JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee
Hon. Judith Donna Ford, Chair
Charlene Hammitt, Manager, Information Services Division, 415-865-7410, charlene.hammitt@jud.ca.gov

DATE: October 5, 2001

SUBJECT: Public Access to Electronic Trial Court Records (adopt Cal. Rules of Court, rules 2070–2077; repeal Standards of Judicial Administration, section 38) (Action Required)

Issue Statement
Code of Civil Procedure section 1010.6(b) requires the Judicial Council, by January 1, 2003, to adopt uniform rules for electronic filing and service of documents in the trial courts. The rules must include statewide policies on vendor contracts, privacy, and access to public records. New rules 2070–2077 set forth such statewide policies. The Court Technology Advisory Committee will soon finalize its proposed rules for electronic filing and service.

Recommendation
The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2002:

1. Adopt rules 2070–2077 of the California Rules of Court to:

   (a) Set forth statewide policies on providing public access to trial court records maintained in electronic form, while protecting privacy and other legitimate interests in limiting disclosure of certain records; and

   (b) Set forth statewide policies regarding courts' contracts with vendors to provide public access to court records maintained in electronic form.

2. Repeal section 38 of the Standards of Judicial Administration.

The text of the proposed rules is attached at pages 26–33, and the text of the standard to be repealed is attached at pages 34–36.

Rationale for Recommendation

The Legislature's charge to the council is to adopt uniform rules for the electronic filing and service of documents in the trial courts, including statewide policies on vendor contracts, privacy, and access to public records. The policies in the new rules are of particular statewide concern because many courts are implementing electronic filing but are uncertain what their obligations are with respect to providing public access to these filings through the Internet. The committee believes that even in the absence of the Legislature's charge to adopt statewide policies it is advisable for the council to do so, to ensure uniform access practices among the 58 counties.

The policy reasons considered by the committee and which support the committee's specific recommendations are presented in the Rationale for Recommendation in the Report.

Descriptions of the proposed rules follow.

Rule 2070 defines "trial court records," "trial court records maintained in electronic form," and "the public" as used in the new rules.

Rule 2071 states that the new rules do not limit access by parties or their attorneys, or access by others who are afforded a greater right of access by statute or California Rules of Court than that provided to the general public. Rule 2071 also states that the new rules do not limit remote electronic access to a court's register of actions or its calendars.

Rule 2072 states that the new rules are intended to provide the public with reasonable access to trial court records maintained in electronic form, while protecting privacy interests. Rule 2072 also states that the new rules are not intended to provide public access to court records to which the public does not otherwise have a right of access.

Rule 2073 states that (1) the public has a general right of access to trial court records maintained in electronic form except as otherwise provided by law; (2) courts must grant access only on a case-by-case basis; and (3) when records become inaccessible by court order or operation of law, courts are not required to take action with respect to copies of those records that were made by the public before the records became inaccessible.

Rule 2074 states that (1) electronic access to trial court records maintained in electronic form must be reasonably available to the public through industry-standard software and at terminals at the courthouse; (2) courts may provide electronic access to records in the following proceedings only through public terminals at the courthouse, and must not provide remote electronic access to records in them: (a) proceedings under the Family Code, (b) juvenile court proceedings, (c) guardianship and conservatorship proceedings, (d) mental health proceedings, (e) criminal proceedings, and (f) civil harassment proceedings under Code of Civil Procedure section 527.6; (3) courts are not required to provide electronic access to their trial court records if this access is not feasible because of resource limitations; (4) persons accessing court records electronically must consent to access the records only as instructed by the court and must consent to the court's monitoring of access to its records; (5) courts must notify the public about the following information: (a) whom to contact about requirements for accessing their records electronically, (b) copyright and other proprietary rights that may apply to information in their records, and (c) that a record available by electronic access does not constitute the official record of the court unless it has been electronically certified by the court; and (6) courts must post a privacy policy on their Web sites to inform users of the information they collect regarding access transactions and the uses they may make of the collected information.

Rule 2075 states that courts must not provide electronic access to any court record maintained in electronic form that has been sealed under rule 243.1.

Rule 2076 states that a court's contract with a vendor to provide public access to its records maintained in electronic form must be consistent with the new rules, must require the vendor to provide access and to protect confidentiality as required by law, and must specify that the court is the owner of the records and has the exclusive right to control their use.

Rule 2077 states that courts may impose fees for providing public access to their records maintained in electronic form, as provided by Government Code section 68150(h), and that courts that provide exclusive access to their records through a vendor must ensure that any fees the vendor imposes for providing access are reasonable.

Alternative Actions Considered

No alternative actions were considered because the Judicial Council is required by statute (Code Civ. Proc., § 1010.6(b)) to adopt rules of court governing vendor contracts, privacy, and access to public records filed electronically with the trial courts. A chronology of actions the committee has taken since it first began to consider developing statewide standards for providing public access to electronic court records is set forth in the Rationale for Recommendation in the Report.

Comments From Interested Parties

The proposed rules were circulated for comment during the spring 2001 cycle. A total of 24 comments were received. The commentators included judges, court administrators, and representatives from the media. Representatives from the court and legal communities generally supported the rules; representatives from the news media did not. Some representatives from the media took the position that remote electronic access to court records should be limited only on a case-by-case basis, e.g., on a party's motion to seal; others took the position that remote electronic access should be afforded in all cases.

Some commentators proposed specific modifications, many of which the committee adopted. The modifications that were adopted are presented under Comments From Interested Parties in the report that follows this summary. However, the committee's conclusion that remote access should not be allowed in the cases specified was not changed in response to the comments received, for the reasons set forth in the Rationale for Recommendation in the report that follows this summary.

A chart summarizing the comments and the committee's responses is attached at pages 37–56.

Implementation Requirements and Costs

As courts begin to implement electronic filing, they must consider how they will provide public access to these records. Some courts already have public terminals in place; others will need to install them at the courthouse. Providing the public with electronic access to court records should result in a cost savings for courts, since this means of access does not require that a court clerk spend time making the records available for inspection and copying by the public, as is required with paper records. As provided in rule 2077, courts may impose a fee for providing electronic access to their records; however, it is anticipated that many, if not most, courts will not do so.

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Issue Statement

Code of Civil Procedure section 1010.6(b) requires the Judicial Council, by January 1, 2003, to adopt uniform rules for electronic filing and service of documents in the trial courts. The rules must include statewide policies on vendor contracts, privacy, and access to public records.

Unlike many other states, California does not provide for a right of public access to court records by statute or rule of court, whether the records are in paper or electronic form. Instead, public access to court records is afforded under the common law. (See *Copley Press, Inc. v. Superior Court* (1998) 63 Cal.App.4th 367, 373 [74 Cal.Rptr.2d 69].) Court records are presumptively accessible to the public unless made inaccessible by statute, California Rules of Court, or court order. Currently, section 38 of the Standards of Judicial Administration (proposed by the committee and adopted by the council effective January 1, 1999) sets forth guidelines courts should follow in providing public access to electronic records.[1] Government Code section 68150(h) provides that court records preserved or reproduced in electronic form must "be made reasonably accessible to all members of the public for viewing and duplication as would the paper records."

[1] Because the proposed rules will preempt section 38, the committee recommends that section 38 be repealed.

Under the mandate of Code of Civil Procedure section 1010.6(b), the Court Technology Advisory Committee developed a set of proposed rules on public access to electronic trial court records. The rules were circulated for public comment and, after incorporating a number of suggestions made in the comments, the committee has finalized a set of rules for submission to the council.

Proposed Rules

Rule 2070 defines "trial court records," "trial court records maintained in electronic form," and "the public" as used in rules 2070–2077.

Rule 2071 states that rules 2070–2077 do not limit access by parties or their attorneys, or access by others who are afforded a greater right of access by statute or California Rules of Court than that provided to the general public. Rule 2071 also states that the new rules do not limit remote electronic access to a court's register of actions or its calendars.

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accessing their records electronically, (b) copyright and other proprietary rights that may apply to information in their records, and (c) that a record available by electronic access does not constitute the official record of the court unless it has been electronically certified by the court; and (6) courts must post a privacy policy on their Web sites to inform users of the information they collect regarding access transactions and the uses they may make of the collected information.

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Rule 2077 states that courts may impose fees for providing public access to their records maintained in electronic form, as provided by Government Code section 68150(h), and that courts that provide exclusive access to their records through a vendor must ensure that any fees the vendor imposes for providing access are reasonable.

Rationale for Recommendation

Balancing the right of access against the right of privacy

Rules 2070–2077 attempt to balance the right of public access to trial court records against the right of privacy afforded by article I, section 1 of the California Constitution. The rules recognize the fundamental difference between paper records that may be examined and copied only at the courthouse and electronic records that may be accessed and copied remotely. It is the conclusion of the Court Technology Advisory Committee that unrestricted Internet access to case files would compromise privacy and, in some cases, could increase the risk of personal harm to litigants and others whose private information appears in case files.

In recognition of these concerns, the rules set forth a three-part approach to public access:

- First, the rules provide for a general right of access to trial court records maintained in electronic form (rule 2073(a)).

- Second, the rules preclude *remote* electronic access by the public to filings in family law, juvenile, mental health, guardianship and conservatorship, criminal, and civil harassment proceedings because of the personal and sensitive nature of the information parties are required to provide to the

court in these proceedings. Public access to electronic records in these proceedings is available only at public terminals at the courthouse (rule 2074(b)).

- Third, the rules provide that a court must not provide electronic access to any court record that has been sealed (rule 2075).

Committee's conclusions
The rules are based on the conclusion of the Court Technology Advisory Committee that electronic records differ from paper records in three important respects: (1) ease of access, (2) ease of compilation, and (3) ease of wholesale duplication. Before the advent of electronic court records, the right to inspect and copy court records depended on physical presence at the courthouse. Unless a case achieved notoriety, sensitive information in the case file was unlikely to circulate beyond those directly concerned with the case. The inherent difficulty of obtaining and distributing paper case files effectively insulated litigants and third parties from the harm that could result from misuse of information provided in connection with a court proceeding.

The rules are also based on the committee's conclusion that the judiciary has a custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of electronic case files. Like other government entities that collect and maintain sensitive personal information, the judiciary must balance the public interest in open court records against privacy and other legitimate interests in limiting disclosure. While there is no question that court proceedings should not ordinarily be conducted in secret, the public's right to information of record is not absolute. When the public's right of access conflicts with the right of privacy, the justification for the requested disclosure must be balanced against the risk of harm posed by the disclosure. (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 166 [32 Cal.Rptr.2d 382].)

Rule drafting history
The committee has been working on the issues covered by rules 2070-2077 for the past six years.

In 1995, the committee established a Privacy and Access Subcommittee to develop statewide policies for public, commercial, and media access to court information in electronic form. Membership encompassed a range of interests, including not only members of the committee, but a representative of the Justice Department, a member of the California Assembly, the director of the Privacy Rights Clearinghouse (a privacy advocate for consumer interests), the director of the First Amendment Coalition (an organization that represents primarily media interests), and the government affairs liaison officer of the Information Industry Association

(a trade association of direct marketers, credit reporting businesses, and the like). Public hearings were held in Southern and Northern California, inviting comment on assuring access, protecting privacy, and funding.

