Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259; and approve forms EFS-007 and EFS-008

Recommended by
Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2013

Date of Report
June 21, 2013

Contact
Patrick O'Donnell, 415-865-7665
patrick.o'donnell@jud.ca.gov

Executive Summary

To implement Assembly Bill 2073, the Court Technology Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending the California Rules of Court to allow superior courts by local rule to require parties to electronically file and serve documents in civil cases, subject to conditions provided by statute and in the rules. The committees also recommend the approval of two new optional Judicial Council forms to be used by parties to request exemptions from mandatory electronic filing and service and by courts to rule on those requests.

Recommendation

The Court Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council, effective July 1, 2013:

1. Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259 to provide for mandatory electronic filing and service; and

2. Approve optional *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007) and *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

The text of the amended rules is attached at pages 44–53. Copies of forms EFS-007 and EFS-008 are attached at pages 54–55.[1]

Previous Council Action

The Judicial Council previously adopted rules on electronic filing and service in the superior courts. These rules—located in the California Rules of Court, rules 2.250–2.261—principally concern electronic filing and service by the consent of the parties in civil cases. The rules previously adopted also address court-ordered electronic filing and service in class actions, consolidated actions, groups of actions, coordinated actions, and complex cases (collectively "complex civil cases"). But no rules have been adopted concerning mandatory e-filing and e-service in ordinary civil cases.

Rationale for Recommendation

The enactment of Assembly Bill 2073 (Silva; Stats. 2012, ch. 320) has changed the legal framework for electronic filing and service.[2] The legislation amended Code of Civil Procedure section 1010.6 to authorize a mandatory electronic filing pilot project in the Superior Court of Orange County and to require the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in specified civil actions on or before July 1, 2014.

The Court Technology and the Civil and Small Claims Advisory Committees, with the assistance of the AB 2073 Mandatory E-Filing Working Group,[3] have developed proposed amendments to the California Rules of Court to provide uniform, statewide rules on mandatory electronic filing

[1] In addition, Guidelines for Reports on Mandatory Electronic Filing and Service, approved by the Judicial Council Technology Committee, are attached at page 56.

[2] The text of AB 2073 is available at: www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2073_bill_20120914_chaptered.pdf .

[3] The members of the working group are Justice Terence L. Bruiniers (Chair), Judge James E. Herman (Vice–Chair), Saul Bercovitch, Judge Thomas James Borris, Judge Daniel J. Buckley, Judge Robert B. Freedman, Tom Griffin, Judge Curtis E. A. Karnow, Paul R. Kiesel, Suzanne Martindale, Edith Matthai, Judge Robert J. Moss, Judge Gary Nadler, Snorri Ogata, Judge Alan G. Perkins, Judge Glen M. Reiser, Court Executive Officer Michael M. Roddy, Julie Rogado, Becky Stilling, and William T. Tanner.

and service in the trial courts. The Judicial Council's adoption of the statewide rules for mandatory electronic filing and service for civil actions will enable any superior court, by local rule, to require parties to electronically file and serve documents, subject to certain requirements and conditions in the statute and statewide rules. Under the statewide rules, mandatory electronic filing and service would be permissive for the superior courts— it would be left to each court to determine whether and how to institute such filing and service—but mandatory for litigants subject to the rules adopted by the courts.

Because of the benefits to courts and the public of having mandatory electronic filing and service, the committees recommend that the Judicial Council adopt the amended rules effective July 1, 2013, so that other courts in addition to the Superior Court of Orange County may promptly institute mandatory electronic filing and service in civil cases. The proposal also includes some amendments to the general rules on electronic filing and service to improve them and make them clearer. And it recommends that two new optional Judicial Council forms be approved to implement the rules on mandatory electronic filing and service.

Proposed rules and forms

New rule provisions on mandatory electronic filing and service

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. That rule, which currently relates only to electronic filing by court order in complex civil cases, would be expanded and renamed "Permissive electronic filing, mandatory electronic filing, and electronic filing by court order."

A new subdivision (a) on permissive electronic filing would be added at the beginning of the rule to clarify that a court by local rule may allow parties to voluntarily file documents electronically "in any types of cases." The key new provisions concerning mandatory electronic filing for ordinary civil cases would be located in subdivision (b), titled "Mandatory electronic filing."

Authorization for mandatory electronic filing.

The threshold issue addressed in new subdivision (b) of rule 2.253 is to provide an express authorization for trial courts to institute electronic filing. This provision states: "A court may require parties by local rule to electronically file documents in civil actions . . . subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter," and certain conditions specified in rule 2.253.[4] (Amended rule 2.253(b).)

[4] Code of Civil Procedure section 1010.6 contains various conditions that apply generally to electronic filing and service and others that apply specifically to mandatory e-filing and service. Also, under AB 2073, amended Code of Civil Procedure section 1010.6(f) provides that the Judicial Council shall adopt uniform rules that shall include statewide policies on, among other things, unrepresented parties, parties with fee waivers, hardships, and reasonable exceptions to electronic filing. Thus, certain conditions are specified in the statute and others are to be provided by rule. (See amended Code Civ. Proc., § 1010.6(g)(2).)

Scope of mandatory e-filing: Exemption of self-represented parties.
One of the most important issues concerning the new provisions on mandatory electronic filing is whether self-represented parties should be subject to mandatory e-filing or should be exempt. Such an exemption is permitted under AB 2073: the legislation states that the mandatory e-filing rules adopted by the council shall include statewide policies on hardships and "reasonable exceptions to electronic filing." (Assem. Bill 2073; amended Code Civ. Proc., § 1010.6(f).) The issue is basically whether the uniform rules should provide that self-represented parties (1) may be required by local rule to file and serve documents electronically, with the opportunity to "opt out," or (2) should be exempt from any requirements to file and serve documents electronically but should be given the opportunity to "opt in."

This question was discussed extensively in the public comments, which are described later in the report. Based on consideration of all the comments, the committees recommend that amended rule 2.253(b)(2) provide:

> Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

At the same time, to reflect the policy favoring voluntary e-filing by self-represented persons, the committees recommend adding an Advisory Committee Comment to rule 2.253 stating:

> Although this rule exempts self-represented parties from any mandatory electronic filing and service requirements, these parties are encouraged to participate voluntarily in electronic filing and service. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.

Scope of mandatory e-filing: Issue of mixed cases if-represented parties are excluded.
Assuming that the rules are amended to exempt self-represented parties from mandatory e-filing, a related issue arises regarding whether to authorize mandatory e-filing in mixed cases in which both attorneys and self-represented litigants are involved. Limiting mandatory e-filing to only those cases in which *all* parties were represented by attorneys would have important consequences. It would significantly limit the impact of mandatory e-filing—for example, excluding the possibility of requiring e-filing in many collections and unlawful detainer cases.

The amended rules on mandatory e-filing address this issue. Specifically, the committees recommend authorizing mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but specifying that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and be served by conventional means unless they affirmatively agree otherwise. Thus, the committees recommend providing in rule 2.253(b)(3):

> In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these mixed cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.

Procedures for "opting out" based on hardship.
Even if self-represented persons are exempted from mandatory e-filing, the e-filing statute requires that a hardship exception "not limited to . . . unrepresented parties" be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).) Thus, the uniform rules need to include such a provision regardless of whether self-represented parties are exempt from mandatory e-filing. The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception:

> A party that is required to file documents electronically must be excused from the requirements if the party shows undue hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

The committees recommend that this provision be included as rule 2.253(b)(4) of the rules on electronic filing and service.

Because the "opt out" procedure for represented parties does not need to be as precisely drawn as it would be if it had applied to self-represented parties, the committees do not recommend the adoption of a detailed procedure at this time. Rule 2.253(b)(4) appears sufficient to address the situation of represented parties that need to ask to be excused from e-filing. The particular procedures to be used to "opt out" may be left to courts to determine locally consistent with the law. In the future, based on experience with mandatory e-filing and e-service, advisory committees could further develop the statewide rules on the procedures for "opting out" of mandatory electronic filing if that appears necessary or desirable.

Scope of mandatory e-filing: Types and categories of civil cases.
Another issue addressed in subdivision (b) of rule 2.253 is what types and categories of cases are appropriate for mandatory e-filing. The new legislation, AB 2073, gives the Judicial Council broad leeway on this matter. It provides that the council "shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for *specified civil actions* in the trial courts of the state." (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)] (italics added).) Except for identifying the actions as civil, the statute does not state what the specified actions are.

The committees discussed various alternatives, including the exclusion of certain types of cases such as juvenile cases. They concluded that the range of types of civil cases in which a court might require parties to file documents electronically should be very broad. Thus, the rule

enumerates numerous kinds of civil cases that are eligible for mandatory e-filing: it would be left to each court to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) Under this approach, the trial courts will have the flexibility to determine which types or categories of civil cases are subject to mandatory e-filing. The courts will be able to implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public that they serve.

Effective date of electronic filing: To be determined by "close of business" or midnight on filing day.

Another issue that the rules must address is what should be the effective date of electronically filed documents. This issue is complicated. There are currently two inconsistent provisions on this matter in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under Orange County's mandatory electronic filing pilot project.

Code of Civil Procedure section 1010.6(b)(3), applicable to electronic filing generally, provides:

> Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day.[5] "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier.

On the other hand, section 1010.6(d)(1)(D), applicable to the mandatory e-filing pilot project in Orange County, provides, in part:

> A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court day that the filing is due.

AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the "close of business"—for cases where e-filing is by consent of the parties or by court order.

In the long term, it appears best to have a single standard for all types of electronic filing, whether voluntary or mandatory. But at this time, the question to be resolved is: What standard

[5] The current rules of court contain a similar, though not identical, provision. (See rule 2.259(c):"A document that is received electronically by the court after the close of business is deemed to have been received on the next court day.")

should be recommended for mandatory electronic filing in civil cases under the rules: (1) the same "close of business" standard that is used for voluntary electronic filing, or (2) a new standard that would allow electronic filings before midnight to be counted on the day they are electronically filed rather than the next court day?

As discussed further below, the commentators were quite divided over this question. The committees recommend that the rules of court on mandatory electronic filing provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule.[6] This flexibility will allow for experimentation and the collection of information about courts' experiences with mandatory electronic filing, which are some of the purposes of AB 2073. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing.[7] This feedback will provide a basis for evaluating different practices and procedures and for making future recommendations, including recommendations about what should be the effective time of electronic filing.

Other electronic filing issues.

The same paragraph in AB 2073 that has new language about the time for electronically filing documents contains a provision about ex parte applications: ". . . Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county." (See Code Civ. Proc., § 1010.6(d)(1)(D).) It appears unnecessary to add such a provision in the statewide rules. Under the rules, the same deadlines that apply to conventionally filed documents also apply to electronically filed documents. (See current rule 2.252(f) ("Filing a document electronically does not alter any filing deadline.")[8] Because ex parte applications must follow this general rule, there is no reason to single out ex parte applications for attention in the rules. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper.

