaining remote access to records for counsel.</p> <p>It is currently possible for Orange County Superior Court to implement at present. The court already has a process in place for private counsel and government entities.</p>	<p>The committee appreciates the information potential cost savings and will include it in the final report.</p> <p>Any additional committee comments? TBD at RPS meeting.</p> <p>The committee appreciates the information about the technological implementation requirements and will include it in the final report.</p> <p>No response required.</p>
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May 20, 2022

Andrea L. Jaramillo,  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Via email: [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)



**RE: Rules: Remote Access to Criminal Electronic Records, SPR22-27**

Dear Ms. Jamarillo,

I am writing to submit the California Victims Legal Resource Center's comments on the Judicial Council's Request for Comment on Remote Access to Criminal Electronic Records, SPR22-27.

The California Victims Legal Resource Center (VLRC) is mandated by Penal Code 13897 and has been in operation since 1984. Located at the University of the Pacific, McGeorge School of Law, the VLRC provides services to victims across California through the 1-800-VICTIMS hotline and [www.1800victims.org](http://www.1800victims.org) website. Furthermore, the VLRC offers direct legal representation to crime victims in California by representing them as their victims' rights attorneys in criminal court. The VLRC also offers trainings on victims' rights to attorneys and allied professionals, and provides technical assistance on victims' rights related legal issues.

As the statewide hub for legal information and support for victims' rights attorneys, the VLRC knows how challenging it is for a victims' rights attorney to get information regarding the criminal case. Hence, the VLRC requests that victim's counsel be granted parity in access to electronic criminal records in California. The Information Technology Advisory Committee (ITAC) has proposed allowing private criminal defense attorneys remote access to criminal records to create parity between this group and public defenders and prosecutors. The VLRC asks that this right also be provided to victim's counsel so that all legal counsel in the criminal justice process have equal access to electronic criminal records.

**Suggested Additional Language in Red:**

Rule 2.519. Remote access by a party's attorney **or victim's retained counsel**

(a) Remote access generally permitted

(1) A party's attorney or **retained victim's counsel** may have remote access to electronic records ~~in the party's actions or proceedings~~ under this rule or under rule 2.518. If a party's attorney or **victim's retained counsel** gains remote access under rule 2.518, the requirements of rule 2.519 do not apply.

(2) If a court notifies an attorney of the court's intention to appoint the attorney to represent a party in a criminal, juvenile justice, child welfare, family law, or probate proceeding, the court may grant remote access to that attorney before an order of appointment is issued by the court.

(3) **Victim is given the same definition as provided in California Penal Code § 679.01(b)<sup>1</sup>.**

(b) Level of remote access

(1) A party's attorney or **retained victim's counsel** may be provided remote access to the same electronic records in the party's actions or proceedings that the party's attorney would be legally entitled to view at the courthouse.

(2) An attorney representing a party or **retained victim's counsel** in a criminal action may be provided remote access to any electronic criminal records that the attorney would be legally entitled to view at the courthouse.

(c) Terms of remote access applicable to an attorney who is not the attorney of record

Except as provided in subdivision (b)(2), an attorney who represents a party, but who is not the party's attorney of record in the party's actions or proceedings, may remotely access the party's electronic records, provided that the attorney:

(1) Obtains the party's consent to remotely access the party's electronic records; and

(2) Represents 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.

Terms of remote access applicable to all attorneys

(1) A party's An attorney or retained victim's counsel may remotely access the electronic records only for the purpose of assisting the a party or victim/s with the that party's or victim/s court matter.

(2) A party's attorney or retained victim's counsel may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.

<sup>1</sup> California Penal Code § 679.01(b) provides "Victim means a person against whom a crime has been committed."

(3) A party's attorney or retained victim's counsel must comply with any other terms of remote access required by the court.

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

The VLRC appreciates your consideration of our comments regarding remote access to criminal records. If you have any questions about the VLRC's suggested changes, please feel free to contact Mariam El-Menshawi at 916-730-7050 or [melmenshawi@pacific.edu](mailto:melmenshawi@pacific.edu).

Respectfully,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke ending in a small flourish.

Mariam El-Menshawi  
Director, California Victims Legal Resource Center

## **TCPJAC/CEAC Joint Rules Subcommittee Spring 2022 Comments**

The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).

### **SPR22-27 Rules: Remote Access to Criminal Electronic Records**

**JRS Position:** Agree with proposed changes.

The JRS notes that this proposal should be implemented because it enhances the fairness and effectiveness of the criminal process.

The JRS notes the following impact to court operations:

- Impact on existing automated systems.
  - There would potentially be significant fiscal impacts on those courts without the existing IT infrastructure to provide this access, except that the Rule 2.516 already makes the following exception: “To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515, subject to the conditions and limitations stated in this article and otherwise provided by law.”

s overbroad and does not belong in a Rule of Court.



Andrea L. Jaramillo,  
Judicial Council of California  
455 Golden Gate Avenue .  
San Francisco, California 94102-3688  
Via Email: [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

RE: Rules: Remote Access to Criminal Electronic Records, **SPR22-27**

Dear Ms. Jaramillo

I am writing to submit Loyola Law School Rights In Systems Enforced (RISE) Clinic's comments on the Judicial Council's Request for Comment on Remote Access to Criminal Electronic Records, **SPR22-27**

### **Background**

The Rights in Systems Enforced (RISE) Clinic, a new addition to the Loyola Social Justice Law Clinics. RISE engages students in the direct representation of survivors of violent crime who seek to assert their rights in state and/or federal criminal enforcement systems, and require legal assistance with collateral civil matters. The RISE Clinic approaches survivor representation through a critical race and gender justice lens, which calls for culturally competent and trauma-informed legal counseling to center the interests of its clients. Through this work, the RISE Clinic is retained by crime victims in Los Angeles County and commonly files Notices of Appearance in Los Angeles County criminal cases as crime victim's retained counsel.