In 1996, the privacy and access subcommittee drafted a rule that took a conservative approach to electronic access. To preclude the possibility of the dissemination and propagation of personal information that by law is available only for limited times or in partial and uncompiled form, the subcommittee recommended that remote electronic access to civil and criminal case data be restricted to specified index information and that the balance of case data, through available at the courthouse, not be provided by remote access. The full committee recommended revising the rule to require broad access. The redrafted rule provided that "any record that a judicial branch agency makes available to the public shall be made available electronically, to the extent that the agency has determined that it has sufficient resources to do so." This rule essentially would have provided access to electronic records on the same terms as paper records. The committee circulated the rule for comment to various advisory committees and AOC staff in Appellate and Trial Court Services.

In 1997, the rule was circulated for public comment. Negative comments outnumbered positive comments by approximately 30 percent. The proposal was criticized for failing to account for differences between paper and electronic records. Many comments expressed concerns about privacy interests in court records (particularly in family law cases), legal restrictions on the dissemination of certain data in criminal case files, and problems with implementation. The committee established a working group to address the issues raised in the comments and to revise the proposal.

In 1998, the committee revised the rule (proposed rule 897) to apply only to trial court pilot projects for certain types of civil cases. The rule was circulated for comment and was criticized for failing to clarify the relationship between existing and new pilot projects. The committee then recast the rule as Section 38 of the Standards of Judicial Administration. The committee's intent in changing the rule to a standard was to encourage innovative projects, to eliminate the contradiction between mandatory rules and permissive standards authorizing pilot projects, and to present recommendations that would not contradict statutory or case law. Section 38 was adopted by the Judicial Council and became effective January 1, 1999. This section was intended to provide trial courts with guidance on providing public access to electronic records until statewide rules of court could be adopted.

In 1999, section 1010.6 was added to the Code of Civil Procedure with the support of the Judicial Council, which believed that it was time to develop statewide standardized statutes and rules to safeguard the security of electronic documents,

the integrity of court electronic filing systems, and the rights of the parties, while facilitating electronic filing in the trial courts. Section 1010.6(b) requires the Judicial Council to adopt uniform electronic filing rules that include statewide policies on vendor contracts, privacy, and access to public records.

The committee and its Strategy Subcommittee worked throughout the past year on developing draft rules on vendor contracts, privacy, and access to public records. At the end of the year, the committee circulated the draft to the presiding judges and court executives for their comment. The committee revised the draft after this informal circulation and voted in January 2001 to submit the rules to the Rules and Projects Committee. The rules were circulated for public comment in the spring, and were revised by the committee in light of the public comments received. With minor adjustments, these are the rules the committee recommends for adoption effective January 1, 2002.

Court decisions

The rules are based in part on the U.S. Supreme Court's 1989 decision in *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (109 S.Ct. 1468, 103 L.Ed.2d 774), in which the court referred to the relative difficulty of gathering paper files as "practical obscurity." In this case, which involved a request under the Freedom of Information Act for the release of information from a database summarizing criminal history, the court recognized a privacy interest in information that is publicly available through other means but is "practically obscure." The court noted that "the issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by the disclosure of that information." (*Id.* at p. 764.) It specifically commented on "the vast difference between public records that might be found after a diligent search of courthouse files . . . and a computerized summary located in a single clearinghouse of information." *(Ibid.)* In weighing the public interest in releasing personal information against the privacy interest of individuals, the court defined the public's interest as "shedding light on the conduct of any Government agency or official," rather than acquiring information about particular private citizens. (*Id.* at p. 773.) The court also noted that "the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information." (*Id.* at p. 770.)

In an earlier decision (*Whalen v. Roe* (1977) 429 U.S. 589 [97 S.Ct. 869, 51 L.Ed.2d 74]), the U.S. Supreme Court considered the issue of informational privacy with respect to a constitutional challenge to a State of New York computer system for the reporting of the names and addresses of persons who obtained certain prescription drugs. The court did not find a constitutional violation, because the statute in question contained sufficient protections against unauthorized use and disclosure of the reporting system. It did, however, express

concern over the "vast amounts of personal information in computerized data banks or other massive government files." (*Id.* at p. 599.)

Although neither of these decisions involved the issue of public access to court records, they are cited because they shed light on the court's concerns about the dissemination of presumptively public records in an electronic environment, and suggest that the U.S. Supreme Court believes there is a fundamental difference between records maintained in paper form and records maintained in electronic form that may be accessed and copied remotely.

More recently, the U.S. Supreme Court has affirmed privacy rights in two cases involving access to government-held records:

1. In *Reno v. Condon* (2000) 528 U.S. 141 [120 S.Ct. 666, 145 L.Ed.2d 587], the court unanimously upheld the Driver's Privacy Protection Act, which prohibits the disclosure and resale of drivers' and automobile owners' personal information without their consent.

2. In *Los Angeles Police Dep't v. United Reporting Pub. Corp.* (1999) 528 U.S. 32 [120 S.Ct. 483, 145 L.Ed.2d 451], the court held that Government Code section 6254(f)(3), which requires a person requesting an arrestee's address to declare that the request is made for one of five prescribed purposes, does not violate the First Amendment but merely regulates access to information in the government's possession, and that states may decide not to give out arrestee information at all without violating the First Amendment.

Other court decisions have also recognized the need to protect individual privacy because of the increasing computerization of public and private records. See, for example, *White v. Davis* (1975) 13 Cal.3d 757, 774–75 (120 Cal.Rptr. 94) (noting that the major impetus for adding privacy as one of the "inalienable rights" guaranteed under Cal. Const., art. I, § 1, was concern about computerization of public and private records); *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 265 (198 Cal.Rptr. 489) (in this case, which involved the issue of public access to juror questionnaires, the court noted that, "[i]n this informational age, commercial misuse of this stored data has potential for unintended harm to which the judiciary may not wish to contribute. . . . Importantly, the court does not have the power to contain the extent to which the data may be used to yield information about a juror's life").

Legislation

The rules are also based on the committee's concern that if courts do not recognize a distinction between electronic and paper records, the courts' electronic records may be used to circumvent public policy protections that the Legislature has

extended to records held by other agencies and entities, e.g., under various provisions of the Public Records Act (Gov. Code, § 6250 et seq.) and the California Information Practices Act (Civ. Code, § 1798 et seq.) that apply to state agencies but not to the courts. Many bills addressing privacy issues, including identity theft and confidentiality of records, have been proposed in Congress and the California Legislature. A particular area of concern is the protection of personal identifying information. This type of information—e.g., social security numbers and financial account numbers—is frequently contained in court files.

Actions taken by the federal courts

The committee is not alone in being concerned about providing information from case files on the Internet. The Committee on Court Administration and Case Management of the Judicial Conference of the United States recently drafted a report and recommendations for providing public access to federal case files while also protecting privacy and other interests in limiting disclosure. The Judicial Conference approved the report and recommendations on September 19, 2001. The recommendations are as follows:

- Public access to civil case files: documents in civil case files should be made available electronically to the same extent that they are available at the courthouse, except for Social Security cases because they contain extremely detailed medical records and other personal information. Personal data identifiers, for example, Social Security numbers, birth dates, financial account numbers, and names of minor children should be modified or partially redacted by the litigants. Only the last four digits of a Social Security number or financial account number should be recited in a document. If the involvement of a minor child must be mentioned, only the child's initials should be recited. If a birth date is necessary, only the year should be recited.

- Public access to criminal case files: public remote access to documents in criminal cases should not be available at this time. This policy will be reexamined within two years. The committee determined that any benefits of remote electronic access to criminal case files were outweighed by the safety and law enforcement risks this access would create.

- Public access to bankruptcy case files: documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases. The Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document.

- Public access to appellate case files: documents in appellate cases should be treated in the same manner in which they are treated in the trial court, an acknowledgment of the importance of uniform practice in the courts.

The Report notes that:

- To a great extent, the recommendations rely on counsel to protect the interests of their clients and may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet. The proposed system requires counsel and pro per litigants to carefully review whether it is essential to their case to file certain documents containing private sensitive information and to seek sealing orders or protective orders, as necessary.

- Federal courts are not required to provide electronic access to case files (assuming that a paper file is maintained), and the recommendations do not create any entitlement to such access.

- Remote electronic access will be available only through the PACERNet system, which requires registration with the PACER (Public Access to Court Electronic Records) service center and the use of a log-in and password. Such registration "creates an electronic trail which can be retraced in order to determine who accessed certain information if a problem arises."

The Administrative Office of the United States Courts staff paper, *Privacy and Access to Electronic Case Files in the Federal Courts*, lists the following factors that may justify electronic access restrictions (at pp. 30–32):

- Balancing access and privacy interests in public information would be consistent with recent actions by the executive branch, e.g., the President's directive to federal agencies to review their privacy policies.

- Congress is likely to recognize the judiciary's responsibility to act in this area; for example, various bills have been introduced to implement safeguards for privacy interests in bankruptcy court records.

- Access rights, whether based on the common law or on the Constitution, are not absolute.

- The loss of "practical obscurity" suggests a need to evaluate access policy. Traditional methods of protecting privacy interests, inherited from the days

of paper case files, may offer inadequate protections in the coming era of electronic case files. Although judges currently balance privacy and access interests primarily through the consideration of motions to seal records on a case-by-case basis, the implementation of electronic case files may justify rethinking the generally passive role played by courts and judges in this area.

- The judiciary has a special custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of case files. The courts are custodians of personal and sensitive documents by virtue of the fact that litigants and third parties are compelled by law to disclose certain information to the courts for adjudicatory purposes. Although there is no "expectation of privacy" in case file information, there is certainly an "expectation of practical obscurity" that will be eroded when case file information is available on the Internet for all to see. Appropriate limits on electronic access to certain file information may allow the courts to balance these interests in the context of the new electronic environment.

- "Access" need not mean the easiest and broadest public access. Although courts have a duty to provide access, at this point there is no statutory obligation to disseminate case files electronically. Case law on access to documents that are not relevant to the performance of the judicial function may provide insights to developing a policy that appropriately limits access to certain electronic case files or to documents in them.

- New forms of access may unduly raise the privacy "price" that litigants must pay for using the courts. The prospect of unlimited disclosure of personal information in case files may undermine public confidence in the litigation process and in the courts.

- Unlimited electronic disclosure of case files may not promote the underlying goals of providing access to case files; that is, effective monitoring of the courts by the public may be accomplished without unlimited disclosure of all the documents in case files. This consideration is especially pertinent to documents in a file that are only marginally related to the adjudication process.

Much of the controversy over the federal courts' electronic public access system ("PACER") has centered on the availability of the detailed financial information that a debtor is required to provide in a bankruptcy proceeding. This has involved the issue of the debtor's right to maintain some privacy versus the creditors' right to have information about the debtor's finances readily available. In January of

this year, the U.S. Justice Department, Treasury Department, and Office of Management and Budget issued a *Study of Financial Privacy and Bankruptcy*, which found substantial privacy concerns in public bankruptcy filings. This report notes that "[t]he emergence of new technologies has an impact on both general public access to information in bankruptcy and the debtor's interest in the privacy of such information. Increased use of the Internet and other powerful databases—both in the judicial system and among the general public—is lowering the barriers to access for parties that have an interest in that information. Personal, often sensitive, information now may be accessed and manipulated from a distance and used in ways not envisioned when the rules that currently govern these records were created. This, in turn, heightens the interests of debtors in ensuring that this information is protected from misuse by private entities." (*Id.* at p. ii.) The report also notes that "[m]uch of the data available to the general public from a bankruptcy proceeding generally is not available from other sources" and that the "comprehensive nature of the information required in bankruptcy proceedings, and the fact that such information is often restricted in other contexts, suggests that there may be reasons to reconsider the current system, which allows unrestricted access to such data by the general public." (*Id.* at p. 19.) It makes the following recommendations:

- Protection of personal financial information should be given increased emphasis in the bankruptcy system, and bankruptcy information policy should better balance society's interest in government accountability and the debtor's privacy. Debtors should not be required to forgo reasonable personal privacy expectations and expose themselves unnecessarily to risk in order to obtain the protections of bankruptcy. (*Id.* at pp. 28–29.)