To the extent that there may be some uncertainty about the basic rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue is addressed in the amended rules by relocating the provision in current rule 2.252(f) to be more prominent. (See amended rule 2.252(c)(2).) This approach to clarifying the law appears

---

[6] Amended rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option.

[7] To accomplish this, a new subparagraph (8) would be added to rule 2.253(b) stating:

> A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court's program.

A set of guidelines has been developed to assist courts in preparing and submitting reports under this provision.

[8] The federal courts follow the same general rule. See U.S. District Court, Northern District of California, Order No. 45, VI.D ("Filing documents does not alter any filing deadlines").

preferable to having a particular rule or statutory provision applicable only to ex parte applications.

New rule provisions on mandatory electronic service.
AB 2073 requires the Judicial Council to "adopt uniform rules to permit the mandatory electronic filing *and service* of documents for specified civil actions in the trial courts of the state." (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Hence, this proposal includes certain rule changes relating to the electronic service as well as the electronic filing of documents. Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Several specific changes to rule 2.251—on electronic service—are included in the proposed rules. Some of these changes are technical: they are designed to eliminate ambiguities on how electronic service will operate in a court that mandates electronic filing under the new rules. However, some of the proposed changes are more substantive.

First, the current rule on electronic service by consent of the parties provides that a party can consent either (1) by serving notice on all parties that the party accepts electronic service and filing, or (2) by electronically filing any document with the court. (See amended rule 2.251(b)(1)(A)–(B).) Based on the comments, the committees recommend changing this rule so that electronically filing will not be deemed consent for self-represented parties; they must affirmatively consent to electronic service. The reason for this change is that, as the commentators persuasively argued, electronic filing and service need to be treated separately for self-represented parties. Many self-represented parties, who might be able to receive assistance with electronic filing from self-help centers and legal aid organizations, might not be able to electronically serve or receive service of documents—for example, because they have no computer. Thus, it is unreasonable to assume that e-filing by self-represented parties constitutes consent to e-service. Furthermore, this presumption may actually discourage these parties from seeking assistance with e-filing because the filing would result in their being compelled to accept e-service which they are unable to do.

Second, a new subdivision (c), entitled "Electronic service required by local rule or court order," would be added to rule 2.251. To clarify the impact of AB 2073, it would state that "[a] court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in the chapter" on electronic service and filing. (See amended Cal. Rules of Court, rule 2.251(c)(1).) In addition, the new subdivision would include a provision establishing a default service procedure for cases involving mandatory electronic filing. It would provide that, except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless (1) the court orders otherwise, or (2) the action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by nonelectronic methods unless they consent to electronic service. (See

amended rule 2.251(c)(2).) Finally, another new provision would be added in subdivision (c) that would state that "[e]ach party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes." (See amended rule 2.251(c)(3).)

A final electronic service question relates to the issue discussed previously about when an electronic filing is effective. The rules on electronic service currently provide that "[s]ervice that occurs after the close of business is deemed to have occurred on the next court day." (See current rule 2.251(f)(4).) The committees do not recommend changing this rule at the present time. However, if the statute and rules on the effective date of electronic filing are changed in the future to provide for the "file until midnight" standard, the statute and rules on service might also be amended to provide that service that occurs before midnight on a court day is deemed to have occurred on that day.

Fees and fee waivers.

AB 2073 enumerates certain conditions and specifies various matters that are to be included in the uniform rules to be adopted on mandatory electronic filing and service, including statewide policies on parties with fee waivers. (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)].) To implement the new statutory provisions, the following paragraphs would be included in rule 2.253(b):

> (5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.
>
> (6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.

Because provisions similar to these are included in the statute, their inclusion in the rules may not be strictly necessary; however, AB 2073 contemplates that there will be rules relating to fees and fee waivers in the new rules on mandatory electronic filing and service. Also, including these specific provisions in the rules offer advantages. First, these key provisions would be in the rules along with the other significant provisions relating to mandatory electronic filing. All the principal conditions and requirements relating to such filings would be together in one place in the rules. Second, the general rules on electronic filing and service already contain other provisions regarding fees and fee waivers. (See current rules 2.252(c), 2.255(b) and 2.258.) Thus, for the sake of comparison and clarity, including specific provisions on fees and fee waivers in the rule on mandatory electronic filing would be useful.

Other rule changes

In addition to the rule changes described above, the committees recommend other rule changes that may be useful to improve and promote the electronic filing and service of documents and to clarify the processes of electronic filing and service.

Filing through EFSPs or directly.
The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court has that capacity.[9] This clarification is important because some trial courts may want to institute mandatory direct e-filing under the new uniform rules. Thus, it is useful to clarify in the rules that e-filing is permissible by *both* direct and indirect means—and that a court can mandate electronic filing by either means.

To effectuate this purpose, in the draft rules, rule 2.252 would be renamed "General rules on electronic filing of documents," and a new subdivision (b), "Direct and indirect electronic filing," would be added to the rule. The new subdivision would state that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly with the court, indirectly through one or more approved electronic filing service providers, or through a combination of direct and indirect means.

The main rule on mandatory electronic filing, rule 2.253, would also be amended to state in new subdivision (b) that "[a] court may require parties by local rule to electronically file documents in civil actions directly with the court, or directly with the court and through one or more approved electronic filing service providers, or through more than one approved electronic filing service provider."[10]

Notification of EFSPs.
A problem has been identified is that parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem was noted as arising particularly often with self-represented parties who may use an EFSP for filing electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. No rule currently

[9] AB 2073 contains language concerning the pilot project that assumes that direct e-filing is an option. One of the conditions specified in the statutory amendments for having a mandatory e-filing program is: "The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, *or to electronic filing access directly through the court*." (Assem. Bill 2070; amended Code Civ. Proc. 1010.6(d)(1)(B)(italics added).)

[10] In the case of mandatory e-filing, the option for a court to provide for e-filing exclusively through a single electronic service provider appears to be precluded by AB 2073, which requires that parties have access to more than one provider capable of electronically filing documents with the court. (See amended Code Civ. Proc., § 1010.6(d)(1)(B)). To change this requirement for cases involving mandatory e-filing may require additional legislation.

expressly addresses this issue. To fill this gap, rule 2.256, on the responsibilities of the electronic filer, would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

> If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

Because this provision would apply to all electronic filers, it is placed in rule 2.256 on the duties of electronic filers rather than in a separate rule for self-represented parties. To the extent the failure to provide contact information is a special problem for self-represented parties, the duty to provide updated information may be highlighted in instructions and information provided to self-represented parties by courts, self-help-centers, EFSPs, and others.

Filing in paper form.

Another issue concerns situations under which it is appropriate for electronic filers to file certain documents in paper form rather than electronically. Current rule 2.253(c) provides: "When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form . . . ." Because of its present location, this provision appears to apply only to documents filed by court order in complex civil cases. This provision should in fact apply to all electronic filings; so, in the amended rules, it has been relocated to rule 2.252, "General rules on electronic filing of documents," as subdivision (d), "Filing in paper form."

Definition of "electronic filing."

A final rule issue that warrants clarification is the definition of "electronic filing" in rule 2.250(b)(7). It is currently defined as "the electronic transmission to a court of a document in electronic form." To distinguish this definition from other meanings of "filing," it would be useful to add: "For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are necessary for the document to be officially filed." Similar clarifications have been added to rules 2.253(b)(7) and 2.259(c).

These clarifications should make the meaning of the term "electronic filing" clearer when it is used throughout the chapter. For example, when it is used to specify the effective date of a filing, the time of transmission—not of processing or the completion of processing—is determinative. California law recognizes that the process for filing documents may sometimes not be completed until a day or more after the documents are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See Cal. Rules of Court, rule 1.20(a): "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.") Like rule 1.20(a), the proposed clarification of the definition of "electronic filing" in the rules on electronic filing is intended to protect the rights of filers—in this case electronic filers. The rule changes clarify that, for purposes of the effective

date of filing, the date of receipt applies, even if the filing process is not completed until a later date.

New Forms for Requesting and Ruling on Exemptions

To assist in implementing the new law—and in particular to help parties requesting exemptions from mandatory electronic filing and service and courts issuing orders on these requests—two new optional Judicial Council forms have been developed:[11]

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008)

If all self-represented parties were subject to mandatory e-filing and had to opt out, these forms would have been of much greater impact: virtually every self-represented party seeking to be excused from mandatory e-filing and e-service would have had to use the forms. However, assuming self-represented parties are exempt, the forms will be used only by represented parties. The forms would still be useful to those parties and the courts. Based on the public comments discussed below, the forms have been modified to be clearer and more effective. The committees recommend that the Judicial Council approve these forms for optional use.

Comments, Alternatives Considered, and Policy Implications

The proposed rules and forms were circulated for public comment between December 14, 2012 and January 25, 2013. Forty-two commentators submitted or joined in 33 comments. The commentators included legal aid and disability rights organizations, consumer groups, State Bar committees, attorneys, electronic filing service providers, legal publishers, press organizations, and seven superior courts. Comments were also provided by the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants.

The comments, presented in the attached comment chart,[12] were extensive. They addressed a wide range of issues, including whether self-represented litigants should be excluded from mandatory e-filing and whether electronic filings should be effective at the "close of business" on the day of fling or should be allowed to be filed until midnight. To make the comments easier to understand, they have been divided by topic into 302 separate comments—organized into three broad categories that have been used in the comment chart:

- General comments (comments 1–33)

[11] These forms are based on a local application and order form developed by the mandatory e-filing pilot court, the Superior Court of Orange County.

[12] The comment chart is attached at pages 57–289.

- Comments on particular issues (comments 34–92)
- Comments in response to the request for specific comments in the invitation to comment (comments 93–302)

This report reviews the comments by summarizing the main rules and forms proposals that were circulated, the specific comments received on each of them, and the committees' responses to these comments.

Comments on new rule provisions on mandatory electronic filing and service

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. The rule would be expanded and renamed "Permissive electronic filing, mandatory electronic filing, and electronic filing by court order," and a new subdivision (a) on permissive electronic filing would be added at the beginning of the rule stating that a court by local rule may allow parties to voluntarily file documents electronically "in any types of cases." No comments were received on these changes.

Authorization for mandatory electronic filing.

The key new provisions concerning mandatory electronic filing for ordinary civil cases are in subdivision (b) of rule 2.253, which has been titled "Mandatory electronic filing." This subdivision provides an express authorization for trial courts to institute electronic filing: "A court may require parties by local rule to electronically file documents in civil actions . . . ." Thus, new subdivision (b) directly implements AB 2073 by authorizing courts to establish mandatory electronic filing and service by local rule.

In general, the commentators supported the overall project to establish mandatory e-filing for civil cases in California. (See comment 1 ("Great move").) The only commentator who objected directly to the rules on mandatory e-filing and e-service was an attorney. He complained that requiring a person or an attorney to file documents electronically, and to pay a fee to an electronic filing service provider, constitute improper limitations on the person's right to access justice. He proposed that the rules state that a court may encourage—not require—parties to serve and file documents electronically. (See comment 10.) The committees disagreed with these comments and suggestions. Changing the rules to encourage but not require electronic filing would be inconsistent with the intent and language of the Assembly Bill 2073, which this rules proposal implements.