As the Judicial Council seeks to implement better procedures for criminal defenses attorneys who are non-county actors to have similar access to criminal records in California, RISE requests that victim's counsel, also non-county actors, be granted similar access to these records when the final rules are updated. In RISE's experience non-county actors in the criminal justice system are required to go to the clerk's office to seek criminal records and this consumes time and valuable resources for many indigent clients. The disparate treatment between county actors and private actors who are legally entitled to receive the same information from the criminal justice system is especially burdensome on non-profits, such as the RISE clinic, performing pro bono representation. Victim's Counsel applauds the current protection of criminal records provided in rule 2.519, as victims have significant privacy interests in maintaining limited access to criminal records where they are the victim-witness, however this limitation should not continue to apply to their own counsel of record, especially as the Judicial Council takes the important step of recommending implementation of rules for easier access for private non-county actors defense counsel.

### **Response to Request for Specific Comments**

The Information Technology Advisory Committee (ITAC) has proposed that Judicial Council amend 2.519 of the California Rules of Court to authorize trial courts to provide private criminal defense attorneys broader remote access to criminal electronic records. RISE asks that this same right be provided to private retained victim's counsel so that victim's counsel, also a non-county actor, has similar remote access to criminal electronic records to which they are currently only entitled to view by going in person to the courthouse.

**The expressed purpose of Marsy's Law is to protect a victim's rights to justice and due process.** California Constitution, Article I, Section 28(a)(8)(b). Further California Constitution, Article I, Section 28(c) (1) provides that "a victim, **the retained attorney of a victim** or a lawful representative of the victim upon request of the victim..., may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right."(Emphasis added)<sup>1</sup>.

To fully assert crime victim's rights in relation to a criminal case, crime victim's retained counsel should have the same remote access recommended by Judicial Council for private non-system criminal defense counsel. This addition to the suggested rule update will provide similar access to victim's retained counsel in a criminal matter as system criminal defense counsel and prosecutors.

**Suggested Additional Language in Red:**

Rule 2.519. Remote access by a party's attorney **or victim's retained counsel**

(a) Remote access generally permitted

(1) A party's attorney or **retained victim's counsel** may have remote access to electronic records ~~in the party's actions or proceedings~~ under this rule or under rule 2.518. If a party's attorney or **victim's retained counsel** gains remote access under rule 2.518, the requirements of rule 2.519 do not apply.

(2) If a court notifies an attorney of the court's intention to appoint the attorney to represent a party in a criminal, juvenile justice, child welfare, family law, or probate proceeding, the court may grant remote access to that attorney before an order of appointment is issued by the court.

(3) **victim is given the same definition as provided in California Penal Code § 679.01(b)<sup>2</sup>.**

(b) Level of remote access

(1) A party's attorney or **retained victim's counsel** may be provided remote access to the same electronic records in the party's actions or proceedings that the party's attorney would be legally entitled to view at the courthouse.

<sup>1</sup>California Constitution, Article I, Section 28(b)(7) also provides the specific right of victims "to reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present...."

<sup>2</sup> California Penal Code § 679.01(b) provides "Victim means a person against whom a crime has been committed."

(2) An attorney representing a party or retained victim's counsel in a criminal action may be provided remote access to any electronic criminal records that the attorney would be legally entitled to view at the courthouse.

(c) Terms of remote access applicable to an attorney who is not the attorney of record

Except as provided in subdivision (b)(2), an attorney who represents a party, but who is not the party's attorney of record in the party's actions or proceedings, may remotely access the party's electronic records, provided that the attorney:

- (1) Obtains the party's consent to remotely access the party's electronic records; and
- (2) Represents 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.

Terms of remote access applicable to all attorneys

- (1) ~~A party's~~ An attorney or retained victim's counsel may remotely access the electronic records only for the purpose of assisting the a party or victim/s with the that party's or victim/s court matter.
- 2) A party's attorney or retained victim's counsel may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.
- (3) A party's attorney or retained victim's counsel must comply with any other terms of remote access required by the court.
- (4) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

## Conclusion

Thank you for considering RISE's comments regarding Remote Access to Criminal Electronic files. RISE and particularly the survivors we serve greatly appreciate the effort by the Judicial Council to implement greater remote access in criminal cases for all individual's representatives with standing in the criminal case. We also hope the Judicial Council will in the future commit to working to improve access and provide guidance on other crime victim's rights issues. Notably no court rules in California provide any guidance to Courts on how to fully integrate victim's retained counsel in the criminal court proceeding. If you have further questions about RISE' suggested changes, please contact Stephanie Richard, RISE Clinic Director at [stephanie.richard@lls.edu](mailto:stephanie.richard@lls.edu) or 213-375-4014.

Sincerely,

*Stephanie Richard*

**Stephanie Richard, Esq.**

**From:** [Invitations](#)  
**To:** [Jaramillo, Andrea](#)  
**Subject:** FW: Invitation to Comment: SPR22-27  
**Date:** Tuesday, April 12, 2022 8:29:14 AM

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-----Original Message-----

From: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov) <[invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)>  
Sent: Monday, April 11, 2022 10:28 PM  
To: Invitations <[Invitations@jud.ca.gov](mailto:Invitations@jud.ca.gov)>  
Subject: Invitation to Comment: SPR22-27

Proposal: SPR22-27  
Position: Agree  
Name: Marc McBride  
Title: Attorney Marc McBride  
Organization:  
Comment on Behalf of Org.: No  
Address: 2030 E 4th Street  
City, State, Zip: Santa Ana CA, 92705  
Telephone: 714-765-9990  
Email: [attorneymcbride@aol.com](mailto:attorneymcbride@aol.com)

COMMENT:

I fail to see the potential harm with allowing private defense attorneys to have the same electronic access that they would get if either (1) they were Public Defenders or (2) they physically walked into a courthouse clerk's office. However, denying this access leads to the potential that interests of a client will be compromised because, for instance, the lawyer has a delay in finding out that a case has been filed or an arrest warrant was issued. It can cause problems where court dates are missed because the lawyer cannot quickly verify that courts/clerks have inputted information accurately. It also makes it more difficult to determine whether, for instance, a client's name has been misspelled which could result in additional warrants. I just see absolutely no downside and significant areas that count as an upside.