- The general public should continue to have access to general information so that the public can hold the bankruptcy system accountable, e.g., the fact that an individual has filed for bankruptcy, the type of proceeding, the identities of the parties in interest, and other core information; but the public should not have access to highly sensitive information that poses substantial privacy risks to the debtor, e.g., social security numbers, financial account numbers, detailed profiles of personal spending habits, and debtor's medical information. Special attention should be given to protecting information about individuals or entities that are not parties to the bankruptcy proceeding. (*Id.* at p. 30.)

- The bankruptcy system should incorporate fair information principles of notice, consent, access, security, and accountability. Debtors should be informed in writing that certain information they disclose in their petitions and schedules may be disclosed to the general public. Debtors' consent

should be required before this information may be disclosed for purposes unrelated to the bankruptcy case. (*Id.* at pp. 34–35.)

- Mechanisms should be developed to ensure that private entities that improperly use a debtor's personal financial information are held accountable. (*Id.* at p. 37.)

Actions taken by other state courts

For many years, rule 123 of the Arizona Rules of the Supreme Court has governed public access to the judicial records of all courts in Arizona, whether in paper or electronic form . In August 2000, the Chief Justice of the Arizona Supreme Court appointed an Ad Hoc Committee to Study Public Access to Electronic Court Records, to examine the issues surrounding public access to computerized court records and to develop recommendations to modify rule 123 with respect to disclosure of these records. The committee issued its report in March 2001, making the following recommendations:

- Courts should protect from remote electronic public disclosure social security numbers, financial account numbers, credit card numbers, and debit card numbers, and courts should review their forms and processes to ensure that this type of information is not being gathered unnecessarily.

- The Supreme Court should develop a form for sensitive data. Information in the form would be available for public inspection at the courthouse but not on the Internet.

- The Supreme Court should notify judges, attorneys, and the public that case records are publicly accessible and may be available on the Internet.

- Domestic relations, juvenile, mental health, and probate records should not be accessible to the public on the Internet.

- Remote access should be afforded on a case-by-case basis, and bulk data should not be electronically accessible on the Internet.

Other state courts limit their publicly accessible electronic court records to either (1) docket information (e.g., Massachusetts) or (2) docket information, a description of the type of case, and the judgment (e.g., Missouri).

In February 2001, the Virginia Legislature appointed a joint subcommittee to study the protection of information contained in the records, documents, and cases filed in the courts of Virginia.

Comments From Interested Parties

The proposed rules were circulated for comment during the spring 2001 cycle. A total of 24 comments were received.

Comments were submitted by (1) representatives from many California courts, including Alameda, Amador, Butte, Los Angeles, Orange, Riverside, San Diego, San Mateo, Santa Clara, Siskiyou, and Stanislaus Counties; (2) the California Judges Association; (3) the California Court Reporters Association; (4) the Office of the Attorney General; (5) the California Newspaper Publishers Association et al.; (6) the Reporters Committee for Freedom of the Press; (7) the Privacy Rights Clearinghouse; (8) Access Reports; (9) the California Appellate Project; (10) the Hemet/Mt. San Jacinto Bar Association; and (11) Consumer Attorneys of California.

Many of the commentators supported the rules as proposed. Some commentators suggested modifications to the rules and some opposed the rules, particularly the limitations on remote electronic access.

A chart summarizing the comments and the committee's responses is attached at pages 37–60.

Descriptions of the comments and the committee's responses follow.

Comments on the definition of "trial court records" in rule 2070(a), and the committee's responses

One of the commentators, John Avery, President of the California Court Reporters Association (comment 2), asked that the rules make clear that they do not apply to reporters' transcripts. In response to this comment, the committee amended the rule to specifically exclude from the definition reporters' transcripts for which fees are required.

Another commentator, Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8), proposed that the definition of "trial court records" include the definition of court records set forth in *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 113–15. One other commentator, Timothy Gee, Management Analyst at the Superior Court of San Mateo County (comment 10), proposed that the definition clarify whether court minutes are trial court records. The committee took no action on these proposals, concluding that the definition covers the court records set forth in *Copley* and also covers court minutes. These matters are noted in the advisory committee comment appended to this rule.

Comment on access to court's register of actions in rule 2071(b), and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (Comment 8) was concerned that, because this rule excludes the register of actions and court calendars from the application of the rules, the public would *not* have a right of access to these records in electronic form.

This was *not* the intent of the committee. As a result, the committee amended this rule to specifically provide that the rules do not limit remote electronic access to a court's register of actions or its calendars.

Comment on constitutional right of access versus constitutional right of privacy in rule 2072, and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) was "concerned that the description of the purposes of the proposed rules emphasizes the constitutional status of the right to privacy while failing to recognize that the right of public access is also of constitutional stature."

The committee concluded that the reference in the rule to the constitutional right of privacy (under Cal. Const., art. I, § 1) should be deleted to avoid any implication that the rules favor privacy at the expense of access; instead the rules attempt to balance the two interests.

Comment on the general right of access in rule 2073(a), and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) was concerned that the reference limiting public access as required by "rule" might permit the adoption of local rules restricting public access to court records to which the public has a right of access.

The committee never intended for courts, by local rule, to be able to limit access to categories of records not restricted by the California Rules of Court (or by statute or court order). Therefore, the committee changed the reference from "rule" to "California Rules of Court" so that the rule now reads: "All trial court records maintained in electronic form must be made available to the public, except as otherwise provided by law, including, but not limited to, statutes, California Rules of Court, and court orders."

Comments on access only on a case-by-case basis in rule 2073(b), and the committee's responses
This was an area of great concern to a number of commentators, particularly with respect to the issue of complying with bulk requests and data compilations. David

De Alba, Special Assistant Attorney General, Office of the Attorney General (comment 7), noted the importance of safeguarding against the bulk and/or commercial distribution of sensitive personal information. Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) proposed doing away with this subdivision altogether because it imposes restrictions on access to electronic court records that are not currently imposed on access to paper court records—that is, members of the press can currently gather information about cases filed in paper form without knowing the parties' names, case number, and so on, and this rule would prohibit them from obtaining information about proceedings of which they are not already aware. Harry Hammitt, Editor at Access Reports (comment 14), completely disagreed with this rule, stating that to require a member of the public to identify a file with the specificity suggested is to limit access to it, in practical terms, to those who are already familiar with the case. J. Rumble of the Superior Court of Santa Clara County (comment 21) stated that courts should not be required to provide compilations or responses to requests for electronic data not directly linked to the official records. He added that the approach stated in the discussion accompanying the rule—i.e., that it is left to individual courts to decide whether to comply with bulk requests—is inconsistent with the legislative mandate of Code of Civil Procedure section 1010.6(b), which requires the council to develop statewide policies on access, and that the issue is of such significance that it warrants a statewide policy.

The committee's legal justification for limiting access on a case-by-case basis has been that courts clearly have authority to place reasonable time, place, and manner restrictions on public access so as not to interfere with the business of the court. Access rules of other state and federal courts (see, e.g., Arizona Supreme Court rule 123(f)(1), (g)(2) and PACER) require a case name and/or number for access. The rule does not limit the number of searches that may be conducted and does not prohibit anyone from, for example, searching for all new cases filed in the court each day by checking the court's register of actions.

The committee was quite concerned by the problem Mr. Rumble faced in his court—how to respond to a media request for the court's entire database, which includes confidential information to which the public does not have a right of access. In order to comply with such a request, it would be necessary for court personnel to carefully review each record in the database and redact all confidential information from the records—a costly, time-consuming, and perhaps impossible task. The committee is aware that other courts have been confronted with similar requests, and concluded that a statewide policy is needed to address this issue. Therefore, in response, the committee deleted from the comment to the rule the sentence that indicated that it is left to individual courts to decide whether

to comply with bulk requests. Under the rule, courts must comply with requests for records on a case-by-case basis only.

Comments on denying remote electronic access to records in specified proceedings, as provided in rule 2074(b), and the committee's responses
David De Alba, Special Assistant Attorney General (comment 7), suggested adding the following to the list of records that are not available remotely: (1) records in civil harassment proceedings under Code of Civil Procedure section 527.6; (2) records in personal injury and medical malpractice cases, which generally include personal medical information and which the Legislature has recognized require special privacy protection under Government Code section 6254(c); and (3) records filed under seal under Government Code section 12652(c).

The committee agreed that records in civil harassment proceedings under Code of Civil Procedure section 527.6 should be added to the list of records that are not available by remote electronic access but only by public terminals at the courthouse, and has done so by adding a subdivision (b)(6) to rule 2074. Allegations in these proceedings are analogous to those in domestic violence and dissolution stay-away orders to which subdivision (b)(1) limits access.

Government Code section 6254(c), which Mr. De Alba references, is contained in the Public Records Act, which does not apply to the courts and exempts disclosure of personnel, medical, or similar files when such disclosure would constitute an unwarranted invasion of personal privacy. Records containing personal medical information (whether in personal injury and medical malpractice cases or in other types of cases) may be sealed on a case-by-case basis under rule 2075. Therefore, the committee declined to add these records to rule 2074(b).

Government Code section 12652(c), which Mr. De Alba also references, provides that complaints filed under the False Claims Act (Gov. Code, §§ 12650–12655) must be filed under seal and may remain under seal for up to 60 days. The committee also declined to add this record to rule 2074(b).

Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) states that there is no substantial justification for distinguishing between the information available through electronic access at the courthouse and that available through remote electronic access, and that limitations on remote electronic access should be eliminated in favor of a requirement that records that are subject to statutory requirements of confidentiality or that have been ordered sealed not be subject to electronic access of any kind. This comment also proposes that parties be obligated to include an identifying statement on the cover of any document or exhibit that is subject to a

confidentiality requirement, and that the court is not responsible for public disclosure of a document so identified. Finally, it proposes that restrictions on remote electronic access to all criminal case records should be eliminated and replaced with a provision restricting electronic access only in regard to documents or exhibits sealed under statute or court rule.

As noted under Rationale for Recommendation, the reason the committee singled out the six enumerated proceedings for special treatment is because of the sensitive nature of the information that parties are required to provide in them. Government Code section 68150(h) requires that court records preserved or reproduced in electronic form "be made reasonably accessible to all members of the public for viewing and duplication as would the paper records." The committee believes that this rule is a reasonable interpretation of the statute. It also reflects the fact that the Legislature has recognized that many of the records in these proceedings should be closed to the public. The approach the committee has taken in this subdivision is in accord with the approach being taken (or being considered) by both the federal courts and many other state courts, as noted under Rationale for Recommendation. For the policy reasons discussed at length there, the committee declined to eliminate the restrictions on remote electronic access.

Ashley Gauthier, Legal Fellow at the Reporters Committee for Freedom of the Press (comment 9), concurred with the comments made by Gray Cary Ware & Freidenrich. She also proposed that the rule not impose limitations on remote electronic access, on the basis that "any information that is contained in a court record is not subject to a privacy interest."

