



JUDICIAL COUNCIL OF CALIFORNIA

www.courts.ca.gov/itac.htm
itac@jud.ca.gov
www.courts.ca.gov/civilandsmallclaims.htm
civilandsmallclaims@jud.ca.gov

RULES AND POLICY SUBCOMMITTEE UNLIMITED CASE AND COMPLEX LITIGATION SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 19, 2017

12:10 PM

Teleconference

Advisory Body RPS:
Members Present: Hon. Peter J. Siggins; Hon. Julie R. Culver; Hon. Jackson Lucky; Hon. Louis R. Mauro; Mr. Darrel Parker; Mr. Don Willenburg
UCCLS:
Hon. Ann I. Jones; Hon. David Chapman; Mr. Keith Childlaw; Mr. William Chisum; Hon. Harold Kahn; Ms. Brenda McCormick; Mr. Robert Olson; Ms. Twila White; Hon. Debre Weintraub

Advisory Body
Members Absent: Mr. Saul Bercovitch; Hon. Victoria Chaney; Hon. Michael Sachs; Hon. Richard K. Sueyoshi

Others Present: Ms. Christy Simons; Ms. Andrea Jaramillo; Mr. Patrick O'Donnell; Ms. Fati Farmanfarmaian, Ms. Nicole Rosa

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 PM, and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the August 19, 2016, Rules and Policy Subcommittee meeting.

There were no written public comments received for this meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1-3)

Item 1

Modernization Project Rules Proposal: Proposed Amendments to Title 2, Chapter 3, Division 2 of the California Rules of Court (Action Required)

Consider circulating for public comment whether to recommend proposed amendments to title 2, chapter 3, division 2 of the California Rules of Court. The proposed amendments reduce redundancies and improve consistency between California Rules of Court governing electronic service and electronic filing

in the trial courts, and provisions of the Code of Civil Procedure that provide statutory authority for permissive and mandatory electronic service and electronic filing in the courts. The proposal also includes amendments to make limited organizational changes to the rules to improve their logical ordering.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Mr. Patrick O'Donnell, Managing Attorney, Legal Services
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Ms. Jaramillo provided a brief review of some of the proposed changes. Changes include reducing redundancies; aligning submission times to match existing rules; and electronic service changes. Recommending advancing to ITAC to approve for public comment. Members felt that these changes overall help to clean up.

Motion for both subcommittees to refer to respective Judicial Advisory Committees with recommendation to go for public comment.

Motion approved.

Item 2

Legislative Proposal to Amend section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure (Action Required)

Consider circulating for public comment whether to recommend proposed amendments to the Civil Code and Code of Civil Procedure. The purpose of the legislative amendments is to provide clarity about and foster the use of electronic service. The proposed amendments authorize electronic service for certain demands and notices. The proposal also clarifies that the broader term "service" is applicable rather than "mailing" in certain code sections.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Mr. Patrick O'Donnell, Managing Attorney, Legal Services
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Ms. Jaramillo provided a brief update on proposed changes. The amendments would add electronic service to code sections that only reference mail service. Notice of pendency statutory requirements only refer to mailing now, and the proposal would add a provision allowing electronic service in certain circumstances. The Civil Code allows for certain damages relating to bad checks and requires courts to mail a demand; the proposal would allow courts that are the payee on a bad check to use electronic service for a demand in lieu of mailing. Finally, the proposal authorizes notices of intention to move for new trial and notices to vacate judgment to be served electronically rather than just mailed. Member raised question, how do you know if an email address is bad or no longer being used (bounce backs)? Current rules of court must provide address they will be served and provide an update if it changes. Burden is on the parties to maintain correct address.

Motion for both subcommittees to refer to respective Judicial Advisory Committees with recommendation to go for public comment.

Motion approved.

At this time, Justice Siggins thanked the members of the Unlimited Case and Complex Litigation Subcommittee for their time and invited members to drop off the call.

Item 3

Rules and Subcommittee 2017 Work Plan (Discussion Item)

Review, prioritize and plan ITAC's 2017 Annual Agenda projects assigned to the subcommittee.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee

Update: Justice Siggins discussed various projects this subcommittee priorities this year. Most will be dictated as other sub/committees and workstreams finish their projects. Privacy policy, remote access for justice partners, electronic records and data are a couple examples. Asked if there were concerns about prioritization. Also if there are other ITAC members to include.

Judge Culver noted privacy policy is on the agenda and other committees will need to be involved beyond ITAC. Appellate has already said they would like to be included. She believes that judges need to look and weigh in on this topic. Previous Rules & Policy Subcommittee efforts on this project have not gone too far due to lack of resources. Hoping there will be staff or other judicial committees or officers to assist going forward.

Justice Siggins ask if any other ITAC members might be helpful on this committee. He suggested that perhaps new ITAC member Ms. Grimwade with her technology background. Please let him know if you have other suggestions.

Judge Culver sees the privacy policy document more as a reference document courts can refer to about where they can find it as well as offering basic privacy policy on their websites.

Justice Siggins follow up with the subcommittee after some investigation about various resources and staff help.

Justice Mauro added that at the recent advisory committee chair meeting, Justice Miller wants approval for all new working groups in an effort to manage resources appropriately.

A D J O U R N M E N T

There being no further business, the meeting adjourned at 12:40 PM.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
May 17, 2017	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Projects Subcommittee and Civil and Small Claims Advisory Committee, Unlimited Case and Complex Litigation Subcommittee	May 23, 2017
	Contact
	Andrea L. Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
From	
Patrick O'Donnell, Principal Managing Attorney Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	
Subject	
Rules Proposal (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)	

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated for public comment a rules proposal that would amend several rules related to electronic service and electronic filing found in title 2, division 3, chapter 2 of the California Rules of Court. The proposed amendments are intended to improve the organization of the rules, improve the rules' consistency with the Code of Civil Procedure, and reduce redundancies between the rules and the Code of Civil Procedure. Specifically, the rules proposal would (1) ensure consistency and redundancy between the rules and Code of Civil Procedure section 1010.6 (section 1010.6),

which provides statutory authority for permissive and mandatory electronic filing and service; (2) accommodate anticipated changes to section 1010.6 and the addition of section 1013b to the Code of Civil Procedure in legislation that the Judicial Council has sponsored in 2017 to ensure the rules are current when the legislation would go into effect; and (3) make limited organizational changes to the rules to improve their logical ordering.

Six commenters submitted specific comments in response to the Invitation to Comment. To facilitate the subcommittee's review of the comments and discussion, the attached materials include the proposed amendments with drafter's notes immediately following each proposed amendment that received public comment. The drafter's notes list the specific comments received in response to the proposal, and are followed by analysis from staff.

A number of the proposed rule changes are designed to align with amendments to Code of Civil Procedure section 1010.6 and the addition of Code of Civil Procedure section 1013b. These legislative changes were part of Judicial Council-sponsored legislation introduced this year as Assembly Bill 976. As of the date of this memorandum, the legislation has passed the Assembly and been introduced into the Senate. The Assembly has made changes to the bill that would necessitate rule changes. It is unknown whether the Senate will make further changes. The last day for any bills to pass this year is September 15. While staff do not anticipate that legislative action on AB 976 will wait until that late date, it is impossible to predict what the status of the bill will be when the Rules and Projects Committee meets in July to consider rules going to the Judicial Council in September.

Staff Recommendations

Because of the unknowns with AB 976, staff recommend that the Rules and Projects Subcommittee and Unlimited Case and Complex Litigation Subcommittee take the following actions:

- (1) Review the comments now,
- (2) Ask staff for further information and analysis on the outcome of AB 976, and
- (3) Wait to advance the proposal to ITAC and the Civil and Small Claims Advisory Committee until the outcome of AB 976 is known.

This will ensure that the rules and legislation actually align and allow sufficient time to incorporate any legislatively driven changes to the rules proposal without having to cycle through the rules proposal twice. Comments have already been received on substantive aspects on the proposal and any further changes would be purely technical changes to conform to the passed version of AB 976. This should allow sufficient time to move the proposal up to the Judicial Council for its November meeting.

Attachments

1. Text of proposed amendments to the California Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259 with drafter's notes.
2. Comment chart

Section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure would be amended, effective January 1, 2019, to read:

1 **Rule 2.250. Construction and definitions**

2
3 (a) * * *

4
5 (b) **Definitions**

6
7 As used in this chapter, unless the context otherwise requires:

- 8
9 (1) A “document” is a pleading, a paper, a declaration, an exhibit, or another
10 filing submitted by a party or other person, or by an agent of a party or other
11 person on the party’s or other person’s behalf. A document is also a notice,
12 order, judgment, or other issuance by the court. A document may be in paper
13 or electronic form.

14
15 *Drafter’s Note: The following comments were received in response to the*
16 *proposed amendments to Rule 2.250(b)(1).*

- 17
18 • Litigation by the Numbers. “Rule 2.250(b)(1): I realize this language has
19 been around for years, and is likely beyond the scope of the Invitation, but
20 I am just now noticing it. Why is there a need to provide a specific
21 definition of “document” for this chapter? The term is used in 157 different
22 C.C.P. sections (including 1010.6) and has never before required
23 definition. I suggest deleting it entirely. Alternatively, it should be revised.
24 The phrase “or another filing submitted,” can easily be interpreted to mean
25 that the term refers only to filed documents, i.e., not written discovery
26 demands or responses. It would follow, then, that Rule 2.250(b)(2)’s
27 definition of electronic service refers only to filed documents. This is
28 obviously not the intent nor the practice.”
- 29
30 • One Legal. “Page 8, (b)(1) “document”: This current definition of a
31 document (...or another filing), including the additional language, could be
32 construed as meaning a document that IS NOT a filing, notice, order,
33 judgment or other issuance, cannot be eServed since (b)(2) below defines
34 eService as “service of a document.” Interrogatories and Notices of
35 Deposition are two (2) examples of documents that do not fall within the
36 definition of a document as described in section (b)(1).”

37
38 *Staff analysis:* These comments are beyond the scope of the changes to Rule
39 2.250(b)(1) in this proposal. Staff are developing a report on public suggestions
40 for rule changes to present to the Rules and Policy Subcommittee in the future,
41 and will incorporate the recommended changes into the report.

- 1 (2) “Electronic service” is service of a document on a party or other person by
2 either electronic transmission or electronic notification. Electronic service
3 may be performed directly by a party or other person, by an agent of a
4 party or other person, including the party’s or other person’s attorney,
5 through an electronic filing service provider, or by a court.
6
- 7 (3) “Electronic transmission” means the transmission of a document by
8 electronic means to the electronic service address at or through which a party
9 or other person has authorized electronic service.
10
- 11 (4) “Electronic notification” means the notification of a party or other person that
12 a document is served by sending an electronic message to the electronic
13 service address at or through which the party or other person has authorized
14 electronic service, specifying the exact name of the document served and
15 providing a hyperlink at which the served document can be viewed and
16 downloaded.
17
- 18 (5) “Electronic service address” ~~of a party~~ means the electronic address at or
19 through which the party or other person has authorized electronic service.
20
- 21 (6) An “electronic filer” is a party or other person filing a document in electronic
22 form directly with the court, by an agent, or through an electronic filing
23 service provider.
24
- 25 (7) “Electronic filing” is the electronic transmission to a court of a document in
26 electronic form. For the purposes of this chapter, this definition concerns the
27 activity of filing and does not include the processing and review of the
28 document, and its entry into the court records, which are necessary for a
29 document to be officially filed.
30
- 31 (8) An “electronic filing service provider” is a person or entity that receives an
32 electronic filing from a party or other person for retransmission to the court
33 or for electronic service on other parties or persons, or both. In submission of
34 filings, the electronic filing service provider does so on behalf of the
35 electronic filer and not as an agent of the court.
36

37 *Drafter’s Note: The following comments were received in response to the*
38 *proposed amendments to Rule 2.250(b)(8).*

- 39
- 40 • [Litigation by the Numbers](#). “Rule 2.250(b)(8): Is the insertion of “or
41 persons” supposed to be “or other persons”?”
42

1 *Staff analysis:* Staff recommend adopting the modification recommended in the
2 comment for the sake of clarity. The “other” in “other parties or persons” is meant
3 to modify both parties and persons, but the commenter’s recommended
4 language is clearer and removes possible ambiguity. The modified language
5 would read:

6
7 An “electronic filing service provider” is a person or entity that receives an
8 electronic filing from a party or other person for retransmission to the court
9 or for electronic service on other parties or other persons, or both. In
10 submission of filings, the electronic filing service provider does so on behalf
11 of the electronic filer and not as an agent of the court.

12
13 ~~(9) “Regular filing hours” are the hours during which a court accepts documents~~
14 ~~for filing at its filing counter.~~

15
16 ~~(10) “Close of business” is 5 p.m. or any other time on a court day at which the~~
17 ~~court stops accepting documents for filing at its filing counter, whichever is~~
18 ~~earlier. The court must provide notice of its close of business time~~
19 ~~electronically. The court may give this notice in any additional manner it~~
20 ~~deems appropriate.~~

21
22 *Drafter’s Note:* The following comments were received in response to the
23 proposed amendments to Rule 2.250(b)(9)-(10).

- 24
25 • OneLegal. “Page 9, (b)(9) and (b)(10) “Regular filing hours and Close of
26 business”: We completely agree with removing these two sub-sections.
27 They were confusing, especially since many courts have different hours
28 on different days.”

29
30 *Staff analysis:* No analysis needed.

- 31
32 • Superior Court of San Diego County. “The proposal to eliminate
33 references to “close of business” and “regular filing hours” in rule
34 2.250(b)(9) and (10) appears to provide different levels of access to the
35 courts. A litigant without access to the internet would be limited to the
36 office hours of a legal aid provider or the public library, neither of which
37 are typically open until midnight.

38
39 This would also provide different levels of access for counties with
40 permissive e-filing. Those who do not utilize e-filing would be limited to
41 submit filings in a drop-box by 5 p.m. or when the courthouse closes.”
42

1 *Staff analysis:* The rule follows the current version of Code of Civil Procedure
2 section 1010.6, which sets an electronic filing deadline of the earlier of 5:00 p.m.
3 or whenever the filing counter closes. (Code Civ. Proc., § 1010.6(b)(3).) AB 976
4 will change the electronic filing cut off time to 11:59:59 p.m. if it is enacted into
5 law. Staff will update the subcommittee on whether AB 976 is enacted and if
6 there are changes to it.

7
8 The commenter is correct that a change to the electronic filing cut-off time will
9 provide different levels of access for those with access to the internet until
10 midnight than those without access to the internet until midnight. However, the
11 current rules also create different levels of access: those who have access to the
12 internet to handle their personal court business before 5:00 p.m. or the court's
13 filing counter closing time, and those who do not. It also creates disparate filing
14 deadlines throughout the state. Electronic filing until midnight will provide a
15 uniform deadline throughout the state and greater access overall, even if levels
16 of access differ between those that have internet access at until midnight and
17 those that do not. Under the current rules and Code of Civil Procedure section
18 1010.6, 5:00 p.m. represents the latest possible time someone can e-file. Many
19 people must work until 5:00 p.m. and do not have internet access at work or are
20 not allowed to use the internet for personal business at work. Such people would
21 have to take time off work, not always paid, to leave earlier to submit their
22 electronic filings. The 11:59:59 p.m. deadline expands the scope of access to
23 later than 5:00 p.m. even if not, practically, until midnight for those that need to
24 access the internet at a public venue like a library. There would still be a higher
25 level of access because many libraries are open later than 5:00 p.m., even if not
26 open until midnight.

27
28 ***Drafter's Note:*** *In the Invitation to Comment, the advisory committee requested f*
29 *specific comments about rule 2.250(b). Below is the request for specific*
30 *comments followed by the specific comments received:*

31
32 *Section 1010.6 and rule 2.250(b) contain definitions of "electronic service,"*
33 *"electronic transmission," and "electronic notification." The rule 2.250(b)*
34 *definitions mirror the section 1010.6 definitions, but the rule provides a*
35 *more comprehensive scheme of definitions than does section 1010.6. The*
36 *advisory committee retained the duplicative definitions to preserve this*
37 *comprehensive scheme.*

38
39 *With respect to the definitions of "electronic service," "electronic*
40 *transmission," and "electronic notification" in rule 2.250(b), the advisory*
41 *committee seeks comments on whether it should:*

- 42
43
 - *Continue to include the terms and their definitions in the rules;*

- 1 ○ *Eliminate the terms and their definitions;*
- 2 ○ *Retain the terms, but refer back to section 1010.6 for the definitions*
- 3 *(e.g., “Electronic service’ has the same meaning as defined in Code of*
- 4 *Civil Procedure section 1010.6”); or*
- 5 ○ *Modify the definitions in some other way.*

- 6
- 7 • Litigation by the Numbers. “With regard to the specific comments
- 8 requested, I agree with the third option: retain the terms but refer to
- 9 1010.6.”
- 10
- 11 • OneLegal. “Page 7, Request for Specific Comments: We like the 3rd bullet
- 12 point option “Retain the terms, but refer back to section 1010.6...” While
- 13 eService is not a new concept to us, it is to many law firms and so to
- 14 define it is helpful. Our eService trainings touch on the rule and statute for
- 15 that reason which is why we think eliminating these definitions entirely
- 16 would be a bad idea. Keeping it in both the rule and the statute, however,
- 17 *is unnecessary.”*
- 18
- 19 • Orange County Bar Association. “The OCBA is confused by the request
- 20 for specific comments: Some members believe that the request seeks
- 21 clarification as to whether all definitions contained in Rule 2.250(b) should
- 22 be retained while other members believe the request only seeks advice on
- 23 keeping the three statutory definitions in one form or another. With regard
- 24 to the request for specific comments, the OCBA believes that it would be
- 25 preferable for ease of administration to retain each of the terms, but refer
- 26 back to section 1010.6 for the statutory definitions and also preferable to
- 27 retain the additional non-statutory definitions at (1),(5),(6),(7), and (8) as
- 28 within the Council’s authority and helpful to the Court, parties, and other
- 29 persons.”
- 30
- 31 • State Bar of California Standing Committee on the Delivery of Legal
- 32 Services. “It is better to retain the duplicative terms and their definitions in
- 33 the rule so that practitioners and especially self-represented litigants have
- 34 the full comprehensive scheme without having to refer back to section
- 35 1010.6.”

36

37 *Staff analysis:* Code of Civil Procedure section 1010.6(a)(1)(A)–(C) define the

38 terms “electronic service,” “electronic transmission,” and “electronic notification.”

39 Rule 2.250(b) duplicates these definitions. Three of the commenters are in favor

40 of retaining the terms in rule 2.250(b), but modifying the definitions to refer to

41 Code of Civil Procedure section 1010.6 (e.g., “Electronic service’ has the same

42 meaning as defined in Code of Civil Procedure section 1010.6.”) The benefit of

43 this approach is that Code of Civil Procedure section 1010.6 and the rules will

1 never be out of sync and a change to the definitions in section 1010.6 will not
2 necessitate a change in the corresponding definitions in the rules. However, it
3 may be unlikely that the definitions will be changed often. The State Bar of
4 California Standing Committee on the Delivery of Legal Services favors retaining
5 the status quo. The benefit of this approach is that it is easier for practitioners
6 and self-represented litigants to read through the definitions without having to
7 look up cross-referenced material.

8
9 If the subcommittee decides that the definitions should be modified, staff will
10 develop a proposal for next year's regular rules cycle.

11 12 **Advisory Committee Comment**

13
14 The definition of “electronic service” has been amended to provide that a party may effectuate
15 service not only by the electronic transmission of a document, but also by providing electronic
16 notification of where a document served electronically may be located and downloaded. This
17 amendment is intended to modify the rules on electronic service to expressly authorize electronic
18 notification as a legally effective alternative means of service to electronic transmission. This
19 rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6,
20 effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156
21 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the
22 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which
23 interpreted the rules as authorizing electronic transmission as the only effective means of
24 electronic service.

25 26 **Rule 2.251. Electronic service**

27 28 **(a) Authorization for electronic service**

29
30 When a document may be served by mail, express mail, overnight delivery, or fax
31 transmission, the document may be served electronically under Code of Civil
32 Procedure section 1010.6 and the rules in this chapter.