Another commentator stated: "Our rule for electronic filing has always been 'Don't make it mandatory, make it irresistible.'" (Comment 118.) To the extent this is an objection to establishing mandatory e-filing the committees disagreed with it; on the other hand, making e-filing "irresistible" is certainly a worthy goal.

The California Judges Association supported the mandatory e-filing rules. It commented that e-filing should be authorized in all civil cases with two caveats—one of which was that mandatory e-filing "should not be made mandatory unless and until the court has the technological capacity

sufficient to implement it." (Comment 4.) The committees agreed with this caveat but did not think it is necessary to expressly provide a requirement for technological capacity in the rules. Courts can be relied on not to embark on mandatory e-filing until they have an effective system available.

Scope of mandatory e-filing: Self-represented parties.
A crucial issue in establishing the rules on mandatory e-filing is whether self-represented parties should be subject to it but be allowed to "opt out," or should be exempt but be allowed to "opt in" to electronic filing. Commentators were specifically asked to address whether self-represented parties should be excluded from mandatory e-filing and numerous comments were submitted on this issue. (See comments 40–52 and 116–135.)

Approximately three-fourths of the commentators recommended excluding self-represented litigants entirely from the mandatory electronic filing and service rules. These included many legal aid organizations, three state bar committees, the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants. These commentators also often expressed the position that self-represented litigants should be allowed to voluntarily opt in to electronic filing and service.

Support for including self-represented litigants in mandatory e-filing and e-service came from superior courts, the Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJ/CEAC) Joint Rules Committee, and a few attorneys. The Superior Courts of Orange County, Riverside, Sacramento, and San Bernardino Counties opposed a general exemption for self-represented litigants. (See comments 129, 130, 131, and 132.) However, the San Diego Superior Court supported exempting them. (See comment 133.) The Los Angeles Superior Court took the position that "[a] court should be allowed to exempt self represented litigants from family and small claims cases, but not in general civil cases. The rules should provide some flexibility so that an individual court can decide whether exemptions should occur in certain case types . . . . If only one rule must apply, then self-represented litigants should be exempt." (Comment 128.) The TCPJ/CEAC Joint Rules Committee took the position: "Allow each trial court to determine by case type whether it is mandatory for self-represented litigants to file electronically or whether they may file by conventional means. Where mandatory, the self-represented litigant must request permission to opt out of the requirement based on undue hardship or significant prejudice." (See comment 50)

Those who supported an exemption for all self-represented litigant presented extensive arguments and information in support of their position. (See, for example, comments 44–49, 116–117, and 121–127.) These commentators were concerned that mandatory e-filing would pose a significant barrier to access to justice for many self-represented litigants. They pointed out that many such individuals have no access to computers or the internet.[13] Even if equipped with necessary technology, many self-represented litigants lack the computer literacy necessary to file

[13] For information about the extent of computer and internet access, see comments 49, 51, 116, 117, and 124.

documents with the courts. These commentators thought that mandatory e-filing would be particularly problematic in many of the types of cases—such as family law and domestic violence cases—in which self-represented litigants are extensively involved. A number of commentators also pointed out that e-filing and e-service could be especially challenging for individuals with low-incomes (and no credit cards), persons with limited English proficiency, persons with disabilities, and the elderly.[14] Particularly in the present fiscal crisis, legal aid organizations and self-help centers lack sufficient resources to assist all self-represented persons to file and serve documents electronically. If instead of providing a general exemption for self-represented parties courts needed to excuse self-represented litigants on an individual basis, this would be costly and burdensome for both the litigants and the courts. Providing the alternative that self-represented litigants are exempt from e-filing, but may voluntarily opt in, would be more efficient and would enable those who can file electronically to benefit from the process. Courts, to the extent they have the ability and resources to do so, could promote e-filing by assisting self-represented persons to e-file.

Those who opposed an exemption for self-represented litigants provided arguments in support of that position. (See, for example, comments 42 and 129.) They contend that a blanket exemption would reduce the benefits of e-filing and that the impact of mandatory e-filing on self-represented litigants is small. An attorney commented that e-filing and e-service provide "significant cost and time savings which self-represented parties should enjoy. They should definitely not be automatically excluded." (Comment 42.) The Superior Court of Orange County, where the mandatory e-filing pilot project started in January 2013, stated: "By initially treating [self-represented litigants] like all other litigants, we will encourage all parties to file from the comfort of their home, office, or through an assistance group such as self-help or legal aid, and enable the court to benefit from the financial efficiencies generated by mandatory e-filing. Simple electronic and over-the-counter procedures will be available to address the needs of the small minority of litigants who are unable to file electronically." (Comment 129.)[15] The Riverside Superior Court commented: "If a blanket exemption existed, [self-represented litigants] would be relieved of e-filing with no apparent justification for the exemption." (Comment 130.)

The committees reviewed the comments. They thought that the majority of the commentators provided good, detailed reasons why it would not be prudent to require self-represented parties to file documents electronically at this time. Thus, the committees recommend that, for the present, self-represented litigants be exempt from mandatory e-filing and service. (See amended rule 2.253(b)(2).) Also, the committees strongly support voluntary e-filing and e-service by self-represented parties, to the extent this is feasible. Although self-represented parties should not be required to "opt out" of mandatory electronic filing and service, they should be encouraged and

[14] See, for example, comments 9 (Attachment B), 12 (Attachment C), 51, 87, 89, 91, 122, and 124.

[15] The court observed that in its first eight days of mandatory e-filing, there were "over 22,000 civil e-filings and only one hundred and ten requests for e-filing exemptions, indicating that the large majority of litigants are both capable and willing to electronically file their documents." (Comment 129.)

assisted to "opt in" if possible. The committees thought that this policy should be reflected in the rules; thus, they recommend including a statement of this policy in the Advisory Committee Comment to rule 2.253.

The committees' recommendations to exclude self-represented parties from mandatory e-filing—yet strongly encourage voluntary e-filing—are consistent with *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives ("Guiding Principles")* adopted by the Judicial Council in August 2012.[16] The *Guiding Principles* recognize, "Because so many cases now involve self-represented parties, technology must be implemented in ways that benefit those with or without legal representation so that all parties have equal access to the courts." (*Guiding Principles*, at page 6.) The *Guiding Principles* also indicate: "recent trial court projects demonstrate that e-filing will evolve and expand in functionality and use, including service for self-represented litigants. Likewise adoption of and trust in e-filing will also grow and expand….As it does, courts must continue to ensure fair and equal electronic access to all parties, including self-represented litigants." (*Id*.)

The committees' recommendations are also consistent with the approach to e-filing recommended in a 2013 report by the Electronic Filing and Access to Justice Best Practices Project. The project report states: "E-filing projects should, from day one, plan for and include the self-represented as a core constituency." But the report cautions: "While moving to mandatory e-filing for the represented on a speedy basis is appropriate, moving to mandatory e-filing for the self-represented should await a sign-off process that ensures full accessibility for all." (*Principles and Best Practices for Access-Friendly Court Electronic Filing* (Legal Services Corporation, 2013), at page 31.)

Issue of mixed cases if self-represented parties are excluded.
Assuming that the rules that are adopted this year exclude self-represented parties from mandatory e-filing requirements, there is a related issue whether the rules should authorize mandatory e-filing in mixed cases in which both attorneys and self-represented parties are involved. (See proposed rule 2.253(b)(3).) If mandatory e-filing were limited to only those cases in which *all* parties were represented by attorneys, it might significantly limit the impact of mandatory e-filing.

To address this matter, the committees recommend including in rule 2.253 a provision that authorizes mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but also specifies that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and would be served by conventional means unless they affirmatively agree otherwise. (See amended rule 2.253(b)(3).) Commentators either supported or did not object to this proposal. (See comments 41 and 45.) The committees recommend that

[16] See www.courts.ca.gov/documents/jc-20120831-itemA.pdf.

the proposed provision about mixed cases be included in the final version of amended rule 2.253(b)(3). Including it will enhance the benefits of e-filing while appropriately protecting self-represented parties.

Procedures for "opting out" based on hardship.

The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception.[17] The proposed provision in amended rule 2.253(b)(4) states:

> A party that is required to file documents electronically must be excused from the requirements if the party can show hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

A few observations should be made about this. First, this new provision—or something like it—is required by AB 2073. Even if self-represented persons are exempt from mandatory e-filing, the electronic filing statute requires that a hardship exception "not limited to . . . unrepresented parties" be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).)

Second, the circulated version of the rule provides minimal guidance on the procedures for requesting a hardship exemption. Basically, rule just tracks the statutory requirements for providing a hardship exception. As discussed previously, the committees recommend that self-represented parties be exempt from mandatory electronic filing and service. If so, this significantly affects the procedures required for seeking to "opt out" from mandatory electronic filing and service: they would apply only to *represented* parties. In that case, the rules on requesting exemptions do not need to be so detailed; the simple version of rule 2.253(b)(4) on "opt out" procedures that was circulated for comment is likely to be sufficient.

To obtain public comments on the issues raised by the hardship/opt out procedures, the invitation to comment posed five specific questions.[18] Comments were received on all these questions. (See comments 136–198.)

---

[17] Compare the procedures already in current rule 2.253(a) for complex cases and rule 8.73 for appellate cases.

[18] The five questions asked were:

- Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?
- Should the rules specify to whom a request for exemption shall be made (e.g., the presiding judge or the presiding judges' designee) or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?

1. More detailed procedures.
On the issue of whether there should be more detailed procedures for requesting an exemption and for filing documents by conventional means, there were three principal responses: (1) some commentators thought there should be more detailed procedures, (2) some commentators thought the procedures should be left to local rules, and (3) a commentator thought it is too soon to make specific recommendations. (See comments 136–146.)

Among those who thought that there should be more detailed procedures for requesting hardship exemptions, the most common recommendation was for the rules to provide for procedures permitting applications for exemptions to be made without a hearing—similar to the fee waiver request process. (See comments 137, 139, 140, and 143.) Thus, the Los Angeles Center for Law and Poverty suggested the following specific procedures for requesting hardship exemptions:

- The proposed form EFS-007 can be submitted ex-parte without a hearing, by parties with attorneys requesting hardship exemption or by low-income or self-represented litigants who have previously opted in to e-filing and/or e-service. However, a hearing may be held if a judicial officer requires additional information.
- Form EFS-007 should not be required for low-income and self-represented litigants who file hard copy documents in the clerk's office (meaning the litigant is exempted and does not need to file a document to opt-out).
- Like a fee waiver request, the matter should be decided expeditiously within a certain time (10 days) or deemed granted.
- If ultimately granted, the documents should be deemed filed as of the date they were originally presented to the court.
- If denied, the litigant should be able to request a hearing set within a reasonable time;
- If the litigant attempted to file in hard copy concurrent with a request for exemption, no default should be taken against the litigant.
- Further, if the rules require "opt-out" rather than "opt-in," self-represented parties should be exempted from the requirement for the first year to afford time for widespread outreach and education, with self-represented parties being encouraged to participate in e-filing for that first year.