# INVITATIONS TO COMMENT

Proposals for Changes to Cal. Rules of Court and Judicial Council Forms

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

*Please indicate the instruction(s) you are commenting on:*

**SPR22-27 Rules: Remote Access to Criminal Electronic Records**

Agree

Agree as Modified

Disagree

## Comments:

### 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?**

Yes, the proposal appropriately addresses the stated purpose and is long overdue.

**• If the rule is not amended, in what ways would that impact the quality of a defendant's representation for a defendant represented by private counsel?**

Immediate and timely access to comprehensive electronic criminal records by private defense counsel is part of access to justice for their clients. There is absolutely no practical or ethical reason why only government lawyers should have special electronic access to court files. The continuing limited facility access brought on by Covid-19, the downsizing of many clerk's offices, the electronic filing of criminal motions and the expansion of remote appearances in criminal cases underscores the need to provide remote access to electronic criminal records.

Private criminal defense attorneys frequently represent clients throughout California. For example, it is not uncommon for a lawyer to have their office in southern California yet be retained to represent a defendant in Northern California. While attorney services do exist for lawyers to have criminal records pulled and copied from a particular Superior Court jurisdiction, such services are expensive. In counties that do not have comprehensive electronic record systems, the physical pulling of a court file and the actual copying of records by the clerk's office can also be costly, unduly time consuming and is simply inefficient for both the lawyer and the court.

Many defendants do not retain private counsel until they have first appeared in court. Often defendants are misinformed or do not understand what they are charged with or by any special orders the court has made with regard to them. They frequently are wrong about the next appearance date the court has ordered or if any outstanding warrants have been issued. Appearance notices issued by Sheriff's Departments upon release from jail are often lost. Remote access immediately solves such common problems and can cut down on needless court continuances.

Sometimes, court clerks inadvertently enter the wrong term which the court has not ordered. Where counsel has electronic access to court records, counsel can review such entries and if an error exists seek immediate amelioration of the mistake.

The list of potential impacts is endless as to privately retained clients no matter how diligent a defense counsel tries to be. Even appellate counsel has need for immediate remote access to the complete record of what occurred in the trial court when preparing an appeal in a criminal case. One need only compare the amount of information available to counsel by the outstanding Criminal Defense Attorney Portal maintained by the Orange County Superior Court and compare it with the embarrassing paucity of that offered for a fee by the Los Angeles

Superior Court. The OC Criminal Defense Attorney Portal should be the model for all trial court jurisdictions to adopt.

**• Does the proposal adequately strike a balance between privacy and remote access to criminal electronic records by criminal defense attorneys? If not, why not?**

A proper balance is struck. Even where counsel has not been retained remote access is still possible (c) and (d).

**o Should remote access be broader than what the proposal provides?**

The proposed rule does not delineate exactly which court records will be available remotely. Different counties who already provide some form of access vary in how much information is available remotely. Some only provide court dates while others permit access to all minute orders of the court, charging documents, motions, witnesses called, jury instructions etc.. As a practical matter to be effective, the electronic records available remotely should be the same as counsel could view at the courthouse.

Additionally, although not part of the rule per se, the remote electronic records should be searchable by private counsel not only case number but also by an individual's name and birth date.

**o Should remote access be narrower than what the proposal provides?**

No.

**• Should there be any additional consequences identified in the rule for failure to comply with the terms of remote access? If yes, what consequences should be included?**

Identification of individual sanctions for noncompliance need not be listed by the rule. Suffice it to say that the trial court may sanction counsel. Sanctions may thus be applied by the court on a case by case basis depending of the severity of noncompliance.

Name: Daniel S. Robinson Title: President

On Behalf of (organization): Orange County Bar Association

Address: P.O. Box 6130

City, State, Zip: Newport Beach, CA 92658

Your comments may be written on this *Response Form* or as a letter. Make sure that your letter includes all of the above identifying information. All comments will become part of the public record for this proposal.

**Mail or fax this form to:**  
Judicial Council of California, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**DEADLINE FOR COMMENT: Friday, May 13, 2022**

**From:** [Invitations](#)  
**To:** [Jaramillo, Andrea](#)  
**Subject:** FW: Invitation to Comment: SPR22-27  
**Date:** Friday, May 13, 2022 9:39:29 AM

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-----Original Message-----

From: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov) <[invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)>  
Sent: Thursday, May 12, 2022 3:11 PM  
To: Invitations <[Invitations@jud.ca.gov](mailto:Invitations@jud.ca.gov)>  
Subject: Invitation to Comment: SPR22-27

Proposal: SPR22-27

Position: Agree

Name: Bryan Borys

Title:

Organization: Los Angeles Superior Court Comment on Behalf of Org.: Yes

Address:

City, State, Zip: Los Angeles CA,

Telephone:

Email: [bborys@lacourt.org](mailto:bborys@lacourt.org)

COMMENT:

Regarding SPR22-17: Remote access to criminal electronic records

- If the rule is not amended, the quality of representation by private counsel may be impacted if they are forced to make greater efforts to obtain records, even though they would not completely be denied access to them.
- The proposal adequately strikes a balance between the privacy of the subject of the record and accessibility of the record for private counsel. Because the records would be accessible if the attorney made an in-person request, the privacy concern is not increased simply because of remote accessibility. Moreover, the attorney would still be bound by rules of ethics and professional responsibility.
- At a minimum, notice of termination of remote access as a sanction for non-compliance should be explicitly stated. We take no position as to whether additional consequences should be identified.