33
34 *Drafter's Note: The following comments were received in response to the*
35 *proposed amendments to Rule 2.251(a).*

- 36
37 • Litigation by the Numbers. “Rule 2.251(a): We unfortunately won't know
38 how C.C.P. section 1010.6 will read until AB 976 is passed. The iteration
39 drafted on 4/20/17 seems inconsistent with Rule 2.251(a). The
40 amendment states: “(2) (A) If a document may be served by mail, express
41 mail, overnight delivery, or facsimile transmission, electronic service of the
42 document is not authorized unless a party or other person has expressly
43 consented on the appropriate Judicial Council form to receive electronic

1 delivery in that specific action or the court has ordered electronic service
2 on a represented party or other represented person under subdivision (c)
3 or (d). (B) If a document is required to be served by certified or registered
4 mail, electronic service of the document is not authorized.” I suggest that,
5 in order not to be inconsistent with whatever C.C.P. section 1010.6
6 ultimately says, Rule 2.251(a) be amended to something like: “A
7 document may be served electronically where authorized by [C.C.P.
8 section 1010.6].”
9

10 *Staff analysis:* Rule 2.251(a) does not have changes in this proposal so the
11 recommendation is outside the scope of the proposal. However, the commenter
12 has identified a change to Code of Civil Procedure section 1010.6 in AB 976 that
13 would necessitate a conforming rule change. Staff will update the subcommittee
14 on whether AB 976 is enacted and if there are changes to it.
15

16 **(b) Electronic service by consent of the parties**

- 17
18 (1) Electronic service may be established by consent ~~of the parties in an action.~~
19 A party or other person indicates that the party or other person agrees to
20 accept electronic service by:
21

22 *Drafter’s Note:* The following comments were received in response to the
23 proposed amendments to Rule 2.251(b)(1).
24

- 25 • Litigation by the Numbers. “Rule 2.251(b)(1): The first sentence should be
26 deleted. I don’t believe that “established” has any meaning here.
27 Electronic service is agreed to, authorized, effected ...what is “established”
28 supposed to mean?”
29

30 *Staff analysis:* The deletion of “established” is outside the scope of this proposal,
31 but staff will add it to a report about public suggestions for future consideration by
32 the subcommittee.
33

- 34 (A) Serving a notice on all parties or other persons that the party or other
35 person accepts electronic service and filing the notice with the court.
36 The notice must include the electronic service address at which the
37 party or other person agrees to accept service; or
38

39 *Drafter’s Note:* The following comments were received in response to the
40 proposed amendments to Rule 2.251(b)(1)(A).
41

- 1 • Litigation by the Numbers. “Rule 2.251(b)(1)(A): The first insertion of “or
2 other persons” is incorrect; service of the notice must be on all parties, so
3 it should be “and other persons.””
4

5 *Staff analysis:* Staff agree with the comment and recommend the modification.
6

- 7 (B) Electronically filing any document with the court. The act of electronic
8 filing is evidence that the party or other person agrees to accept service
9 at the electronic service address the party or other person has furnished
10 to the court under rule 2.256(a)(4). This subparagraph (B) does not
11 apply to self-represented parties or other self-represented persons;
12 they must affirmatively consent to electronic service under
13 subparagraph (A).
14

15 *Drafter’s Note:* The following comments were received in response to the
16 proposed amendments to Rule 2.251(b)(1)(B).
17

- 18 • Litigation by the Numbers. “Rule 2.251(b)(1)(B): The current iteration of
19 C.C.P. section 1010.6 seems to indicate that the parties can only
20 expressly consent. If so, this subsection is inconsistent. Again, perhaps
21 something like: “A party or other person may consent to accept electronic
22 service as provided in [C.C.P. section 1010.6].””
23

24 *Staff analysis:* The commenter is correct. AB 976 would eliminate consent by
25 conduct and the rules would need to be revised to conform to that change. Staff
26 will update the subcommittee on whether AB 976 is enacted.
27

- 28 (2) A party or other person that has consented to electronic service under (1) and
29 has used an electronic filing service provider to serve and file documents in a
30 case consents to service on that electronic filing service provider as the
31 designated agent for service for the party or other person in the case, until
32 such time as the party or other person designates a different agent for service.
33

34 **(c) Electronic service required by local rule or court order**
35

- 36 (1) A court may require parties to serve documents electronically in specified
37 actions by local rule or court order, as provided in Code of Civil Procedure
38 section 1010.6 and the rules in this chapter.
39

- 40 (2) A court may require other persons to serve documents electronically in
41 specified actions by local rule, as provided in Code of Civil Procedure section
42 1010.6 and the rules in this chapter.
43

1 (3)(2) Except when personal service is otherwise required by statute or rule, a
2 party or other person that is required to file documents electronically in an
3 action must also serve documents and accept service of documents
4 electronically from all other parties or persons, unless:

5
6 (A) The court orders otherwise, or

7
8 (B) The action includes parties or persons that are not required to file or
9 serve documents electronically, including self-represented parties or
10 other self-represented persons; those parties or other persons are to be
11 served by non-electronic methods unless they affirmatively consent to
12 electronic service.

13
14 (4)(3) Each party or other person that is required to serve and accept service of
15 documents electronically must provide all other parties or other persons in the
16 action with its electronic service address and must promptly notify all other
17 parties, other persons, and the court of any changes under ~~(f)~~(g).

18
19 **(d) Additional provisions for electronic service required by court order**

20
21 (1) If a court has adopted local rules for permissive electronic filing, then the court
22 may, on the motion of any party or on its own motion, provided that the order
23 would not cause undue hardship or significant prejudice to any party, order all
24 parties in any class action, a consolidated action, a group of actions, a
25 coordinated action, or an action that is complex under rule 3.403 to serve all
26 documents electronically, except when personal service is required by statute or
27 rule.

28
29 (2) A court may combine an order for mandatory electronic service with an order
30 for mandatory electronic filing as provided in rule 2.253(c).

31
32 (3) If the court proposes to make any order under (1) on its own motion, the court
33 must mail notice to any parties that have not consented to receive electronic
34 service. The court may electronically serve the notice on any party that has
35 consented to receive electronic service. Any party may serve and file an
36 opposition within 10 days after notice is mailed, electronically served, or such
37 later time as the court may specify.

38
39 (4) If the court has previously ordered parties in a case to electronically serve
40 documents and a new party is added that the court determines should also be
41 ordered to do so under (1), the court may follow the notice procedures under (2)
42 or may order the party to electronically serve documents and in its order state

1 that the new party may object within 10 days after service of the order or by
2 such later time as the court may specify.

3
4 **~~(d)~~(e) Maintenance of electronic service lists**

5
6 A court that permits or requires electronic filing in a case must maintain and make
7 available electronically to the parties or other persons in the case an electronic
8 service list that contains the parties' or other persons' current electronic service
9 addresses, as provided by the parties or other persons that have filed electronically
10 in the case.

11
12 *Drafter's Note: The following comments were received in response to the*
13 *proposed amendments to Rule 2.251(e).*

- 14
15 • Litigation by the Numbers. "Rule 2.251(e): The first insertion of "or other
16 persons" is incorrect; the list must be made available to the parties, so it
17 should be "and other persons.""

18
19 *Staff analysis: Staff agree with the comment and recommend the modification.*

20
21 **~~(e)~~(f) Service by the parties and other persons**

- 22
23 (1) Notwithstanding ~~(d)~~(e), parties and other persons that have consented to or
24 are required to serve documents electronically are responsible for electronic
25 service on all other parties and other persons required to be served in the
26 case. A party or other person may serve documents electronically directly, by
27 an agent, or through a designated electronic filing service provider.
28
29 (2) A document may not be electronically served on a nonparty unless the
30 nonparty consents to electronic service or electronic service is otherwise
31 provided for by law or court order.

32
33 **~~(f)~~(g) Change of electronic service address**

- 34
35 (1) A party or other person whose electronic service address changes while the
36 action or proceeding is pending must promptly file a notice of change of
37 address electronically with the court and must serve this notice electronically
38 on all other parties and all other persons required to be served.
39
40 (2) A party's or other person's election to contract with an electronic filing
41 service provider to electronically file and serve documents or to receive
42 electronic service of documents on the party's or other person's behalf does
43 not relieve the party or other person of its duties under (1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(3) An electronic service address is presumed valid for a party or other person if the party or other person files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

(g)(h) Reliability and integrity of documents served by electronic notification

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

- (1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (3) Maintain the hyperlink until either:
 - (A) All parties in the case have settled or the case has ended and the time for appeals has expired; or
 - (B) If the party or other person is no longer in the case, the party or other person has provided notice to all other parties and other persons required to receive notice that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given.

(h)(i) When service is complete

- (1) Electronic service of a document is complete ~~at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.~~ as provided for under Code of Civil Procedure section 1010.6 and the rules in this chapter.
- (2) If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.
- ~~(2) If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of the document, is extended by two court days, unless otherwise provided by a statute or a rule.~~

1
2 ~~(3) — The extension under (2) does not extend the time for filing:~~

3
4 ~~(A) — A notice of intent to move for a new trial;~~

5
6 ~~(B) — A notice of intent to move to vacate the judgment under Code of Civil
7 Procedure section 663a; or~~

8
9 ~~(C) — A notice of appeal.~~

10
11 ~~(4) — Service that occurs after the close of business is deemed to have occurred on
12 the next court day.~~

13
14 *Drafter's Note: The following comments were received in response to the
15 proposed amendments to Rule 2.251(i).*

- 16
17 • Litigation by the Numbers. “Rule 2.251(i): Insert “deemed” ... “Electronic
18 service of a document is deemed complete.” That term is included in the
19 current iteration of the proposed amendment to C.C.P. section 1010.6. In
20 addition, instead of “as provided for under [C.C.P. section 1010.6] it
21 should say “as provided in ...” [The revisions variously use: “provided in,”
22 “provided for under,” and “provided under.”]”

23
24 *Staff analysis:* Staff agree with the commenter that the revisions should be
25 consistent in their use of “provided for under/in/under” and recommend the
26 modification to “as provided in.”

27
28 Regarding “deemed complete.” The commenter is correct that “deemed
29 complete” is the language in AB 976 and the rules would more closely track
30 Code of Civil Procedure section 1010.6 with the addition of “deemed” if AB 976 is
31 enacted in its current iteration. Staff will update the subcommittee on whether the
32 bill passes and if there are changes to it.

33
34 **~~(i)~~(j) Proof of service**

35
36 (1) Proof of electronic service ~~may be by any of the methods~~ shall be made
37 as provided in Code of Civil Procedure section 1013b. 1013a, with the
38 following exceptions:

39
40 ~~(A) — The proof of electronic service does not need to state that the person
41 making the service is not a party to the case.~~

42
43 ~~(B) — The proof of electronic service must state:~~

1
2 (i) ~~The electronic service address of the person making the service, in~~
3 ~~addition to that person’s residence or business address;~~
4

5 (ii) ~~The date of the electronic service, instead of the date and place of~~
6 ~~deposit in the mail;~~
7

8 (iii) ~~The name and electronic service address of the person served, in~~
9 ~~place of that person’s name and address as shown on the~~
10 ~~envelope; and~~
11

12 (iv) ~~That the document was served electronically, in place of the~~
13 ~~statement that the envelope was sealed and deposited in the mail~~
14 ~~with postage fully prepaid.~~
15

16 (2) ~~Proof of electronic service may be in electronic form and may be filed~~
17 ~~electronically with the court.~~
18

19 (3)(2) ~~Under rule 3.1300(c), proof of electronic service of the moving papers must~~
20 ~~be filed at least five court days before the hearing.~~
21

22 (4)(3) ~~The party filing the proof of electronic service must maintain the printed~~
23 ~~form of the document bearing the declarant’s original signature and must~~
24 ~~make the document available for inspection and copying on the request of the~~
25 ~~court or any party to the action or proceeding in which it is filed, in the~~
26 ~~manner provided in rule 2.257(a). If a person signs a printed form of a proof~~
27 ~~of electronic service, the party or other person filing the proof of electronic~~
28 ~~service must comply with the provisions of rule 257(a).~~
29

30 *Drafter’s Note: The following comments were received in response to the*
31 *proposed amendments to Rule 2.251(j).*
32

- 33 • [Litigation by the Numbers](#). “Rule 2.251(j): The reference to rule 257(a)
34 needs to be changed to 2.257(a).”
- 35 • [OneLegal](#). “Page 14, new (j)(3) “The party filing the proof...”: The added
36 last sentence is missing the “2.” Should be 2.257(a) not 257(a).”
37

38
39 *Staff analysis: These commenters are correct. There is a “2.” missing and this*
40 *should be corrected.*
41

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

1 (1) The court may electronically serve documents ~~any notice, order, judgment, or~~
2 ~~other document issued by the court in the same manner that parties may serve~~
3 ~~documents by electronic service.~~ as provided for under Code of Civil
4 Procedure section 1010.6 and the rules in this chapter.
5

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

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

13
14 (B) Adopting a local rule stating that the court accepts electronic service.
15 The rule must indicate where to obtain the electronic service address at
16 which the court agrees to accept service.
17

18 *Drafter's Note: The following comments were received in response to the*
19 *proposed amendments to Rule 2.251(k).*

- 20
21 • Litigation by the Numbers. "Rule 2.251(k): Instead of "as provided for
22 under [C.C.P. section 1010.6] it should say "as provided in ...""

23
24 *Staff analysis: Staff recommend the commenter's modification for the sake of*
25 *consistency in the rules.*

26 27 Advisory Committee Comment

28
29 Subdivisions (c)–(d). Court-ordered electronic service is not subject to the provisions in Code of
30 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are
31 established by local rule, the court and the parties must have access to more than one electronic
32 filing service provider.
33

34 **Rule 2.252. General rules on electronic filing of documents**

35 36 **(a) In general**

37
38 A court may provide for electronic filing of documents in actions and proceedings
39 as provided under Code of Civil Procedure section 1010.6 and the rules in this
40 chapter.
41

42 **(b) Direct and indirect electronic filing**

43

1 Except as otherwise provided by law, a court may provide for the electronic filing
2 of documents directly with the court, indirectly through one or more approved
3 electronic filing service providers, or through a combination of direct and indirect
4 means.

5
6 **(c) ~~Effect of document filed electronically~~ No effect on filing deadline**

7
8 (1)—~~A document that the court or a party files electronically under the rules in this~~
9 ~~chapter has the same legal effect as a document in paper form.~~

10
11 (2)—Filing a document electronically does not alter any filing deadline.

12
13 **(d) Filing in paper form**

14
15 When it is not feasible for a party or other person to convert a document to
16 electronic form by scanning, imaging, or another means, a court may allow that
17 party or other person to file the document in paper form.

18
19 **(e) Original documents**

20
21 In a proceeding that requires the filing of an original document, an electronic filer
22 may file an electronic copy of a document if the original document is then filed
23 with the court within 10 calendar days.

24
25 *Drafter's Note: The following comments were received in response to the*
26 *proposed amendments to Rule 2.252(e).*

- 27
28 • [OneLegal](#). "Page 16, (3) Original documents: Many "eFiling courts" have
29 specifically listed documents which cannot be eFiled, including Wills.
30 Since a Will is, or can be, an original document, perhaps some clarifying
31 language is needed as this section conflicts with what those courts are
32 doing."

33
34 *Staff analysis: This comment is outside the scope of the changes in this*
35 *proposal, but staff will add it to a report about public suggestions for future*
36 *consideration by the subcommittee.*

37
38 **(f) Application for waiver of court fees and costs**

39
40 The court ~~may~~ must permit electronic filing of an application for waiver of court
41 fees and costs in any proceeding in which the court accepts electronic filings.

42

1 (g) **Orders and judgments**

2
3 The court may electronically file any notice, order, minute order, judgment, or
4 other document prepared by the court.
5

6 (h) **Proposed orders**

7
8 Proposed orders may be filed and submitted electronically as provided in rule
9 3.1312.
10

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

13
14 (a) **Permissive electronic filing by local rule**

15
16 A court may permit parties by local rule to file documents electronically in any
17 types of cases, ~~directly or through approved electronic service providers~~, subject to
18 the conditions in Code of Civil Procedure section 1010.6 and the rules in this
19 chapter.
20

21 (b) **Mandatory electronic filing by local rule**

22
23 A court may require parties by local rule to electronically file documents in civil
24 actions directly with the court, or directly with the court and through one or more
25 approved electronic filing service providers, or through more than one approved
26 electronic filing service provider, subject to the conditions in Code of Civil
27 Procedure section 1010.6, the rules in this chapter, and the following conditions:
28

29 (1) The court must specify the types or categories of civil actions in which
30 parties or other persons are required to file and serve documents
31 electronically. The court may designate any of the following as eligible for
32 mandatory electronic filing and service:
33

34 (A) All civil cases;

35
36 (B) All civil cases of a specific category, such as unlimited or limited civil
37 cases;

38
39 (C) All civil cases of a specific case type, including but not limited to,
40 contract, collections, personal injury, or employment;

41
42 (D) All civil cases assigned to a judge for all purposes;
43

- 1 (E) All civil cases assigned to a specific department, courtroom or
2 courthouse;
- 3
- 4 (F) Any class actions, consolidated actions, or group of actions,
5 coordinated actions, or actions that are complex under rule 3.403; or
6
- 7 (G) Any combination of the cases described in subparagraphs (A) to (F),
8 inclusive.
9

10 *Drafter's Note: The following comments were received in response to the*
11 *proposed amendments to Rule 2.253(b)(1).*

- 12
- 13 • OneLegal. "Page 17, 2.253(b)(1): While no changes were made to this
14 rule it made us realize there may be an issue with some eFiling courts that
15 are mandating case types OTHER than Civil (e.g. Family, Probate). I don't
16 believe the definition of "Civil" includes these case types and I suggest
17 adding more specific language while the "hood is open." Here are a couple
18 of reasons why we don't think the definition of Civil includes such case
19 types as Family and Probate:
- 20
- 21 a. CRC 2.300(a) (A section of the Filing and Service by Fax rules) reads
22 in part (emphasis added): The rules in this chapter apply to **civil,**
23 **probate, and family** law proceedings in all trial courts.
24
- 25 b. CCP section 308 defines parties in a **civil action** as **plaintiff** and
26 **defendant**.
27

28 *Staff analysis:* The comment is outside the scope of the changes in the rules
29 proposal. However, staff will address the concern. Under rule 1.6(3), "Civil case'
30 means a case prosecuted by one party against another for the declaration,
31 enforcement, or protection of a right or the redress or prevention of a wrong. Civil
32 cases include all cases except criminal cases and petitions for habeas corpus."
33 Accordingly, it is broadly inclusive of many civil case types. A "general civil case"
34 has a more narrow definition and excludes various case types including family
35 and probate cited as examples in the comment. (Cal. Rules of Court, rule 1.6(4).)
36

- 37 (2) Self-represented parties or other self-represented persons are exempt from
38 any mandatory electronic filing and service requirements adopted by courts
39 under this rule and Code of Civil Procedure section 1010.6.
40
- 41 (3) In civil cases involving both represented and self-represented parties or other
42 persons, represented parties or other persons may be required to file and serve
43 documents electronically; however, in these cases, each self-represented

1 party or other person is to file, serve, and be served with documents by non-
2 electronic means unless the self-represented party or other person
3 affirmatively agrees otherwise.
4

5 (4) A party or other person that is required to file and serve documents
6 electronically must be excused from the requirements if the party or other
7 person shows undue hardship or significant prejudice. A court requiring the
8 electronic filing and service of documents must have a process for parties or
9 other persons, including represented parties or other represented persons, to
10 apply for relief and a procedure for parties or other persons excused from
11 filing documents electronically to file them by conventional means.
12

13 (5) Any fees charged by the court or an electronic filing service provider shall
14 be consistent with the fee provisions of Code of Civil Procedure section
15 1010.6. for no more than the cost actually incurred by the court in providing
16 for the electronic filing and service of the documents. Any fees charged by an
17 electronic filing service provider shall be reasonable.
18

19 ~~(6) Any fees for electronic filing charged by the court or by an electronic filing~~
20 ~~service provider must be waived when deemed appropriate by the court,~~
21 ~~including providing a waiver of the fees for any party that has received a fee~~
22 ~~waiver.~~
23

24 ~~(7)(6) Any document required to be electronically filed with the court under this~~
25 ~~subdivision that is received electronically after the close of business on any~~
26 ~~day is deemed to have been filed on the next court day, unless by local rule~~
27 ~~the court provides that any document required to be electronically filed with~~
28 ~~the court under this subdivision that is received electronically before~~
29 ~~midnight on a court day is deemed to have been filed on that court day, and~~
30 ~~any document received electronically after midnight is deemed filed on the~~
31 ~~next court day. The effective date of filing any document received~~
32 ~~electronically is prescribed by Code of Civil Procedure section~~
33 ~~1010.6. This paragraph provision concerns only the effective date of filing.~~
34 Any document that is received electronically must be processed and satisfy
35 all other legal filing requirements to be filed as an official court record.
36

37 ~~(8)(7)~~ A court that adopts a mandatory electronic filing program under this
38 subdivision must report semiannually to the Judicial Council on the operation
39 and effectiveness of the court's program.
40

1 (c) **Electronic filing and ~~service required by court order~~**

2
3 (1) If a court has adopted local rules for permissive electronic filing,
4 then ~~The~~ the court may, on the motion of any party or on its own motion,
5 provided that the order would not cause undue hardship or significant
6 prejudice to any party, order all parties in any class action, a consolidated
7 action, a group of actions, a coordinated action, or an action that is complex
8 under rule 3.403 to:

9
10 ~~(A) — Serve all documents electronically, except when personal service is~~
11 ~~required by statute or rule;~~

12
13 ~~(B) — File file all documents electronically;~~ ~~or~~

14
15 ~~(C) — Serve and file all documents electronically, except when personal~~
16 ~~service is required by statute or rule.~~

17
18 (2) A court may combine an order for mandatory electronic filing with an order for
19 mandatory electronic service as provided in rule 2.252(d).