The committee disagrees with this position. A right of privacy is specifically afforded under article I, section 1 of the California Constitution. Additionally, the federal courts have found an informational right of privacy in court records under the U.S. Constitution, which is an "individual interest in avoiding disclosure of personal matters." (*In re Crawford* (9th Cir. 1999) 194 F.3d 954, 958, following *Whalen v. Roe* (1977) 429 U.S. 589, 599 [97 S.Ct. 869, 51 L.Ed.2d 64].) For example, indiscriminate public disclosure of social security numbers that are contained in court filings, particularly when accompanied by names and addresses, "may implicate the constitutional right to informational privacy." (*Id.* at p. 958.)

José Octavio Guillén, Executive Officer/Clerk at the Superior Court of Riverside County (comment 13), indicated in his comments that his court strongly disagrees with the courthouse-versus-remote distinction in rule 2074(b) because (1) it requires courts to "chase technology" and continually update access rules as new technology becomes available that allows court records to be electronically collected at the courthouse; (2) it poses access-to-justice issues because of the

limited hours a courthouse is open; and (3) it requires courts to make computer system modifications that would be unnecessary if there were no distinction.

It certainly is not the committee's intention to make the work of the courts more difficult, but, as discussed under Rationale for Recommendation in this report, it is the position of the committee that there are important policy reasons for limiting remote access to the records specified. As noted in rule 2072, the committee recognizes the important public service that courts perform in providing remote electronic access in all other cases to which access is not otherwise restricted by law.

Loree Johnson, Information Systems Manager at the Superior Court of Siskiyou County (comment 17), stated in her comments that information that is available to the public at the courthouse should also be available remotely if the court wishes it to be. She notes that Siskiyou is a very rural county, and it is a hardship for people in remote areas to travel many miles to the courthouse to view information that could be made available on the Internet.

The rules *do* provide for remote electronic access to most types of court records, and rule 2072 specifically acknowledges the benefits to the public that should result from providing this access. However, courts may not decide, by local rule or policy, to provide remote access to the records specified in rule 2074(b). The purpose of the rules is to provide a statewide policy regarding public access and privacy that applies to all trial courts. There is also nothing in the rules that would prevent a court from sending a record by mail, fax, or e-mail to a person who cannot come to the courthouse.

Comments on denying electronic access based on resource limitations, as provided in rule 2074(d), and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8), suggested that the rule clarify that if records are available only in electronic form, the court must ensure that the public's right of access is accommodated. Harry Hammit, Editor at Access Reports (comment 14), proposes that courts be encouraged, and be provided with funds, to move aggressively toward providing access.

The committee amended the rule to provide that courts may limit electronic access as long as some type of access is provided.

Comments on conditions of use in rule 2074(e), and the committee's response
Beth Givens, Director of Privacy Rights Clearinghouse (comment 11), and Linda Robertson, Supervising Attorney at the California Appellate Project (comment 20), both expressed concern about the language in this rule, which sets forth as one

of the conditions of access that the user consent to "monitoring" by the court of access to its records. They proposed that the rule specify the information that will be collected, and who will have access to it and under what circumstances.

The committee believes that this matter is adequately addressed by a change it made to rule 2074(g), which now provides as follows: "A court must post on its public-access Web site a privacy policy to inform members of the public accessing its records maintained in electronic form of the information it collects regarding access transactions and the uses that the court may make of the collected information."

Comments on rule 2075's limitation on public access based on overriding interest, and the committee's responses

Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) proposed that this rule refer to rule 243.2 as well as rule 243.1 of the California Rules of Court with respect to requirements for a court's sealing order.

The committee deleted the reference to the requirements for a court's sealing order and amended the rule to provide: "A court must not provide electronic access to any court record maintained in electronic form that has been sealed under rule 243.1."

Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. also proposed that this rule provide that courts may adopt procedures for the separate filing, redaction, or other method of identifying and excluding certain types of information from remote electronic access, including social security numbers, financial account numbers, names of confidential informants in criminal proceedings, information about victims of sexual abuse crimes, and information about persons seeking temporary restraining orders in domestic violence, sexual abuse, or stalking cases.

In the advisory committee comment appended to the rule, the committee suggests the types of information that parties may request the court to seal, such as medical or employment records, tax returns, financial account numbers, credit reports, and social security numbers. In drafting the rules, the committee considered restricting remote access to specific data elements in a court record, such as a party's financial account numbers, but concluded that the problem with this approach is one of practical implementation: it would require someone in the clerk's office to carefully read each document filed with the court to ascertain whether there are any matters in the document that need to be redacted, and might subject the courts to liability for failing to redact all confidential data elements. Therefore, the committee concluded that the more workable approach is to limit remote

electronic access to certain categories of cases (as is done in rule 2074(b)) and not to items of information that must be provided in specified records.

Comment on contracts with vendors in rule 2076, and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) proposed that this rule require that a vendor provide public access to a court's records in a manner consistent with the requirements of law.

The committee amended the rule in response to this comment so that it now reads as follows: "A trial court's contract with a vendor to provide public access to its trial court records maintained in electronic form must be consistent with these rules, and must require the vendor to provide public access to these records and to protect the confidentiality of these records as required by law . . . ."

Comment on fees for electronic access in rule 2077, and the committee's response
Gray Cary Ware & Freidenrich on behalf of California Newspaper Publishers Association et al. (comment 8) proposed that this rule should make clear that vendors may not charge fees in excess of those associated with the costs of duplication, as provided by Government Code section 68150(h).

The committee revised this rule in response to this comment by adding the following sentence to the rule: "To the extent that public access to a court's records maintained in electronic form is provided exclusively through a vendor, the court must ensure that any fees the vendor imposes for the costs of providing access are reasonable."

Recommendation
The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2002:

1. Adopt rules 2070–2077 of the California Rules of Court to:

   (a) Set forth statewide policies on providing public access to trial court records maintained in electronic form, while protecting privacy and other legitimate interests in limiting disclosure of certain records; and

   (b) Set forth statewide policies regarding courts' contracts with vendors to provide public access to court records maintained in electronic form.

2. Repeal section 38 of the Standards of Judicial Administration.

The text of the proposed rules is attached at pages 26–33, and the text of the standard to be repealed is attached at pages 34–36.

Attachments

Rules 2070, 2071, 2072, 2073, 2074, 2075, 2076, and 2077 of the California Rules of Court are adopted, effective January 1, 2002, to read:

DIVISION VI
RULES FOR FAX AND ELECTRONIC FILING AND SERVICE
CHAPTER 1. FAX FILING AND SERVICE RULES ***
CHAPTER 2. ELECTRONIC FILING AND SERVICE RULES
CHAPTER 3. PUBLIC ACCESS TO ELECTRONIC TRIAL COURT RECORDS

Rule 2070. Definitions

(a) **[Trial court records]** As used in this chapter, "trial court records" are all documents, papers, and exhibits filed by the parties to an action or proceeding; orders and judgments of the court; and those items listed in subdivision (a) of Government Code section 68151, excluding reporters' transcripts 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.

(b) **[Trial court records maintained in electronic form]** As used in this chapter, "trial court records maintained in electronic form" are computerized records, regardless of the manner in which they have been computerized. The term does not include trial court records that are maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.

(c) **[The public]** As used in this chapter, "the public" is an individual, a group, or an entity, including print or electronic media, or the representatives of an individual, a group, or an entity.

Advisory Committee Comment

Subdivision (a). This subdivision sets forth a definition of "trial court records" that incorporates the definition of "court record" set forth in Government Code section 68151(a). It is also in accord with the definition of "judicial record" set forth in Code of Civil Procedure section 1904, which defines a "judicial record" as the record or official entry of the court proceedings, or the official act of a judicial officer in an action or special proceeding. Documents that reflect an official action of the court, such as the court minutes and the court's written dispositions, are included within the definition of court records. The definition recognizes that the public right of access to court records does not apply to all of a court's records and files, but only to records that

officially reflect the work of the court. (See *Copley Press Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 113–15 [7 Cal.Rptr.2d 841].)

Rule 2071. Applicability

(a) **[Access by parties and attorneys]** The rules in this chapter do not limit access to trial court records maintained in electronic form by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or California Rules of Court.

(b) **[Access to court's register of actions]** The rules in this chapter do not limit remote electronic access to a court's register of actions, as defined in Government Code section 69845, or its calendars.

Rule 2072. Purpose

The rules in this chapter are intended to provide the public with reasonable access to trial court records maintained in electronic form, while protecting privacy interests. Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to trial court records maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to trial court records may also foster in the public a more comprehensive understanding of the trial court system. The rules in this chapter are not intended, however, to provide public access to trial court records to which the public does not otherwise have a right of access.

Advisory Committee Comment

Under Code of Civil Procedure section 1010.6(b), the Judicial Council is required to adopt uniform rules for the electronic filing and service of documents in the trial courts, that include statewide policies on vendor contracts, privacy, and access to public records. The rules in this chapter set forth such statewide policies. These rules attempt to balance the right of public access to trial court records maintained in electronic form against the right of privacy and other legitimate interests in limiting disclosure of certain records.

Rule 2073. Public access

(a) **[General right of access]** All trial court records maintained in electronic form must be made available to the public except as

otherwise provided by law, including, but not limited to, statutes, California Rules of Court, and court orders. The extent to which trial court records are made available to the public must not be determined by the medium in which the records are maintained unless the rules in this chapter or another legal authority provides otherwise.

(b) [Access only on case-by-case basis] A trial court must grant public access to its trial court records maintained in electronic form only when the record is identified by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis.

(c) [Records that become inaccessible] If a trial court record maintained in electronic form is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to copies of the record that were made by the public before the record became inaccessible.

Advisory Committee Comment

Subdivision (a). This subdivision states the general rule that trial court records are open to the public for inspection and copying. (See *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 597 [98 S.Ct. 1306, 55 L.Ed.2d 570] and *KNSD Channels 7/39 v. Superior Court* (1998) 63 Cal.App.4th 1200, 1203 [74 Cal.Rptr.2d 595].) Currently, there are no statutes or California Rules of Court providing for public access to trial court records, whether in paper or electronic form. Public access is afforded under the common law. (See *Copley Press, Inc. v. Superior Court* (1998) 63 Cal.App.4th 367, 373 [74 Cal.Rptr.2d 69].) This subdivision indicates that public access to specified court records may be precluded by law. (See, e.g., Fam. Code, § 3552 [sealing of tax returns filed in support proceedings] and Cal. Rules of Court, rule 985(h) [confidentiality of indigent defendant's in forma pauperis records].)

Subdivision (b). This subdivision provides that trial courts must grant public access to their records maintained in electronic form on a case-by-case basis only. This is consistent with the procedures courts employ for requests for access to paper files; i.e., courts make paper files available on request, one file at a time, to individuals who ask for a particular file. It addresses the concerns stated by the court in *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157 [32 Cal.Rptr.2d 382], in which the court denied a commercial vendor's request for periodic copies of the court's computerized database of docket information about every person against whom criminal charges were pending. The court found a "qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending" in a particular court or group of courts. (*Id.* at p. 165.) The court noted that "[i]t is the aggregate nature of the information which makes it valuable to respondent; it is that same quality which makes its dissemination constitutionally dangerous." *(Ibid.)* The court also noted the adverse impact of disseminating a database to private vendors, with its potential for frustrating policies permitting the subsequent sealing or destruction of records, or limiting the dissemination of similar records by other criminal justice agencies. (*Id.* at pp. 166–67 ["If, for example, the court ordered a record maintained by a criminal justice agency to be sealed or destroyed because a defendant had been found factually innocent of the charges . . ., the information would still be available for sale by

respondent. Or, . . . if a defendant was granted statutory diversion, this information would be available to the public from respondent even though it could not be obtained from the California Department of Justice"].)