**From:** [Invitations](#)  
**To:** [Jaramillo, Andrea](#)  
**Subject:** FW: Invitation to Comment: SPR22-27  
**Date:** Friday, May 13, 2022 1:22:52 PM

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-----Original Message-----

From: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov) <[invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)>  
Sent: Friday, May 13, 2022 12:38 PM  
To: Invitations <[Invitations@jud.ca.gov](mailto:Invitations@jud.ca.gov)>  
Subject: Invitation to Comment: SPR22-27

Proposal: SPR22-27  
Position: Agree  
Name: Iyana Doherty  
Title: Courtroom Operations Supervisor  
Organization: OCSC  
Comment on Behalf of Org.: Yes  
Address:  
City, State, Zip: Westminster CA,  
Telephone:  
Email: [idoherthy@occourts.org](mailto:idoherthy@occourts.org)

COMMENT:

Failure to comply is a breach of trust with the defendant and with the court. Violation incidents should be accessible to potential future clients and other courts (maybe through Bar Association?) The courts would save about \$55.00 for each paper box. Less money would be spent on ink cartridges and minor wear and tear of the printer.

An implementation requirement for the courts would be to have technological updates to their case management systems. Each county would have to secure its software program for technical capabilities and security. The court's IT Department would set its process by verifying the user, having a California bar number, and accepting the court's disclaimer to access records remotely. Each court should have a strategy if any counsel cannot retrieve confidential or sealed documents. Each court's website should provide instructions on gaining remote access to records for counsel.

It is currently possible for Orange County Superior Court to implement at present. The court already has a process in place for private counsel and government entities.





1 have if ~~he or she~~ the person were to seek to inspect the records in person at the courthouse. Thus,  
2 if ~~he or she~~ the person is legally entitled to inspect certain records at the courthouse, that person  
3 could view the same records remotely; on the other hand, if ~~he or she~~ the person is restricted from  
4 inspecting certain court records at the courthouse (e.g., because the records are confidential or  
5 sealed), that person would not be permitted to view the records remotely. In some types of cases,  
6 such as unlimited civil cases, the access available to parties and their attorneys is generally  
7 similar to the public's but in other types of cases, such as juvenile cases, it is much more  
8 extensive (see Cal. Rules of Court, rule 5.552).

9  
10 For authorized persons working in a qualified legal services program, the rule contemplates  
11 services offered in high-volume environments on an ad hoc basis. There are some limitations on  
12 access under the rule for qualified legal services projects. When an attorney at a qualified legal  
13 services project becomes a party's attorney and offers services beyond the scope contemplated  
14 under this rule, the access rules for a party's attorney would apply.

15  
16 **Rule 2.521. Remote access by a court-appointed person or person working for an**  
17 **appellate appointed counsel administrator**

18  
19 **(a) Remote access generally permitted**

20  
21 (1) Remote access by a court-appointed person

22  
23 (A) A court may grant a court-appointed person remote access to electronic  
24 records in any action or proceeding in which the person has been  
25 appointed by the court.

26  
27 ~~(2)~~(B) Court-appointed persons include an attorney appointed to  
28 represent a minor child under Family Code section 3150; a Court  
29 Appointed Special Advocate volunteer in a juvenile proceeding; an  
30 attorney appointed under Probate Code section 1470, 1471, or 1474; an  
31 investigator appointed under Probate Code section 1454; a probate  
32 referee designated under Probate Code section 8920; a fiduciary, as  
33 defined in Probate Code section 39; an attorney appointed under  
34 Welfare and Institutions Code section 5365; ~~or~~ and a guardian ad litem  
35 appointed under Code of Civil Procedure section 372 or Probate Code  
36 section 1003.

37  
38 (2) Remote access by a person working for an appellate appointed counsel  
39 administrator

40  
41 (A) A court may grant a person working for an appellate appointed counsel  
42 administrator remote access to electronic records.

1 (B) Appellate appointed counsel administrators are organizations  
2 contracted with the Courts of Appeal or Judicial Council to administer  
3 programs for appointed counsel on appeal. The appellate appointed  
4 counsel administrators are:

5  
6 (i) Appellate Defenders, Inc.;

7  
8 (ii) California Appellate Project—Los Angeles;

9  
10 (iii) California Appellate Project—San Francisco;

11  
12 (iv) Central California Appellate Program;

13  
14 (v) First District Appellate Project; and

15  
16 (vi) Sixth District Appellate Program.

17  
18 (C) Persons “working for an appellate appointed counsel administrator”  
19 under this rule include attorneys, employees, contractors, and  
20 volunteers.

21  
22 (D) An appellate appointed counsel administrator must designate which  
23 persons it authorizes to have remote access, and must certify that the  
24 authorized persons work for the appellate project.

25  
26 **(b) Level of remote access**

27  
28 A court-appointed person or person working for an appellate appointed counsel  
29 administrator may be provided with the same level of remote access to electronic  
30 records as the ~~court-appointed~~ person would be legally entitled to if ~~he or she~~ the  
31 person were to appear at the courthouse to inspect the court records.

32  
33 **(c) Terms of remote access**

34  
35 (1) Remote access only for purpose of fulfilling responsibilities

36  
37 (A) A court-appointed person may remotely access electronic records only  
38 for purposes of fulfilling the responsibilities for which ~~he or she~~ the  
39 person was appointed.

40  
41 (B) A person working for an appellate appointed counsel administrator may  
42 remotely access electronic records only for purposes of fulfilling the  
43 administrator’s responsibilities.

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- (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 the records obtained under this article.
- (4) A court-appointed person or person working for an appellate appointed counsel administrator must comply with any other terms of remote access required by the court.
- (5) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

**Advisory Committee Comment**

**Subdivision (a)(2)(B).** A list of appellate appointed counsel administrators, including physical and web addresses and contact information, is available on the California Courts website at <https://www.courts.ca.gov/13714.htm>.

**Rule 2.523. Identity verification, identity management, and user access**

**(a)–(c) \* \* \***

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

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

**(e) \* \* \***

1 **Rule 2.540. Application and scope**

2  
3 (a) \* \* \*

4  
5 (b) **Level of remote access**

6  
7 (1) A court may provide authorized persons from government entities with  
8 remote access to electronic records as follows:

9  
10 (A)–(P) \* \* \*

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

15  
16 (R) Habeas Corpus Resource Center: criminal electronic records and  
17 habeas corpus electronic records.