20
21 ~~(3)~~(2) If the court proposes to make any order under (1) on its own motion, the
22 court must mail notice to ~~the~~ any parties that have not consented to receive
23 electronic service. The court may electronically serve the notice on any party
24 that has consented to receive electronic service. Any party may serve and file
25 an opposition within 10 days after notice is mailed, electronically served, or
26 such later time as the court may specify.

27
28 ~~(4)~~(3) If the court has previously ordered parties in a case to electronically ~~serve or~~
29 file documents and a new party is added that the court determines should also
30 be ordered to do so under (1), the court may follow the notice procedures
31 under (2) or may order the party to electronically ~~serve or~~ file documents and
32 in its order state that the new party may object within 10 days after service of
33 the order or by such later time as the court may specify.

34
35 ~~(5)~~(4) The court's order may also provide that:

36
37 (A) Documents previously filed in paper form may be resubmitted in
38 electronic form; and

39
40 (B) When the court sends confirmation of filing to all parties, receipt of the
41 confirmation constitutes service of the filing if the filed document is
42 available electronically.

43

1
2
3 **Advisory Committee Comment**

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

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

17
18 **Subdivision (c).** Court-ordered electronic filing ~~and service~~ under this subdivision ~~are~~ is not
19 subject to the provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where
20 mandatory electronic filing and service are established by local rule, the court and the parties
21 must have access to more than one electronic filing service provider.
22

23 **Rule 2.254. Responsibilities of court**

24
25 **(a) Publication of electronic filing requirements**

26
27 Each court that permits or mandates electronic filing must publish, in both
28 electronic and print formats, the court’s electronic filing requirements.
29

30 **(b) Problems with electronic filing**

31
32 If the court is aware of a problem that impedes or precludes electronic filing ~~during~~
33 ~~the court’s regular filing hours~~, it must promptly take reasonable steps to provide
34 notice of the problem.
35

36 **(c) Public access to electronically filed documents**

37
38 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed
39 document is a public document at the time it is filed unless it is sealed under rule
40 2.551(b) or made confidential by law.
41

42 **Rule 2.255. Contracts with electronic filing service providers**

43

1 **(a) Right to contract**

- 2
- 3 (1) A court may contract with one or more electronic filing service providers to
- 4 furnish and maintain an electronic filing system for the court.
- 5
- 6 (2) If the court contracts with an electronic filing service provider, it may require
- 7 electronic filers to transmit the documents to the provider.
- 8
- 9 (3) If the court contracts with an electronic service provider or the court has an
- 10 in-house system, the provider or system must accept filing from other
- 11 electronic filing service providers to the extent the provider or system is
- 12 compatible with them.
- 13

14 **(b) Provisions of contract**

15

16 ~~The court's contract with an electronic filing service provider may allow the~~

17 ~~provider to charge electronic filers a reasonable fee in addition to the court's filing~~

18 ~~fee. The contract may also allow the electronic filing service provider to make other~~

19 ~~reasonable requirements for use of the electronic filing system.~~

20

- 21 (1) The court's contract with an electronic filing service provider may:
- 22
- 23 (a) Allow the provider to charge electronic filers a reasonable fee in addition to
- 24 the court's filing fee;
- 25
- 26 (b) Allow the provider to make other reasonable requirements for use of the
- 27 electronic filing system.
- 28
- 29 (2) The court's contract with an electronic filing service provider must comply with
- 30 requirements of Code of Civil Procedure section 1010.6.
- 31

32 **(c) Transmission of filing to court**

33

34 An electronic filing service provider must promptly transmit any electronic filing

35 and any applicable filing fee to the court.

36

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

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

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

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

10 **(e) Ownership of information**

11 All contracts between the court and electronic filing service providers must
12 acknowledge that the court is the owner of the contents of the filing system and has
13 the exclusive right to control the system's use.
14

15
16 **Rule 2.256. Responsibilities of electronic filer**

17
18 **(a) Conditions of filing**

19 Each electronic filer must:

- 20
21
22 (1) Comply with any court requirements designed to ensure the integrity of
23 electronic filing and to protect sensitive personal information;
24
25 (2) Furnish information the court requires for case processing;
26
27 (3) Take all reasonable steps to ensure that the filing does not contain computer
28 code, including viruses, that might be harmful to the court's electronic filing
29 system and to other users of that system;
30
31 (4) Furnish one or more electronic service addresses, in the manner specified by
32 the court, ~~at which the electronic filer agrees to accept service.~~ This only
33 applies when the electronic filer has consented to or is required to accept
34 electronic service;
35
36 (5) Immediately provide the court and all parties with any change to the
37 electronic filer's electronic service address. This only applies when the
38 electronic filer has consented to or is required to accept electronic service;
39 and
40
41 (6) If the electronic filer uses an electronic filing service provider, provide the
42 electronic filing service provider with the electronic address at which the filer

1 is to be sent all documents and immediately notify the electronic filing
2 service provider of any change in that address.

3
4 **(b) Format of documents to be filed electronically**

5
6 A document that is filed electronically with the court must be in a format specified
7 by the court unless it cannot be created in that format. The format adopted by a
8 court must meet the following requirements:

- 9
10 (1) The software for creating and reading documents must be in the public
11 domain or generally available at a reasonable cost.
12
13 (2) The printing of documents must not result in the loss of document text,
14 format, or appearance.
15
16 (3) The document must be text searchable when technologically feasible without
17 impairment of the document's image.
18

19 If a document is filed electronically under the rules in this chapter and cannot be
20 formatted to be consistent with a formatting rule elsewhere in the California Rules
21 of Court, the rules in this chapter prevail.
22

23 **Advisory Committee Comment**

24
25 **Subdivision (b)(3).** The term “technologically feasible” does not require more than the
26 application of standard, commercially available optical character recognition (OCR) software.
27

28 **Rule 2.257. Requirements for signatures on documents**

29
30 **(a) Documents signed under penalty of perjury**

31
32 When a document to be filed electronically provides for a signature under penalty
33 of perjury, of any person, the following applies the document is deemed to have
34 been signed by that person if filed electronically provided that either of the
35 following conditions is satisfied:

- 36
37 (1) The declarant has signed the document using a computer or other technology
38 in accordance with procedures, standards, and guidelines established by the
39 Judicial Council; or
40

41 *Drafter's Note: The following comments were received in response to the*
42 *proposed amendments to Rule 2.257(a)(1).*
43

- [OneLegal](#). “. Page 23, 2.257(a)(1) Documents signed under penalty of perjury: The additional language allowing for “either 1 or 2” is a great improvement because it will allow filers to submit documents without first scanning them. We also like the addition of electronic signatures as that language will ameliorate confusion and lessen rejections of submitted eFilings for those filers who choose to “e-Sign” their documents. A great step in the right direction!”

Staff analysis: No analysis needed.

~~(1)(2)~~ The declarant ~~The document is deemed signed by the declarant if, before filing, the declarant has physically signed a printed form of the document. (2)~~ By electronically filing the document, the electronic filer certifies ~~that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party. Local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original. In the event this second method of~~ submitting documents electronically under penalty of perjury is used, the following conditions apply:

~~(A)(3)~~ At any time after the electronic version of the document is filed, any ~~other~~ party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

~~(B)(4)~~ Within five days of service of the demand under ~~(3)(A)~~, the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

~~(C)(5)~~ At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

~~(D)~~ Notwithstanding (A)–(C), local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must

1 maintain them only for the period of time stated in Government
2 Code section 68152(a). If the local child support agency
3 maintains an electronic copy of the original, signed pleading in
4 the statewide automated child support system, it may destroy the
5 paper original.
6

7 **(b) Documents not signed under penalty of perjury**
8

9 If a document does not require a signature under penalty of perjury, the document
10 is deemed signed by the party if the document is filed electronically.
11

12 **(c) Documents requiring signatures of opposing parties**
13

14 When a document to be filed electronically, such as a stipulation, requires the
15 signatures of opposing parties, the following procedure applies:
16

- 17 (1) The party filing the document must obtain the signatures of all parties on a
18 printed form of the document.
19
- 20 (2) The party filing the document must maintain the original, signed document
21 and must make it available for inspection and copying as provided in (a)(2) of
22 this rule and Code of Civil Procedure section 1010.6. The court and any other
23 party may demand production of the original signed document in the manner
24 provided in (a)(3)–(5)(2)(A)–(C).
25
- 26 (3) By electronically filing the document, the electronic filer indicates that all
27 parties have signed the document and that the filer has the signed original in
28 his or her possession.
29

30 **(d) Digital signature**
31

32 A party is not required to use a digital signature on an electronically filed
33 document.
34

35 **(e) Judicial signatures**
36

37 If a document requires a signature by a court or a judicial officer, the document
38 may be electronically signed in any manner permitted by law.
39

40 **Advisory Committee Comment**
41

1 **Subdivision (a)(1).** The standards and guidelines for electronic signatures that satisfy the
2 requirements for an electronic signature under penalty of perjury are [will be] contained in the
3 Trial Court Records Manual.
4

5 **Rule 2.259. Actions by court on receipt of electronic filing**
6

7 **(a) Confirmation of receipt and filing of document**
8

9 (1) *Confirmation of receipt*
10

11 When a court receives an electronically submitted document, the court must
12 promptly send the electronic filer confirmation of the court's receipt of the
13 document, indicating the date and time of receipt. A document is considered
14 received at the date and time the confirmation of receipt is created.
15

16 (2) *Confirmation of filing*
17

18 If the document received by the court under (1) complies with filing
19 requirements and all required filing fees have been paid, the court must
20 promptly send the electronic filer confirmation that the document has been
21 filed. The filing confirmation must indicate the date and time of filing and is
22 proof that the document was filed on the date and at the time specified. The
23 filing confirmation must also specify:
24

25 (A) Any transaction number associated with the filing;

26 (B) The titles of the documents as filed by the court; and
27

28 (C) The fees assessed for the filing.
29

30 (3) *Transmission of confirmations*
31

32 The court must send receipt and filing confirmation to the electronic filer at
33 the electronic service address the filer furnished to the court under rule
34 2.256(a)(4). The court must maintain a record of all receipt and filing
35 confirmations.
36

37 (4) *Filer responsible for verification*
38

39 In the absence of the court's confirmation of receipt and filing, there is no
40 presumption that the court received and filed the document. The electronic
41 filer is responsible for verifying that the court received and filed any
42 document that the electronic filer submitted to the court electronically.
43

1
2 **(b) Notice of rejection of document for filing**
3

4 If the clerk does not file a document because it does not comply with applicable
5 filing requirements or because the required filing fee has not been paid, the court
6 must promptly send notice of the rejection of the document for filing to the
7 electronic filer. The notice must state the reasons that the document was rejected
8 for filing.
9

10 ~~(e)~~ **Document received after close of business**
11

12 ~~A document that is received electronically by the court after the close of business is~~
13 ~~deemed to have been received on the next court day, unless the court has provided~~
14 ~~by local rule, with respect to documents filed under the mandatory electronic filing~~
15 ~~provisions in rule 2.253(b)(7), that documents received electronically before~~
16 ~~midnight on a court day are deemed to have been filed on that court day, and~~
17 ~~documents received electronically after midnight are deemed filed on the next court~~
18 ~~day. This provision concerns only the effective date of filing; any document that is~~
19 ~~electronically filed must be processed and satisfy all other legal filing requirements~~
20 ~~to be filed as an official court record.~~
21

22 ~~(c)(d)~~ **Delayed delivery**
23

24 If a technical problem with a court's electronic filing system prevents the court
25 from accepting an electronic filing ~~during its regular filing hours~~ on a particular
26 court day, and the electronic filer demonstrates that he or she attempted to
27 electronically file the document on that day, the court must deem the document as
28 filed on that day. This subdivision does not apply to the filing of a complaint or any
29 other initial pleading in an action or proceeding.
30

31 ~~(d)(e)~~ **Endorsement**
32

- 33 (1) The court's endorsement of a document electronically filed must contain the
34 following: "Electronically filed by Superior Court of California, County of
35 _____, on _____ (date)," followed by the name of the court clerk.
36
- 37 (2) The endorsement required under (1) has the same force and effect as a
38 manually affixed endorsement stamp with the signature and initials of the
39 court clerk.
40
- 41 (3) A complaint or another initial pleading in an action or proceeding that is filed
42 and endorsed electronically may be printed and served on the defendant or
43 respondent in the same manner as if it had been filed in paper form.

1
2 **(e)(f) Issuance of electronic summons**
3

- 4 (1) On the electronic filing of a complaint, a petition, or another document that
5 must be served with a summons, the court may transmit a summons
6 electronically to the electronic filer in accordance with this subdivision and
7 Code of Civil Procedure section 1010.6.
8
9 (2) The electronically transmitted summons must contain an image of the court’s
10 seal and the assigned case number.
11
12 (3) Personal service of the printed form of a summons transmitted electronically
13 to the electronic filer has the same legal effect as personal service of a copy
14 of an original summons.
15

16 *Drafter’s Note: The following comments were received as overarching or*
17 *additional comments to the proposal. Each comment is on a different topic and*
18 *has a separate staff analysis.*
19

- 20 • Orange County Bar Association. “OCBA’S only concern with this proposal
21 is that it pre-supposes an effective date of Jan 1, 2018 for the Judicial
22 Council legislation amending C.C.P. §1010.6 and enacting a new C.C.P.
23 §1013b, which legislation is necessary for some but not all of these
24 proposed rule changes. The timing for adoption of these Rule changes
25 must be specifically coordinated with the legislation enactment or else
26 many changes herein will have to be delayed or removed.”
27

28 *Staff analysis: Staff agree with the comment and recommend that the*
29 *subcommittee wait on the outcome of the enactment of AB 976 before making a*
30 *recommendation to ITAC and the Civil and Small Claims Advisory Committee.*
31

- 32 • State Bar of California Standing Committee on the Delivery of Legal
33 Services. “With respect to the “reasonable requirements” to access the
34 electronic filing system, it would greatly benefit low income clients to
35 explicitly state that Electronic Filing Services Providers (EFSPs) cannot
36 require indigents to have either a credit card, debit card, or bank account
37 to utilize the EFSPs’ services. In the past, some EFSPs have required a
38 credit card to create an account, even if that credit card was never billed,
39 and that creates an insurmountable barrier to those without access to
40 credit or banking services.
41

42 Additionally, EFSPs should have to comply with accessibility requirements
43 under the Americans with Disabilities Act, which is another way they

1 cannot require users not use, for example, a screen reader to use the site
2 in a reasonable manner.”

3

4 *Staff analysis:* These suggestions are outside the scope of the changes
5 presented in this proposal, but staff will add them to a report about public
6 suggestions for future consideration by the subcommittee.