Rule 2074. Electronic access

(a) [General rule] Electronic access to trial court records maintained in electronic form must be reasonably available to the public by means of networks or software that is based on industry standards or is in the public domain. Access must be provided at public terminals at the courthouse and by remote electronic access, except as otherwise provided in subdivision (b) of this rule. Courts should encourage availability of access at public off-site locations.

(b) [Records not available by remote electronic access] The following trial court records maintained in electronic form must not be made available to the public through remote electronic access but only through public terminals at the courthouse:

(1) Trial court records in proceedings under the Family Code, including, but not limited to, proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; and child custody proceedings.

(2) Trial court records in juvenile court proceedings.

(3) Trial court records in guardianship and conservatorship proceedings.

(4) Trial court records in mental health proceedings.

(5) Trial court records in criminal proceedings.

(6) Trial court records in civil harassment proceedings under Code of Civil Procedure section 527.6.

(c) [Limitation on public access by law] Subdivision (b) of this rule is not intended to require public access to records in any specified proceeding to which the public does not otherwise have a right of access.

(d) [Other limitations on electronic access based on resource limitations] A court is not required to provide electronic access to its trial court records if this access is not feasible because of the court's resource limitations, as long as the court provides reasonable public access in some form to these records.

(e) [Conditions of use by persons accessing records] Electronic access to trial court records by the public is subject to two conditions: (1) the user's consent to access the records only as instructed by the court; and (2) the user's consent to the court's monitoring of access to its records. A court must give notice of these conditions in any manner it deems appropriate. The court may deny access to members of the public for failure to comply with the conditions of use. Any member of the public who willfully destroys or alters any trial court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

(f) [Notices to persons accessing records] A court must give notice of the following information to members of the public accessing its trial court records maintained in electronic form. A court may give these notices in any manner it deems appropriate.

(1) The court staff member(s) to contact about the requirements for accessing the court's records electronically.

(2) Copyright and other proprietary rights that may apply to information in a case file absent an express grant of additional rights by the holder of the copyright or other proprietary right. The notice should indicate that (a) use of this information is permissible only to the extent permitted by law or court order; and (b) any use inconsistent with proprietary rights is prohibited.

(3) The status of the trial court records available by electronic access. Unless electronically certified by the court, trial court records available by electronic access do not constitute the official record of the court. The notice should indicate the procedure and any fee required for obtaining a certified copy of an official record of the court.

(g) [Access policy] A court must post on its public-access Web site a privacy policy to inform members of the public accessing its records maintained in electronic form of the information it collects regarding

access transactions and the uses that the court may make of the collected information.

Advisory Committee Comment

Subdivision (a). This subdivision provides for noncommercial access to court records. The rationale for this provision is that the public should share the benefits of technology, including more efficient access to court records. The reasons for requiring access through industry-standard software and for putting terminals in publicly accessible places are to prevent any exclusive commercial control of court records, to make these records available to the public at little or no charge, and to accommodate members of the public who do not have access to personal computers.

Subdivision (b). This subdivision denies remote electronic access to records in the specified proceedings because of the personal and sensitive nature of the information parties are required to provide to the court in these proceedings. Public access to electronic court records in these proceedings is available only at public terminals at the courthouse. The Legislature has recognized that many of the records in the specified proceedings should be closed to the public. (See, e.g., Fam. Code, § 3552 [parties' tax returns filed in support proceedings must be sealed]; Pen. Code, § 1203.05 [probation reports are public only for 60 days]; Prob. Code, § 1513(d) [report of investigation and recommendation concerning proposed guardianship is confidential]; Welf. & Inst. Code, § 827 (access to case files in juvenile court proceedings is generally restricted).) Government Code section 68150(h) requires that court records preserved or reproduced in electronic form must "be made reasonably accessible to all members of the public for viewing and duplication as would the paper records." The committee believes that this subdivision is a reasonable interpretation of the statute.

This subdivision is based on the committee's conclusion that there is a fundamental difference between paper records that may be examined and copied only at the courthouse and records maintained in electronic form that may be accessed and copied remotely. The committee concluded that unrestricted Internet access to case files would compromise privacy and, in some cases, could increase the risk of personal harm to litigants and others whose private information appears in case files.

This subdivision is based in part on the U.S. Supreme Court's 1989 decision in *United States Dep't of Justice v. Reporters Committee for Freedom of the Press* 489 U.S. 749 [109 S.Ct. 1468, 103 L.Ed.2d 774], in which the court referred to the relative difficulty of gathering paper files as "practical obscurity." Unless a case achieved notoriety, sensitive information in the case file was unlikely to circulate beyond those directly concerned with the case. The inherent difficulty of obtaining and distributing paper case files effectively insulated litigants and third parties from the harm that could result from misuse of information provided in connection with a court proceeding. This subdivision is also based on other court decisions that have recognized the need to protect individual privacy because of the increasing computerization of public and private records. (See, e.g., *White v. Davis* (1975) 13 Cal.3d 757, 774–75 [120 Cal.Rptr. 94] and *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 265 [198 Cal.Rptr. 489].)

This subdivision is based, as well, on the committee's conclusion that the judiciary has a custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of case files. Like other government entities that collect and maintain sensitive personal information, the judiciary must balance the public interest in open

court records against privacy and other legitimate interests in limiting disclosure. While there is no question that court proceedings should not ordinarily be conducted in secret, the public's right to information of record is not absolute. When the public's right of access conflicts with the right of privacy, the justification supporting the requested disclosure must be balanced against the risk of harm posed by the disclosure. (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 166 [32 Cal.Rptr.2d 382].)

This subdivision is also based on the committee's conclusion that if courts do not recognize a distinction between electronic and paper records, the courts' electronic records may be used to circumvent policy protections that the Legislature has extended to records held by other agencies and entities, e.g., under various provisions of the Public Records Act (Gov. Code, § 6250 et seq.) and the California Information Practices Act (Civ. Code, § 1798 et seq.).

Subdivision (d). This subdivision acknowledges that courts may preclude or limit electronic access to trial court records because of resource constraints. The committee expects, however, that courts will meet the requirements of rule 2073(a) as these constraints are removed.

Subdivision (g). This subdivision is based on Government Code section 11015.5, which requires state agencies (but not the courts) that electronically collect personal information about users of their Web sites to give notice to these users of the existence of the information-gathering method and the type of personal information that is being collected as well as the purpose for which the information will be used. This subdivision is also in accord with Government Code section 11019.9, which requires state departments and agencies (but not the courts) to enact and maintain a permanent privacy policy in accordance with the California Information Practices Act (Civ. Code, § 1798 et seq.).

Such a privacy policy might notify users that the court's server may gather and store the following information: (1) the user's Internet domain and IP address; (2) the type of browser and operating system used to access the site; (3) the date and time of access; (4) the pages viewed on the site; and, (5) if the user reached the site from another site, the address of the originating site. The policy might advise users that this information is collected to make the site more useful, to diagnose problems with the server, to keep the site running smoothly, to learn about the number of visitors to the site and the types of technology they use, and to improve the content of the site.

Rule 2075. Limitation on public access to sealed records

A court must not provide electronic access to any court record maintained in electronic form that has been sealed under rule 243.1.

Advisory Committee Comment

This rule is based on numerous judicial decisions that have held that the right of public access to judicial records is not absolute but must be reconciled with overriding public or private interests. (See *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 598 [98 S.Ct. 1306, 1312, 55 L.Ed.2d 570]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1211 [86 Cal.Rptr.2d 778].) Overriding interests that may justify denying public access include preserving the litigants' right to a fair trial (see, e.g., *Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 13–14 [106 S.Ct. 2735, 2743, 92 L.Ed.2d 1]; *NBC Subsidiary (KNBC-TV), supra*, 20 Cal.4th at pp. 1216–17) and protecting the privacy interests of litigants or third parties.

(See, e.g., *Press-Enterprise Co. v. Superior Court* (1984) 464 U.S. 501, 511–12 [104 S.Ct. 819, 824–25, 78 L.Ed.2d 629]; *Nixon, supra*, 435 U.S. at p. 598; and *Copley Press, Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 85 [278 Cal.Rptr. 443].) The rule anticipates that parties may ask the court to seal records that contain personal identifying information. This information may include, under appropriate circumstances, medical or employment records, tax returns, financial account numbers, credit reports, social security number, driver's license number, home address, or home or other personal telephone number. It may also include personal identifying information about minor children involved in court proceedings.

Rule 2076. Contracts with vendors

A trial court's contract with a vendor to provide public access to its trial court records maintained in electronic form must be consistent with these rules, and must require the vendor to provide public access to these records and to protect the confidentiality of these records as required by law, including but not limited to statute, California Rules of Court, and court order. Any contract between a court and a vendor to provide public access to the court's records maintained in electronic form must specify that the court is the owner of these records and has the exclusive right to control their use.

Advisory Committee Comment

This rule provides that courts that elect to contract with a vendor to provide public access to their electronic records must require the vendor to provide access to these records and to protect the confidentiality of these records as required by law, and that the contract must be consistent with these rules. This follows the general principle set forth in the California Information Practices Act (Civ. Code, § 1798 et seq.), which applies to state agencies but not to the courts (Civ. Code, § 1798.3(b)(2))—that state agencies that contract with a private vendor to maintain records containing personal information must ensure that the vendor complies with the act's requirements. (See *id.* at § 1798.19.)

Rule 2077. Fees for electronic access

Trial courts may impose fees for the costs of providing public access to their trial court records maintained in electronic form, as provided by Government Code section 68150(h). On request, a trial court must provide the public with a statement of the costs on which these fees are based. To the extent that public access to a court's records maintained in electronic form is provided exclusively through a vendor, the court must ensure that any fees the vendor imposes for the costs of providing access are reasonable.

Standard 38 of the California Standards of Judicial Administration is repealed, effective January 1, 2002.

~~**Sec. 38. Access to electronic records**~~

~~**(a) [Intent]** Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of electronic records. Access to trial courts' electronic records can save the public time, money, and effort and encourage the courts to be efficient in their operations. Improved access to court records may also foster a more comprehensive understanding of the trial court system. Because of such benefits, trial courts are encouraged to explore possibilities for creating electronic court records and to offer public access to such records if their resources permit. Such access should not harm legitimate privacy interests or compromise protections established by law or court order.~~

~~**(b) [Definitions]** The following definitions apply to this standard:~~

~~(1) A "record" is any information that is part of an official case file of a court, that constitutes court action, or that otherwise reflects an official action of a court. Records include those items listed in Government Code section 68151(a). Records do not include personal notes or preliminary memoranda of judges or other judicial branch personnel.~~

~~(2) An "electronic record" is any record that is accessible electronically, regardless of how it was created. The term does not include records on microfiche, paper, or any other medium that can be read without the use of an electronic or mechanical device.~~

~~(3) "Access" is the ability to obtain or make use of electronic records by any means.~~

~~(4) "Public access" is access that is not restricted by law or an order of the court.~~

~~(5) A "summary report" is a compilation of public records that is produced in the ordinary course of business.~~

~~**(c) [Scope]** This standard applies only to public access to the electronic records that trial courts prepare, own, use, or retain. The standard does not apply to electronic access by a person who is a party to a case or the attorney of such a person, the electronic filing of documents, or the electronic distribution of any~~

court calendar records. A court should not grant access to an electronic record that is sealed, is made confidential, or is required to be expunged after a time or event determined by law or an order of the court. Cases involving family law, child support, juvenile law, mental health, probate, criminal law, or public offenses, as they are defined in Penal Code section 15, should not be included in electronic records made available through remote access.