(See comment 140.)

- Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?
- Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?
- Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?

The Superior Court of Orange County also thought that some statewide guidelines or procedures would be useful. It specifically recommended that:

- The request for exemption can be submitted ex parte.
- A hearing is not required on the request, unless the judicial officer requires additional information.
- The court can grant the clerk's office the authority to grant the request if the party meets certain basic criteria (e.g., there is a previous granted fee waiver on file, the party is submitting a fee waiver application and indicates receipt of government assistance or income below the poverty level, or the party does not have access to a computer).
- Documents submitted with the request should be filed the day of the application is received to preclude missing statutory deadlines or defaults.

(See comment 143.)

The IOLTA-Funded California Disability Advocacy Organizations stated that, if the rules provide for an opt-out process, the process must be:

- Compliant with federal and state disability civil rights law requirements.
- Coordinated and aligned with the existing provision of rule 1.100.
- Clearly and sufficiently detailed as to all aspects of the process (including eligibility requirements; timelines and mechanisms for submitting requests and issuance of decisions; identification of initial screeners authorized to rule on exemption requests; and identification of oversight process for review of initial decisions).
- Clearly memorialized, widely distributed and easily available in multiple accessible formats relevant to people with disabilities.

(See comments 9 and 83; Attachment B, page 11.)

Other commentators mentioned additional procedural features that should be included in the statewide rules. The Santa Clara Superior Court commented that the timing for submitting and processing requests should be consistent, as well as the forms used by applicants. (Comment 146.) A majority of the members of the State Bar of California's Committee on Administration of Justice (CAJ) thought that the application procedures should be part of the statewide uniform rules. CAJ expressed particularly concern about the failure of the rules to address compliance with the mandatory service and filing requirements during the time between the filing of a request and the time that a ruling on that request for an exemption, and it recommended the adoption of a stopgap mechanism to address this problem. (Comment 141.)

Four commentators did not support statewide rules providing more detailed procedures or guidelines; instead they recommended leaving the application process to local rules. (See

comments 138, 142, 144, and 145.) One commentator thought that it was premature to recommend more detailed procedures. (See comment 137.)

The committees considered these comments. Assuming self-represented parties are exempted entirely from mandatory electronic filing and service for the reasons stated previously, the committees do not recommend the adoption of more detailed statewide rules on the procedures for "opting out" at this time. Amended rule 2.253(b)(4) appears sufficient to address the situation of *represented* parties that need ask to be excused from e-filing. The particular procedures to be used to "opt out" may be left to courts to determine locally consistent with the law.[19] Courts instituting mandatory e-filing should consider the public comments about the more detailed procedures in adopting their local procedures. In the future, based on local experiences, advisory committees could further develop the statewide rules on the procedures for "opting out" of mandatory electronic filing if that appears necessary or desirable.

2. Specification to whom the hardship request should be made.
The invitation to comment asked for specific comments on whether the rules of court should specify to whom a request for a hardship exemption shall be made or should require local rules to specify to whom the request shall be made. Eleven comments were received on this particular question. (See comments 147–157.) Half of the commentators indicated that this matter should be left to local rules. Those who thought that the specification was needed generally indicated that the request, at least in the first instance, should be made to the clerk's office, which would have the ability to grant requests. A few commentators also reiterated their position that self-represented litigants should be excluded entirely from mandatory e-filing and e-service and, if so, would not need to make requests.

The committees, which support exempting self-represented parties altogether, do not think that the proposed rules on mandatory e-filing need to be modified to expressly address to whom requests for exemptions must be made.

3. Exemption from mandatory electronic service.
Comments were specifically invited on whether a party should be able to request exemption from electronic service. Thirteen comments were received on this question. (See comments 158–170.) Most supported some sort of exemption.

A number of commentators recommended that self-represented litigants should be excluded entirely from mandatory e-service just like mandatory e-filing. For example, one stated that "self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service, but allowed to opt in"; it commented further that "tying e-filing and e-service together will greatly increase the requests for exemptions." (Comment 162.) Another stated that

[19] As commentators noted, local rules providing opt-out procedures would need to be consistent not only with Code of Civil Procedure section 1010.6(d)(1)(C) and (g)(2 and rule 2.253(b)(4) but also with the statutes and rules on accommodations for persons with disabilities.

"the automatic inclusion of e-service would be a hardship for those parties who do not have regular access to internet-capable electronic devices." (Comment 163.)

Some of these commentators indicated that the burden of mandatory e-service and electronic receipt of service may be even higher for self-represented litigants than e-filing. "Low-income and self-represented litigants who were able to access assistance with document preparation through a self-help center or legal services agency may be able to receive one-time assistance in e-filing, but no one provider can assist litigants with free, daily access to electronic devices with internet and scanner or PDF conversion software. Thus, even if parties must e-file or can opt in to do so, they should be able to request exemption from mandatory receipt of e-service." (Comment 163.)

The Superior Court of Orange County, which had objected to excluding self-represented litigants entirely from mandatory electronic filing and service, takes the position that parties should be able to request exemptions from both electronic filing and service—or from either separately. Recognizing that parties who may be assisted to file documents electronically by legal aid organizations or self-help centers may not have the ability to serve or receive service of documents electronically, the court states that a procedure must be in place to excuse self-represented litigants from e-service even if they are able to e-file; hence, it recommends adding a new subdivision to rule 2.251 (on e-service) to provide for hardship exemption from electronic service requirements. (Comment 167.) Other commentators have similarly indicated that, if mandatory e-filing and e-service apply to self-represented parties, there should be a simple "opt out" procedure applying to e-service as well as e-filing. (Comments 164 and 165.)

Still others have taken the position that the rules should be stricter. An attorney commented that parties should be able to be exempt from electronic service only if they lack a computer with internet connections. (Comment 161.) A court commented that, if a party is bound by electronic filing, the party should also be bound by electronic service. (Comment 166.) Another court commented that the exemptions should be "all or nothing": parties should either fully opt in or fully opt out—it would be administratively burdensome to exempt portions of the program. (Comments 170.)

The committees agreed that self-represented parties should be exempt from mandatory electronic service as well as mandatory electronic filing. Self-represented parties, however, should be able to voluntarily agree to accept electronic service by affirmatively consenting to do so. For represented parties, the proposed rules and forms on mandatory electronic filing and service should remain basically as proposed: they would allow represented parties to request to be excused from both mandatory electronic filing and service—or from either separately.

4. Simplified rules for self-represented litigants to opt out.
The invitation to comment asked whether the same procedures that are proposed to be used for hardship requests generally should also apply to self-represented persons—or whether some simplified procedures should be available for such litigants. Sixteen comments were received on

this question. (See comments 171–186.) Assuming the committees' recommendation to exempt self-represented litigants entirely from mandatory electronic filing service is adopted, the opt-out procedures would apply only to represented parties. In that case, the question whether there should be simplified procedures for self-represented parties would not need to be addressed. (See comment 184.) On the other hand, if self-represented litigants are not exempted generally, then the issue would need to be decided. In that situation, the commentators were somewhat divided on whether special procedures for exemptions should apply.

Some thought that the hardship exemption procedures should also apply to self-represented litigants. (See, for example, comments 172, 174, 182, and 185.) The Superior Court of Santa Clara County thought this would ensure consistency. (Comment 185.) The Superior Court of Orange County commented: "The same procedures for hardship requests, developed by the individual trial courts, should continue to apply to self-represented persons. Any proposed rule should have the same essential elements as outlined above, while leaving the discretion for processing the requests in the purview of the local trial courts." (Comment 182; see also comment 143.)

Other commentators thought that the request process for self-represented litigants should be simpler, probably using procedures similar to those used in applying for a fee waiver. (See, for example, comments 175, 179 and 180.) The Superior Court of Los Angeles County commented: "A simple request should apply to self-represented litigants. The critical criteria should be whether the litigant has access to a computer with Internet access." (Comment 181.) The Superior Court of Riverside County commented: "Each court should be allowed to decide what it would like to do to make hardship requests easy. Again, self-represented should not be associated with hardship. These are two distinct situations." (Comment 183.)

In the end, assuming that the Judicial Council agrees with the committees' recommendation for a general exemption for self-represented litigants from mandatory electronic filing and service, there will be no need to develop a set of simplified procedures for self-represented parties to use to "opt out": the exclusion will be automatic.

5. Should the clerk's office be given authority to grant requests for exemption.
The invitation to comment solicited comments on the specific question whether the clerk's office should be able to grant requests for exemptions and no appearance or hearing be required unless the request is denied. Twelve comments were received on this question. (See comments 187–198.)

The commentators generally supported giving the clerk's office the authority to grant exemptions. The California Commission on Access to Justice added that: "The decision whether to allow self-represented parties to opt out of e-filing should be ministerial rather than discretionary." (Comment 187.) The California Family Law Facilitators' Association cautioned that "the clerk's office should be able to grant such requests but very specific rules about who would qualify and who would not qualify would need to be developed. Otherwise each clerk

would have discretion based upon whim to determine who would be exempt and who would not be exempt." (Comment 188).

Regarding the exemption process, a commentator remarked: "A process similar to the ones developed for fee waiver requests should be developed, with accompanying rules and forms. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied." (Comment 191.) Another commentator stated that "the clerk's office should be able to grant a request for an exemption, but . . . a judicial officer should be required to consider a request before it is denied." (Comment 192.)

Finally, a court stated: "The decision on how to process these should be left to the discretion of the trial court, but the same options provided in Gov. Code Section 68632 et seq. [on fee waivers] should be made available in this context as well. It is unlikely any court would require an appearance or hearing, but there is no need to prohibit them." (Comment 195.) Another court stated: "The individual court should make this decision by local rule." (Comment 194.)

In light of the committees' recommendation that self-represented parties be exempted altogether from mandatory e-filing and service, they did not regard the question of whether clerk's offices should be authorized to grant exemptions to be a matter that needs to be included in the statewide rules on mandatory electronic filing. Courts instituting mandatory e-filing should consider the comments on the issue in adopting their local procedures. If further experience indicates that statewide rules need to be developed on this subject, this issue might be considered by the committees in the future.

Scope of mandatory e-filing: Types and categories of civil cases.

The next issue considered regarding rule 2.253 is about what types and categories of cases are appropriate for mandatory e-filing. Under the rules that were circulated, the range of types of civil cases in which a court might require parties to file documents electronically was very broad. Amended rule 2.253 lists numerous kinds of civil cases that would be eligible for mandatory e-filing: each court would be left to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) The only types of civil cases that would have been excluded under the proposed rules were juvenile cases.