7

8

DRAFT

SPR17-25**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Litigation By The Numbers By Julie Goren, Author/Publisher 13351 Cumpston St. Sherman Oaks, California 91401 Telephone: 818-787-9799 Email: julie@litigationbythenumbers.com	AM	<p>With regard to the specific comments requested, I agree with the third option: retain the terms but refer to 1010.6.</p> <p>Other comments are as follows:</p> <p>1. Rule 2.250(b)(1): I realize this language has been around for years, and is likely beyond the scope of the Invitation, but I am just now noticing it. Why is there a need to provide a specific definition of “document” for this chapter? The term is used in 157 different C.C.P. sections (including 1010.6) and has never before required definition. I suggest deleting it entirely. Alternatively, it should be revised. The phrase “or another filing submitted,” can easily be interpreted to mean that the term refers only to filed documents, i.e., not written discovery demands or responses. It would follow, then, that Rule 2.250(b)(2)’s definition of electronic service refers only to filed documents. This is obviously not the intent nor the practice.</p> <p>2. Rule 2.250(b)(8): Is the insertion of “or persons” supposed to be “or other persons”?</p> <p>3. Rule 2.251(a): We unfortunately won’t know how C.C.P. section 1010.6 will read until AB 976 is passed. The</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>iteration drafted on 4/20/17 seems inconsistent with Rule 2.251(a). The amendment states: “(2) (A) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented on the appropriate Judicial Council form to receive electronic delivery in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). (B) If a document is required to be served by certified or registered mail, electronic service of the document is not authorized.” I suggest that, in order not to be inconsistent with whatever C.C.P. section 1010.6 ultimately says, Rule 2.251(a) be amended to something like: “A document may be served electronically where authorized by [C.C.P. section 1010.6].”</p> <p>4. Rule 2.251(b)(1): The first sentence should be deleted. I don’t believe that “established” has any meaning here. Electronic service is agreed to, authorized, effected ...what is “established” supposed to mean?</p> <p>5. Rule 2.251(b)(1)(A): The first insertion of “or other persons” is incorrect; service of the notice must be on all parties, so it should be “and other persons.”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>6. Rule 2.251(b)(1)(B): The current iteration of C.C.P. section 1010.6 seems to indicate that the parties can only expressly consent. If so, this subsection is inconsistent. Again, perhaps something like: “A party or other person may consent to accept electronic service as provided in [C.C.P. section 1010.6].”</p> <p>7. Rule 2.251(e): The first insertion of “or other persons” is incorrect; the list must be made available to the parties, so it should be “and other persons.”</p> <p>8. Rule 2.251(i): Insert “deemed” ... “Electronic service of a document is deemed complete.” That term is included in the current iteration of the proposed amendment to C.C.P. section 1010.6. In addition, instead of “as provided for under [C.C.P. section 1010.6] it should say “as provided in ...” [The revisions variously use: “provided in,” “provided for under,” and “provided under.”]</p> <p>9. Rule 2.251(j): The reference to rule 257(a) needs to be changed to 2.257(a).</p> <p>10. Rule 2.251(k): Instead of “as provided for under [C.C.P. section 1010.6] it should say “as provided in ...”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	One Legal, LLC. By Mark L. Schwartz, Court Integration Manager 504 Redwood Blvd. #223 Novato, CA 94947 mschwartz@onelegal.com Tel. 415-475-6254	NI	<p>1. Page 7, Request for Specific Comments: We like the 3rd bullet point option “Retain the terms, but refer back to section 1010.6...” While eService is not a new concept to us, it is to many law firms and so to define it is helpful. Our eService trainings touch on the rule and statute for that reason which is why we think eliminating these definitions entirely would be a bad idea. Keeping it in both the rule and the statute, however, <i>is</i> unnecessary.</p> <p>2. Page 8, (b)(1) “document”: This current definition of a document (...or another filing), including the additional language, could be construed as meaning a document that IS NOT a filing, notice, order, judgment or other issuance, cannot be eServed since (b)(2) below defines eService as “service of a document.” Interrogatories and Notices of Deposition are two (2) examples of documents that do not fall within the definition of a document as described in section (b)(1).</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>3. Page 9, (b)(9) and (b)(10) “Regular filing hours and Close of business”: We completely agree with removing these two sub-sections. They were confusing, especially since many courts have different hours on different days.</p> <p>4. Page 14, <i>new</i> (j)(3) “The party filing the proof...”: The added last sentence is missing the “2.” Should be 2.257(a) not 257(a).</p> <p>5. Page 16, (3) Original documents: Many “eFiling courts” have specifically listed documents which cannot be eFiled, including Wills. Since a Will is, or can be, an original document, perhaps some clarifying language is needed as this section conflicts with what those courts are doing.</p> <p>6. Page 17, 2.253(b)(1): While no changes were made to this rule it made us realize there may be an issue with some eFiling courts that are mandating case types OTHER than Civil (e.g. Family, Probate). I don’t believe the definition of “Civil”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>includes these case types and I suggest adding more specific language while the “hood is open.” Here are a couple of reasons why we don’t think the definition of Civil includes such case types as Family and Probate:</p> <p>a. CRC 2.300(a) (A section of the Filing and Service by Fax rules) reads in part (emphasis added): The rules in this chapter apply to <i>civil, probate, and family law</i> proceedings in all trial courts.</p> <p>b. CCP section 308 defines parties in a <i>civil action</i> as <i>plaintiff</i> and <i>defendant</i>.</p> <p>7. Page 23, 2.257(a)(1) Documents signed under penalty of perjury: The additional language allowing for “either 1 or 2” is a great improvement because it will allow filers to submit documents without first scanning them. We also like the addition of electronic signatures as that language will ameliorate confusion and lessen rejections of submitted eFilings for those filers who choose to “e-Sign” their documents. A great step in the right direction!</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Orange County Bar Association By Michael L. Baroni, President P.O. Box 6130 Newport Beach, CA 92658	A	<p>OCBA’S only concern with this proposal is that it pre-supposes an effective date of Jan 1, 2018 for the Judicial Council legislation amending C.C.P. §1010.6 and enacting a new C.C.P. §1013b, which legislation is necessary for some but not all of these proposed rule changes. The timing for adoption of these Rule changes must be specifically coordinated with the legislation enactment or else many changes herein will have to be delayed or removed.</p> <p>The OCBA is confused by the request for specific comments: Some members believe that the request seeks clarification as to whether all definitions contained in Rule 2.250(b) should be retained while other members believe the request only seeks advice on keeping the three statutory definitions in one form or another. With regard to the request for specific comments, the OCBA believes that it would be preferable for ease of administration to retain each of the terms, but refer back to section 1010.6 for the statutory definitions and also preferable to retain the additional</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			non-statutory definitions at (1),(5),(6),(7), and (8) as within the Council’s authority and helpful to the Court, parties, and other persons.	
4.	<p>State Bar of California Standing Committee on the Delivery of Legal Services By Sharon Djemal, Chair 180 Howard Street San Francisco, California 94105 Tel: 415-538-2267 Fax: 415-538-2552</p>	A	<p>Specific Comments</p> <ul style="list-style-type: none"> • Section 1010.6 and rule 2.250(b) contain definitions of “electronic service,” “electronic transmission,” and “electronic notification.” The rule 2.250(b) definitions mirror the section 1010.6 definitions, but the rule provides a more comprehensive scheme of definitions than does section 1010.6. The advisory committee retained the duplicative definitions to preserve this comprehensive scheme. <p>With respect to the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b), the advisory committee seeks comments on whether it should:</p> <ul style="list-style-type: none"> ▪ Continue to include the terms and their definitions in the rules; 	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">▪ Eliminate the terms and their definitions;▪ Retain the terms, but refer back to section 1010.6 for the definitions (e.g., “Electronic service” has the same meaning as defined in Code of Civil Procedure section 1010.6”); or▪ Modify the definitions in some other way. <p>It is better to retain the duplicative terms and their definitions in the rule so that practitioners and especially self-represented litigants have the full comprehensive scheme without having to refer back to section 1010.6.</p> <p>Additional Comments</p> <p>With respect to the “reasonable requirements” to access the electronic filing system, it would greatly benefit low income clients to explicitly state that Electronic Filing Services Providers (EFSPs) cannot require indigents to have either a credit card, debit card, or bank account to utilize the EFSP’s services. In the past, some</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>EFSPs have required a credit card to create an account, even if that credit card was never billed, and that creates an insurmountable barrier to those without access to credit or banking services.</p> <p>Additionally, EFSPs should have to comply with accessibility requirements under the Americans with Disabilities Act, which is another way they cannot require users not use, for example, a screen reader to use the site in a reasonable manner.</p>	
5.	<p>Superior Court of Los Angeles County 111 N. Hill Street Los Angeles, CA 90012</p>	A	No specific comment.	
6.	<p>Superior Court of San Diego County By Mike Roddy, Court Executive Officer County Courthouse 220 West Broadway San Diego, California 92101</p>	AM	<p>The proposal to eliminate references to “close of business” and “regular filing hours” in rule 2.250(b)(9) and (10) appears to provide different levels of access to the courts. A litigant without access to the internet would be limited to the office hours of a legal aid provider or the public library, neither of which are typically open until midnight.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR17-25

Technology: Rules Modernization Project (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			This would also provide different levels of access for counties with permissive e-filing. Those who do not utilize e-filing would be limited to submit filings in a drop-box by 5 p.m. or when the courthouse closes.	

DRAFT

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
May 17, 2017	Please review
To	Deadline
Information Technology Advisory Committee, Rules and Projects Subcommittee and Civil and Small Claims Advisory Committee, Unlimited Case and Complex Litigation Subcommittee	May 23, 2017
	Contact
	Andrea L. Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
From	
Patrick O'Donnell, Principal Managing Attorney Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	
Subject	
Legislative Proposal (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)	

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated for public comment a legislative proposal that would amend section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure. Specifically, this legislative proposal would (1) authorize the courts to electronically serve a written demand for payment on the drawer of a bad check when the court is the payee of the check and the drawer of the check is accepting electronic service in the matter to which the check pertains; (2) authorize a

party asserting a real property claim to electronically serve a notice of pendency of the action on other parties or owners when those parties or owners are already accepting electronic service in the action; (3) authorize electronic service of notices of intention to move for a new trial or vacate judgment; and (4) amend certain deadlines tied to dates of “mailing” to be tied instead to dates of “service.” The proposal originates from ITAC’s modernization project to amend statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices.

Four commenters submitted specific comments in response to the Invitation to Comment. To facilitate the subcommittee’s review of the comments and discussion, the attached materials include the proposed amendments with drafter’s notes immediately following each proposed amendment that received public comment. The drafter’s notes list the specific comments received in response to the proposal, and are followed by analysis from staff.

Next, the Civil and Small Claims Advisory Committee (CSCAC) and ITAC will provide input on this proposal during their June 9 meetings.

Subcommittee’s Task

The subcommittee is tasked with reviewing the comments and:

- Advising ITAC to recommend that the Judicial Council sponsor all or part of the proposal;
- Rejecting the proposal; or
- Asking staff or group members for further information and analysis.

Attachments

1. Text of proposed amendments to Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a with drafter’s notes.
2. Comment chart.

Section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure would be amended, effective January 1, 2019, to read:

1 **Civil Code, § 1719.**

2
3 (a)(1) Notwithstanding any penal sanctions that may apply, any person who passes a
4 check on insufficient funds shall be liable to the payee for the amount of the check and a
5 service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25)
6 for the first check passed on insufficient funds and an amount not to exceed thirty-five
7 dollars (\$35) for each subsequent check to that payee passed on insufficient funds.
8

9 (2) Notwithstanding any penal sanctions that may apply, any person who passes a check
10 on insufficient funds shall be liable to the payee for damages equal to treble the amount
11 of the check if a written demand for payment is mailed by certified mail to the person
12 who had passed a check on insufficient funds and the written demand informs this person
13 of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of
14 the service charge payable to the payee. The person who had passed a check on
15 insufficient funds shall have 30 days from the date the written demand was mailed to pay
16 the amount of the check, the amount of the service charge payable to the payee, and the
17 costs to mail the written demand for payment. If this person fails to pay in full the amount
18 of the check, the service charge payable to the payee, and the costs to mail the written
19 demand within this period, this person shall then be liable instead for the amount of the
20 check, minus any partial payments made toward the amount of the check or the service
21 charge within 30 days of the written demand, and damages equal to treble that amount,
22 which shall not be less than one hundred dollars (\$100) nor more than one thousand five
23 hundred dollars (\$1,500). When a person becomes liable for treble damages for a check
24 that is the subject of a written demand, that person shall no longer be liable for any
25 service charge for that check and any costs to mail the written demand.
26

27 (3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service
28 charge, costs to mail the written demand, or treble damages if he or she stops payment in
29 order to resolve a good faith dispute with the payee. The payee is entitled to the service
30 charge, costs to mail the written demand, or treble damages only upon proving by clear
31 and convincing evidence that there was no good faith dispute, as defined in subdivision
32 (b).
33

34 (4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for
35 the service charge if, at any time, he or she presents the payee with written confirmation
36 by his or her financial institution that the check was returned to the payee by the financial
37 institution due to an error on the part of the financial institution.
38

39 (5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for
40 the service charge if the person presents the payee with written confirmation that his or
41 her account had insufficient funds as a result of a delay in the regularly scheduled transfer
42 of, or the posting of, a direct deposit of a social security or government benefit assistance
43 payment.

1 (6) As used in this subdivision, to “pass a check on insufficient funds” means to make,
2 utter, draw, or deliver any check, draft, or order for the payment of money upon any
3 bank, depository, person, firm, or corporation that refuses to honor the check, draft, or
4 order for any of the following reasons:
5

6 (A) Lack of funds or credit in the account to pay the check.
7

8 (B) The person who wrote the check does not have an account with the drawee.
9

10 (C) The person who wrote the check instructed the drawee to stop payment on the check.
11

12 (b)–(c) * * *

13
14 (d) In the case of a stop payment, a court may not award damages or costs under this
15 section unless the court receives into evidence a copy of the written demand that, in that
16 case, shall have been sent to the drawer and a signed certified mail receipt showing
17 delivery, or attempted delivery if refused, of the written demand to the drawer’s last
18 known address.
19

20 (e)–(f) * * *

21
22 (g)(1) Notwithstanding subdivision (a), if the payee is the court, the written demand for
23 payment described in subdivision (a) may be mailed to the drawer by the court clerk.
24 Notwithstanding subdivision (d), in the case of a stop payment where the demand is
25 mailed by the court clerk, a court may not award damages or costs pursuant to
26 subdivision (d), unless the court receives into evidence a copy of the written demand, and
27 a certificate of mailing by the court clerk in the form provided for in subdivision (4) of
28 Section 1013a of the Code of Civil Procedure for service in civil actions.
29

30 (2) In lieu of the mailing provisions of (g)(1), if the payee is the court and the check
31 passed on insufficient funds relates to an action in which the drawer has consented to
32 accept or is required to accept electronic service pursuant to Section 1010.6 of the Code
33 of Civil Procedure, the court clerk may serve the written demand electronically.
34 Notwithstanding subdivision (d), in the case of a stop payment where the demand is
35 electronically served by the court clerk, a court may not award damages or costs pursuant
36 to subdivision (d) unless the court receives into evidence a copy of the written demand,
37 and a certificate of electronic service by the court clerk in the form provided for in
38 subdivision (4) of Section 1013a of the Code of Civil Procedure as modified for
39 electronic service in accordance with Section 1013b of the Code of Civil Procedure.
40

41 *Drafter’s Note: The following comments were received in response to the*
42 *proposed amendments to Civil Code section 1719(g)(2):*
43

- 1 • [Orange County Bar Association](#). “Agree as Modified - As to the proposed
2 changes to CC section 1719, the following modifications are suggested.
3

4 With very limited exception, parties who have agreed to accept, or who
5 are required to accept, electronic service of documents pursuant to the
6 provisions of CCP section 1010.6, are represented by counsel. For these
7 parties, the email address on file with the court is that of their respective
8 counsel and not that of the actual party. Consequently, a drawer of a
9 check may appear to be a party subject to electronic service in the
10 underlying action, but whose personal email is not the one in the court
11 records. While there is no disagreement with the idea behind the
12 proposal, it is suggested that the proposed language adding subsection
13 (2) to CC section 1719(g) be modified in some manner to ensure that the
14 drawer’s personal email address is used and that permission for its use by
15 the court is obtained. To do anything less would result in an insufficient
16 and failed demand under CC section 1719(g).”
17

18 *Staff analysis:* The purpose of the new Civil Code section 1719(g)(2) is to ensure
19 that it is not inconsistent with Code of Civil Procedure section 1010.6, which
20 allows the courts to “electronically serve any document issued by the court” that
21 does not have to be personally served. (Code Civ. Proc, § 1010.6(a)(3).) Staff
22 disagree with the Orange County Bar Association that using the electronic
23 service address where the drawer of the check is accepting electronic service in
24 the underlying action would “result in an insufficient and failed demand.” Where
25 the drawer is accepting electronic service through counsel, counsel would have a
26 professional obligation to the drawer as the client to alert them about the
27 demand.
28

29 Unrelated to the Orange County Bar Association’s comment, staff recommend
30 modifying the end of proposed Civil Code section 1719(g)(2) from:
31

32 . . . a certificate of electronic service by the court clerk in the form
33 provided for in subdivision (4) of Section 1013a of the Code of Civil
34 Procedure as modified for electronic service in accordance with
35 Section 1013b of the Code of Civil Procedure.
36

37 to:

38
39 . . . a certificate of electronic service by the court clerk in the form
40 provided for in subdivision (a)(4) of Section 1013b of the Code of
41 Civil Procedure.
42

1 Staff make this recommendation because in Assembly Bill (AB) 976, the
2 Legislature has revised the wording of proposed Code of Civil Procedure section
3 1013b, which will be the new code section covering proof of electronic service.
4 The Legislature's revisions were nonsubstantive and improved the clarity of the
5 section. Staff do not anticipate further changes to section 1013b as it was not
6 controversial in the Assembly, but if there are additional changes, staff will alert
7 the subcommittee. There would be adequate time to address the changes before
8 legislative proposals go to the Judicial Council in November.

9
10 (3) For purposes of this subdivision, in courts where a single court clerk serves more than
11 one court, the clerk shall be deemed the court clerk of each court.

12
13 (h)–(k) * * *

14
15 **Code of Civil Procedure, § 405.22.**

16
17 (a) Except in actions subject to Section 405.6, the claimant shall, prior to recordation of
18 the notice, cause a copy of the notice to be mailed, by registered or certified mail, return
19 receipt requested, to all known addresses of the parties to whom the real property claim is
20 adverse and to all owners of record of the real property affected by the real property
21 claim as shown by the latest county assessment roll. If there is no known address for
22 service on an adverse party or owner, then as to that party or owner a declaration under
23 penalty of perjury to that effect may be recorded instead of the proof of service required
24 above, and the service on that party or owner shall not be required. Immediately
25 following recordation, a copy of the notice shall also be filed with the court in which the
26 action is pending. Service shall also be made immediately and in the same manner upon
27 each adverse party later joined in the action.

28
29 (b) In lieu of the mailing provisions of (a), a claimant may serve the notice electronically
30 in accordance with Section 1010.6 upon the parties to whom the real property claim is
31 adverse and the owners of record provided that the parties to whom the real property
32 claim is adverse and the owners of record have consented to accept or are required to
33 accept electronic service pursuant to Section 1010.6 in the action to which the notice
34 pertains.

35
36 **Code of Civil Procedure, § 405.23.**

37
38 Any notice of pendency of action shall be void and invalid as to any adverse party or
39 owner of record unless the requirements of Section 405.22 are met for that party or owner
40 and a proof of service in the form and content specified in Section 1013a for service by
41 mail or Section 1013b for electronic service has been recorded with the notice of
42 pendency of action.

1 **Drafter's Note:** The following comments were received in response to the
2 proposed amendments to Code of Civil Procedure sections 405.22 and 405.23:

- 3
4 • Orange County Bar Association. “Disagree – As to the proposed changes
5 to CCP sections 405.22 and 405.23, the following observations are made.

6
7 As a practical matter, it is difficult to see how allowing the service
8 electronically of a notice of pendency of action would be of real benefit. At
9 the time a plaintiff, for example, would want to serve the notice, it would
10 seem unlikely that an adverse party even if required to be served
11 electronically, would have responded so as to have its electronic contact
12 information on file. In that all affected owners of record also must be
13 served notice, it would seem even more unlikely that their respective
14 electronic contact information or consent would be known to the plaintiff.
15 Finally, in that service must be made “immediately” upon each adverse
16 party later joined per CCP section 405.22, it would seem most unlikely
17 their electronic contact information would have been provided. For these
18 reasons, based on the timing considerations involved, the likelihood exists
19 that most if not all of these notices would still be served by mail.

20
21 Beyond the practical considerations, there are differences in the very
22 nature of a notice of pendency of action which set it apart from a pleading,
23 for example. These differences are not just rooted in tradition, but in
24 actual distinction. The use and impact of these notices is serious which is,
25 perhaps, the reason for the heightened requirements associated with their
26 service (these heightened requirements would be lost, of course, were
27 electronic service allowed). Pleadings simply may be mailed, but these
28 notices must be sent registered or certified mail, return receipt requested.
29 Both of these methods allow for tracking and evidence of receipt.
30 Pleadings are filed with the court, while notices are recorded with the
31 county recorder, and require a notary's seal and acknowledgment.
32 Pleading and notices are both public records, but the notice appears in the
33 chain of title giving constructive notice to all who come after. In short, a
34 notice of pendency of action is surrounded by unique considerations, and
35 it should not be equated with, treated like, or served in the manner of a
36 subsequent pleading.”

37
38 **Staff analysis:** Regarding the Orange County Bar Association's comment that
39 there is a lack of real benefit as a practical matter. Electronic service of notice of
40 pendency would only apply to a narrow subset of litigants (those that are
41 accepting electronic service in the underlying matter and have not been served a
42 notice of pendency by mail). The service of the notice is a prerequisite to
43 recordation and it is not clear to staff why mailing should be required as applied

1 to that subset of litigants. Staff disagree that electronic service of the notice
2 causes something about the seriousness of the process to be lost. First, sending
3 certified mail creates a written record of transmission from the United States
4 Postal Service (USPS). Evidence of mailing is essentially officially corroborated
5 by USPS. Similarly, electronic service creates a record of transmission where the
6 technology itself provides a written record to corroborate the sender's claim that
7 they indeed sent the material to the place where the recipient has represented to
8 the court that the recipient can be reached. Second, regarding evidence of
9 receipt, such evidence is not a prerequisite to recordation. The sender using mail
10 must request a return receipt, but the recipient does not actually have to send it
11 back nor does the sender have to have the return receipt to record the notice.
12 While staff disagree with some of the Orange County Bar Association's point,
13 staff recognize that the Orange County Bar Association membership may have
14 more practical experience in this area of law that should be given weight in
15 determining whether to proceed with the notice of pendency provisions in this
16 proposal. In addition, it would potentially create surplusage in the Code of Civil
17 Procedure if, indeed, there is no practical utility to be accomplished in allowing
18 electronic service of a notice of pendency.

