



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 AND UNLIMITED CASE AND COMPLEX LITIGATION SUBCOMMITTEE

MINUTES OF OPEN MEETING

May 23, 2017
12:10 PM – 1:30 PM
Teleconference

Advisory Body**Members Present:**RPS:

Hon. Peter J. Siggins; Hon. Jackson Lucky; Mr. Darrel Parker; Mr. Don Willenburg

UCCLS:

Hon. Ann I. Jones; Hon. David Chapman; Mr. Keith Chidlaw; Mr. William Chisum; Mr. Robert Olson; Mr. Saul Bercovitch; Ms. Brenda McCormick

Advisory Body**Members Absent:**RPS:

Hon. Julie Culver; Hon. Louis Mauro

UCCLS:

Hon. Debra Katz Weintraub; Hon. Harold Kahn; Hon. Victoria Chaney; Hon. Michael Sachs; Hon. Richard K. Sueyoshi; Ms. Twila White

Others Present:

Ms. Andrea Jaramillo; Mr. Patrick O'Donnell; Ms. Fati Farmanfarmaian, Ms. Nicole Rosa; Ms. Susan McMullen; Ms. Jane Whang

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

Subcommittees members reviewed and approved the minutes of the January 19, 2017, joint ITAC Rules and Policy Subcommittee and CSCAC Unlimited Case and Complex Litigation Subcommittee Meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 4)

Item 1**Modernization Project Rules Proposal: Proposed Amendments to Title 2, Chapter 3, Division 2 of the California Rules of Court (Action Required)**

Review public comments received and decide 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

Update: Justice Siggins noted that there have been changes to the Assembly Bill that may affect the rules of court. The Assembly amendments would require express consent to electronic service and would not allow the act of electronic filing to be deemed consent. This would require a change to the rules of court, which allows the act of electronic filing to serve as consent to electronic service. The subcommittees discussed the substantive comments on the proposal, but held the proposal pending the outcome of the legislation.

Ms. Jaramillo reviewed the technical comments, which mostly clarified or agreed with proposed amendments. She then reviewed the substantive topics. The subcommittees had sought specific comments on whether and how certain definitions should be retained rule 2.250 (b)(1). There were 3 comments in favor of cross-referencing Code of Civil Procedure section 1010.6 definitions in the rule and one suggested to retaining the definitions in their entirety in the rules so that self-represented litigants don't have to cross reference the Code of Civil Procedure. No changes to the definitions were planned in this proposal, but comments were solicited for future reference. Members voiced it might be more helpful to retain the reference so people don't have to look in several places.

Item 2

405.23, 594, 659, 660, and 663a of the Code of Civil Procedure (Action Required)

Review public comments and decide 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 reviewed the comments regarding Civil Code section 1719 which would allow a court to use electronic service when they have received a bad check, if a litigant is already accepting electronic service in the case to which the check pertains. One substantive comment was that when a litigant is represented by counsel, the litigant's email should be used and not the law firm's email if the law firm's email was the electronic service address. The members discussed this,

but determined that if the litigant was a client of a law firm, then the firm's attorneys would have a professional ethical duty to inform the client if the firm received a bad check email on the client's behalf. One commenter noted that the Assembly Bill containing Code of Civil Procedure 1013b was pending in the legislature and that some of the proposal relied on it. However, staff explained to the subcommittees that the passage of the Assembly Bill would be resolved prior to the November Judicial Council meeting and, if necessary, parts of the proposal that relied on Code of Civil Procedure section 1013b could be pulled.

Regarding the proposed amendments to Code of Civil Procedure sections 405.22 and 405.23, the Orange County Bar commented that electronic service will not be a benefit and unlikely to be used. Staff discussed with the subcommittee that while this would be a very narrow subset of litigants and may not apply to all, it would still make sense to allow it for litigants that could use it. Assembly Bill 976 may impact this part of the proposal, however, and staff will update the subcommittees on the bill's progress.

The proposed changes to Code of Civil procedure section 594 would allow for electronic service of notice of a trial or hearing. Los Angeles County Superior Court commented that this should clarify whether this would change the timing of service. The proposal only allows for electronic service and does not change any other aspect. There was another similar comment about changing different timeframes, but the proposal does not alter applicable time frames. No further substantive comments. All comments can be found in the meeting materials.

Motion to Pass the Proposed Legislative Changes onto the Respective Advisory Committees.

Approved.

Item 3

Rules and Policy Subcommittee: Privacy Policy Project Update (Discussion Item)

Present an update on the activities of the *Privacy Resource Guide* development.

Presenters: Hon. Julie Culver, Judge of the Superior Court of California, County of Monterey
Mr. Patrick O'Donnell, Managing Attorney, Legal Services
Ms. Jane Whang, Attorney, Legal Services

Discussion: Mr. O'Donnell invited members to review and contribute any items they think might be of interest. Justice Siggins will send an email asking ITAC to review and any areas they might be of assistance or have ideas to share.

Item 4

Rules and Policy Subcommittee: Rules for Remote Access to Records for Justice Partners Project Update (Discussion Item)

Present an update on the development of remote access rules for Justice Partners.

Presenters: Mr. Patrick O'Donnell, Managing Attorney, Legal Services
Ms. Andrea Jaramillo, Attorney II, Legal Services

Discussion: Mr. O'Donnell reported that there are several gaps in the rules that say they don't apply to parties or justice partners. Courts are very involved in working with parties and justice partners without any guidelines. It would be helpful to have guidelines with input from a variety of advisory committees. He proposed to amend the annual agendas in several advisory committees so they can assist ITAC, as the lead, in formulating and developing rules; and to get authorization to form a joint subcommittee to undertake this task. After speaking to the chairs of various committees, they all agree this is a good project and would like to participate. There is a total of nine advisory committees, including ITAC. Each would have at least one member assigned to participant. Ms. Jaramillo will draft initial discussion topics and once all members are assigned there will be a telephonic meeting.

Ms. Jaramillo has been reviewing the rules and the subject matter experts are editing drafts to reflect the suggested changes. She feels there may be some interest generated and she expects public comments.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the Rules and Policy Subcommittee on November 15, 2017.