Comments were specifically invited on whether the proposed scope was appropriate, whether the scope should be narrowed to exclude any other types or categories of civil cases, or whether it should be expanded to authorize mandatory e-filing even in juvenile cases. A number of commentators responded to these questions. (See comments 38–39 and 102–115.) Most of the commentators supported the broad scope and flexibility of subdivision (b)(1), which leaves it to the superior courts to determine which types or categories of civil cases are subject to mandatory e-filing in those courts. However, differences of opinion arose on the issue of whether juvenile and certain other types of cases should be included.

The TCPJ/CEAC Joint Rules Committee requested that "juvenile cases not be excluded outright." (Comments 39 and 115.) On the other hand, a legal aid organization and a State Bar committee commented that "[t]he rule should not be expanded to include juvenile cases." (Comments 105 and 107.) The Superior Courts of Los Angeles and San Bernardino Counties also supported excluding juvenile cases. (Comments 108 and 112.)

There was also a difference of opinion as to whether small claims cases should be excluded or included. The State Bar Committee on Administration of Justice recommended that "small claims cases *not* be included in the mandatory e-filing and e-service rules," although it recognized that there could be substantial benefit to *permitting* at least the filing of pleadings in small claims cases through electronic means. (Comment 38.) On the other hand, the Superior Court of Sacramento County recommended that small claims cases be specifically added to the types of cases for which mandatory e-filing may be mandated. (Comment 111.)[20]

Some commentators recommended excluding family law cases from the rules. (See comments 102, 106, and 107.) These commentators were particularly concerned because a large portion of parties in these cases are self-represented. If mandatory e-filing were to apply only to family law cases in which all parties are represented, their concern might be substantially less. The Superior Court of San Bernardino County stated: "[W]e feel the proposed scope of the rules is adequate and appropriate: including family law and excluding juvenile cases. Family Law represents a large and challenging set of cases within the trial courts and all measures which could assist in the effective and efficient resolution of these cases should be available." (Comment 112.)

Finally, some commentators recommended excluding additional types or categories of cases besides juvenile and family law cases from the rules on mandatory e-filing and e-service. These included cases involving domestic violence restraining orders, civil harassment restraining orders, probate guardianships, probate and mental health, and unlawful detainers. (See comments 105, 106, and 107.) The commentators argued that the case for excluding types or categories of cases is particularly strong if self-represented litigants are not generally excluded from mandatory e-filing and e-service. (See comments 102 and 107.)

The committees reviewed and discussed the comments. They recommend, first, that the rules provide for a broad, flexible, and inclusive approach that would allow each court implementing mandatory e-filing and e-service to determine the specific types of civil cases for which to mandatory electronic filing and service would be appropriate in that court. To that end, the proposed definition of "civil case" that was circulated—that would have excluded juvenile cases from the definition of "civil"—would be eliminated. Thus, courts would be authorized to institute mandatory e-filing and service for any type of civil case, including juvenile dependency cases, for which the court determines that mandatory e-filing is appropriate.

[20] If the mandatory e-filing rules that are adopted exempt self-represented parties, mandatory e-filing would not be permissible in small claims cases because all parties in these cases are self-represented.

At the same time, as a prudential matter, the committees recommend that an Advisory Committee Comment be added to rule 2.253 noting that, in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may involve special procedures or other considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts.

The committees noted that many of the commentators' arguments for excluding specific case types—such as family law and other cases mentioned above—were substantially based on concerns that self-represented parties would have difficulty in implementing e-filing and e-service in these types of cases. But because self-represented parties would be exempt entirely under the committees' recommendations and only represented parties would be required to file and serve documents electronically, these concerns should largely be eliminated. In addition, as a practical matter, courts are unlikely to be instituting mandatory e-filing in these more challenging types of cases until after they have acquired experience with more conventional types of civil cases. Even if a court eventually includes such cases in mandatory e-filing, electronic filing would apply only where parties are represented; and, in those situations, attorneys would have an opportunity to request to be excused from mandatory e-filing on a showing of undue hardship or significant prejudice. (See Code Civ. Proc., § 1010.6(d)(1)(C) and rule 2.253(b)(4).)

Fees and fee waivers.

The rule on mandatory electronic filing includes paragraphs on fees and fee waivers. (See rule 2.253(b)(5)–(6).) Comments were invited from the public and the courts about the fee and fee waiver provisions—and specifically whether any other provisions should be added. Fifteen comments were received on these matters. (See comments 226–240.)

Several legal aid organizations agreed with including the language in proposed rule 2.253(b) permitting courts to charge only actual costs and requiring reasonable fees to be charged by electronic filing service providers. (See comments 229, 230, 232, 233 and 240.) Other legal aid organizations expressed similar views. One also expressed a concern that there were no proposed provisions concerning the review, judicial or otherwise, to determine reasonability; it suggested that rules should be developed regarding fees charged by EFSPs. It stated: "Fees charged by EFSPs may be prohibitive to many of the underserved, especially if e-filing is made opt-out rather than opt-in." (Comment 231.) Another legal aid organization was concerned that, without guidelines, e-filing fees might increase, effectively barring the door for many low-income litigants. The California Commission on Access to Justice commented: "The process for handling fee waivers is not outlined in detail and may require further study." (Comment 226.)

On the other hand, most trial courts thought the proposed rules on fees of fee waivers were sufficient; they did not think that any more rules were needed. (See comments 235, 236,238, and 239.) To the extent rules were needed, the courts thought that they could be developed locally. (See comments 236 and 237.)

The committees recommend the adoption of the provisions on fees and fee waivers that were circulated. If experience shows that additional, more detailed rules or guidelines about these matters are needed, they can be developed in the future.

Effective date of electronic filing: Determined by "close of business" or midnight on filing day.

An important issue that needs to be addressed in the rules is what should be the effective date of mandatorily e-filed documents. As previously indicated, there are two different and inconsistent provisions on this question in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under the Superior Court of Orange County's mandatory electronic filing pilot project. AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform statewide rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the "close of business"—for cases where e-filing is by consent or by court order.

The invitation to comment observed that, in the long-term, a single standard for all types of electronic filing, whether voluntary or mandatory, seems best. But at this time, the question that must be resolved is: what standard should be recommended for mandatory electronic filing under the new rules? The invitation presented three options: (1) adopt the "close of business" standard for all electronically filed cases; (2) allow same-day filing until midnight in mandatory e-filing cases; or (3) make filing effective at the time of transmission. For the purposes of discussion and public comment, the rules that were circulated provided for all three options described above—the "close of business," the "file until midnight," and the "time of transmission" approaches. The proposed rules also provided for the option that, if either the "file until midnight" or the "time of transmission" approach were recommended, its adoption might be postponed until conforming legislation can be enacted. Comments were specifically invited on the issues relating to when electronic filings under the mandatory e-filing rules should be effective.[21]

Forty-two comments were received on these issues. (See comments 53–59 and 241–276.) The commentators divided on the question of the effective time of filing. A majority favored adopting the "close of business" standard for mandatory e-filing as well as for voluntary e-filing.

[21] Specifically, the Invitation to Comment asked:

- How should the effective time of electronic filing and service be determined?
- Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?
- Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?
- If the "file until midnight" standard is to be adopted, should it be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making this standard applicable to both voluntary and mandatory e-filing?

A minority supported the "file until midnight" standard. Only one commentator expressed support for the "time of transmission" standard.

Several legal aid organizations supported the "close of business" standard. (See comments 248, 252, and 253.) "This is to ensure fairness to those who do not have the resources to e-file and must do so before the close of business and not give an unfair advantage to those who do have the resources to e-file and may do so before midnight." (Comment 252.) One legal aid organization supported the "file until midnight" standard. It explained that this standard would create greater access for clients who come in after the close of business, as well as to evening clinics, to be able to e-file their documents—which is particularly important for litigants who need to file answers in unlawful detainer cases. (Comment 251.) Another legal aid organization stated that e-filing should be effective on transmission. It stated: "This is important to ensure that documents are considered to be timely filed in the event of delays by either the e-filing vendor or the court clerks." (Comment 53.) Finally, one aid organization suggested postponing the adoption of the standard until more information is available from the implementation of the Orange County pilot project. (Comment 268.)

The majority of the trial courts submitting comments supported the "close of business" standard. (See comments 56, 57, 255, 258, and 259.) The Superior Court of Los Angeles County, in support of the "close of business" standard, commented that "adopting this standard would provide for a consistent standard for all filings regardless of the process by which they are received." (Comment 255.) The Superior Court of San Diego County commented that, "[w]ith the severe staffing shortages, allowing filing until midnight would backlog items for processing by court staff the next business day and this would make it more difficult to process emergency requests in a timely manner. It would also create inconsistency in the code related to when documents must be filed, which would be unmanageable for court personnel. Our court also believes that this makes it fair for all litigants because some, like self-represented parties, may not have access to e-filing, which would put them on an unequal playing field." (Comment 258.) The Santa Clara County Superior Court supported the "close of business" standard because it "provides equal access to justice and ensures consistency at a specific court without imposing a particular time on all courts." (Comment 259.)

Two courts supported the "file until midnight" standard. The Superior Court of Orange County stated: "There should be a uniform statewide rule permitting the 'file until midnight' option….This will be a significant benefit to the attorneys who will have more time to draft their pleadings, and very little hardship to the local courts." (Comment 246.) The Superior Court of Riverside County stated: "File until midnight has most appeal because all courts across the state do not close at the same time. This is also a tangible benefit of e-filing for the filers but may put a burden on the court." (Comment 257.)

Attorney organizations were divided on the issue of timing, although their members tended to favor the midnight filing standard. (See comments 54, 55, and 254.) Approximately two-thirds of the State Bar's Committee on the Administration of Justice (CAJ) favored the "file until

midnight" standard, with a minority supporting the "close of business" standard. The CAJ majority believed that a midnight deadline will "increase access to the courts, decrease confusion among litigants, and advance the goal of encouraging e-filing." The CAJ minority believed that the "close of business" standard "provides an even playing field, in which all litigants will have the same filing time, and no one would have the advantage of additional hours in which to prepare and file pleadings." (Comment 54.) The State Bar's Litigation Section favored the midnight standard stating that it is "practical, consistent with e-filing rules in California appellate courts and in federal courts, and avoids uncertainties caused by inconsistent and changing closing times of filing windows." (Comments 55.) Finally, the State Bar's Standing Committee on the Delivery of Legal Services (SCDLS) reached no consensus on the timing issue. SCDLS saw benefits and drawbacks to both approaches. However, no member of SCDLS was in favor of the "close of business standard" as currently defined in Code of Civil Procedure section 1010.6(b)(3) because it allows for wide variations of filing times—which continue to change—dependent on different courts and different days of the week. (Comment 254.)

Other entities submitted comments on the issue of the effective time of filings. The California Judges Association supported the "close of business" standard. (Comment 269.) The Task Force on Self-Represented Litigants also recommended retaining the "close of business" rule stating: "Allowing until midnight for electronic filers would be unfair to the other side that is not e-filing or does not have access to a computer after work hours." (Comment 58.) Likewise, the TCPJ/CEAC Joint Rules Committee recommended that "the effective time be the same time as required by the court for any other method of filing." (Comment 59.)