19
20 In addition to the concerns raised by the Orange County Bar Association, there is
21 a policy consideration depending on the outcome of AB 976. In the current
22 iteration of AB 976, the Assembly has added a provision that would add the
23 following to Code of Civil Procedure section 1010.6. "If a document is required to
24 be served by certified or registered mail, electronic service of the document is not
25 authorized." Similarly, AB 976 adds the following to Code of Civil Procedure
26 section 1020, "Electronic service is not authorized for a notice that requires
27 certified or registered mail." The Senate has not yet considered these provisions.
28 If these provisions are enacted, the Legislature will have expressly manifested its
29 intent to disallow electronic service when registered or certified mail is required. If
30 those provisions remain and the subcommittee believes it would be best to
31 proceed to carve out an exception for a notice of pendency, staff could develop
32 language to add to the proposal to ensure the intent to allow electronic service
33 remains. Such language would be something like, "Notwithstanding the
34 provisions of Code of Civil Procedure sections 1010.6(a)(2)(B) and 1020(b). . . ."
35 Staff will keep the subcommittee informed about the status of AB 976. There
36 would be adequate time to address provisions of AB 976 before legislative
37 proposals go to the Judicial Council in November.

38
39 **Code of Civil Procedure, § 594.**

40
41 (a) In superior courts either party may bring an issue to trial or to a hearing, and, in the
42 absence of the adverse party, unless the court, for good cause, otherwise directs, may
43 proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the

1 case may require; provided, however, if the issue to be tried is an issue of fact, proof shall
2 first be made to the satisfaction of the court that the adverse party has had 15 days' notice
3 of such trial or five days' notice of the trial in an unlawful detainer action as specified in
4 subdivision (b). If the adverse party has served notice of trial upon the party seeking the
5 dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall
6 be deemed to have had notice.

7
8 (b) The notice to the adverse party required by subdivision (a) shall be
9 served electronically in accordance with Section 1010.6 or by mail on all the parties by
10 the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful
11 detainer action where notice is served electronically in accordance with Section 1010.6
12 or by mail, that service shall be electronically served or mailed not less than 10 days prior
13 to the date set for trial. If notice is not served by the clerk as required by this subdivision,
14 it may be served electronically in accordance with Section 1010.6 or by mail by any party
15 on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful
16 detainer action where notice is served electronically in accordance with Section 1010.6
17 or by mail, that service shall be electronically served or mailed not less than 10 days prior
18 to the date set for trial. The time provisions of Section 1010.6 and Section 1013 shall not
19 serve to extend the notice of trial requirements under this subdivision for unlawful
20 detainer actions. If notice is served by the clerk, proof thereof may be made by
21 introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section
22 1013a, compliance with Section 1013b when service is electronic, or other competent
23 evidence. If notice is served by a party, proof may be made by introduction into evidence
24 of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a,
25 compliance with Section 1013b when service is electronic, or other competent evidence.
26 The provisions of this subdivision are exclusive.

27
28 *Drafter's Note: The following comments were received in response to the*
29 *proposed amendments to Code of Civil Procedure section 594:*

- 30
31 • Superior Court of Los Angeles County. "Code of Civil Procedure § 594(b)
32
33 Page 9, lines 1 through 3 - In order to clarify that the 20 day provision only
34 applies to service by mail, not electronic service, change:
35
36 "...shall be served electronically in accordance with Section 1010.6 or by
37 mail on all parties by the clerk of the court not less than 20 days prior to
38 the date set for trial."
39
40 to
41

1 "...shall be served by mail on all parties by the clerk of the court not less
2 than 20 days prior to the date set for trial or electronically in accordance
3 with Section 1010.6."
4

5 *Staff analysis:* There was no intention to have separate time frames for mail and
6 electronic service in Code of Civil Procedure section 594. Any differentiation in
7 time frames would be found in Code of Civil Procedure sections 1010.6 and
8 1013. Accordingly, staff recommend against the modification in the comment.
9

- 10 • Aderant. "We have reviewed the Invitation to Comment LEG 17-05 and
11 write to request that the proposed amendment to CCP 594(b) be further
12 clarified with respect to the calculation of the 15 and 10-day deadlines for
13 a party to serve notice provided therein.
14

15 As proposed, CCP 594(b) states, in part:

16 If notice is not served by the clerk as required by this subdivision, it
17 may be served electronically in accordance with Section 1010.6 or by
18 mail by any party on the adverse party not less than 15 days prior to
19 the date set for trial, and in an unlawful detainer action where notice is
20 served electronically in accordance with Section 1010.6 or by mail,
21 that service shall be electronically served or mailed not less than 10
22 days prior to the date set for trial. The time provisions of Section
23 1010.6 and Section 1013 shall not serve to extend the notice of trial
24 requirements under this subdivision for unlawful detainer actions.
25

26 CCP 1010.6(a)(4) says, "[A]ny period of notice, or any right or duty to do
27 any act or make any response within any period or on a date certain after
28 the service of the document, which time period or date is prescribed by
29 statute or rule of court, shall be extended after service by electronic
30 means by two court days. . . ."
31

32 CCP 1013(a) provides, "[A]ny period of notice and any right or duty to do
33 any act or make any response within any period or on a date certain after
34 the service of the document, which time period or date is prescribed by
35 statute or rule of court, shall be extended . . . 20 calendar days if either the
36 place of mailing or the place of address is outside the United States. . . ."
37

38 The statement that the time provisions in CCP 1010.6 and 1013 shall not
39 "extend the notice of trial requirements under this subdivision for unlawful
40 detainer actions," makes the calculation for non-unlawful detainer actions
41 ambiguous, because it seems to imply that they *do* serve to extend the
42 notice of trial requirements in those cases.
43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

For example, in a non-unlawful detainer actions, amended CCP 594(b) seems to require notice to be electronically served 15 days + 2 court days prior to the date of trial, pursuant to CCP 594(b) and CCP 1010.6. Similarly, notice served by mail outside of California and outside of the United States, would need to be served 20 and 30 days prior to the date of trial, respectively. Is this correct? Or should the deadline for service of notice in non-unlawful detainer actions served by either method simply be 15 days prior to trial?

If the deadline is meant to be only 15 days before trial, we respectfully request that CCP 594(b) be further amended to eliminate the reference to unlawful detainer actions in the sentence regarding the time provisions of CCP 1010.6 and 1013: “The time provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under this subdivision ~~for unlawful detainer actions.~~”

If extra time under CCP 1010.6 and 1013 is meant to be added to the notice deadline, we respectfully request that CCP 594(b) be further amended to clarify this fact. For example, the time provision sentence could be changed to read, “Except for unlawful detainer actions, the time provisions of Section 1010.6 and Section 1013 shall serve to extend the notice of trial requirements under this subdivision.”

Staff analysis: The purpose of the proposal is to allow electronic service of a notice of trial, not to remove special provisions applicable to unlawful detainer actions. The exemption from extensions of time under Code of Civil Procedure section 594(b) only applies to unlawful detainer actions. This is a specific carve-out from extensions of time that the Legislature added in 1977. (Stats.1977, ch. 1257, p. 4762, § 19.5.) Therefore, extensions of time provisions do apply to non-unlawful detainer actions. Accordingly, staff recommend that the committee retain “for unlawful detainer actions” rather than strike it out as suggested by the commenter.

Regarding, changing the language to “Except for language . . .”, staff do not find it to add clarity to the existing language of section 594(b) and do not recommend altering the language of section 594(b) beyond the scope of the proposal to allow electronic service for a notice of trial.

Finally, unrelated to the comments, the proposed changes reference Code of Civil Procedure section 1013b, which is currently part of AB 976. Staff do not anticipate an issue with the passage of section 1013b as it was not controversial

1 in the Assembly, but if there are applicable changes to AB 976, staff will alert the
2 subcommittee.

3
4 **Code of Civil Procedure, § 659.**

5
6 (a) The party intending to move for a new trial shall file with the clerk and serve upon
7 each adverse party a notice of his or her intention to move for a new trial, designating the
8 grounds upon which the motion will be made and whether the same will be made upon
9 affidavits or the minutes of the court, or both, either:

10
11 (1) After the decision is rendered and before the entry of judgment.

12
13 (2) Within 15 days of the date of ~~mailing~~ service of the notice of entry of judgment by the
14 clerk of the court pursuant to Section 664.5, or service upon him or her by any party of
15 written notice of entry of judgment, or within 180 days after the entry of judgment,
16 whichever is earliest; provided, that upon the filing of the first notice of intention to move
17 for a new trial by a party, each other party shall have 15 days after the service of that
18 notice upon him or her to file and serve a notice of intention to move for a new trial.

19
20 (b) That notice of intention to move for a new trial shall be deemed to be a motion for a
21 new trial on all the grounds stated in the notice. The times specified in paragraphs (1) and
22 (2) of subdivision (a) shall not be extended by order, ~~or stipulation, or by~~ those provisions
23 of Section 1013 that extend the time for exercising a right or doing an act where service
24 is by mail, ~~or those provisions of Section 1010.6 that extend the time for exercising a~~
25 right or doing an act where service is electronic.

26
27 **Code of Civil Procedure, § 660.**

28
29 On the hearing of such motion, reference may be had in all cases to the pleadings and
30 orders of the court on file, and when the motion is made on the minutes, reference may
31 also be had to any depositions and documentary evidence offered at the trial and to the
32 report of the proceedings on the trial taken by the phonographic reporter, or to any
33 certified transcript of such report or if there be no such report or certified transcript, to
34 such proceedings occurring at the trial as are within the recollection of the judge; when
35 the proceedings at the trial have been phonographically reported, but the reporter's notes
36 have not been transcribed, the reporter must upon request of the court or either party,
37 attend the hearing of the motion and shall read his notes, or such parts thereof as the
38 court, or either party, may require.

39
40 The hearing and disposition of the motion for a new trial shall have precedence over all
41 other matters except criminal cases, probate matters and cases actually on trial, and it
42 shall be the duty of the court to determine the same at the earliest possible moment.

1 Except as otherwise provided in Section 12a of this code, the power of the court to rule
2 on a motion for a new trial shall expire 60 days from and after the ~~mailing~~ service of the
3 notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days
4 from and after service on the moving party by any party of written notice of the entry of
5 the judgment, whichever is earlier, or if such notice has not theretofore been given, then
6 60 days after filing of the first notice of intention to move for a new trial. If such motion
7 is not determined within said period of 60 days, or within said period as thus extended,
8 the effect shall be a denial of the motion without further order of the court. A motion for
9 a new trial is not determined within the meaning of this section until an order ruling on
10 the motion (1) is entered in the permanent minutes of the court or (2) is signed by the
11 judge and filed with the clerk. The entry of a new trial order in the permanent minutes of
12 the court shall constitute a determination of the motion even though such minute order as
13 entered expressly directs that a written order be prepared, signed and filed. The minute
14 entry shall in all cases show the date on which the order actually is entered in the
15 permanent minutes, but failure to comply with this direction shall not impair the validity
16 or effectiveness of the order.

17
18 **Code of Civil Procedure, § 663a.**

19
20 (a) A party intending to make a motion to set aside and vacate a judgment, as described in
21 Section 663, shall file with the clerk and serve upon the adverse party a notice of his or
22 her intention, designating the grounds upon which the motion will be made, and
23 specifying the particulars in which the legal basis for the decision is not consistent with
24 or supported by the facts, or in which the judgment or decree is not consistent with the
25 special verdict, either:

26
27 (1) After the decision is rendered and before the entry of judgment.

28
29 (2) Within 15 days of the date of ~~mailing~~ service of the notice of entry of judgment by the
30 clerk of the court pursuant to Section 664.5, or service upon him or her by any party of
31 written notice of entry of judgment, or within 180 days after the entry of judgment,
32 whichever is earliest.

33
34 (b) Except as otherwise provided in Section 12a, the power of the court to rule on a
35 motion to set aside and vacate a judgment shall expire 60 days from the ~~mailing~~ service
36 of the notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or
37 60 days after service upon the moving party by any party of written notice of entry of the
38 judgment, whichever is earlier, or if that notice has not been given, then 60 days after
39 filing of the first notice of intention to move to set aside and vacate the judgment. If that
40 motion is not determined within the 60-day period, or within that period, as extended, the
41 effect shall be a denial of the motion without further order of the court. A motion to set
42 aside and vacate a judgment is not determined within the meaning of this section until an
43 order ruling on the motion is (1) entered in the permanent minutes of the court, or (2)

1 signed by the judge and filed with the clerk. The entry of an order to set aside and vacate
2 the judgment in the permanent minutes of the court shall constitute a determination of the
3 motion even though that minute order, as entered, expressly directs that a written order be
4 prepared, signed, and filed. The minute entry shall, in all cases, show the date on which
5 the order actually is entered in the permanent minutes, but failure to comply with this
6 direction shall not impair the validity or effectiveness of the order.

7
8 (c) The provisions of Section 1013 extending the time for exercising a right or doing an
9 act where service is by mail and the provisions of Section 1010.6 extending the time for
10 exercising a right or doing an act where service is electronic shall not apply to extend the
11 times specified in paragraphs (1) and (2) of subdivision (a).

12
13 (d)–(e) * * *

14
15 *Drafter’s Note: The following comments were received in response to the*
16 *request in the Invitation to Comment for comments in response to the question,*
17 *“Does the proposal appropriately address the stated purpose?”*

- 18
19 • Orange County Bar Association. “Yes, in light of the modernization project
20 which seeks to “facilitate electronic filing and service and to foster modern
21 e-business practices.” It is believed, however, that the anticipated benefits
22 of these efforts should be carefully weighed against certain implications
23 and ramifications for litigants.”

24
25 *Staff analysis: No analysis needed.*

26
27 *Drafter’s Note: The following comments were received, but not tied specifically*
28 *to one of the proposed legislative amendments or request for specific comments.*

- 29
30 • Mark W. Lomax. “C.C.P. section 411.20 requires the clerk to mail notice
31 regarding a dishonored check for a filing fee, and C.C.P. section 411.21
32 requires the clerk to mail notice regarding partial payment of a filing fee. I
33 recommend that both sections be amended to permit the notices to be
34 served electronically or by postal mail.”

35
36 *Staff analysis: The comment is outside the scope of the proposal, but staff will*
37 *incorporate the comment into a report that staff are developing for the*
38 *subcommittee’s consideration in the future on suggestions from the public.*

39
40

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Aderant By Victoria Katz, Rules Attorney www.aderant.com Email: victoria.katz@aderant.com	NI	<p>We have reviewed the Invitation to Comment LEG 17-05 and write to request that the proposed amendment to CCP 594(b) be further clarified with respect to the calculation of the 15 and 10-day deadlines for a party to serve notice provided therein.</p> <p>As proposed, CCP 594(b) states, in part:</p> <p>If notice is not served by the clerk as required by this subdivision, it may be served electronically in accordance with Section 1010.6 or by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served electronically in accordance with Section 1010.6 or by mail, that service shall be electronically served or mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>this subdivision for unlawful detainer actions.</p> <p>CCP 1010.6(a)(4) says, “[A]ny period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days....”</p> <p>CCP 1013(a) provides, “[A]ny period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended . . . 20 calendar days if either the place of mailing or the place of address is outside the United States....”</p> <p>The statement that the time provisions in CCP 1010.6 and 1013 shall not “extend the notice of trial requirements under this subdivision for unlawful detainer actions,”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>makes the calculation for non-unlawful detainer actions ambiguous, because it seems to imply that they <i>do</i> serve to extend the notice of trial requirements in those cases.</p> <p>For example, in a non-unlawful detainer actions, amended CCP 594(b) seems to require notice to be electronically served 15 days + 2 court days prior to the date of trial, pursuant to CCP 594(b) and CCP 1010.6. Similarly, notice served by mail outside of California and outside of the United States, would need to be served 20 and 30 days prior to the date of trial, respectively. Is this correct? Or should the deadline for service of notice in non-unlawful detainer actions served by either method simply be 15 days prior to trial?</p> <p>If the deadline is meant to be only 15 days before trial, we respectfully request that CCP 594(b) be further amended to eliminate the reference to unlawful detainer actions in the sentence regarding the time provisions of CCP 1010.6 and 1013: “The time</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions.”</p> <p>If extra time under CCP 1010.6 and 1013 is meant to be added to the notice deadline, we respectfully request that CCP 594(b) be further amended to clarify this fact. For example, the time provision sentence could be changed to read, “Except for unlawful detainer actions, the time provisions of Section 1010.6 and Section 1013 shall serve to extend the notice of trial requirements under this subdivision.”</p>	
2.	Lomax, Mark W. Pasadena CA, Email: mlomax1074@gmail.com	AM	C.C.P. section 411.20 requires the clerk to mail notice regarding a dishonored check for a filing fee, and C.C.P. section 411.21 requires the clerk to mail notice regarding partial payment of a filing fee. I recommend that both sections be amended to permit the notices to be served electronically or by postal mail.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Orange County Bar Association By Michael L. Baroni, President P.O. Box 6130 Newport Beach, CA 92658	A, AM, N	<p>Agree as Modified - As to the proposed changes to CC section 1719, the following modifications are suggested.</p> <p>With very limited exception, parties who have agreed to accept, or who are required to accept, electronic service of documents pursuant to the provisions of CCP section 1010.6, are represented by counsel. For these parties, the email address on file with the court is that of their respective counsel and not that of the actual party. Consequently, a drawer of a check may appear to be a party subject to electronic service in the underlying action, but whose personal email is not the one in the court records. While there is no disagreement with the idea behind the proposal, it is suggested that the proposed language adding subsection (2) to CC section 1719(g) be modified in some manner to ensure that the drawer's personal email address is used and that permission for its use by the court is obtained. To do anything less would result in an insufficient and failed demand under CC section 1719(g).</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Disagree – As to the proposed changes to CCP sections 405.22 and 405.23, the following observations are made.</p> <p>As a practical matter, it is difficult to see how allowing the service electronically of a notice of pendency of action would be of real benefit. At the time a plaintiff, for example, would want to serve the notice, it would seem unlikely that an adverse party even if required to be served electronically, would have responded so as to have its electronic contact information on file. In that all affected owners of record also must be served notice, it would seem even more unlikely that their respective electronic contact information or consent would be known to the plaintiff. Finally, in that service must be made “immediately” upon each adverse party later joined per CCP section 405.22, it would seem most unlikely their electronic contact information would have been provided. For these reasons, based on the timing considerations involved, the likelihood exists that most if</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>not all of these notices would still be served by mail.</p> <p>Beyond the practical considerations, there are differences in the very nature of a notice of pendency of action which set it apart from a pleading, for example. These differences are not just rooted in tradition, but in actual distinction. The use and impact of these notices is serious which is, perhaps, the reason for the heightened requirements associated with their service (these heightened requirements would be lost, of course, were electronic service allowed). Pleadings simply may be mailed, but these notices must be sent registered or certified mail, return receipt requested. Both of these methods allow for tracking and evidence of receipt. Pleadings are filed with the court, while notices are recorded with the county recorder, and require a notary's seal and acknowledgment. Pleading and notices are both public records, but the notice appears in the chain of title giving constructive notice to all who come after. In short, a notice of pendency of</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05

Proposed Legislation (Technology): Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>action is surrounded by unique considerations, and it should not be equated with, treated like, or served in the manner of a subsequent pleading.</p> <p>Agree – As to the proposed changes to CCP sections 594, 659, 660, and 663a.</p> <p>Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, in light of the modernization project which seeks to “facilitate electronic filing and service and to foster modern e-business practices.” It is believed, however, that the anticipated benefits of these efforts should be carefully weighed against certain implications and ramifications for litigants.</p>	
4.	Superior Court of Los Angeles County 111 N. Hill Street Los Angeles, CA 90012	AM	<p>Suggested modifications:</p> <p>Code of Civil Procedure § 594(b)</p> <p>Page 9, lines 1 through 3 - In order to clarify that the 20 day provision only applies to service by mail, not electronic service, change:</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG 17-05**Proposed Legislation (Technology): Electronic Service** (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>“...shall be served electronically in accordance with Section 1010.6 or by mail on all parties by the clerk of the court not less than 20 days prior to the date set for trial.”</p> <p>to</p> <p>“...shall be served by mail on all parties by the clerk of the court not less than 20 days prior to the date set for trial or electronically in accordance with Section 1010.6.”</p>	
5.	Superior Court of San Diego County By Mike Roddy, Court Executive Officer County Courthouse 220 West Broadway San Diego, CA 92101	A	No specific comments.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Privacy Resource Guide