(d) [Policies] The objective of this standard is to provide a trial court ("a court") with a reasonable framework for providing public access ("access") to its electronic records.

(1) (*Electronic records*) A court should grant access to an electronic record only when the record is identified by the name or number of a case and only on a case-by-case basis. A court need not grant access to all or part of an electronic record if access is not feasible because of the court's resource limitations.

(2) (*Summary reports*) A court may provide access to electronic versions of summary reports.

(3) (*Direct electronic access for the public*) Direct electronic access to court records should be reasonably available to the public remotely, through the Internet, or by means of software based on industry standards or in the public domain. When feasible, remote access should be available at public off-site locations such as public libraries. Access should also be available at public terminals at the courthouse.

(4) (*Contracts with vendors*) A court that elects to contract with a vendor to release its records electronically should, in accordance with these policies, require the vendor to protect confidentiality as required by law or court order and should provide the public with direct electronic access to such records without requiring access through the vendor.

(5) (*Disclaimers*) As appropriate, a court should provide disclaimers regarding the accuracy of its electronic records.

(6) (*Information on access*) A court that provides access to its electronic records should provide the public with information on the requirements for access.

~~(e) [Evaluation] Any trial court that provides public access to its electronic records should submit to the Judicial Council a copy and an evaluation of its access policies as directed by the council.~~

Comments for SPR01-21
Public Access to Electronic Trial Court Records (adopt rules 2070–2077)

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	RoseAnn Alfaro Supervising Legal Clerk III Superior Court of Stanislaus County	A	N	No comment.	No response required.
2.	John Avery President California Court Reporters Association			1. The relationship between a court reporter as an independent contractor or an employee of the court for purposes of transcript preparation and the obligation of a reporter to provide transcripts in electronic form are not addressed. It would appear that the policies, privacy issues and access to public records are not applicable to court reporters, court reporter transcripts and the stenographic notes retained by court reporters. It is suggested the rule clearly state it is not intended to apply to the circumstances stated above. 2. It is suggested specific reference to the prohibitions provided in Government Code §69954(d) be referenced.	1. Based on this comment, rule 2070(a) was revised to exclude from the definition of "trial court records" reporters transcripts for which fees are required. 2. The committee declined to include the reference.
3.	Cindy Avila Supervising Legal Clerk Superior Court of Stanislaus County	A	N	No comment.	No response required.
4.	Hon. Ronald L. Bauer Chair, Rules and Forms Committee Superior Court of Orange County	A	Y	For a first foray into previously untrodden territory, the proposed rules are excellent.	No response required.
5.	Susan Cichy Administrator Superior Court of Los Angeles County	A	N	1. I agree that criminal records are one of the areas that should not be remotely accessed.	1. Remote electronic access to records in criminal proceedings is not allowed for the reasons stated in the Advisory Committee Comment to rule 2074(b).

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				2. All other provisions seem to allow local court control of process – taking into consideration funding and other local restrictions.	2. Local court control of process is permitted under the rules; however, the rules set forth *statewide* policies governing vendor contracts, privacy, and public access to electronic court records, as required by Code of Civil Procedure section 1010.6(b), with which all trial courts in this state must comply. Contrary local restrictions are not permitted.
6.	John A. Clarke Executive Officer/Clerk Superior Court of Los Angeles County	A	N	No comment.	No response required.
7.	David De Alba Special Assistant Attorney General Office of the Attorney General		Y	Proposed Rule 2074 limiting remote electronic access to certain types of court records is a good example of the safeguards the proposed rules provide against unwarranted invasions of individual privacy interests. The Judicial Council may wish to consider other types of proceedings which contain sensitive personal information, including the following: 1. Proceedings under Civil Code section 527.6 (temporary restraining orders prohibiting harassment).	1. The committee agreed that records in civil harassment proceedings under Code of Civil Procedure section 527.6 should be added to the list of records that are not available by remote electronic access but only available at public terminals at the courthouse. Subdivision (b)(6) has been added to rule 2074, which precludes remote electronic access to these records. The committee's rationale is that

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					allegations in these proceedings are analogous to those in domestic violence and dissolution stay-away orders to which rule 2074(b)(1) limits access.
				2. Personal injury and medical malpractice cases, which the legislature has recognized requires privacy protection, see Government Code section 6254(c).	2. Government Code section 6254(c) is contained in the Public Records Act, which does not apply to the courts. It exempts disclosure of personnel, medical, or similar files when such disclosure would constitute an unwarranted invasion of personal privacy. Electronic court records containing this type of information may be sealed on a case-by-case basis under rule 2075. Therefore, the committee declined to add these records to rule 2074(b).
				3. The rules may wish to address actions filed under seal pursuant to the False Claims Act. Propose — Rule 2073 [False Claims Action Under Seal] "Actions filed under seal pursuant to Government Code section 12652(c) are not to be maintained in electronic form or accessible to the public by electronic register while under seal. Absent court order, only documents filed subsequent to the lifting of the seal shall be maintained in electronic form."	3. Government Code section 12652(c) provides that complaints filed under the False Claims Act must be filed under seal and may remain under seal for up to 60 days. The committee also declined to add this record to rule 2074(b).
8.	Attn. Yvette Depina Office Manager for James M. Chadwick Gray Cary Ware & Freidenrich LLP		Y	1. Rule 2070(a) should include in the definition of court records the terminology in the *Copley Press, Inc. v. Superior Court* 6 Cal. App. 4th 106 (1992) decision that the public's right of access extends to all "the various documents filed in or received by the	1. The committee declined to amend rule 2070(a) based on this comment, concluding that the definition covers the court records set forth in *Copley*. The advisory committee comment to this rule

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	on behalf of: California Newspapers Publishers Association, California First Amendment Coalition, The Copley Press, Inc., Freedom Communications, Inc., Hearst Corporation, Los Angeles Times, McClatchy Company, Reporters Committee for Freedom of the Press, and San Jose Mercury News, Inc.			court". 2.Rule 2071(b) limits the application of the proposed rules by expressly excluding "a court's register of actions . . .court indexes, or court calendar records." We submit that there is no sound foundation for this exclusion. . . . if the disclosure of such compilations is deemed to constitute an impermissible invasion of personal privacy, the remedy . . . is to provide for the creation and maintenance of electronic databases designed to segregate any truly private information into non-public fields, and permit public disclosure of the rest of the information in the database. 3. [Rule 2072] We suggest that the statement of purpose be revised to give explicit recognition to the constitutional stature of the right of public access, as found by the California Supreme Court in *NBC Subsidiary, Inc. v. Superior Court* 20 Cal. 4th 1178 (1999) and as observed by the Judicial Council in issuing California Rules of Court 243.1 *et seq*.	so states. 2. The concern of this comment is that because rule 2071(b) excludes the register of actions and court calendars from the application of the rules that the public would *not* have a right of access to these records maintained in electronic form. This was *not* the intention of the committee. As a result, the committee revised the rule to specifically provide that the rules *do not limit remote electronic access* to a court's register of actions or its calendars. 3. *The committee considered the question but decided that there was no need to explicitly acknowledge the constitutional right of privacy declared in Article I, section 1 of the California Constitution.*

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				4. [Rule 2073(a)] We are concerned that this provision of the rules appears to permit the adoption of local rules or standing orders restricting public access to court records that are subject to constitutional or statutory rights of public access. We believe that this rule should be revised to provide that local rules and standing orders may not restrict access in any manner inconsistent with the U.S. and California Constitutions or California statutes or rules of court.	4. The committee never intended that courts, by local rule, could limit access to categories of records not restricted by the California Rules of Court (or by statute or court order). Therefore, the committee changed the reference in rule 2073(a) from "rule" to "California Rules of Court" so that the rule now reads: "All trial court records maintained in electronic form must

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				5. [Rule 2073(b)] We suggest that proposed rule 2073(b) be eliminated entirely. The proposed rule imposes restrictions on access to trial court records maintained in electronic form that are not currently imposed on access to trial court records maintained in other forms. . . .The proposed rule would prohibit the public and the press from obtaining any information about proceedings of which they were not already aware. The restrictions imposed contravene the mandate of Government Code section 68150(h) that electronic court records "shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records". Restrictions comparable to those imposed by this proposed rule are not and never have been imposed on access to paper records. This restriction would prevent routine newsgathering techniques that the press have used for decades to provide information to the public about specific judicial proceedings and about the operations of the courts in general. The practice . . . of routinely seek[ing] access to all new cases filed in the courts each day [would be prohibited] because the reporter would not be able to provide a case name, number, or party.	be made available to the public, except as otherwise provided by law, including, but not limited to, statute, California Rules of Court, or court order." The committee also changed references to "rule" in rules 2071(a) and 2076 to "California Rules of Court." 5. The committee's legal justification for limiting access to access on a case-by-case basis is that courts clearly have authority to place reasonable time, place, and manner restrictions on affording public access so as not to interfere with the business of the courts. Other state and federal court access rules require case name and/or number for access. The rule does not limit the number of searches that may be conducted and does not prohibit anyone from, for example, searching for all new cases filed in the court each day by checking the court's register of actions. As is noted in the advisory committee comment to the rule, the provision that trial courts must grant public access to their records maintained in electronic form on a case-by-case basis only is consistent with the procedures courts employ with respect to requests for access to paper files, i.e., courts make papers files available on request, one file at a time, to individuals who ask for a particular file. It

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					addresses the concerns stated by the court in *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, in which the court denied a commercial vendor's request for periodic copies of the court's computerized database of docket information about every person against whom criminal charges were pending in the court, finding a "qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending." (*Id* at p. 165.)
				6. [Rule 2074(b)] Another troubling provision of the proposed rules is its broad prohibition on remote public access to certain categories of records. There is no substantial justification for distinguishing between the information available through local electronic access at the courthouse and through remote electronic access. We suggest that the limitations on remote electronic access be eliminated, in favor of a requirement that records that are subject to statutory requirements of confidentiality or that have been specifically ordered to remain sealed not be subject to electronic access of any kind. We recommend that the court provide that the parties have the obligation to identify on the cover or container of any document or exhibit that is subject to such a confidentiality requirement the express notation of that requirement, and that the courts are	6.As is noted in the advisory committee comment to rule 2074(b), the reason the committee singled out the enumerated proceedings for special treatment is because of the sensitive nature of the information that parties are required to provide in them. Government Code section 68150(h) requires that court records preserved or reproduced in electronic form must "be made reasonably accessible to all members of the public for viewing and duplication as would the paper records." The committee believes this rule is a reasonable interpretation of the statute. It also reflects the fact that the Legislature