18  
19 (S) For good cause, a court may grant remote access to electronic  
20 records in particular case types to government entities beyond those  
21 listed in (b)(1)(A)–(R). For purposes of this rule, “good cause” means  
22 that the government entity requires access to the electronic records in  
23 order to adequately perform its legal duties or fulfill its responsibilities  
24 in litigation.

25  
26 (T) All other remote access for government entities is governed by  
27 articles 2 and 3.

28  
29 (2) Subject to (b)(1), the court may provide a government entity with the same  
30 level of remote access to electronic records as the government entity would  
31 be legally entitled to if a person working for the government entity were to  
32 appear at the courthouse to inspect court records in that case type. If a court  
33 record is confidential by law or sealed by court order and a person working  
34 for the government entity would not be legally entitled to inspect the court  
35 record at the courthouse, the court may not provide the government entity  
36 with remote access to the confidential or sealed electronic record.

37  
38 (3) This rule applies only to electronic records. A government entity is not  
39 entitled under these rules to remote access to any documents, information,  
40 data, or other types of materials created or maintained by the courts that are  
41 not electronic records.

42  
43 (c) \* \* \*

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
1.	Appellate Defenders, Inc., California Appellate Project—Los Angeles, California Appellate Project—San Francisco, Central California Appellate Program, First District Appellate Project, and Sixth District Appellate Program by Laurel Thorpe, Executive Director, Central California Appellate Program	A	<p>The appellate projects strongly support the proposed amendments recommended by the Information Technology Advisory Committee to Rules of Court, rules 2.515, 2.521, 2.523, and 2.540.</p> <p>The quantity of appellate project staff contacts with the superior courts for information contained in superior court records, and time associated with it, is not data that the appellate projects specifically track. But the number of cases in which compensation is claimed by panel attorneys for reviewing superior court records (whether in electronic form or not) in person at the superior court is tracked, giving at least some context on how often it is necessary to review superior court records once an appeal has been initiated. In the 10-year period ended June 30, 2020, panel attorneys statewide claimed compensation for review of superior court records in more than 11,000 appeals--more than 13% of all court appointed counsel appeals during that time period. That data does not include other instances where there was direct communication with superior court staff but did not involve the full review of the records at the superior court, as that activity is claimed under a category that includes a variety of tasks.</p> <p>Several of the appellate projects offer the service of having project staff review superior court records for the benefit of appointed panel attorneys, but all of the appellate projects do</p>	<p>No response required.</p> <p>The committee appreciates the quantification of data indicating the significant amount of time appointed counsel and staff of the appellate projects/appointed appellate counsel administrators spend at courthouses to view court records or spend over the phone talking to court staff for information. It appears the administrators and appointed counsel serving may benefit from significant time efficiencies from remote access. The committee will include this information in its final report.</p> <p><b>Any additional committee comments? TBD at RPS meeting.</b></p>

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
			<p>regularly have contact with the superior court clerks regarding the superior court records on matters being appealed. Whether the time is spent visiting the superior court in person or on the telephone with superior court clerical staff to acquire information, valuable project staff and superior court staff time would be saved if the appellate projects were given direct access to the electronic superior court records as described in the proposed amendments.</p> <p>Even before counsel is appointed, such access would allow the appellate projects to determine whether there are problems with the notice of appeal at an early stage that can be resolved before the jurisdictional time for the filing of a notice of appeal expires. For example, the appellate projects would be able to contact trial attorney for the filing of an amended notice of appeal, or to file an application for a certificate of probable cause where needed. Or where there appears to be a question of appealability, the appellate projects would be able to examine the superior court records to determine whether the order is appealable and the appellate project should proceed to arrange for appointment of counsel, or does not appear to be appealable (which triggers different actions among the appellate projects, depending on the practice expected by the relevant district or division of the Courts of Appeal).</p>	

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
			<p>* In response to the question from the invitation to comment, "Does the proposal appropriately address the state purpose?" the commenter indicated it appears to.</p> <p>[T]he appellate projects are aware of rule 2.506(a), which reads, in pertinent part, "The court may impose fees for the costs of providing public access to its electronic records, under Government Code section 68150(l)." A review of section 68150, subdivision (l) reveals that "Reasonable provision shall be made for duplicating the records at cost." It might be helpful to include a provision in the proposed amendments that clarifies that there shall be no fee charged by the superior courts for remote access to the superior court electronic records by the appellate projects except to the extent permitted for duplication of records at cost, within the meaning of Government Code section 58150, subdivision (l). This distinguishes the access from other court services, such as the PACER system used in the federal courts that charges a fee simply for electronic access (in excess of a threshold) in the absence of obtaining a specific exemption from the court itself. The projects assume that "duplication of records" refers to the reproduction of the records in paper form. The projects would prefer that there be no fee charged even for duplication of records, of course, because any duplication of record would be for the benefit of the indigent defendant, who is entitled to a free transcript on appeal, and the</p>	<p>No response required.</p> <p>Amending rule 2.506(a) of the California Rules of Court or otherwise including language in the rules about fees is beyond the scope of the proposal. However, it is a topic the committee may consider for a future rule cycle.</p> <p><b>Any additional committee comments? TBD at RPS meeting.</b></p>



	Commenter	Position	Comment	DRAFT Committee Response
			<p>appellate projects are not reimbursed for fees charged for access.</p> <p>* <b>Rule 2.521(a)(2)(B)(i):</b> The commenter recommends the appellate projects/appellate appointed counsel program administrators be listed by name in the rule “as it will avoid confusion over whether an entity seeking remote access is one of the appellate projects contemplated by the rules. Given that some appeals are transferred to other districts, it is possible that superior court staff may not be familiar with the names of each of the appellate projects that might seek access, especially on only rare occasions. By having the individual projects expressly named in the rules, the project seeking access need only point to the appropriate rule to show its authorization for access.”</p> <p>The commenter further noted that “[t]echnically, the California Appellate Project is a single corporation with one contract to serve as administrator within the meaning of rule 8.300(e) for the Court of Appeal in the Second District, and with a separate contract to serve as appellate project on capital cases. In the jargon at the level of the appellate courts, they are referred to separately, and identifying them separately certainly clarifies for all that "both" are included within the provisions of the proposed amendments.”</p>	<p>The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee has decided to [insert what RPS recommends: list by name, or provide a more generalized description with an advisory committee comment linking to the list of organizations].</p> <p>Any additional committee comments? TBD at RPS meeting.</p>