For the California
Trial and Appellate Courts
and the Judicial Branch

First Edition
_____, 2018

Privacy Resource Guide

Table of Contents

1. Introduction

- 1.1 Background**
- 1.2 Purpose of the Privacy Resource Guide**
- 1.3 Key Definitions**

2. Privacy in Court Records

- 2.1 Confidential and Sealed Records in the Trial Courts**
 - 2.1.1 Confidential Records**
 - 2.1.2 Sealed records**
- 2.2 Confidential and Sealed Records in the Appellate Courts**
 - 2.2.1 Confidential records**
 - 2.2.2 Sealed records**
- 2.3 Privacy in Opinions of the Courts of Appeal**
- 2.4 Redaction of Trial and Appellate Court Records**
 - 2.4.1 Redaction of Social Security numbers and financial account numbers**
 - 2.4.2 Redaction of Social Security Numbers from documents filed in dissolution of marriage, nullity of marriage, and dissolution cases**
 - 2.4.3 Abstracts of judgment or decrees requiring payment of money**

2.4.4 Redaction of information about victims or witnesses in criminal cases

2.5 Destruction of Records

2.5.1 Destruction of criminal records

3. Access to Court Records

3.1 Public Access to Trial Court Records

3.1.1 Public access to paper court records at the courthouse

3.1.2 Electronic court records

3.1.3 Courthouse and remote access to electronic records

3.1.4 Access by type of record

3.1.5 Remote access in high-profile criminal cases

3.1.6 Case-by-case access

3.1.7 Bulk data

3.1.8 Access to calendars, indexes, and registers of action

3.1.9 Retention of user access information

3.2 Public Access to Records in the Courts of Appeal

3.2.1. Public access to paper court records at the courthouse

3.2.2 Public access to electronic court records at the courthouse

3.2.3 Remote public access to court records

3.2.4 Retention of user access information

3.3 Remote Access of Parties and their Attorneys to Court Records

- 3.4 Remote Access of Justice Partners to Court Records**
- 3.5 Remote Access by Other Courts to a Court's Records**
- 3.6 Access to California Courts Protective Order Registry (CCPOR)**
 - 3.6.1 Access to form CLETS-001 through CCPOR**
- 3.7 Third-party Storage**

4. Financial Privacy in Civil and Criminal Cases

- 4.1 Fee Waivers**
- 4.2 Requests for Funds**
- 4.3 Defendant's Statement of Assets**
- 4.4 Information about the Financial Assets and Liabilities of Parties to a Divorce Proceeding**
- 4.5 Information Privacy Act Not Applicable to the Courts**
- 4.6 Privacy in the Payment of Fines and Fees**
 - 4.6.1 Credit card information**
 - 4.6.2 Retention of credit card information**
 - 4.6.3 Legal restrictions on credit card information**
 - 4.6.4 Use of vendors to collect fines and fees**
- 4.7 Taxpayer Information**
 - 4.7.1 Confidential statements of Taxpayer's Social Security Numbers**
 - 4.7.2 Income tax returns in child support cases**

5. Privacy in Judicial Administrative Records

5.1 Public access to judicial administrative records (rule 10.500)

5.1.1 Policy

5.1.2 Scope of access

5.1.3 Exemptions and waiver of exemptions

5.2 Criminal History Information

6. Privacy of Witnesses, Jurors, and Other Non-parties

6.1 Witness and Victim Information

6.1.1 Confidential information about witnesses and victims in police, arrest, and investigative reports

6.1.2 Victim impact statements

6.1.3 Identity of sex offense victims

6.2 Juror Information

6.2.1 Juror questionnaires of those jurors not called

6.2.2 Juror questionnaires answered under advisement of confidentiality

6.2.3 Sealed juror records in criminal courts

6.2.4 Records of grand jury proceedings

6.2.5 Courts' inherent power to protect jurors

6.3 Attorney Information

6.4 Vexatious Litigant List

7. Privacy Protection for Judicial Officers

7.1 Privacy Protection Guidance for judicial officers

8. Privacy and the Electronic Court: Best Practices

8.1 Electronic Filing and Service, and Access to Protected Private Information

8.1.1 Electronic identification and verification

8.1.2 E-filing directly with the court

8.1.3 E-filing through EFSPs and vendors

8.1.4 E-service lists and other information

8.2 Protected Personal Information Held in Cloud-based Storage Systems

8.3 Case and Document Management Systems

8.3.1 Vendor-serviced CMS/DMS

8.3.2 Metadata

9. Privacy and Court-related Services: Best Practices

9.1 California Court Self-help Centers

9.2 Family Law Facilitator Offices

9.3 Family Court Services

9.4 Civil Court-ordered Mediation Services

9.5 Document Assembly Programs

10. Privacy and Data Exchanges with Justice Partners

- 10.1 Data Exchanges with Local Justice Partners**
- 10.2 Data Exchanges with State Justice Partners**
- 10.3 Data Exchanges with Federal Justice Partners**
- 10.4 Inter-state Data Exchanges**
- 10.5 Intra-branch Data Exchanges**
- 10.6 CCPOR**

11. Court Websites: Best Practices

- 11.1 Privacy Statements**
- 11.2 Retention and Tracking of User Information and Data**
 - 11.2.1 Use of cookies on court websites**
 - 11.2.2 Self-help center portals**

12. Video and Surveillance: Best Practices

- 12.1 Photographing, Recording, and Broadcasting in Court**
- 12.2 Video Remote Interpreting**
- 12.3 Security Cameras in Public Areas**

13. Privacy and Information Security: Best Practices

- 13.1 Information Systems Controls Framework Template**
- 13.2 How to Use the Information Systems Control Framework**

14. Court Management of Protected Private Information: Best Practices

- 14.1 Developing a Local Court Privacy Guide**
- 14.2 Establishing Local Privacy Procedures and Systems**
- 14.3 Identifying Key Court Personnel**
- 14.4 Training Court Staff**
- 14.5 Periodic Review of Privacy Procedures and Systems**

15. Responding to Data Breaches: Best Practices

- 15.1 Developing an incident response plan**
- 15.2 Noticing affected persons**
 - 15.2.1 Contents of notice**
 - 15.2.2 Means of providing notice**
- 15.3 Contacting Law Enforcement**
- 15.4 Contacting credit reporting agencies**

Appendices

- Appendix A: List of relevant statutes and rules
- Appendix B: Model local court privacy guide
- Appendix C: Sample privacy statement for court websites
- Appendix D: Sample terms of use for court websites
- Appendix E: Sample notice of data breach

1. Introduction

1.1 Background

Privacy is a fundamental right guaranteed by the California Constitution. (Cal. Const., art I, § 1; see *Westbrook v. County of Los Angeles* (1994) 27 Cal. App 157, 164–166.) To protect people’s privacy, numerous laws have been enacted that provide for the confidentiality of various kinds of personal information. In adjudicating cases, courts have a major role in enforcing these laws and protecting the privacy rights of citizens. Courts also are involved in protecting people’s privacy rights through their own day-to-day operations, including preserving the integrity of confidential and sealed records, ensuring that sensitive data is secure, and protecting private personal information.

On the other hand, access to information concerning the conduct of the public’s business is also a fundamental right of every citizen. (Cal. Const., art I, § 3(b); see *NBC Subsidiary (KNBC-TV) v. Superior Court of Los Angeles County* (1999) 20 Cal.4th 1178, 1217–1218 (substantive courtroom proceedings in ordinary civil cases are “presumptively open”).) Courts are obligated to conduct their business in an open and transparent manner. (See also Cal. Rules of Court, rule 10.500.) Similarly, court records are presumed to be open and must be made accessible to the public unless made confidential or sealed. (See Cal. Rules of Court, rule 5.550(c).)¹ Openness and accessibility are important to preserve trust and confidence in the judicial system; and they are necessary to carry on the regular, ongoing business of the courts.²

1.2 Purpose of the Privacy Resource Guide

The purpose of this resource guide is to assist the trial and appellate courts—and more generally the judicial branch—to protect the privacy interests of persons involved with the California court system while providing the public with reasonable access to the courts and the records to which they are entitled.

The resource guide provides assistance in two ways. First, it provides information about the legal requirements that guide the courts’ activities and operations relating to protecting the privacy of persons involved with the court system. Second, the guide provides practical advice for courts on the best practices for carrying out their obligations to protect people’s privacy.

The creation of the resource guide at this time is important, among other reasons, because of the major transition underway that is transforming the courts from a paper-based physical system to

¹ All references to rules in this Resource Guide are to the California Rules of Court, unless otherwise indicated.

² In recognition of the special role that courts play in conducting the people’s business, the Legislature has in some instances exempted the courts from laws enacted to protect personal privacy. (See, e.g., Civ. Code, §1798.3(b)(1) [excluding from the definition of “agency” covered by the Information Privacy Act of 1977 “[a]ny agency established under Article VI of the California Constitution”—that is, the courts]).

one that relies increasingly on electronic records and other forms of technology to conduct business. With this change, much information in the courts that was practically obscure can now be made available remotely in easily searchable format. It requires careful analysis and the deliberate institution of new practices to ensure that proper privacy protections are now in place.

1.3 Key Definitions

As used in this Resource Guide, unless the context or subject matter otherwise requires:

- (1) “Court record” means any document, paper, or exhibit filed by the parties to an action or proceeding; any order or judgment of the court; any item listed in Government Code section 68151, excluding any reporter’s transcript for which the reporter is entitled to receive a fee for any copy. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel. (Cal. Rules of Court, rule 2.502.)
- (2) “Electronic record” means a computerized court record, regardless of the manner in which it has been computerized. The term includes both a document that has been filed electronically and an electronic copy or version of a record that was filed in paper form. The term does not include a court record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.
- (3) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court. (Cal. Rules of Court, rule 10.500(c)(1).)
- (4) “Confidential record” is a record that based on statute, rule, or case law is not open to inspection by the public.
- (5) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use. (Cal. Rules of Court, rule 10.500(c)(2).)
- (6) “Protected personal information” or “PPI” means any personal information or characteristics that may be used to distinguish or trace an individual’s identity, such as their name, Social Security Number (SSN), or biometric records. (32 CFR 701.101.)

- (7) “Rule” means a rule of the California Rules of Court.
- (8) “Sealed record” means a record that by court order is not open to inspection by the public. (See Cal. Rules of Court, rule 2.550(b)(2))
- (9) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored. (Cal. Rules of Court, rule 10.500(c)(6).)

2. Privacy in Court Records

2.1 Confidential and Sealed Records in the Trial Courts

Protection of privacy is an important major reason for making court records confidential or for sealing them. By making a document confidential or sealing it, the public can be prevented from obtaining access to sensitive personal information or other information that might adversely affect a person’s privacy. By respecting and enforcing the confidentiality or sealing, courts assist in protecting and preserving persons’ privacy. However, there may be other reasons for making a document confidential or for sealing it besides protecting privacy. For example, confidentiality or sealing may be used to ensure the safety of witnesses, to protect trade secrets, or to preserve legally recognized privileges. This section focuses on records that are confidential or sealed in the trial courts principally or at least in part for reasons of protecting privacy interests.

Subsection 2.1.1 provides a non-exhaustive list of types of cases and proceedings and of specific records³ that are exempt from the presumption of public disclosure by statute, regulation, court rule, or case law. Some records by law are strictly confidential and others may be confidential in particular circumstances. In addition to the records described in this section, there are many other confidential records discussed under more specific headings later in this Resource Guide and described in the Appendix.

Sealed records in the trial courts are discussed in subsection 2.1.2

2.1.1 Confidential Records

Records of Adoption Proceedings

Documents related to an adoption proceeding are not open to the public. Only the parties, their attorneys, and the Department of Social Services may review the records. The judge can authorize review by a requestor only in “exceptional circumstances and for good cause

³ Judicial Council forms may sometimes constitute the record or part of the record in a case. Any Judicial Council form that is labeled or entitled “CONFIDENTIAL” must not be disclosed, except as authorized by law.

approaching the necessitous.” (Fam. Code, § [9200\(a\)](#).) Any party to the proceeding can petition the court to have redacted from the records, before copy or inspection by the public, the name of the birth parents and information tending to identify the birth parents. (Fam. Code, § [9200\(b\)](#).)

Records of Juvenile Proceedings

Welfare and Institutions Code section [827](#) and California Rules of Court, rule [5.552](#), establish broad restrictions on the disclosure of juvenile court records. These laws reflect a general policy that, with certain limited exceptions, juvenile court records should remain confidential. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 225.) Specifically, section [827\(a\)\(1\)\(P\)](#) permits juvenile court records to be inspected only by certain specified persons and “any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.” There is also an exception to this rule of confidentiality for certain records in cases brought under Welfare and Institutions Code section [602](#), in which the minor is charged with one or more specified violent offenses. (Welf. & Inst. Code, § [676](#).) In such cases, the charging petition, the minutes, and the jurisdictional and dispositional orders are available for public inspection (Welf. & Inst. Code, § [676\(d\)](#)), unless the juvenile court judge enters an order prohibiting disclosure (Welf. & Inst. Code, § [676\(e\)](#)). Thus, except for records enumerated in Welfare and Institutions Code section [676](#), if a record is part of a juvenile court file, it should be kept confidential and disclosed only as permitted under Welfare and Institutions Code section [827](#) and California Rules of Court, rule [5.552](#). Juvenile court records may also be subject to sealing orders under Welfare and Institutions Code sections [389](#), [781](#), and [786](#) (see § 2.1.2, “Sealed Records”).

Juvenile court records should remain confidential regardless of a juvenile’s immigration status. (Welf. & Inst. Code, § [831\(a\)](#).) Juvenile information may not be disclosed or disseminated to federal officials absent a court order upon filing a petition under Welfare and Institutions Code section [827\(a\)](#). (Welf. & Inst. Code, § [831\(b\)–\(c\)](#).) Juvenile information may not be attached to any documents given to or provided by federal officials absent prior approval of the presiding judge of the juvenile court under Welfare and Institutions Code section [827\(a\)\(4\)](#). (Welf. & Inst. Code, § [831\(d\)](#).) “Juvenile information” includes the “juvenile case file” as defined in Welfare and Institutions Code section [827\(e\)](#), as well as information regarding the juvenile such as the juvenile’s name, date or place of birth, and immigration status. (Welf. & Inst. Code, § [831\(e\)](#).)

Dismissed petitions: The court must order sealed all records related to any petition dismissed under Welfare and Institutions Code section [786](#) that are in the custody of the juvenile court, law enforcement agencies, the probation department, and the Department of Justice. The procedures for sealing these records are stated in Welfare and Institutions Code section [786](#).

Special Immigrant Juvenile Findings

In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child’s immigration status that is not otherwise protected by the state confidentiality laws must remain confidential and must be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child’s counsel, and the child’s guardian. (Code Civ. Proc., § [155\(c\)](#).)

In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the

proceedings that are not otherwise protected by state confidentiality laws may be sealed using the procedure in California Rules of Court, rules [2.550](#) and [2.551](#). (Code Civ. Proc., § [155\(d\)](#).)

Confidentiality of Records in Civil Cases

Unlawful Detainer Proceedings

Court files and records in unlawful detainer proceedings are not publicly available until 60 days after the case is filed, except for persons specified by statute, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action except to persons specified in the statute. (Code Civ. Proc., § [1161.2](#).) An exception excludes records of mobile home park tenancies from this code section; those records are not confidential. In addition, effective January 1, 2011, access to court records in unlawful detainer proceedings is permanently limited to persons specified in the statute in the case of complaints involving residential property based on section [1161a](#) (holding over after sale under execution, mortgage, or trust deed [foreclosures]) as indicated in the caption of the complaint, unless judgment has been entered, after a trial, for the plaintiff and against all defendants. (Code Civ. Proc., § [1161.2](#).) The complaints in these actions shall state in the caption: “Action based on Code of Civil Procedure section [1161a](#).”(Code Civ. Proc., § [1166\(c\)](#).)

False Claims Act Cases

The documents initially filed in cases under the False Claims Act are confidential under Government Code section [12650](#) et seq. The complaint and other initial papers should be attached to a Confidential Cover Sheet—False Claims Action (form [MC-060](#)). The cover sheet contains a place where the date on which the sealing of the records in the case expires.

Confidential Records in Criminal Proceedings

Search warrants

It is within the court’s discretion to seal the court documents and records of a search warrant until the warrant is executed and returned, or until the warrant expires. (Pen. Code, § [1534\(a\)](#).) Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record. Under Evidence Code §§ 1040 – 1041, public entities may refuse to disclose official information and an informant’s identity when disclosure is against the public interest. When a search warrant is valid on its face, a public entity bringing a criminal proceeding may establish the search’s legality without revealing to the defendant any official information or an informant’s identity. (Evid. Code, § 1042, subd. (b).) When a search warrant affidavit is fully or partially sealed pursuant to Evidence Code §§ 1040 - 1042, the defense may request a motion to quash or traverse the search warrant. The court should follow the procedure established in *People v. Hobbs* (1994) 7 Cal.4th 948.

Police reports

There is no specific statute, rule, or decision addressing the confidentiality of a police report once it has become a “court record.” Generally speaking, a police report that has been used in a judicial proceeding or is placed in a court file is presumed to be open to the public. Many police reports, however, contain sensitive or personal information about crime victims, witnesses, and other third parties. Penal Code section [1054.2](#) provides that defense counsel may not disclose the

address or telephone number of a victim or witness to the defendant or his or her family. Similarly, law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim, or an arrestee or potential defendant. (Pen. Code, § [841.5](#).) We suggest that courts should require that personal information be redacted *before* the report is filed with the court or used in a judicial proceeding.

Probation reports

Probation reports filed with the court are confidential *except* that they may be inspected

- by anyone up to 60 days after either of two dates, whichever is earlier: (1) when judgment is pronounced, or (2) when probation is granted;
- by any person pursuant to a court order;
- if made public by the court on its own motion; and
- by any person authorized or required by law. (Pen. Code, § [1203.05](#).)

Confidential Records in Family Law proceedings

Child custody evaluation reports

These reports must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officer, court employee or family court facilitator for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person upon order of the court for good cause. (Fam. Code, §§ [3025.5](#) and [3111](#).)

Child custody mediator recommendations

These recommendations must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officer, court employee or family court facilitator for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person upon order of the court for good cause. (Fam. Code, §§ [3025.5](#) and [3183](#).)

Written statements of issues and contentions by counsel appointed for child

These written statements must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officers, court employees or family court facilitators for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person, upon order of the court, for good cause. (Fam. Code, §§ [3025.5](#), [3151\(b\)](#).)

Parentage Act documents

Records in Uniform Parentage Act proceedings, except the final judgment, are not open to the public. (Fam. Code, § [7643\(a\)](#).) If a judge finds that a third party has shown good cause and finds exceptional circumstances, the court may grant that person access to the records. (*Ibid.*) This includes records from paternity actions.

Family conciliation court records

These records are confidential. The judge of the family conciliation court can grant permission for a party to review certain documents. (Fam. Code, § [1818\(b\)](#).)

Proceeding to terminate parental rights

Documents related to such proceedings are confidential; only persons specified by law may review the records. (Fam. Code, § [7805](#).)

Support enforcement and child abduction records

Support enforcement and child abduction records are generally confidential; these records may be disclosed to persons specified by statute only under limited circumstances. In certain instances, the whereabouts of a party or a child must not be revealed to the other party or his or her attorneys. A local child support agency must redact such information from documents filed with the court. (Fam. Code, § [17212](#).)

Confidential Records in Probate Proceedings

Confidential Guardian Screening Form (form [GC-212](#))

This mandatory Judicial Council form regarding the proposed guardian is confidential. It is used by the court and by persons or agencies designated by the court to assist in determining whether a proposed guardian should be appointed. (Cal. Rules of Court, rule [7.1001\(c\)](#).)

Confidential Supplemental Information (form [GC-312](#))

This form regarding the proposed conservatee is confidential. It shall be separate and distinct from the form for the petition. The form shall be made available only to parties, persons given notice of the petition who have requested this supplemental information, or who have appeared in the proceedings, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interest of the conservatee. The clerk shall make provisions for limiting the disclosure of the report exclusively to persons entitled thereto. (Prob. Code, [1821\(a\)](#).)