Two individuals submitted comments supporting the current "close of business" standard. An EFSP and publisher stated "midnight filings in electronic filings can and will cause general confusion amongst the entire filing population. . . . If for example, a county has required electronic filing for all civil cases, optional electronic filing for Probate, and no electronic filing for Family Law cases, how do you expect a law firm staff to deal with two different filing times each day?" (Comment 242.) Another legal publisher commented that "[e]xtending the deadline to midnight cannot be necessary, and I cannot see how it could benefit anyone, particularly the attorneys and staff force to work so late." Although this commentator opposed the "file until midnight" standard, she also thought that the current "close of business" standard should be changed to provide for a uniform 5:00 p.m. deadline for electronic filing and service. (Comment 250.)[22]

The invitation to comment specifically asked questions about uniformity and, if the "close of business" standard is not retained, about the timing of introducing any alternative standard. The commentators generally supported the adoption of a uniform standard for both voluntary and

[22] A legal aid organization also recommended the adoption of a standard 5:00 p.m. deadline for electronic filings. (See comment 253.) Adopting this standard would require a legislative change because "close of business" is defined in the statute to mean "5 p.m. *or the time at which the court would not accept filing at the court's counter, whichever is earlier*." (Code Civ. Proc., §1010.6(b)(3)(emphasis added).).

mandatory e-filing. (See comments 260–267.) The California Judges Association pointed out that one advantage of adopting the close of business standard is that it avoids the problems that would otherwise arise if the "file until midnight" approach is pursued. (Comment 269.) If the current "close of business" approach in Code of Civil Procedure section 1010.6(b)(3) and rule 2.259(c) were retained and made applicable by rule to all types of electronic filings, it would be fairly simple to provide in the uniform rules on mandatory electronic filing that this "close of business" standard applies to all electronically filed cases.[23] On the other hand, if an alternative standard is preferred, the process for implementing that approach would be more complicated. The "file until midnight" standard could be made applicable by rule to all mandatory electronic filing, but to make the "file until midnight" standard applicable to cases involving voluntary e-filing would require legislation.

The committees considered the comments. They recognized that courts, legal aid groups, and bar organizations are divided and that their members have varying positions on the question of the effective timing of electronic filings. The committees concluded that more experience and information would be beneficial. Hence, they recommend that the rules of court on mandatory electronic filing provide for the "close of business" standard but allow individual courts the option of adopting instead the "file until midnight" standard by local rule. Proposed rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing. These reports will provide a basis for evaluating different practices and procedures and for making future recommendations about electronic filing and service.

Electronic service.

AB 2073 requires the Judicial Council to "adopt uniform rules to permit the mandatory filing *and service* of documents for specified civil actions in the trial courts of the state." (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Thus, the proposal includes rule changes relating to the electronic service as well as the electronic filing of documents. (See amended rule 2.251.) Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Although the commentators did not object specifically to the proposed new provisions in the rules about electronic service, several legal aid organizations raised related issues and made suggestions concerning electronic service, particularly as it applies to self-represented litigants. (See comments 60–63.) Some commentators indicated that it would be useful to permit self-represented persons to get assistance in electronically filing documents without that constituting

[23] As mentioned above, some commentators have suggested that even if this standard were to be adopted, there may be good reasons to revise the current version "close of business" standard. The standard as presently defined in the statute and rules is subject to wide actual variation because of the different times when courts' filing counters close. However, if the "close of business" standard is going to be changed (for example, to a standard time of 4 p.m. or 5 p.m.), such a change would require legislation as well as rule amendments.

consent to electronic service. “Self-represented litigants who choose to e-file should not be required to accept future service by email.” (Comment 63.) Other commentators stated: “[E]-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.” (Comment 61.) “[T]he ability of a self-represented litigant to use e-filing may not be consistent throughout a case. A litigant may be able to accomplish e-filing at one point in the case, and not at another. A self-represented litigant would then need a process by which to ‘opt out’ even after initially e-filing.” (Comment 63.) To implement these ideas, the commentators suggested that separate procedures and forms be available for electronic filing and service. (See comments 60–63.)

The committees agreed with the commentators that it is important to distinguish between electronic filing and electronic service. Specifically, the rules should enable self-represented parties to get assistance with electronically filing documents without such filing necessarily requiring the self-represented parties to serve and be served electronically. Such provisions would help not only the self-represented parties to file electronically but also the courts to receive more filings electronically. These provisions would also protect self-represented parties who cannot serve documents electronically (for example, because they do not have a computer) or do not want to receive such service because of the nature of the case (for example, in a proceeding involving violence, harassment or abuse).

The proposed rules on mandatory electronic service already recognized the distinction between filing and service, to a significant extent. For example, amended rule 2.251(c) states that, as a general rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties. However, the rule also provides for an exception: new subparagraphs (c)(2)(A) and (B) provide that this general rule does not apply if the court orders otherwise or if “[t]he action includes parties that are not required to file or serve documents electronically, including self-represented parties.” The provision continues: “those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service.” The committees have added “affirmatively” before consent to clarify this further.

The rules as circulated, however, did not include similar provisions in rule 2.251(b) on service by consent, which currently states that a party indicates that it agrees to accept electronic service by “[e]lectronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service by the court at the electronic service address the party furnished under rule 2.256(a)(4).” (See current rule 2.251(a)(2); proposed amended rule 2.251(b).) This means, in effect, that if a self-represented party voluntarily files a document in a case, perhaps with the assistance of a self-help center or legal aid organization, the party is agreeing to accept electronic service in that case. Based on the comments, the committees recommend that the rule provision that presumes that electronic filing constitutes consent to electronic service be modified to state that the provision does not apply to self-represented parties. Specifically, they recommend that rule 2.251 be amended to include a statement that the provision that a party consents to electronic service by electronically filing a document “does not

apply to self-represented parties; they must affirmatively consent to electronic service…." (See amended rule 2.251(b)(1)(B).)

Regarding forms, the committees note that a form already exists for the purpose of enabling parties to affirmatively consent to electronic service. (See *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005). They also note that the *Substitution of Attorney— Civil* (form MC-050) can be used, in cases where there has been limited scope representation, for a party to indicate that it has become self-represented and to provide the party's physical address for service by mail. Based on experience, forms can be revised or added in the future if that is necessary for self-represented parties to be able to opt in and out of electronic service.

Comments on other rule changes

Filing through EFSPs or directly with the court (rule 2.252(b)).
The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court provides that capacity. To effectuate this purpose, under the proposal that was circulated, rule 2.252 would be renamed "General rules on electronic filing of documents," and a new subdivision (b), "Direct and indirect electronic filing," would be added to the rule. The new subdivision states that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly through the court, through one or more approved electronic service providers, or through a combination of direct and indirect means.

The State Bar's Litigation Section recommended modifying the text of proposed rule 2.252(b) to read:

> "Except as otherwise provided by law, a court may provide for the electronic filing of documents directly ~~through~~ with the court, indirectly through one or more approved electronic filing service providers, or . . . ."

(See comment 65.) The Litigation Section also suggested that the reference in rule 2.252(b) to electronic filing through "a combination of direct and indirect means" was unclear. It suggested that this phrase be modified to state more clearly what is meant.

The committees agreed that the text of rule 2.252(b) should be modified and have made the changes suggested. However, the phrase "a combination of direct and indirect means" seems clear enough and has been left unchanged.

Number of EFSPs (rule 2.253(b)).
The invitation to comment proposed amending rule 2.253, the main rule on mandatory electronic filing, to state in new subdivision (b) that "[a] court may require parties by local rule to electronically file documents in civil actions directly through the court, or directly through the

court and through one or more approved electronic service providers, or through more than one approved electronic service provider." [24]

A commentator stated: "We note that the legislation requires that TWO OR MORE EFSP's be available to accept electronic filing for the court. It also appears that the court itself could be an EFSP and would therefore be counted as well. However, the rule as proposed does not reflect the 'two or more' requirement. It should." (Comment 35.) The committees did not think that the text of rule 2.253(b) needs to be changed. The commentator appears to have misconstrued the language of AB 2073. Under that bill, electronic filing is subject to certain conditions, including "The court and all parties shall have access either to *more than one* electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court . . . ." (Code Civ. Proc., §1010.6(d)(1)(B)(italics added); see also Code Civ. Proc., §1010.6(g)(2).) Thus, the proposed rule language is accurate and the reference to "two or more EFSPs" is not required.

The committees did think, however, that the statutory provisions on the required number of vendors may warrant review and reconsideration in the future. The statutory language is not as clear as it might be. Also, members were concerned that some courts—especially smaller courts—might not be able to obtain more than one electronic filing service provider or to provide services directly. Thus, they might be precluded under the statute from instituting mandatory electronic filing in ordinary civil cases.

Notification of EFSPs (rule 2.256(a)(6)).

Parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem arises particularly often with self-represented litigants who use an EFSP (including legal aid organizations that perform this service) to file electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. To address this problem, rule 2.256 would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

> If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

One comment was received on this new provision. Legal Service of Northern California (LSNC) stated: "LSNC believes there should be an addition to proposed rule 2.256(a)(6) about the requirement to report changes in email addresses. The rule should require courts to provide pro

[24] Based on the previous comment on rule 2.252(b) (comment 65) and the response, similar changes have been made to rule 2.253(b)—namely, the word "through" has been replaced by "with" and the word "filing" has been placed after "electronic" and before "service provider" each time the term is used.

per litigants with information about when changes need to be reported and how that change can be reported. Pro per e-filers need to be informed of the requirement and how to change an email address in writing. Including the requirement to report email address changes in court rules is insufficient because pro per litigants are not informed about the existence of the court rules." (Comment 66.)

The committees think that the proposed provision about notification should be included in rule 2.253(b)(6) but not that it is necessary to add a specific requirement that courts provide information to self-represented persons that they must notify EFSPs of changes in their addresses and how to do so. Courts are not the only source of this information. The information can be provided to self-represented parties by various entities (including EFSPs, legal aid organizations, and self-help centers) and in a variety of ways (including notices, information sheets, website information, and in person). Thus, it seems best to provide for flexibility regarding how the information about the requirement to notify EFPS about changes in a party's address is to be given to self-represented parties.

Filing in paper form.

Current rule 2.253(c) provides: "When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form." Because of its present location, this subdivision appears to apply only to documents filed by court order in complex civil cases. However, this provision should apply to all electronic filings; hence, in the amended rules, it has been relocated to rule 2.252, "General rules on electronic filing of documents," as subdivision (d), "Filing in paper form."

There were no comments on the proposed relocation of the rule provision. The committees recommend that the rule be relocated as proposed.

Paper courtesy copies.

A court recommended that the rules provide that courts may require paper courtesy copies be provided in any proceedings that are going to be held within one day of the electronic filing because, depending on the press of business, an electronic filing might take that long to be processed and available on the court's case management system. (Comment 92.) The committees do not recommend adding a specific provision on courtesy copies to the rules at this time. The committees may consider in the future whether this proposal, or something like it on courtesy copies, should be included in the rules.