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				not responsible for public disclosure of documents or evidence not so identified. The restrictions on remote electronic access to all criminal case records should be eliminated, and replaced with a provision . . . restricting electronic access only to those documents or evidentiary exhibits properly sealed pursuant to statute or court order. 7. [Rule 2074(d)] Our concern with proposed rule 2074(d) is primarily based on its ambiguity. These rules may at some point govern public access to trial court records exclusively, because some or all records will be maintained only in electronic form. We suggest that this provision be revised to clarify that to the extent that records are available only in electronic form, the courts must ensure that the public's right of access is accommodated. 8. [Rule 2074(e)] The apparent intent of this provision is to permit the court to impose restrictions designed to prevent abuse of the electronic access system, for example hacking into or maliciously altering a database. However, the language would apparently permit the imposition of conditions or instructions limiting access in a manner inconsistent with the public's constitutional, common law, and statutory access rights. [The rule] should be clarified to provide that it does not permit restrictions on access to court records not otherwise provided for in these rules.	has recognized that many of the records in these proceedings should be closed to the public. The rationale for prohibiting remote electronic access is set forth in the advisory committee comment to this rule. 7. The committee amended rule 2074(d) to provide that courts may limit electronic access as long as they provide some type of access. 8. The committee declined to amend rule 2074(e), because rule 2073(a) already provides that trial court records maintained in electronic form must be made available to the public except as otherwise provided by law.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				9.[Rule 2075] We believe that it would be more appropriate to frame this provision in the negative than in the positive, in order to clarify that other provisions of the proposed rules do not grant the power to limit access in a manner that does not comply with the public's right of access and Rule 241.3. We are concerned that because the proposed rule does not expressly incorporate all of the provisions of Rules 243.1 and 243.2, it will not adequately protect the public's right of access. We therefore propose that this provision be reworded to read: "A court may not limit access to any trial court record maintained in electronic form unless necessary to protect an overriding interest. A court may limit public access only by an order issued in accordance with the provisions of rules 243.1 and 243.2." We suggest that Rule 2075 be augmented to provide that the courts may adopt procedures for the separate filing, redaction, or other methods for the identification and exclusion of certain types of information not subject to remote electronic access.	9. Based on this comment, rule 2075 was revised to specifically provide that "[a] court must not provide electronic access to any court record maintained in electronic form that has been sealed under rule 243.1" (rule on sealing). This commentator also proposed that it would be more appropriate to frame the provision in the negative than in the positive to clarify that other provisions of the proposed rules do not grant the power to limit access in a manner that does not comply with the public's right of access. The committee declined to do so because rule 2073(a) already provides that trial court records maintained in electronic form must be made available to the public except as otherwise provided by law. This commentator also suggested that this rule should provide that courts may adopt procedures for the separate filing, redaction, or other methods for the identification and exclusion of certain types of information from remote electronic access. In the advisory committee comment to rule 2075, the committee suggests the type of information that parties may request the court to seal. In drafting the rules, the committee considered restricting remote

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					access to specific data elements in a court records, such as a party's financial account numbers, but concluded that the problem with this approach is one of practical implementation: it would require someone in the clerk's office to carefully read each document filed with the court to ascertain whether there are any matters in the document that need to be redacted, and might subject the courts to liability for failing to redact all confidential data elements. Therefore, the committee concluded that the more workable approach is to limit remote electronic access to certain categories of cases (as is done in rule 2074(b)) and not to items of information that must be provided in specified records.
				10. Rule 2076 should be revised to specifically provide that any vendor who contracts with a court to provide public access to trial court records in electronic form must provide the public with access to such records in a manner consistent with the requirements of the law. At present, this rule merely provides that vendors must maintain the confidentiality of court records, and makes no provision for access at all.	10. Based on this comment, rule 2076 was revised, so that it now provides as follows: "A trial court's contract with a vendor to provide public access to its trial court records maintained in electronic form must be consistent with these rules, and must require the vendor to provide public access to these records and to protect the confidentiality of these records as required by law."
				11. [Rule 2077] We believe that "overhead" costs cannot properly be passed along to the public, and we read proposed Rule 2077 as recognizing that fact. However, this provision is somewhat ambiguous, and clarification in this respect is probably advisable.	11. Based on this comment, rule 2077 was

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				Clarification would be advisable to make it clear that vendors providing electronic access under contract with the court may not charge fees in excess of those associated with the costs of duplication. 12. The proposed rules should expressly provide that trial court records maintained in electronic form may either be sealed or made public in accordance with the provisions of Rule 243.2, which governs both the sealing and unsealing of court records.	revised, so that it now provides as follows: "To the extent that public access to a court's records maintained in electronic form is provided exclusively through a vendor, the court must ensure that any fees the vendor imposes for the costs of providing access are reasonable." 12. As noted under response 9 above, rule 2075 has been amended to specifically provide that a court may not provide electronic access to any record that has been sealed.
9.	Ashley Gauthier Legal Fellow The Reporters Committee for Freedom of the Press	N	Y	1. The *United States Department of Justice v. Reporters Committee* 489 U.S. 749 (1989), which dealt with a complex executive branch regulatory scheme, should not be relied upon to create a broad policy regarding privacy and access to court records, which, under common law, have traditionally been open to the public.	1. The Committee has cited this case because it sheds light on the Supreme Court's concerns with respect to the dissemination of presumptively public records in an electronic environment, and suggests that the court believes there is a fundamental difference between records maintained in paper form and records maintained in electronic form that may be accessed and copied remotely. The committee acknowledges that under the common law, court records have traditionally been open to the public. However, the public right of access is a qualified right and such access may be limited based on privacy considerations and other overriding interests.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				2. The Reporters Committee urges the California Judiciary to reject any rules that would cut off public access to entire categories of documents and to reject rules that would limit access based upon the requester's identity or purpose.	2. The rules do not cut off public access to entire categories of documents: they merely restrict access to documents in the six proceedings specified in rule 2074(b) to access at the courthouse. The rules do not limit public access based on the requester's identity or purpose. Unlike PACER, which imposes a registration requirement on members of the public who wish to obtain access to federal court records, and unlike some other states which require members of the public to state their reasons for requesting court records and to disclose the purpose for which they intend to use the records, the proposed rules make court documents maintained in electronic form accessible to all members of the public, "no questions asked."
10.	Timothy Gee Management Analyst III Superior Court of San Mateo County	N	Y	1. The proposed rules are overbroad and leave much of the right to access open to interpretation and create potential liability of the courts to litigation over the right to access. 2.How different is the definition under Rule 2070(c) of public and the "public's right to access" under	1. The committee submits that the rules are sufficiently specific: they set forth six categories of cases in which remote access is prohibited (rule 2074(b); they authorize courts to limit access to specific records on a case-by-case basis and in accordance with the rules on sealing (rule 2075); and they provide that the public has a right of access to court records except as otherwise provided by law (rule 2073(a)). 2. *Westbrook* involved a vendor's request for copies of the court's computerized

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				2074(b) from the situation in *Westbrook v. County of Los Angeles* 27 Cal. App. 4th 157?	database of docket information about every person against whom criminal charges were pending in the court. Rule 2073(b) (and the advisory committee comment to that rule) address the concerns raised by the court in *Westbrook* by providing for access on a case-by-case basis only. Commercial vendors, as well as the media, are included within the definition of "the public" set forth in rule 2070(c), but are still only entitled to access on a case-by-case basis.
				3. Rules 2070(c) and 2074(b) are in conflict.	3. The committee believes that rules 2070(c) and 2074(b) are consistent.
				4. Does there need to be a statewide rule to define the distinction between an "electronic, public accessible record" and "official record" (when, if ever, can a publicly accessible electronic record be an official record)?	4. This issue is addressed by rule 2074(f)(3), which requires courts to give notice that, unless electronically certified by the court, trial court records available by electronic access do not constitute the official record of the court; this notice should indicate the procedure and fee for obtaining a certified copy.
				5. A further clarification is needed in Rule 2072 on what the public has a right to (see last sentence).	5. The committee believes that the last sentence of rule 2072 and rule 2074(c) make it clear that the proposed rules do not give members of the public access to records to which they do not otherwise have a right of access.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				6. Providing public access at public terminals at the courthouse to all electronic records under Rule 2074 potentially opens access to other restricted case information. 7. What is the basis for the distinction between remote and public access? 8. If these rules require the courts to make accessible all records kept in electronic format then how can a court restrict access to sensitive or confidential information in documents which may not, on their face, be confidential materials (e.g. exhibits to	6. The committee disagrees. The rules do not give the public a right of access to confidential court records. These records are not a part of the public electronic court file, just as confidential records in paper form are not a part of the public court file. 7. The basis for the distinction is that there is a fundamental difference between records that may be examined and copied only at the courthouse and records that may be accessed and copied remotely. The "practical obscurity" of records available only at the courthouse has effectively protected litigants and third parties whose personal information appears in case files from the widespread and virtually uncontrollable dissemination of this information, a protection that disappears when this information is available on the Internet. The limitation on remote access does not apply to cases in general, but only in the cases specified in rule 2074(b) because of the personal and sensitive nature of the information that parties are required to provide in these cases. 8. A party may request a sealing order under rule 2075 (and the sealing rules) to protect allegedly confidential material (not otherwise made confidential by statute or

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				motions which may contain confidential materials). 9. There must be a better definition of what constitutes trial court records. Are court minutes trial court records? 10. If a court engages in imaging its court files and records, does that put all of those documents imaged under the definition of electronic records, which are then to be made accessible?	California Rules of Court). 9. The advisory committee comment to rule 2070(a) states that "court minutes" are included within the definition of "trial court records." 10. Yes.
11.	Beth Givens Director Privacy Rights Clearinghouse	A	N	1. The most sensitive of court records, such as divorce proceedings and other family law matters, will not be available in full-text format online. I agree that this is a wise policy given the sensitive nature of these proceedings. I also agree that records containing sensitive identifying information such as Social Security numbers and bank/credit account numbers should not be available publicly because of their role in identity theft and other financial fraud schemes. 2. Rule 2074(e)(2) deserves additional discussion. What is meant by "monitoring" in this provision?	1. No response required. 2. Based on this comment, rule 2074(g) was revised so that it now provides as follows: "A court must post on its public access Web site a privacy policy to inform members of the public accessing its records maintained in electronic form of the information it collects regarding access transactions and the uses that the court may make of the collected information." 3. The committee believes that a limitation

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				3. Rule 2077 regarding fees. I recommend adding the word "reasonable" after the word "impose."	on the fees a court may charge is adequately provided by Government Code section 68150(h). However, the committee revised the rule to provide that any fees for electronic access charged by a vendor must be "reasonable."
12.	Sean P. Griffith California Judges Association, Family Law Committee		Y	Good idea.	No response required.
13.	José Octavio Guillén Executive Officer/Clerk Superior Court of Riverside County	AM	Y	1. [Rule 2070 (a)] We understand this to mean that all of the data in our case management system is available to the public without restriction. This rule only covers document images. Is this the correct interpretation? 2. [Rule 2070(c)] This may be difficult to implement because of the complexity of identifying a party attempting to gain access electronically. Conceptually a party on a case has a right to electronically access that case as soon as they are named as a party. 3. [Rule 2072] We completely agree. 4. [Rule 2073] We completely agree. 5. [Rule 2074] We strongly disagree with the courthouse vs. remote access aspects of this	1. The rules cover public access to electronic documents (rule 2070(a), (b)), and do not limit remote electronic access to a court's register of actions and calendars (rule 2071(b)). 2. The rules contemplate that there will be two levels of access: unrestricted access by the court, parties, and attorneys, and possibly restricted access by the public. Parties and attorneys will be able to access the entire court file by identifying themselves by a password or log-on. This is a matter that will be addressed by the rules on electronic filing. 3. No response required. 4. No response required. 5. It is certainly not the committee's intention to make the work of the courts

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				proposed rule. We feel that this poses technical problems because the trial courts will need to 'chase technology' and continually update access rules as new technology becomes available that allows court records to be electronically collected at the courthouse. This poses access to justice issues because of the limited hours that a courthouse is open. Being able to implement this rule at a minimum cost to the trial court is very important. The distinction between courthouse and remote access requires the court to make computer system modifications that would be unnecessary if there was no distinction. 6. [Rule 2074(b)] indicates records in juvenile, guardianship, conservatorship and mental health proceedings will be available to the public at the courthouse. It is our practice today, that those records are NOT available today via paper. This rule would seem to then open up access to currently unavailable records. Subdivision (b) also indicates that many family law and criminal records will be unavailable using remote access, where today those records are available in paper. This is very inconsistent and the courts will be setting up a situation to be in a continual state of conflict with other statutes already in place. Access to data should not be based on the media used to store that data. 7. Rule 2076 We completely agree.	more difficult, but, as set forth in the advisory committee comment to this rule, there are important policy reasons for limiting remote access to the records specified. As noted in rule 2072, the committee recognizes the important public service courts perform in providing remote electronic access in all other cases to which access is not otherwise restricted by law. 6. Rule 2074(c) and the last sentence of rule 2072 make clear that the rules do not provide public access to trial court records to which the public does not otherwise have a right of access. Rule 2073(a) provides that the extent to which records are made available to the public must not be determined by the medium (i.e., paper or electronic) in which they are maintained unless the rules or other legal authority provide otherwise. Rule 2074(b) prohibits remote electronic access to the records specified, but these records are available at the courthouse as are the paper records. All other records are available remotely, unless made confidential by law. 7. No response required.