Confidential Conservator Screening Form (form [GC-314](#))

This mandatory Judicial Council form is confidential. (Cal. Rules of Court, rule [7.1050\(c\)](#).)

Reports regarding proposed conservators or guardianship

An investigative report created pursuant to Probate Code section [1513](#) concerning a proposed guardianship is confidential and available only to parties served in the action or their attorneys (generally, parents, legal custodian of child). An investigative report created pursuant to Probate Code section [1826](#) regarding the proposed conservatee is confidential and available only to those persons specified by statute. Under the statute, the reports on proposed conservatees shall be made available only to parties, persons given notice of the petition who have requested the report, or who have appeared in the proceedings, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interest of the conservatee. The clerk shall make provisions for limiting the disclosure of the reports on guardianships and conservatorships exclusively to persons entitled thereto. (Prob. Code, §§ [1513\(d\)](#) and [1826\(n\)](#).)

Investigator's review reports in conservatorships

These reports are confidential. The information in the reports may be made available only to parties, persons identified in section [1851\(b\)](#), persons given notice who have requested the report or appeared in the proceeding, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interests of the conservatee. The clerk shall

make provisions for limiting the disclosure of the report exclusively to persons entitled thereto. (Prob. Code, §§ [1851\(b\) and \(e\)](#).) Subdivision (b) provides for special restricted treatment of attachments containing medical information and confidential criminal information from California Law Enforcement Telecommunications System (CLETS). Although the attachments are not mentioned in (e), it is recommended, to be consistent with (b), that they be treated as confidential except to the conservator, conservatee, and their attorneys.

Certification Forms

Certification of counsel of their qualifications (form [GC-010](#)) and certification of completion of continuing education (form [GC-011](#)): The forms state that they are “confidential for court use only.” They are governed by rule [7.1101](#), which states that the certifications must be submitted to the court but not lodged or filed in a case file. (Cal. Rules of Court, rule [7.1101\(h\)\(6\)](#).)

Confidential Records in Protective Order Proceedings

Confidential CLETS Information Form

A Judicial Council form, *Confidential CLETS Information* (form [CLETS-001](#)), has been developed for petitioners in protective order proceedings to use to submit information about themselves and the respondents to be entered through the CLETS (the California Law Enforcement Telecommunications System) into the California Restraining and Protective Order System (CARPOS), a statewide database used to enforce protective orders. This form is submitted to the courts by petitioners in many types of protective order proceedings, including proceedings to prevent domestic violence, civil harassment, elder and dependent adult abuse, private postsecondary school violence, and juvenile cases. The information on the forms is intended for the use of law enforcement. The form is confidential. Access to the information on the forms is limited to authorized court personnel, law enforcement, and other personnel authorized by the California Department of Justice to transmit or receive CLETS information. The forms must not be included in the court file. (Cal. Rules of Court, rule [1.51](#).)

Subpoenaed records

Subpoenaed business records

Subpoenaed business records of nonparty entities are confidential until otherwise agreed to by the parties, introduced as evidence, or entered into the record. (Evid. Code, § [1560\(d\)](#).)

Employment records

***Pitchess* motions**

Medical records

The following federal and California statutes limit disclosure of medical records by medical providers, health care plans, or contractors. The laws do not impose obligations on the courts as to handling, management, and retention of medical records in court records. However, courts should place appropriate protections on medical records that have been filed confidentially or under seal.

Health Insurance Portability and Accountability Act (HIPAA):

HIPAA and related federal regulations (42 U.S.C. § [1320d](#) et seq., 45 C.F.R. § [160](#) et seq. and [164](#) et seq.) set standards for medical information held by covered entities, defined as 1) a health plan, 2) health care clearinghouse, or 3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA provisions. (45 C.F.R. § [160.102](#)(a).) Generally, courts are not covered entities subject to HIPAA and therefore, are not directly subject to the privacy rules of HIPAA. (See 45 C.F.R. parts 160-164.) However, HIPAA prohibits covered entities from disclosing medical records or protected health information (“PHI”) without a patient’s signed authorization or a signed court order. (45 C.F.R. section 164.508; 45 C.F.R. section 164.512(e)(1).) Accordingly, parties responsible for maintaining confidentiality of information under HIPAA should request that such information be filed under seal pursuant to rules 2.550 and 2.551 of the California Rules of Court.

To the extent that a court meets the definition of “plan sponsor” under HIPAA, a court may have to comply with certain privacy obligations and should consult with its Human Resources department.

California Confidentiality of Medical Information Act (Civ. Code, section 56-56.37):

The Confidentiality of Medical Information Act (“CMIA”) governs the disclosure of medical information by health care providers. (Civ. Code § [56](#) et seq.) Courts are generally not health care providers covered by the act and are not directly subject to the law’s confidentiality provisions. (Civ. Code § [56.05](#)(m).) A limited exception may occur when a court employs a health care provider, such as a clinical social worker, to conduct assessments and other services for a collaborative court. In these limited circumstances, the medical information is likely confidential, and court staff should use an authorization for release of medical information to discuss pertinent information with other collaborative court team members. (Civ. Code § [56.10](#)(a).) California law prohibits medical providers, health care service plans, or contractors from disclosing a patient’s medical information, without authorization, or, among other things, a court order. (Civ. Code, section 56.10(b)(1).) A party submitting such medical information should submit the information pursuant either to a protective order and/or a motion to seal. (See Rule [2.551](#).)

Psychiatric records or reports

Records of mental health treatment or services for the developmentally disabled, including LPS proceedings

Under Welfare and Institutions Code sections [5328](#) and [5330](#), the following records are confidential and can be disclosed only to recipients authorized in Welfare and Institutions Code section 5328: records related to the Department of Mental Health (Welf. & Inst. Code, § [4000](#) et seq.); Developmental Services (Welf. & Inst. Code, § [4400](#) et seq.); Community Mental Health Services (Welf. & Inst. Code, § [5000](#) et seq.); services for the developmentally disabled (Welf. & Inst. Code, § [4500](#) et seq.); voluntary admission to mental hospitals (Welf. & Inst. Code, § [6000](#) et seq.); and mental institutions (Welf. & Inst. Code, § [7100](#) et seq.).

Psychiatric records or reports in criminal cases

Reports prepared at the request of defense counsel to determine whether to enter or withdraw a plea based on insanity or mental or emotional condition are confidential. (Evid. Code, § [1017](#).) However, most psychiatric reports prepared at the court's request are presumed open to the public. (See Evid. Code, § 1017[report by a court-appointed psychotherapist]; Evid. Code, § [730](#) [report by a court-appointed expert]; Pen. Code, § [288.1](#) [report on sex offender prior to suspension of sentence]; Pen. Code, § [1368](#) [report concerning defendant's competency]; and Pen. Code, §§ [1026](#), [1027](#) [report on persons pleading not guilty by reason of insanity].)

Reports concerning mentally disordered prisoners

Reports under Penal Code section [4011.6](#) to evaluate whether prisoners are mentally disordered are confidential. (Pen. Code, § 4011.6.)

Presentencing diagnostic reports

Under Penal Code section [1203.03](#), the report and recommendation from the 90-day Department of Corrections presentencing diagnosis should be released only to defendant or defense counsel, the probation officer, and the prosecuting attorney. After the case closes, only those persons listed immediately above, the court, and the Department of Corrections may access the report. Disclosure to anyone else is prohibited unless the defendant consents. (Pen. Code, § [1203.03\(b\)](#).)

Medical diagnoses and test results

Substance use disorder-related information from qualifying federally assisted programs

The Code of Federal Regulations provides that information that would disclose the identity of a person receiving treatment for a substance use disorder from a qualifying federally assisted program is confidential. (42 C.F.R. § [2.12](#).) A “qualifying federally assisted program” subject to the regulations includes a recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or a program conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program. (*Id.* at § [2.12](#)(b)(3)(i), (ii).) A “program” is defined to include “an individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment “. . . (*Id.* at § [2.11](#)(a).) Information from collaborative courts involving substance use disorder diagnosis or treatment, such as drug court programs, may be subject to the confidentiality provisions of the federal regulations, depending on whether the program or the court receives federal financial assistance as defined in the regulations. This may include information related to program participants and records identifying the participant and his or her diagnosis and treatment.

HIV Test Results or Status

No person shall disclose HIV test results without the patient's signed authorization, or except pursuant to Health and Safety Code sections [1603.1](#), [1603.3](#), or [121022](#), or any other statute expressly providing an exemption. (Health and Saf. Code, [§ 120980\(g\)](#).)

Court records containing results of mandatory AIDS testing for defendants convicted of violating Penal Code section [647\(b\)](#) are, with certain specified exceptions, confidential. (Pen. Code, [§ 1202.6\(f\)](#).) HIV test results ordered of defendants charged with certain crimes are also confidential. (Pen. Code, [§§ 1202.1](#), [1524.1](#).)

If a court orders HIV tests under Health and Safety Code sections [121055](#), [121056](#), and [121060](#), the court shall order that all persons receiving the results maintain the confidentiality of personal identifying data related to the test results, except as necessary for medical or psychological care or advice. (Health and Saf. Code, [§ 121065](#).)

However, HIV status and/or test results under Penal Code [§§ 647f](#) and [12022.85](#), and Health and Safety Code [§§ 1621.5](#), [120290](#), and [120291](#) are generally not confidential as they are a required element of a crime or enhanced sentencing and may become part of the public court records in these cases.

[NOTE: Pending legislation may affect some of the preceding statutes by either repealing and/or making certain information confidential. If the legislation is enacted, the analysis will need to be modified.]

2.1.2 Sealed records

General Rules on Sealed Records: Rules 2.500 and 2.551

The main rules on sealed records in the trial courts are contained in rules [2.550](#) and [2.551](#) of the California Rules of Court. The premise of these rules is that court records are presumed to be open unless confidentiality is required by law. (Rule [2.550\(c\)](#).) A court may only order that a record be filed under seal if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(Rule [2.551\(d\)](#).) This substantive test is based on the Supreme Court’s decision in *NBC Subsidiary (KNBC-TV) v. Superior Court of Los Angeles County* (1999) 20 Cal.4th 1178, 1217–1218.

The right of privacy may qualify as an overriding interest in the proper situation. In *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, the court stated: “We have no doubt that, in appropriate circumstances, the right of privacy may be properly described as a compelling or overriding interest.” *Id.*, at page 1063. However, the *Burkle* case involved an attempt to close financial records in divorce proceedings under a statute, Family 2024.6, which the court concluded was not narrowly tailored to serve overriding privacy interests. Because less restrictive means exist to achieve the statutory objective, the court found that section 2024.6 operates as an undue burden on the First Amendment right of public access to court records. Hence, the court concluded that statute is unconstitutional on its face. *Id.* at page 1048.

In circumstances where a court determines that sealing is appropriate, the content and scope of the sealing order is prescribed by rule. The rules provide that the court’s order must (1) state the facts that support the findings, and (2) direct the sealing of only those documents and pages, or if reasonably practical, portions of those documents and pages, that contain the materials that need to be placed under seal. All other portions of each document or page must be included in the public file. (Cal. Rules of Court, rule [2.550\(e\)](#).)

The procedures for filing records under seal in the trial courts are contained in rule 2.551. (Cal. Rules of Court, rule [2.551](#).)

Sealing of records in criminal cases

Criminal court records may be sealed upon a motion and court order under the following provisions:

<i>Code section</i>	<i>Description</i>
Upon finding of defendant’s factual innocence either by law enforcement agency or court	
Pen. Code § 851.8	-When defendant is found factually innocent pursuant to section 851.8, the court shall order that records of arrest (interpreted to include any court records) be sealed and destroyed.
Upon defendant’s acquittal and judge’s finding of factual innocence	
Pen. Code § 851.85	-When a defendant is acquitted and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, the judge may order that

	<p>the records in the case be sealed, including any record of arrest or detention</p> <p>-Occurs upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case</p>
Upon defendant's conviction being set aside based determination of factual innocence	
Pen. Code § 851.86	<p>-When a defendant's conviction is set aside based upon a determination that he or she was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention</p> <p>-Occurs upon written or oral motion of any party in the case or the court, and with notice to all parties to the case</p>
Upon successful completion of a diversion program	
Pen. Code § 851.87	A person that successfully completes a pre-filing diversion program may petition the court to seal arrest and court files two years after successful completion of the diversion program. The sealing order shall not be forwarded to the Department of Justice and has other limitations.
Pen. Code § 851.90	A person that successfully completes a drug diversion program under Pen. Code §§ 1000, 1000.5, or 1000.8 may petition the court to seal arrest and court files. The sealing order shall not be forwarded to the Department of Justice and has other limitations.
Discretionary sealing upon dismissal of a case	
Pen. Code § 1170.9(h)(4)(D)	When a dismissal pursuant to Pen. Code 1170.9 is granted (criminal offenses related to trauma, injury, substance abuse, or mental health problems stemming from military service), the court has the discretion to order the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.
Pen. Code § 1203.45	Persons under 18 years of age at the time of commission of a misdemeanor who are eligible for, or have previously received, the relief provided by Section 1203.4 or 1203.4a may petition the court to seal the

	record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. Some misdemeanor convictions are ineligible under this section.
Mandatory sealing upon grant of a petition under WIC § 781	
Pen. Code § 1203.47	If a petition is granted under Welfare and Institutions Code § 781, all records relating to the violation or violations of subdivision (b) of Section 647 or of Section 653.22, or both, shall be sealed.
Dismissal and sealing of legally invalid convictions	
Health and Saf. Code § 11361.8(e), (f)	Specified marijuana convictions may be dismissed and sealed based on the conviction being legally invalid post-Proposition 64.

Sealing of Records in Juvenile Cases

There is a specific statute and rule on sealing juvenile records. (Welf. & Inst. Code, § [781](#); Cal. Rules of Court, rule [5.830](#).) These allow a former ward of the court to petition the court to order juvenile records sealed. If the petition is granted, the court must order the sealing of all records described in section 781. The order must apply in the county of the court hearing the petition and all other counties in which there are juvenile records concerning the petitioner. (Cal. Rules of Court, rule [5.830\(a\)\(4\)](#).) All records sealed must be destroyed according to section [781\(d\)](#).

2.2 Confidential and Sealed Records in the Appellate Courts

Add text Re: rule 8.45

2.2.1 Confidential records

Add text RE: rule 8.46

2.2.2 Sealed records

Add text Re: rule 8.47

2.3 Privacy in Opinions of the Courts of Appeal

Add text RE: rule 8.90

2.4 Redaction of Trial and Appellate Court Records

2.4.1 Redaction of Social Security numbers and financial account numbers

California Rules of Court, rules [1.201](#) and [8.41](#) impose a duty on the parties or their attorneys to redact certain identifiers (i.e., Social Security Numbers and financial account numbers) from documents filed with the court. It is the responsibility of the filers to exclude or redact the identifiers. The rules state that court clerks will not review each pleading or other paper for compliance with the requirements of the rules. In an appropriate case, the court on a showing of good cause may order a party filing a redacted document to file a *Confidential Reference List* (form [MC-120](#)) identifying the redacted information. This form is confidential.

2.4.2 Redaction of Social Security Numbers from documents filed in dissolution of marriage, nullity of marriage, and dissolution cases

In general, petitioners and respondents may redact any social security number from any pleading, attachment, document, or other written materials filed with the court pursuant to a petition for dissolution of marriage, nullity of marriage, or legal separation. (Family Code, § 2024.5(a).) However, an abstract of support judgment, the form required pursuant to Family Code section 4014, or any similar form created for the purpose of collecting child or spousal support payments may not be redacted. (Family Code, § 2024.5(b).)

2.4.3 Abstracts of judgment or decrees requiring payment of money

The contents of an abstract of judgment or a decree requiring the payment of money are prescribed by Code of Civil Procedure section 674. The section provides that any judgment or decree shall contain *the last four digits* of the social security number and the driver's license number of the judgment debtor if they are known to the judgment creditor. (Code Civ. Proc., § [674\(a\)\(6\)](#).)

2.4.4. Redaction of information about victims or witnesses in criminal cases

Law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim to an arrestee or potential defendant. (Pen. Code, § [841.5](#).) Similarly, defense counsel may not disclose the address or telephone number of a victim or witness to the defendant, his or her family, or anyone else. (Penal Code, § section [1054.2](#)) This information may be contained in police reports and other documents filed with the courts. It is recommended that courts require that the addresses and telephone numbers of victims and witnesses be redacted *before* any document containing that information is filed with the court or used in a judicial proceeding.

2.5 Destruction of Records

2.5.1 Destruction of criminal records

Records of arrest or conviction for marijuana related offenses

These records include all offenses under Health & Saf. Code § 11357, § 11360(b), and any records pertaining to the arrest and conviction of any person under 18 for violations under Health & Saf. Code §§ 11357-11362.9, except for § 11357.5. These records must be destroyed two years from either the date of conviction, the date of arrest if there was no conviction, or two years upon release from custody for persons incarcerated pursuant to the subdivision. (Health & Saf. Code, § [11361.5\(a\)](#).) Records associated with violations of section 11357(d) shall be retained until the offender turns 18, at which point they are also to be destroyed. (Health & Saf.

Code, § [11361.5\(a\)](#).) This rule is subject to exceptions for records from judicial proceedings and records related to an offender’s civil action against a public entity. (See Health & Saf. Code, § [11361.5\(d\)](#).) Public agencies are prohibited from using information in records subject to destruction, even if they have not yet been destroyed. (Health & Saf. Code, [11361.7\(b\)](#).)

3. Access to Court Records

3.1 Public Access to Trial Court Records

Court records are presumed to be open, unless they are confidential as a matter of law or are sealed by court order. Confidential and sealed records are described in sections 2.1 and 2.2 and Appendix 1.

3.1.1. Public access to paper court records at the courthouse

Paper records that are not confidential or sealed are available at the courthouse for public inspection and copying. These paper records in the past were often costly to locate, inspect, and copy. The difficulties and expenses involved in obtaining these paper records impeded public access but also provided an added level of privacy. This important practical effect of older court business practices was reflected in the “doctrine of practical obscurity,” which recognized that obscurity could serve positive purposes with respect to protecting privacy interests.

Increasingly courts are relying on records created and maintained in electronic format. These records can be searched and made accessible remotely. Thus, if the benefits of “practical obscurity” are to be preserved, this will no longer be a by-product of old paper-based business practices. Instead, providing privacy protection through differential ease of access to court records is a conscious policy choice and requires carefully planned implementation.

3.1.2 Electronic court records

Rules [2.500–2.507](#) of the California Rules of Court first adopted in 2002 are intended to provide the public with reasonable access to trial court records that are maintained in electronic form while protecting privacy interests. These rules prescribe how the public may access electronic records both at the courthouse and remotely.

The rules are not intended to give the public a right of access to any electronic record that they are not otherwise entitled to access in paper form, and do not create any right of access to records sealed by court order or confidential as a matter of law. These rules apply only to trial court records and only to access to court records by the public. They do not prescribe the access to court records by a party to an action or proceeding, by the attorney for a party, or by other persons or entities that may be entitled to such access by statute or rule.

3.1.3 Courthouse and remote access to electronic records

The law requires that court records maintained in electronic form “shall be made reasonably accessible to all members of the public for viewing and duplication as the paper records would have been accessible.” (Gov. Code, § [68150\(l\)](#).) Electronic access must be available at the courthouse and may also be made available remotely.

If a court maintains records in electronic form, it must provide a means for the public to view those records at the courthouse. “Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the courthouse, *regardless of whether they are also accessible remotely.*” (Gov. Code, § [68150\(l\)](#) (emphasis added)).

3.1.4 Access by type of record

There are some important restrictions on the records that may be made available remotely that do not apply to records at the courthouse. By rule of court, the following types of court records may not be made available remotely to the public:

- (1) Records in a proceeding under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
- (2) Records in a juvenile court proceeding;
- (3) Records in a guardianship or conservatorship proceeding;
- (4) Records in a mental health proceeding;
- (5) Records in a criminal proceeding;
- (6) Records in a civil harassment proceeding under Code of Civil Procedure section 527.6;
- (7) Records in a workplace violence prevention proceeding under Code of Civil Procedure section 527.8;
- (8) Records in a private postsecondary school violence prevention proceeding under Code of Civil Procedure section 527.85;
- (9) Records in an elder or dependent adult abuse prevention proceeding under Welfare and Institutions Code section 15657.03; and
- (10) Records in proceedings to compromise the claims of a minor or a person with a disability.