"Electronic filing."

When the present rules proposal was being developed, an issue that appeared to warrant clarification was the definition of "electronic filing" in rule 2.250(b)(7). It is currently defined as "the electronic transmission to a court of a document in electronic form." To distinguish this definition from other meanings of "filing," the circulated proposal recommended adding: "For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are

necessary for a document to be officially filed." Similar clarifications would be added to rules 2.253(b)(7) and 2.259(c). These additions to the rules make the meaning of the term "electronic filing" clearer when it is used throughout the chapter.

This proposal received extensive comments from the Press Group.[25] (See comments 18 and 64, and attachment D to the comment chart.) The Press Group's remarks state: "The proposed rule changes include an ostensibly minor revision that could be used to work a fundamental change in access to court records—a change not contemplated or authorized by Assembly Bill 2073. Namely, the proposed rules would create a new category of court records: those that have been 'officially filed,' as opposed to 'filed' for all other purposes."

The comment continues: "At best, the proposed changes are confusing without serving any meaningful function. However, based on past statements by court administrators, it appears the true purpose of introducing the concept of an 'officially filed' document into the Rules of Court is to provide administrators with justification for denying public access to records that have been 'filed,' under the long-understood meaning of that term, until ***after*** they have been ***'officially filed,'*** an event that, under the proposed rules, would not occur until after 'the processing and review of the document' by court staff, whenever that might be. Proposed Rule 2.250(b)(7) (emph. added)."

"The proposed rule changes would thus give court administrators unbridled discretion to delay press and public access to fundamentally public records until administrators decide such access is appropriate—even if it is days or weeks after the "filed' date." (Comment chart, Attachment D, page 1.)

Thus, the Press Group objects to the specific proposed rule changes on the grounds that they are supposedly intended to delay access to court records. It also objects to the adoption of the mandatory e-filing rules on the grounds that these rules should not be adopted until the Orange County pilot project has been completed. (Comment chart, Attachment D, page 2.)

The comments are based on a misunderstanding of the purposes and processes of mandatory electronic filing, and of electronic filing as a whole. Due to the severe fiscal restraints on the courts, clerks' offices are encountering difficulties and delays in processing paper filings. As a result, some members of the Press Group may be encountering difficulties in getting quick access to filed documents. This is doubtless the source of the frustrations expressed in the Press Group's comments. Yet far from being a means to delay access, electronic filing will enable courts to process filings more quickly and thus make them more accessible.

[25] The Press Group consists of the California Newspaper Publishers Association, the First Amendment Coalition, California Aware, and Courthouse News Service. Three additional organizations have joined in the comments by the Press Groups: Bay Area News Group, The Press Democratic Media Company, and Los Angeles Times Communications, LLC.

Even in the best of times, it takes time for the clerks to review papers presented for filing—to determine, for example if fees have been paid or the papers contain any sealed or statutorily confidential information that requires special processing. Although the courts would generally prefer, if possible, to be able to file complaints on the same day that they are submitted and make the filed complaints available to the public, to do so is sometimes simply not possible—especially in the current drastic fiscal circumstances under which courts have been compelled to lay off employees, close courtrooms, and cutback on services. But with the introduction of e-filing and its expansion under mandatory e-filing, courts will be able to more quickly process case filings—and thereby make them available sooner to the public.

The Press Group's comments are also inconsistent with the law on court records. A "court record" is defined under California law as a record that has been *filed*—i.e., put in a file or its equivalent.[26] Also, the law provides that electronic court records shall be made *reasonably* accessible to the public.[27] The law, however, does not require courts to provide immediate public access to all documents as soon as they are received by the court, even though they have not yet been filed—i.e., not yet become court records. California law recognizes that documents may sometimes not be filed until a day or more after they are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See rule 1.20(a): "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.")

Like rule 1.20(a), the proposed clarification of the definition of "electronic filing" in this rule proposal is intended to protect the rights of filers—in this case electronic filers. The rule changes would clarify that, for purposes of the effective date of filing, the date of receipt applies, even if the filing process is not completed until a later date. Although such a provision is likely to be of less importance in the e-filing context than the paper filing context because most electronic

---

[26] See California Government Code section 68151(a):

"Court record" shall consist of the following:

(1) All filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.

(2) Administrative records filed in an action or proceeding, depositions, transcripts, including preliminary hearing transcripts, and recordings of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.

(3) Other records listed under subdivision (j) of Section 68152.

[27] See California Government Code section 68150(*l*):

> Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be made *reasonably* accessible to all members of the public for viewing and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

(Emphasis added.)

filings will be completed quite quickly, if not instantaneously, it still has a valuable part to play in protecting the rights of litigants and should be included in the e-filing rules.

The committees concluded that adding the proposed provisions to rules 2.250(b)(7), 2.253(b)(7), and 2.259(c) would clarify the rules on electronic filing and would assist in protecting the rights of persons who file documents electronically. Hence, they recommend that these provisions be included in the amendments.

"Time of transmission."

Current rule 2.251(f)(1) provides that "[e]lectronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent." There is some ambiguity in the application of this rule. If an electronic filing service provider is used, is the "time of transmission" the time of transmission by the filer to the EFSP or the time of transmission by the EFSP to the served party? Presumably, it is the latter. The invitation to comment asked whether this issue should be clarified in the rules. One commentator agreed that the "time of transmission" should be clarified, although no specific language was proposed. (See comment 54.) The committees recommend clarifying the rule at this time.[28]

Court-ordered electronic filing (rule 2.253(c)).

Amended rule 2.253(c)(currently rule 2.253(a)) provides that a court "may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403" to file and serve documents electronically. Two comments were received on this existing rule provision.

First, a legal aid organization commented: "Consolidated family law, domestic violence, probate and housing actions should be exempted from Rule 2.253 (c), given the extraordinary number of SRLs, and the regular (proposed) rules regarding opt-ins to e-filing and service should apply." (See comment 81.) Second, the Superior court of San Diego County stated: "Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order 'in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403...' and there is no requirement for having two electronic service providers. Because some courts have court

[28] To address this issue, rule 2.251(f)(1) [proposed amended rule 2.251(h)(1)] would be revised to include the underlined language:

> Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. <u>If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.</u>

ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order 'e-filing through the court directly or through an electronic service provider.' If this were not clarified, our court would potentially need to discontinue e-filing in these court ordered cases until it gets a second electronic service provider and then restart the process once the second provider is brought on board. This would be unduly burdensome to the court and the parties in these cases since our court has found that the process of getting an electronic service provider set up with our court takes in excess of a year to complete. The cost and staffing levels required to complete such a process create significant barriers at this time due to reduced funding." (Comment 82.)

The committees did not think that rule 2.253(c) needs to be changed; the provisions on court-ordered filing and service in complex cases have been working effectively for years. However, to address the concern of the Superior Court of San Diego County, the committees recommend adding an explanatory Advisory Committee Comment stating that court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6: court-ordered electronic filing, unlike mandatory e-filing by local rule, does not require more than one electronic filing service provider.

Limited scope and pro bono representation.

A number of commentators submitted comments on limited scope representation and pro bono representation. (See comments 74–80, and 88.)

Limited scope representation. Some commentators recommended that the rules specifically recognize and provide for limited scope representation, and the fact that some represented parties will become self-represented in the course of litigation. Thus, a legal aid organization suggested that, if a represented party who has consented to e-service becomes unrepresented, the party should be exempted from e-filing and e-service, unless the party opt-ins or becomes represented again. Judicial Council forms, such as forms EFS-007 and EFS-008, and the substitution of attorney forms, should be usable for this purpose. The rules should provide for the assessment of exemptions as part of the substitution of attorney process. In the court's order granting a substitution, the self-represented party could be directed to file an exemption request with the clerk's office within 5 days of the order's date. Low- and moderate-income litigants in family law should not be required to request permission to be exempt from e-filing and e-service each time they hire a limited scope attorney. The commentator also suggested that the Limited Scope Representation forms should be modified to reflect whom to serve and how to serve a party. (Comment 76.) The State Bar's Standing Committee on the Delivery of Legal Services made similar recommendations. (Comment 79.) The Task Force on Self-Represented Litigants also made a recommendation on this issue—namely, that the e-filing rules set out a process by which a litigant who becomes self-represented during a case is automatically excluded from mandatory e-filing unless that person opts in. (Comment 80.)

As discussed above, the committees are recommending that self-represented parties be exempt entirely from electronic filing and service. If this is done, it should largely take care of most of the commentators' concerns about limited scope representation. Parties who will no longer be represented will not have to request an exemption from mandatory e-filing or e-service. To notify other parties, they can use *Substitution of Attorney–Civil* (form MC-050), which has places on the form for parties to indicate that they are self-represented and to provide the street address where they can be served. To better assist self-represented persons who will no longer be assisted by an attorney who was electronically filing and serving documents in the case, the advisory committees may, in the future, consider reviewing the substitution of attorney form and other forms to determine if they should be revised.

Pro bono representation. Commentators also recommended that parties represented pro bono and by legal service attorneys should be allowed to opt out or qualify for a waiver of the cost of filing. Without such an option, the commentators believed that the added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients. (See comments 74, 75, 77, and 78.) One commentator specifically suggested that either the court should provide a free way to e-file documents or require electronic filing service providers to allow for no-fee transmissions for litigants represented by legal service programs or pro bono attorneys working with legal services programs. (Comment 78.)

These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver are entitled to request a waiver of their electronic filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law.[29] Meanwhile, there may be some other ways to address the commentators' concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.

Access for persons with disabilities.

Several organizations provided specific comments about how new technological advances, including e-filing and the mandatory e-filing proposal considered here, may impact persons with disabilities. (See comments 9 and 83 (Attachment B), 84, 87, and 91.) The organizations submitting these comments often joined in support of the comments by other legal aid organizations on mandatory e-filing and service. (See comment chart, Attachment B, page 2 (also noting that "people with disabilities are…disproportionately eligible for California legal aid, and disproportionately likely to be among low-income and disadvantaged parties that

[29] However, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, *but not limited to*, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(emphasis added).)

comprise the bulk of self-represented litigants"). However, the focus of these separate comments was on disability access issues.