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				8. Rule 2077 We agree with the need for this rule, but Riverside Superior Court will not charge fees for the following reasons: The public has already paid, through taxes, for the court to create electronic records; the court is realizing an advantage by reducing the number of people in the court by providing electronic access.	8. The committee recognizes that many courts will not charge fees; however, courts may do so subject to the limitations on fees set forth in the rule.
14.	Harry Hammitt Editor Access Reports		N	1. [Rule 2072] The benefits of electronic access to court records are spelled out reasonably well. 2. [Rule 2073] I completely disagree with (b). To require a member of the public to identify a file with the specificity suggested is to limit access to it as a practical matter to only those who are already familiar with the case.	1. No response required. 2. The committee's legal justification for limiting access to access on a case-by-case basis is that courts clearly have authority to place reasonable time, place, and manner restrictions on affording public access so as not to interfere with the business of the courts. Other state and federal court access rules require case name and/or number for access. The rule does not limit the number of searches that may be conducted and does not prohibit anyone from, for example, searching for all new cases filed in the court each day by checking the court's register of actions. As is noted in the Advisory Committee Comment to the rule, the provision that trial courts must grant public access to their records maintained in electronic form on a case-by-case basis only is consistent with the procedures courts employ with respect to requests for access to paper

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					files, i.e., courts make papers files available on request, one file at a time, to individuals who ask for a particular file. It is addresses the concerns stated by the court in *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, in which the court denied a commercial vendor's request for periodic copies of the court's computerized database of docket information about every person against whom criminal charges were pending in the court, finding a "qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending." (*Id* at p. 165.)
				3. [Rule 2074(b)] The availability of electronic access is too restricted. We have been led to believe that computers will make our ability to use information more efficient and easier, and while restricting access to certain kinds of sensitive information by limiting the physical locations where such records are available, probably puts into place a policy that will have severe unintended consequences in the future. I also believe that such restrictions on "criminal records" as a category is far too broad. Such records should not be treated in the same fashion as family and medical records.	3. The rules provide for remote electronic access to most types of court records, and rule 2072 specifically acknowledges the benefits to the public that should result from providing this access. Remote electronic access is prohibited in the cases specified for policy reasons. The rules do not deny access in these proceedings, but merely limit access to access at the courthouse

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				4. Rule 2074(d) properly reflect that access to electronic records requires the expenditure of time and money on the part [of] courts and it probably should not be a requirement for smaller courts to move aggressively towards such access. But all courts should be encouraged and perhaps provided grant money to move aggressively towards such access.	4. Courts are being encouraged to do so to the extent that resources allow.
				5. Rule 2074(e) strikes me as fine on the surface, but to be effective the conditions a court may impose must be clearly spelled out, they must be reasonable, and they must be applied even-handedly.	5. The committee certainly contemplates that the conditions will be clearly spelled out, reasonable, and applied even-handedly.
				6. Rule 2075 is not an appropriate policy to pursue. I realize that the concept of a public interest in non-disclosure already exists in California law, notably in the Public Records Act. However, I believe that the public interest in an access regime should run only towards promoting access, not non-disclosure. In other words, a record that could be withheld should be disclosed if the public interest in disclosure is deemed greater than the reasons for protecting the information, but a record should not be withheld because there is a deemed to be a public interest in doing so. Decisions to withhold should be limited to statutory exemptions, not to subjective interpretation of the public access.	6. Under California law, courts may order specified records sealed on making the findings specified in the rules on sealing (rule 243.1 et seq.), which are based on the Supreme Court's decision in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1211 [86 Cal.Rptr.2d 778]. This decision, as well as numerous others, recognize that the right of public access to court records is not absolute, but must be reconciled with overriding public or private interests.
				7. Rule 2076 is adequate to the extent that it says nothing more than a contractor should follow the same rules of confidentiality as would the court	7. Rule 2076 has been revised to provide

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				itself. But using vendors for public disclosure brings a host of other problems, particularly invidious fees or other restrictions to access placed on the legitimate access needs of the public. 8. Rule 2077 on fees seems to reflect that fees should be based on a schedule included in Government Code section 68150(h). Generally speaking, fees should be designed to cover marginal costs, and should not include reflexive use of out-moded per page fees that might allow for charging hundreds of thousands of dollars for electronic records which can be copied for only a few dollars. Fees should not be used as a revenue center, but as a way to defray legitimate costs. Experience has shown that fees are an obstacle to access, so it is important to hold fees at a reasonable level. 9. The policy assumptions underlying the proposals really need more work before adoption. The values of privacy and public access should be equally weighted; privacy should not be the presumed default position.	that a court's contract with a vendor must require the vendor to provide public access as required by law. The issue of fees is addressed by the committee's revision to rule 2077. 8. The Committee contemplates that many courts will decide not to charge any fees for providing public access (as is noted in item 8 of comment 13 from Riverside County). The committee agrees that fees should be held at a "reasonable" level and has added a provision to this rule requiring vendors that provide access to limit their fees to a "reasonable" amount. 9. The committee believes that the rules do not give greater weight to privacy than they do to the public right of access.
15.	Stephanie Harbin Supervising Legal Clerk II Superior Court of Stanislaus County	A	N	Agree with proposed changes.	No response required.
16.	Hon. Susan C. Harlan Superior Court of Amador County	A	N	No comment.	No response required.
17.	Loree Johnson	N	N	I believe that information which is available to the	The rules *do* provide for remote electronic

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	IS Manager Superior Court of Siskiyou County			public at the courthouse should also be available remotely, if the court wishes to make it so. I[t] seems to be a double standard to restrict information based on the means of delivery. We do not tell people that they can have copies of documents at the counter, but not through the mail or fax. Why should we have a separate rule about public information in electronic form? Siskiyou is a very rural county and it is a hardship on people in remote areas to travel many miles to the courthouse to view information that could be made available via the internet.	access to most types of court records, and rule 2072 specifically acknowledges the benefits to the public that should result from providing this access. However, courts may not decide, by local rule or policy, to provide remote access to the records specified in rule 2074(b). The purpose of the rules is to provide a statewide policy regarding public access and privacy that applies to all trial courts. There is nothing in the rules that would prevent a court from sending a record to a person who cannot come to the courthouse, for example, by mail, fax, or e-mail.
18.	Larry Maligie Court Technology Officer Superior Court of Butte County		N	I have no comment that disagrees with the Statewide Technology Resource Group.	No response required.
19.	Hon. Wayne L. Peterson Presiding Judge Superior Court of San Diego County		Y	The Trial Court Presiding Judges Advisory Committee recommends approval proposed new rules of court 2070–2077.	No response required.
20.	Linda Robertson Supervising Attorney California Appellate Project	AM	Y	1. [Rule 2074(b)] We support the proposed rule's provision protecting trial court records in family law, criminal, juvenile and mental health proceedings by allowing them to be accessed only from terminals in the courthouse, and not remotely. We ask that "habeas corpus pleadings and exhibits" be added to the list of records specified since they implicate many of the same privacy considerations as criminal proceedings and often contain particularly sensitive	1. Habeas corpus pleadings filed in electronic form in the trial court would not be accessible remotely by virtue of 2074(b)(5) if they are filed as part of a criminal proceeding. Habeas corpus pleadings filed in appellate courts cannot be covered by the rules because, under the mandate of Code of Civil Procedure section 1010.6(b), the scope of the rules is

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				matters about the petitioner's case or personal background, or that may affect his or her personal safety. 2. [Rule 2074(e) and (g)] One troubling part of the rule is that these subsections suggest that the court will monitor public access transactions in ways the rule does not explain. We are concerned that this suggests collecting information that identifies people who access records, without articulating what information will be collected, who will have access to it, under what circumstances, and whether such information will be subject to disclosure in litigation. We believe that these questions should be addressed before any plan for collecting this information, with its potential infringement of the privacy rights of those who access public information, is put into place.	limited to trial court records. 2. Based on this comment, rule 2074(g) was revised so that it now provides as follows: "On its public access web site, a court must post a privacy policy to inform members of the public accessing its records maintained in electronic form of the information it collects regarding access transactions and the uses that the court may make of the collected information."
21.	J. Rumble Superior Court of Santa Clara County		Y	Rule 2073(b) provides for access to court records on a case-by-case basis. We support that approach. Requests for court documents in electronic form should be handled in the same manner as access provided to paper files. Courts should not be required to provide compilations or responses to requests for electronic data that is not directly linked to the official record. The comments state that the CTAC left it to individual courts to decide whether to comply with "bulk requests." This approach is inconsistent with the legislative mandate of Code of Civil Procedure section 1010.6(b) that requires the Judicial Council to develop statewide policies on access to public records and privacy. Moreover, the	The committee was quite concerned by the problem this commentator faced in his court, i.e., how to respond to a media request for the court's entire database, which includes confidential information to which the public does not have a right of access. In order to comply with such a request, it would be necessary for court personnel to carefully review each record in the database and redact all confidential information from the records, a costly, time-consuming, and perhaps impossible task. The committee is aware that other courts have been confronted with similar

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				issue is of such significance that it warrants a statewide policy so there is one rule for all courts in California.	requests, and concluded that a statewide policy is needed to address this issue. The committee believes that this rule addresses the problem by providing that courts may only provide access on a case-by-case basis.
22.	Arthur Sims Chair, Court Executive Advisory Committee Executive Officer, Superior Court of Alameda County	AM	Y	The Court Executives Advisory Committee recommends approv[al] as circulated for comment.	No response required.
23.	Quinton Swanson President Hemet/Mt. San Jacinto Bar Association	A	N	Provision should be made to allow attorneys access to information. A password could be assigned to law firms that sign up for access and this access should include otherwise sealed cases if they are the attorney of record on a case.	Attorneys and parties will have access to the entire case file. These rules only apply to access by the public (rule 2071(a)).
24.	Lea-Ann Tratten Legal Counsel Consumer Attorneys of California	A	N	Agree with proposed changes.	No response required.

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