(See rule [2.503\(c\)](#).) As this list indicates, many of the types of cases whose records that are by deliberate policy not made readily available remotely to the public involve sensitive private personal and financial information about children, elderly and disabled persons, and victims of crime and violence.

3.1.5 Remote access in high-profile criminal cases

Notwithstanding the general restriction against providing criminal records remotely in rule [2.503\(c\)](#), under rule [2.503\(e\)](#), the presiding judge or a designated judge may order the records of a high-profile criminal case to be posted on the court’s website to enable faster and easier access to these records by the media and public. This rule specifies several factors that judges must consider before taking such action. One of the factors to be considered is: “The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information.” (Rule [2.503\(e\)\(1\)\(A\)](#).) Prior to posting, staff should, to the extent feasible, redact any confidential information contained in the court documents in accord with California Rules of Court, rule [2.503\(e\)\(2\)](#). In addition, five days’ notice must be provided to the parties and the public before the court makes a determination to provide electronic access under the rule.

3.1.6 Case-by-case access

The court may only grant electronic access to an electronic record when the record is identified by the number of the case, the caption of the case, or the name of party, and only on a case-by-case basis. (Rule [2.503\(f\)](#).)

3.1.7 Bulk data

The court may provide bulk distribution of only its electronic records of a calendar, index, or register of actions. “Bulk distribution” means distribution of all, or a significant subset, of the court’s electronic records. (Rule [2.503\(g\)](#).)

3.1.8 Access to calendars, indexes, and registers of action

Courts that maintain records in electronic form must, to the extent feasible, provide—both at the courthouse and remotely—access to registers of action, calendars, and indexes. (Cal. Rules of Court, rule [2.503\(b\)](#).) The minimum contents for electronically accessible court calendars, indexes, and registers of action are prescribed by rule. (See rule [2.507\(b\)](#).) This enables the public to obtain access to court records in an effective, meaningful way.

There is also a rule on what information must be *excluded* from court calendars, indexes, and registers of action; the information to be excluded includes social security numbers, financial information, arrest and search warrant information, victim and witness information, ethnicity, age, gender, government (i.e., military) I.D. numbers, driver’s license numbers, and dates of birth. (See rule [2.507\(c\)](#).) Thus, the rule on court calendars, indexes, and registers of action explicitly recognizes the parties to lawsuits have important privacy rights that should not be compromised by easily and unnecessarily providing large amounts of private information.

3.1.9 Retention of user access information

[To be added. This might cross-reference website policy.]

3.2 Public access to appellate court records

3.2 Public Access to Records in the Courts of Appeal

3.2.1. Public access to paper court records at the courthouse (rule 8.83(c))

3.2.2 Public access to electronic court records at the courthouse (rule 8.83(b))

3.2.3 Remote public access to court records (rule 8.83(b)–(d))

3.2.4 Retention of user access information

3.3 Remote access of parties and their attorneys to court records

[To be added to a subsequent version of the Resources Guide]

3.4 Remote access of justice partners to court records

[To be added to a subsequent version of the Resources Guide]

3.5 Remote access by other courts to a court's records

[To be added to a subsequent version of the Resources Guide]

3.6 Access to California Courts Protective Order Registry (CCPOR)

3.6.1 Access to form CLETS-001 through CCPOR

[To be added to a subsequent version of the Resources Guide]

3.7 Third-party storage

4. Financial Privacy in Civil and Criminal Cases

The constitutional right to privacy extends to one's personal financial information. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal. 3d 652, 656.) In court proceedings, this right of financial privacy is often protected by a particular statute or rule, as illustrated by the examples below. However, the right of financial privacy is not unlimited in scope. As discussed in the example in section 4.4 below, a court has concluded that Family Code section 2014.6, the statute relied on by a participant in a divorce proceeding to close the records in that proceeding, was constitutionally overbroad. (See *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, 1048.) Also, the Legislature has not made the Financial Privacy Act of 1977 applicable to the courts.

4.1 Fee Waivers

In civil cases, an application for an initial fee waiver, which contains personal financial information, is confidential. (Cal. Rules of Court, rule [3.54](#).) Only the court and authorized court personnel, persons authorized by the applicant, and persons authorized by order of the court may have access to the application. No person may reveal any information contained in the application except as authorized by law or order of the court. However, the order granting a fee waiver is not confidential.

4.2 Requests for Funds

In criminal cases, an indigent defendant requests for funds for payment of investigators, experts, and others to aid in presenting or preparing the defense in certain murder cases is confidential. This exemption applies to defendants in capital and life without parole murder cases under Penal Code section [190.05\(a\)](#). (Pen. Code, § [987.9](#).)

4.3 Criminal Defendant's Statement of Assets

Defendant's Statement of Assets (form CR-115) is a mandatory Judicial Council form. It is confidential in the same manner as probation reports. (See Pen. Code, § [1202.4](#).)

4.4 Information about the Financial Assets and Liabilities of Parties to a Divorce Proceeding

In *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, the court considered the constitutionality of Family Code section 2014.6 that requires a court, on the request of a party to a divorce proceeding, to seal any pleading that lists and provides the location or identifying information about the financial assets of the parties. The court concluded that section 2024.6 is unconstitutional on its face. The court stated: “While the privacy interests protected by section 2014.6 may override the First Amendment right of access in an appropriate case, the statute is not narrowly tailored to serve overriding privacy interests. Because less restrictive means exist to achieve the statutory objective, section 2014.6 operates as an undue burden on the First Amendment right of public access to court records.” (*Id.* at page 1048.)

4.5 Information Privacy Act Not Applicable to the Courts

A general protection for individuals’ privacy rights is contained in the Information Practices Act of 1977. However, recognizing the special role that courts play in conducting the people’s business and the need for openness in conducting that business, the Legislature has expressly exempted the courts from the application of that Act. (See Civ. Code, §1798.3(b)(1) [excluding from the definition of “agency” covered by the Information Privacy Act of 1977 “[a]ny agency established under Article VI of the California Constitution”—that is, the courts]).

4.6 Privacy in the Payment of Fines and Fees

[To be added. Best practices consistent with Civil Code.]

4.6.1 Credit card information

4.6.1.1 Credit card information collected online

4.6.1.2 Credit card information collected at the counter

4.6.2 Retention of credit card information

4.6.3 Legal restrictions on credit card information

4.6.4 Use of vendors to collect fines and fees

4.7 Taxpayer Information

4.7.1 Confidential statements of taxpayer’s Social Security Numbers

Confidential Statements of Taxpayer’s Social Security Number on mandatory Judicial Council forms (forms [WG-021](#) and [WG-025](#)) for use in connection with wage garnishments are confidential.

4.7.2 Income tax returns in child support cases

In a proceeding involving child, family, or spousal support, if a judge finds that a tax return is relevant to disposition of the case, the tax return must be sealed and maintained as a confidential record of the court. (Fam. Code, § 3552.)

5. Privacy in Judicial Administrative Records

5.1 Public access to judicial administrative records (rule 10.500)

[Rule 10.500](#) provides for public access to “judicial administrative records” (Rule 10.500(c)(2)), which includes records of budget and management information related to the administration of the courts.

5.1.1 Policy

The rule is based on the California Public Records Act (“CPRA”) (Government Code section 6250 et seq.) and is intended to be broadly construed to further the public’s right of access. Unless otherwise indicated, the terms used in this rule have the same meaning as under the [Legislative Open Records Act](#) (Gov. Code, § 9070 et seq.) and the [California Public Records Act](#) (Gov. Code, § 6250 et seq.) and must be interpreted consistently with the interpretation applied to the terms under those acts.

5.1.2 Scope of access

[Rule 10.500](#) covers only judicial administrative records and does not govern the public’s right to access “adjudicative records,” which are “writings” prepared, used, or filed in a court proceeding, relate to judicial deliberation, or the assignment or reassignment of cases of justices, judges, subordinate judicial officers, and the assignment or appointment of counsel by the court. (Rule 10.500(c)(1).) As discussed above, adjudicative records, or court records, are presumptively public, subject to exceptions as discussed in Sections 2-3 above.

Disclosable judicial administrative records include any non-adjudicative records (writings) containing information that relates to “the conduct of the people’s business that is prepared, owned, used, or retained by a court, regardless of the writing’s physical form or characteristics.” (Rule 10.500(c)(2).) However, personal information that is not related to the conduct of the people’s business—or material falling under a statutory exemption (see below)—is not disclosable and can be redacted from the public records that are produced or presented for review. (See *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.) This limitation on disclosure protects the privacy rights of government employees involved in creating public records.

Even if electronic communications are conducted on an agency employee or official’s personal device or personal email account, they are disclosable if they pertain to the people’s business and are prepared, owned, used, or retained by a court or its personnel. (See Rule 10.500(b)(5); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.) On the other hand, if the documents relate to purely personal information, that content is not disclosable. Pursuant to a 10.500 request, courts

may ask their employees to search their own files, segregate public records from personal records, and submit an affidavit with sufficient factual basis for determining whether the contested item are public records or personal materials. (*Id.*)

5.1.3 Exemptions and waiver of exemptions

[Rule 10.500\(f\)](#) provides 12 categories of records that a court may exempt from disclosure. For the purpose of this Resource Guide, the most important of these categories is the exemption for personnel, medical, or similar files, or other personal information whose disclosure would constitute an unwarranted invasion of personal privacy. (Rule 10.500(f)(3).) Some of the other exempt categories include records that relate to pending or anticipated claims or litigation to which a judicial branch entity or its personnel are parties (Rule 10.500(f)(2)); disclosure that is exempt or prohibited under state or federal law, including under the California Evidence Code relating to privilege or by court order in a court proceeding (Rule 10.500(f)(5); records that would reveal or compromise court security or safety of court personnel (Rule 10.500(f)(6)); trade secrets, or confidential commercial or financial information (Rule 10.500(f)(10) and the catch-all exemption where, on the facts of a specific request, the public interest in withholding the record clearly outweighs the public interest in disclosure. (Rule 10.500(f)(12).)

A judicial branch entity's or judicial branch personnel's disclosure of a judicial administrative record that is exempt from disclosure pursuant to rule 10.500(f) or law waives the exemptions as to that specific record. (Rule 10.500(h).) However, waiver does not apply to disclosures made in certain contexts as discussed in rule 10.500(h).

5.2 Criminal History Information

Summaries of criminal history information (criminal history information rap sheets) are confidential. (*Westbrook v. Los Angeles* (1994) 27 Cal.App.4th 157, 164; Pen. Code, §§ [11105](#) and [13300–13326](#).) Public officials have a duty to preserve the confidentiality of a defendant's criminal history. (*Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76.) Unauthorized disclosure of criminal history violates a defendant's privacy rights under the California Constitution. (*Ibid.*) Courts have upheld the confidentiality assigned to criminal history records. (See, e.g., *Westbrook v. Los Angeles* (1994) 27 Cal.App.4th 157 [unauthorized private company was denied access to municipal court information computer system].)

6. Privacy of Witnesses, Jurors, and Other Non-parties

6.1 Witness and Victim Information

6.1.1 Confidential information about witnesses and victims in police, arrest, and investigative reports

The court and the district attorney shall establish a mutually agreeable procedure to protect the confidential information of any witness or victim contained in police reports submitted to the court in support of a complaint, indictment, information, search warrant or arrest warrant. (Pen. Code, § [964](#).)

6.1.2 Victim impact statements

Victim impact statements filed with the court must remain under seal until imposition of judgment and sentence, except that the court, the probation officer, and counsel for the parties may review such statements up to two days before the date set for imposition of judgment and sentence. (Pen. Code, § [1191.15\(b\)](#).) Victim impact statements shall not be otherwise reproduced in any manner. (Pen. Code, § [1191.15\(c\)](#).)

6.1.3 Information about victims, witnesses, and others

Law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim, or an arrestee or potential defendant. (Pen. Code, § [841.5](#).) Similarly, defense counsel may not disclose the address or telephone number of a victim or witness to the defendant or his or her family. (Penal Code, § section [1054.2](#).) If this information is contained in documents filed with the courts, it should be redacted before the documents are filed.

6.1.4 Identity of sex offense victims

At the request of a victim of an alleged sexual offense, the court may order that the victim be treated anonymously. Upon a proper showing, the judge may order the identity of the victim in all records and during all proceedings to be either “Jane Doe” or “John Doe” if the judge finds that such an order is reasonably necessary to protect the alleged victim’s privacy and that such measures will not unduly prejudice the prosecution or defense. (Pen. Code, § [293.5](#).)

6.2 Juror Information

6.2.1 Juror questionnaires of those jurors not called

The questionnaires of jurors not called to the jury box for voir dire are not open to the public. (*Copley Press, Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 87–88); but cf. *Bellas v. Superior Court of Alameda County* (2000) 85 Cal.App.4th 636, 645, fn. 6 [suggesting a contrary rule].)

6.2.2 Juror questionnaires answered under advisement of confidentiality

These records are not open to the public. (*Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 493-494 [jurors were told their answers on questionnaire were confidential].)

6.2.3 Sealed juror records in criminal courts

After the jury reaches a verdict in a criminal case, the court’s record of personal juror identifying information (including names, addresses, and telephone numbers) must be sealed. (Code Civ. Proc., § [237\(a\)\(2\)](#).) This is often accomplished by replacing juror names with numbers. Indeed, that is how appellate court records contain the relevant information while conforming to the requirements of Code of Civil Procedure section [237](#). The defendant or his or her counsel can petition the court for access to this information to aid in developing a motion for a new trial or for any other lawful purpose. (Code Civ. Proc., § [206\(f\)](#).)

6.2.4 Records of grand jury proceedings

These records are not open to the public unless an indictment is returned. If an indictment is returned, records of the grand jury proceeding are not open to the public until 10 days after a copy of the indictment has been delivered to the defendant or his or her attorney. (Pen. Code, § [938.1\(b\)](#); *Daily Journal Corp. v. Superior Court* (1999) 20 Cal.4th 1117, 1124–1135.) If there is a “reasonable likelihood” that release of all or part of the transcript would prejudice the accused’s right to a fair trial, a judge may seal the records. (Pen. Code, §§ [938.1](#), [929](#); see *Rosato v. Superior Court* (1975) 51 Cal.App.3d 190.) Notwithstanding the confidential status of a record, in civil grand juries, a judge may order disclosure of certain evidentiary materials, as long as information identifying any person who provided information to the grand jury is removed. (Pen. Code, § [929](#).) Also, after an indictment is returned, the judge may order disclosure of nontestimonial portions of the grand jury proceedings to aid preparation of a motion to dismiss the indictment. (*People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 434–436.)

6.2.5 Courts’ inherent power to protect jurors

Courts may exercise their discretion to seal juror records where a “compelling interest” exists, such as protecting jurors’ safety or privacy, protecting litigants’ rights, or protecting the public from injury. (*Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 262; Code Civ. Proc., § [237](#); see *Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1091.) Thus any juror information that a judge orders sealed is not open to the public.

6.3 Attorney information

6.4 Vexatious litigant list

7. Privacy Protection for Judicial Officers

7.1 Privacy Protection Guidance for Judicial Officers

Government Code section 6254.21 prohibits persons or businesses from publicly posting or displaying on the Internet the home address and phone number of a judicial officer, if he or she has made a written demand of that person or business not to disclose that information. Upon request of a California trial court judge, commissioner, or referee, the Judicial Privacy Protection Program of the Judicial Council’s Security Operations unit will make such written demand to a predetermined list of major online data vendors. (See Appendix__ for attached form authorizing the Judicial Council to make written demand on behalf of a trial court judge, commissioner, or referee.) For further information, contact securityoperations@jud.ca.gov.

8. Privacy and the Electronic Court: Best Practices

8.1 Electronic Filing and Service, and Access to Protected Private Information

8.1.1 Electronic identification and verification

[Text to be added] (For possible SRL principles, see <http://www.srln.org/system/files/attachments/LSC%20Best%20Practices%20in%20E-Filing.pdf>)

8.1.2 E-filing directly with the court

8.1.3 E-filing through EFSPs and vendors

8.1.4 E-service lists and other information

8.2 Protected Personal Information Held in Cloud-based Storage Systems

8.3 Case and Document Management Systems

8.3.1 Vendor-serviced CMS/DMS

8.3.2 Metadata

9. Privacy and Court-related Services: Best Practices

9.1 California Court Self-help Centers

9.2 Family Law Facilitator Offices

9.3 Family Court Services

9.4 Civil Court-ordered Mediation Services

9.5 Document Assembly Programs

10. Privacy and Data Exchanges with Justice Partners

10.1 Data Exchanges with Local Justice Partners

10.2 Data Exchanges with State Justice Partners

10.3 Data Exchanges with Federal Justice Partners

10.4 Inter-state Data Exchanges

10.5 Intra-branch Data Exchanges

10.6 CCPOR

11. Court Websites: Best Practices

California courts use public websites extensively to conduct their business. All the trial and appellate courts have websites. These websites perform essential services. For example, they provide the public with key information about the courts. They provide access to local rules and forms needed to carry on cases. They provide litigants with information about hearing dates and other calendar information. And they provide information to jurors about when and where to appear. Recently, websites have also become an increasingly important means for transacting business, such as paying for traffic tickets or scheduling hearings.

11.1 Privacy Statements

Like other institutions employing websites, courts need to advise the public and other users of the court's privacy policies with regard to the use of their websites. Courts need to inform users about the information that is collected. A privacy statement on the website will explain how the court gathers information, how it uses it, and how the court will protect users' privacy.

Each court will develop its own Privacy Statement relating to its website. For courts to consider as they develop or revise their statements, a Model Privacy Statement is attached as Appendix __. In addition, a Model Terms of Use is attached as Appendix _.

11.2 Retention and Tracking of User Information and Data

11.2.1 Use of cookies on court websites

11.2.2 Self-help center portals

12. Video and Surveillance: Best Practices

12.1 Photographing, Recording, and Broadcasting in Court

California Rules of Court, [rule 1.150](#) permits photographing, recording, and broadcasting of courtroom proceedings pursuant to a judge's ruling on media requests and sets forth factors to be considered by a judge in determining whether to grant media requests for such activity. A judge may not permit media coverage of proceedings held in chambers; proceedings closed to the

public; jury selection; jurors or spectators; or conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench. (Rule 1.150(e)(6).)

12.2 Video Remote Interpreting

12.3 Security Cameras in Public Areas

The Judicial Council has recommended best practices and policies for security camera recordings in the courthouse, covering the retention schedule, downloading, disclosures to the public or other parties; and retention schedules for downloaded recordings. (See Fact Sheet: Recommendations on Security Camera Recordings Policy and Best Practices (Oct. 2015).) Further questions may be directed to Ed Ellestad, Supervisor, Judicial Council Security Operations.

13. Privacy and Information Security: Best Practices

13.1 Information Systems Controls Framework Template

13.2 How to Use the Information Systems Control Framework

14. Court Management of Protected Private Information: Best Practices

[[To be added. Best practices following Civil Code section 1798 et seq.]]

14.1 Developing a Local Court Privacy Guide

14.2 Establishing Local Privacy Procedures and Systems

14.3 Identifying Key Court Personnel

14.4 Training Court Staff

14.5 Periodic Review of Privacy Procedures and Systems

15. Responding to Data Breaches: Best Practices

15.1 Developing an incident response plan

15.2 Noticing affected persons

[Note: Review Civil Code 1798.92 governing business security breach notices]

15.2.1 Contents of notice

15.2.2 Means of providing notice

15.3 Contacting Law Enforcement

15.4 Contacting credit reporting agencies

Appendices

Appendix A: List of relevant statutes and rules

Appendix B: Model local court privacy guide

Appendix C: Sample privacy statement for court websites

Appendix D: Sample terms of use for court websites

Appendix E: Sample notice of data breach