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
			<p><b>* Rule 2.540:</b> In considering whether there are additional case types that should be included for the Court of Appeal, the comment noted, “the Court of Appeal has broad authority to appoint counsel in possibly any type of case where the Court believes appointment of counsel would serve the interest of justice or avoid unconstitutional consequences. (See <i>Salas v. Cortez</i> (1979) 24 Cal.3d 22; <i>Payne v. Superior Court</i> (1976) 17 Cal.3d 908.) Permitting the Court of Appeal to have remote access to superior court electronic records in other types of cases that do not normally involve appointment of counsel may aid in its determination whether counsel should nonetheless be appointed. (Appellate project attorneys have occasionally been requested by the Court of Appeal to represent, for example, a court reporter who must respond to an order to show cause related to the court reporter's failure to timely prepare and file a reporter's transcript.)”</p>	<p><i>Staff Comments: It seems “outlier” types of situations can be resolved through use of the “good cause” remote access provision under rule 2.540(b)(1)(Q).</i></p> <p>The committee [insert comments TBD at RPS meeting.]</p>
2.	Joint Rules Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee	A	Under proposed rule 2.521(a)(2)(B) – Are the names of the appellate appointed counsel required? If the specific names are not required, we would recommend removing the specific names. The rule would need to be updated if the names of the appellate appointed counsel changed.	The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee has decided to [insert what RPS recommends: list by name, or provide a more generalized description with an advisory committee comment linking to the list of organizations].
3.	Orange County Bar Association by Daniel S. Robinson, President	AM	<b>* Rule 2.521(a)(2)(B):</b> The commenter indicated that the list of current appellate appointed counsel	The committee appreciates the comment addressing the request for specific comment on

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
			administrators should not be listed in the rule and “the definition and the Advisory Committee Comment indicating where the list can be found are sufficient.”	whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee has decided to [insert what RPS recommends: list by name, or provide a more generalized description with an advisory committee comment linking to the list of organizations].
4.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	<p>The list of names of each organization makes the rule clear and concise. The specific organizations listed does not allow anyone else to decide if another appellate project should fall within the realm of contracted organizations.</p> <p>* The commented indicated that Courts of Appeal and the Habeas Corpus Resource Center should have access to probate electronic records as “many criminal cases, defendants have been evaluated by mental health providers.”</p>	<p>The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee has decided to [insert what RPS recommends: list by name, or provide a more generalized description with an advisory committee comment linking to the list of organizations].</p> <p>The proposal includes “mental health electronic records” within the scope of access for Courts of Appeal and that should encompass any relevant probate electronic records. In light of the court’s comment, the committee contacted the Habeas Corpus Resource Center (HCRC), which indicated these are the types of records HCRC regularly needs but did not realize it could be possible to obtain them through remote electronic means. The committee notes that as a practical matter, courts make not have records in an electronic format such as decades old records on microfiche, but that the rule could provide authority to access them if and when they are available in an electronic format. Because adding these records to the rule for</p>

	Commenter	Position	Comment	<b>DRAFT</b> Committee Response
				<p>HCRC would necessitate an additional comment period, the committee will consider it for a future rule cycle while allowing the current proposal to move forward. Rule 2.540(b)(1)(Q) [“good cause” remote access for government entities] and rule 2.519 [remote access by a party’s attorney] may provide alternatives in the interim.</p> <p><b>Any additional committee comments? TBD at RPS meeting.</b></p>
			<p>It appears to provide cost savings for the counsel programs. Superior courts would also no longer have to budget for paper boxes, postage, and staffing hours.</p>	<p>The committee appreciates the insight into potential cost savings for both the administrators and the courts. The committee will include this information in its final report.</p> <p><b>Any additional committee comments? TBD at RPS meeting.</b></p>
			<p>Some kind of validation would need to be in place to ensure only authorized persons could access the records. Where will the request be to and who can request a confidential or sealed record.</p> <p>Case Processing Department clerks will need to be trained on how to retrieve the request if it is made electronically, which judicial officer will be tasked with granting or denying the request and determining the delivery of the document to said organization.</p> <p>The courts IT Department will have to work in conjunction with the organization’s IT staff to</p>	<p>The committee agrees that remote users will need to be validated. Under rule 2.523(d) of the California Rules Court, organizations like the appellate appointed counsel administrators would be required to verify identities and provide the court with that information. In addition, the identity and access management is part of Judicial Council Information Technology’s catalog of services available to the superior courts.</p> <p>The committee agrees that only persons authorized to view a confidential or sealed records would be able to view such a record remotely.</p>

	Commenter	Position	Comment	DRAFT Committee Response
			<p>ensure compatibility, authorization of users and deletion of users, and IT support for the organizations. A system-generated docket code will have to be created if the request is made and accepted electronically.</p> <p>Orange County Superior Court can implement this practice at present. All our criminal records are digitized. We do not foresee any barriers; however, recognize there will be issues with each organization's software program being compatible with the courts to retrieve documents.</p>	<p>The committee appreciates the insight into the training requirements and IT resource needs and will include that information in its final report.</p> <p>Any additional committee comments? TBD at RPS meeting.</p>
5.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	<p>We suggest that Rule 2.540 be further expanded to allow the following entities to have the access indicated:</p> <p>(b)(K) County child welfare agency: child welfare electronic records, family electronic records, and probate electronic records; County Adult Protective Services: family electronic records and probate electronic records; Regional Centers: family electronic records and probate electronic records.</p> <p>The lack of this access causes operational issues for trial courts.</p>	<p>The committee appreciates the suggestion. While it is beyond the scope of the currently proposed amendments, the committee will review the matter further and may consider it for a future rule cycle. Note also that rule 2.540(b)(1)(Q) allows government entities not on the list to obtain remote access with there is good cause to do so, which may provide an option for child welfare agencies and adult protective services in the interim.</p> <p>Any additional committee comments? TBD at RPS meeting.</p>

To: Information Technology Advisory Committee

From: Laurel Thorpe on Behalf of the Court-Appointed Appellate Projects

Date: May 2, 2022

Re: Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center, Item SPR22-26

### **Appellate Projects' Interest in Item SPR22-26**

The Court of Appeal projects are non-profit corporations created pursuant to California Rules of Court, rule 8.300(e), which contract with the Courts of Appeal through the Judicial Council of California, Appellate Court Services, to oversee the system of court-appointed counsel on appeal in their respective districts. The central goal of the offices is to improve the quality of indigent representation on appeal, assist the Court of Appeal in administering criminal, juvenile, and limited civil appeals by indigents who are entitled to the appointment of counsel at public expense. Their caseload covers criminal, juvenile delinquency and dependency, and civil commitment appeals, certain writs, and other proceedings requiring appointed counsel in the appellate courts.<sup>1</sup> Another project, the California Appellate Project, San Francisco (CAP-SF), administers appointed death penalty cases in the California Supreme Court.

#### **Comments by Appellate Appointed Counsel Administrators on Proposed Amendments to the Rules of Court, Rules 2.515, 2.521,**

<sup>1</sup> The Court of Appeal projects include the First District Appellate Project (FDAP), located in Oakland; California Appellate Project, Los Angeles (CAP-LA), serving the Second District; Central California Appellate Program (CCAP), located in Sacramento and serving the Third and Fifth Districts; Appellate Defenders, Inc. (ADI), located in San Diego and serving the Fourth District; and the Sixth District Appellate Program (SDAP), in San Jose.

## **2.523, and 2.540 Regarding Adding Appellate Projects to Those Entitled to Remote Access to Superior Court Electronic Records**

The appellate projects strongly support the proposed amendments recommended by the Information Technology Advisory Committee to Rules of Court, rules 2.515, 2.521, 2.523, and 2.540.

The quantity of appellate project staff contacts with the superior courts for information contained in superior court records, and time associated with it, is not data that the appellate projects specifically track. But the number of cases in which compensation is claimed by panel attorneys for reviewing superior court records (whether in electronic form or not) in person at the superior court is tracked, giving at least some context on how often it is necessary to review superior court records once an appeal has been initiated. In the 10-year period ended June 30, 2020, panel attorneys statewide claimed compensation for review of superior court records in more than 11,000 appeals--more than 13% of all court appointed counsel appeals during that time period. That data does not include other instances where there was direct communication with superior court staff but did not involve the full review of the records at the superior court, as that activity is claimed under a category that includes a variety of tasks.

Several of the appellate projects offer the service of having project staff review superior court records for the benefit of appointed panel attorneys, but all of the appellate projects do regularly have contact with the superior court clerks regarding the superior court records on matters being appealed. Whether the time is spent visiting the superior court in person or on the telephone with superior court clerical staff to acquire information, valuable project staff and superior court staff time would be saved if the appellate projects were given direct access to the electronic superior court records as described in the proposed amendments.

Even before counsel is appointed, such access would allow the appellate projects to determine whether there are problems with the notice of appeal at an early stage that can be resolved before the jurisdictional time for the filing of a notice of appeal expires. For example, the appellate projects would be able to contact trial attorney for the filing of an amended notice of appeal, or to file an application for a certificate of probable cause where needed. Or where there appears to be a question of appealability, the

appellate projects would be able to examine the superior court records to determine whether the order is appealable and the appellate project should proceed to arrange for appointment of counsel, or does not appear to be appealable (which triggers different actions among the appellate projects, depending on the practice expected by the relevant district or division of the Courts of Appeal).

In response to the Request for Specific Comments, the appellate projects offer the following:

**Does the proposal appropriately address the stated purpose?**

It appears to. However, the appellate projects are aware of rule 2.506(a), which reads, in pertinent part, "The court may impose fees for the costs of providing public access to its electronic records, under Government Code section 68150(l)." A review of section 68150, subdivision (l) reveals that "Reasonable provision shall be made for duplicating the records at cost." It might be helpful to include a provision in the proposed amendments that clarifies that there shall be no fee charged by the superior courts for remote access to the superior court electronic records by the appellate projects except to the extent permitted for duplication of records at cost, within the meaning of Government Code section 58150, subdivision (l). This distinguishes the access from other court services, such as the PACER system used in the federal courts that charges a fee simply for electronic access (in excess of a threshold) in the absence of obtaining a specific exemption from the court itself. The projects assume that "duplication of records" refers to the reproduction of the records in paper form. The projects would prefer that there be no fee charged even for duplication of records, of course, because any duplication of record would be for the benefit of the indigent defendant, who is entitled to a free transcript on appeal, and the appellate projects are not reimbursed for fees charged for access.

**Should rule 2.521(a)(2)(B) include both the general definition of “appellate appointed counsel administrators” as “organizations contracted with the Courts of Appeal or Judicial Council to administer programs for appointed counsel on appeal” and the list**



**of current administrators by name? If not, which should be retained or omitted?**

The appellate projects recommend that the appellate projects be specified by name, as proposed in rule 2.521(a)(2)(B)(i) through (vi), as it will avoid confusion over whether an entity seeking remote access is one of the appellate projects contemplated by the rules. Given that some appeals are transferred to other districts, it is possible that superior court staff may not be familiar with the names of each of the appellate projects that might seek access, especially on only rare occasions. By having the individual projects expressly named in the rules, the project seeking access need only point to the appropriate rule to show its authorization for access.

Technically, the California Appellate Project is a single corporation with one contract to serve as administrator within the meaning of rule 8.300(e) for the Court of Appeal in the Second District, and with a separate contract to serve as appellate project on capital cases. In the jargon at the level of the appellate courts, they are referred to separately, and identifying them separately certainly clarifies for all that "both" are included within the provisions of the proposed amendments.

There is sound logic behind and value in also identifying what the appointed counsel administrators are, as set forth in rule 2.521(a)(2)(B), because it gives context for why the appellate projects should have the remote electronic access.

**Are there additional case types to which the Courts of Appeal and the Habeas Corpus Resource Center should have access and that should be included with the proposed amendments to rule 2.540?**

The appellate projects are not in a position to respond definitively to this question, as they are not aware of what the Courts of Appeal or the Habeas Corpus Resource Center may already have access to or what additional case types they may wish to have remote access to. The appellate projects do observe that the Court of Appeal has broad authority to appoint counsel in possibly any type of case where the Court believes appointment of counsel would serve the interest of justice or avoid unconstitutional consequences. (See *Salas v. Cortez* (1979) 24 Cal.3d 22; *Payne v. Superior Court* (1976) 17 Cal.3d 908.) Permitting the Court of Appeal to have remote access to superior court electronic records in other types of cases that do not normally

involve appointment of counsel may aid in its determination whether counsel should nonetheless be appointed. (Appellate project attorneys have occasionally been requested by the Court of Appeal to represent, for example, a court reporter who must respond to an order to show cause related to the court reporter's failure to timely prepare and file a reporter's transcript.)

Respectfully submitted,

/s/ *Laurel Thorpe*

Laurel Thorpe, Executive Director  
Central California Appellate Program

Jonathan Soglin, Executive Director  
First District Appellate Project

Richard Lennon, Executive Director  
California Appellate Project-Los Angeles

Lynelle Hee, Executive Director  
Appellate Defenders, Inc.

Patrick McKenna, Executive Director  
Sixth District Appellate Program

Joseph Schlesinger, Executive Director  
California Appellate Project-San Francisco

## **TCPJAC/CEAC Joint Rules Subcommittee Spring 2022 Comments**

The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).

### **SPR22-26: Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center**

**JRS Position:** Agree with proposed changes.

The JRS notes the following:

Under proposed rule 2.521(a)(2)(B) – Are the names of the appellate appointed counsel required? If the specific names are not required, we would recommend removing the specific names. The rule would need to be updated if the names of the appellate appointed counsel changed.

## INVITATIONS TO COMMENT

Proposals for Changes to Cal. Rules of Court and Judicial Council Forms

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

Please indicate the instruction(s) you are commenting on:

**SR22-26 – amends Rules 2.515, 2.521, and 2.523**

Agree

Agree as Modified

Disagree

**Comments:** \_\_\_\_\_

Rule 2.521(a)(2)(B) – I don't think we should list the current appellate appointed counsel administrators. I think the definition and the Advisory Committee Comment indicating where the list can be found are sufficient.

**Name:** Daniel S. Robinson **Title:** President

**On Behalf of (organization):** Orange County Bar Association

**Address:** P.O. Box 6130

**City, State, Zip:** Newport Beach, CA 92658

Your comments may be written on this *Response Form* or as a letter. Make sure that your letter includes all of the above identifying information. All comments will become part of the public record for this proposal.

**Mail or fax this form to:**  
Judicial Council of California, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**DEADLINE FOR COMMENT: Friday, May 13, 2022**

**From:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)  
**To:** [Invitations](#)  
**Subject:** Invitation to Comment: SPR22-26  
**Date:** Friday, May 13, 2022 12:36:50 PM

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Proposal: SPR22-26  
Position: Agree  
Name: Iyana Doherty  
Title: Courtroom Operations Supervisor  
Organization: OCSC  
Comment on Behalf of Org.: Yes  
Address:  
City, State, Zip: Westminster CA,  
Telephone:  
Email: [idoherly@occourts.org](mailto:idoherly@occourts.org)  
COMMENT:

The list of names of each organization makes the rule clear and concise. The specific organizations listed does not allow anyone else to decide if another appellate project should fall within the realm of contracted organizations. The Courts of Appeal should have access to both Probate cases and [Habeas Corpus] Resource Center in order to access mental health records. In many criminal cases, defendants have been evaluated by mental health providers.

It appears to provide cost savings for the counsel programs.

Superior courts would also no longer have to budget for paper boxes, postage, and staffing hours.

Some kind of validation would need to be in place to ensure only authorized persons could access the records.

Where will the request be to and who can request a confidential or sealed record. Case Processing Department clerks will need to be trained on how to retrieve the request if it is made electronically, which judicial officer will be tasked with granting or denying the request and determining the delivery of the document to said organization. The courts IT Department will have to work in conjunction with the organization's IT staff to ensure compatibility, authorization of users and deletion of users, and IT support for the organizations. A system-generated docket code will have to be created if the request is made and accepted electronically.

Orange County Superior Court can implement this practice at present. All our criminal records are digitized. We do not foresee any barriers; however, recognize there will be issues with each organization's software program being compatible with the courts to retrieve documents.

**From:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)  
**To:** [Invitations](#)  
**Subject:** Invitation to Comment: SPR22-26  
**Date:** Thursday, May 12, 2022 5:21:52 PM

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Proposal: SPR22-26

Position: Agree

Name: Susan Ryan

Title: Chief Deputy of Legal Services

Organization: Riverside Superior Court

Comment on Behalf of Org.: Yes

Address:

City, State, Zip: Riverside CA, 92501

Telephone:

Email: [susan.ryan@riverside.courts.ca.gov](mailto:susan.ryan@riverside.courts.ca.gov)

COMMENT:

We suggest that Rule 2.540 be further expanded to allow the following entities to have the access indicated:

(b)(K) County child welfare agency: child welfare electronic records, family electronic records, and probate electronic records;

County Adult Protective Services: family electronic records and probate electronic records;

Regional Centers: family electronic records and probate electronic records.

The lack of this access causes operational issues for trial courts.