The commentators agreed that technological advances—including the availability of e-filing and e-service—can be beneficial to many attorneys and litigants; and technological advances can also be beneficial for people with disabilities. However, unless designed and implemented with attention to a wide range of needs, new technologies can also create new barriers to access. (See Attachment B, page 2.) Among the recommendations made by these commentators were the following:

- Need to explicitly recognize statutory disability rights mandates (Comment chart, Attachment B and comment 91)
- Need to coordinate and align e-filing rules with California Rules of Court, rule 1.100 (Comment chart, Attachment B, and comments 84 and 91)
- Need to include check boxes on forms for disability accommodations (Comment chart, Attachment B, and comment 84)
- Need to ensure confidentiality of disability-related information (Comment chart, Attachment B, and comment 84)
- Need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers (Comment chart, Attachment B, and comment 84)
- Need to decouple e-filing and e-service (Comment chart, Attachment B)
- Strong recommendation against a mandatory "opt out" requirement, but if that is pursued, need for the procedure to satisfy various conditions (Comment chart, Attachment B)
- Need for appropriate exemptions process (Comment chart, Attachment B)
- Need for technology access advisory resources in connection with the development of the rules on mandatory e-filing and e-service, including
    - Soliciting specific public comment on disability access issues
    - Retaining and consulting experts with technical knowledge of disability access issues
    - Directing courts implementing the rules to retain and consult experts with technical knowledge of disability issues
    - Inviting participation of users with disabilities in technical system design and testing (Comment chart, Attachment B)
- Need for ongoing feedback mechanisms (Comment chart, Attachment B)
- Need to address special issues for persons with limited English proficiency (LEP), including translating materials and forms and providing bilingual staff to assist LEP litigants or access to interpretive services (Comments 87 and 89)

These comments are well-taken. As the commentators observed, the self-represented population includes many persons with disabilities, low-incomes, and limited English proficiency. Electronic filing and service may pose challenges for many of these persons.

The committees have several responses to these comments. First, they recommend that electronic filing and service not be made mandatory for self-represented persons at this time. These persons should continue to have the ability to file and serve documents by conventional means. For them, electronic filing and e-service would be strictly voluntary. Second, as some of the commentators noted, technology can be of substantial assistance to self-represented persons, including those with disabilities. Thus, self-represented parties should definitely be given the opportunity to "opt in" to e-filing and e-service to the extent that is feasible. Third, self-help centers and legal aid organizations have an important role to play in assisting disabled persons obtain access to justice, using modern technology when it can be of benefit. Fourth, courts implementing e-filing should ensure that, as e-filing is implemented and expands, it is developed in a manner that addresses the needs and situations of persons with disabilities, low-income individuals, and persons with limited English proficiency. See *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012.)

Comments on the New Forms for Requesting and Ruling on Exemptions

Two new Judicial Council forms for use by persons requesting an exemption were circulated for comment:

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

Comments were specifically invited on these on what other Judicial Council forms, if any, should be adopted to implement the new mandatory e-filing legislation and rules.[30]

Twenty-seven comments were received on the questions about the forms. (See comments 199–225.) The commentators made specific suggestions to improve the two proposed forms, EFS-007 and EFS-008. Many of these suggestions were technical or stylistic, i.e., to clarify the caption, to strike or relocate the proof of service, and to add instructions for persons requesting exemptions. Some were more practical and substantive—for example, to add a drop-down list of reasons for requesting exemptions and to clarify that forms EFS-007 and 008 could be used to request changes in status during the pendency of an action. (See comments 137 and 204.) Commentators were divided on the question whether the forms should be mandatory or optional. (See comments 211–219.)

[30] The questions asked in the Invitation to Comment about forms were:

- Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?
- Should these forms be made mandatory rather than optional?
- Are any other forms needed to implement the rules on mandatory e-filing?

In addition, the IOLTA-Funded California Disability Funded Advocacy Organization submitted comments on the forms. They stated that (1) there should be separate forms for e-filing and e-service, (2) the forms should include specific check boxes for disability accommodations, (3) the forms should be fillable, and (4) the forms should be compatible with specific access considerations enumerated in their letter. (See comment chart, Attachment B, pages 13–15.)

Finally, some commentators did not think that any additional forms besides EFS-007 and EFS-008 were necessary; others did—and provided lists of the forms that they thought should be developed. The additional forms suggested by commentators included information sheets on electronic filing and service, requests for hearings, notices of hearings, and orders after hearing. (See comments 202, 204, and 222.) A court also commented: "Trial courts should be allowed to develop additional forms they deem appropriate to implement mandatory e-filing." (Comment 224.)

The committees thought that, if self-represented parties are exempt from mandatory e-filing, the forms for requesting exemptions and for issuing orders on the requests would not be so crucial. Nonetheless, it would still be useful to have the forms available for represented parties to use to ask to be excused from mandatory electronic filing, electronic service, or both. The forms would also be useful for courts instituting mandatory electronic filing. Thus the committees recommend approval of the two proposed forms, as optional forms. Also based on the comments, the committees recommend some specific modifications to the two proposed forms that were circulated, as discussed in the comment chart. Finally, the committees recognized that some additional forms may need to be developed in the future to implement electronic filing and service, especially for self-represented parties.

Comments on timing

Timing of the adoption of the rules and forms.
The adoption of rules on mandatory electronic filing and service is required by statute; AB 2073 provides that the Judicial Council shall adopt such rules. However, the legislation is flexible as to timing; it simply requires the rules to be adopted on *or before* July 1, 2014. To realize the efficiencies and savings from mandatory e-filing, the invitation to comment indicated that an effective date of July 1, 2013 is being recommended for the rules. Comments were expressly invited on the question of timing.

A majority of the commentators supported the proposed effective date of July 1, 2013. (See comments 294, 295, 296, 297, and 298.) The Superior Court of Orange County commented: "Most courts will not be able to implement immediately, but those that are capable should be allowed to do so immediately to maximize savings and improve/maintain service to the public." (Comment 294.) The TCPJ/CEAC Joint Rules committee stated that July 1, 2013 effective date appears to be feasible. (Comment 298.) Some commentators, however, did suggest postponing action on the rules. The Los Angeles County Superior Court stated that the "proposal goes too

far, too soon. Statewide rules, which will tie the hands of individual courts, are being implemented before the pilot projects of Orange County and other courts provide the necessary experiences and insight into the best decisions on the issue raised by this proposal. . . .We should wait until 2014 to implement any rules." (Comment 23; see also comment 279.) The State Bar's Litigation Section also suggested waiting until after the Orange County pilot program has been evaluated before adopting the proposed new rules. (Comment 293.) The Press Group commented that it would be precipitous to adopt mandatory e-filing rules before going through the pilot program. (Comment Chart, Attachment D, page 2.)

A legal aid organization submitted an alternative view on the issue of timing. It recommended "that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in." (Comment 36.)

The committees considered the comments and recommend that the proposed rules and forms be adopted effective July 1, 2013, as proposed. Absent the rules, only the Superior Court of Orange County is authorized to establish mandatory electronic filing in civil cases. The prompt adoption of the proposed rules will enable other courts to realize the benefits of electronic filing in the near future. In the present fiscal situation, this is highly desirable. The committees think that the proposed rules provide an effective basis for instituting mandatory electronic filing and service; the rules will enable courts to initiate mandatory electronic filing in a pragmatic, flexible manner. In addition, they recommend continuing to collect information about the experience of the trial courts that introduce mandatory electronic filing. Based on the courts' collective experiences, such further changes in the rules, forms, and statute as may be necessary or desirable can be made in the future.

Implementation Requirements, Costs, and Operational Impacts

The approach to mandatory e-filing in AB 2073 and the rules implementing it are permissive for the courts. The decisions whether to institute mandatory e-filing and, if so, in what types and categories of civil cases, are left entirely to the discretion of the courts. Each court that decides to institute mandatory electronic filing will need to identify the fiscal and operational impacts for it, as well as the benefits that it may receive. (Comment 292; see also comments 288–291.) In the end, the authorization for courts to mandate e-filing in civil actions should result in a significant increase in the number of cases that are filed electronically. As a result, courts should realize many benefits from e-filing, including greater efficiency and lower costs to file process court records.

Attachments

1. California Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259, at pages 44–53

2. *Request for Exemption from Mandatory Electronic Filing and Service* (form (EFS-007), at page 54

3. *Order of Exemption from Mandatory Electronic Filing and Service* (form EFS-008), at page 55

4. Guidelines for Reports on Mandatory Electronic Filing and Service, at page 56

5. Comment chart, at pages 57–289

6. Attachments A, B, C, and D to comment chart

Rules 2.250–2.254, 2.256, 2.258, and 2.259 of the California Rules of Court would be amended, effective July 1, 2013, to read:

Rule 2.250. Construction and definitions

(a) * * *

(b) Definitions

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

(1)–(6) * * *

(7) "Electronic filing" is the electronic transmission to a court of a document in electronic form. For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are necessary for the document to be officially filed.

(8)–(10) * * *

Rule 2.251. Electronic service

(a) ~~Consent to~~ Authorization for electronic service

~~(1)~~ When a document may be served by mail, express mail, overnight delivery, or fax transmission, ~~electronic service of~~ the document may be served electronically under ~~is permitted when authorized by~~ Code of Civil Procedure section 1010.6 and the~~se~~ rules in this chapter.

(b) Electronic service by consent of the parties

~~(2)~~(1) Electronic service may be established by consent of the parties in an action. A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A).

~~(3)~~(2) A party that has consented to electronic service under ~~(2)~~(1) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

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

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

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

(A) The court orders otherwise, or

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

(3) Each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes under (f).

~~(b)~~(d) Maintenance of electronic service lists

A court that ~~orders or~~ permits or requires electronic filing in a case must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

~~(c)~~(e) Service by the parties

(1) Notwithstanding ~~(b)~~(d), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

~~(d)~~(f) Change of electronic service address

(1)–(3) * * *

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

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

(1)–(3) * * *

~~(f)~~(h) When service is complete

(1) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.

(2)–(4) * * *

~~(g)~~(i) Proof of service

(1)–(4) * * *

~~(h)~~(j) Electronic service by court

The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

Rule 2.252. ~~Documents that may be filed electronically~~ General rules on electronic filing of documents

(a) In general

A court may ~~permit~~ provide for electronic filing of ~~a~~ documents in ~~any~~ actions ~~or~~ and proceedings as provided under Code of Civil Procedure section 1010.6 and the

rules in this chapter ~~unless the rules in this chapter or other legal authority expressly prohibit electronic filing~~.

(b) Direct and indirect electronic filing

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

(c) Effect of document filed electronically

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

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

(d) Filing in paper form

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

~~(b)~~(e) Original documents

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

~~(c)~~(f) Application for waiver of court fees and costs

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

~~(d)~~(g) Orders and judgments

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

~~(e)~~(h) Proposed orders

Proposed orders may be filed and submitted electronically as provided in rule 3.1312.

~~**(f) Effect of document filed electronically**~~

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

~~(2) Filing a document electronically does not alter any filing deadline.~~

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order ~~requiring electronic service or filing~~

(a) Permissive electronic filing

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

(b) Mandatory electronic filing

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

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

(A) All civil cases;

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

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

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

(E) All civil cases assigned to a specific department, courtroom or courthouse;

(F) Any class actions, consolidated actions, or group of actions, coordinated actions, or actions that are complex under rule 3.403; or

(G) Any combination of the cases described in subparagraphs (A) to (F), inclusive.

(2) Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

(3) In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.

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

(5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.

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

(7) Any document required to be electronically filed with the court under this subdivision that is received electronically after the close of business on any day is deemed to have been filed on the next court day, unless by local rule the court provides that any document required to be electronically filed with the court under this subdivision that is received electronically before midnight on a court day is deemed to have been filed on that court day, and any document received electronically after midnight is deemed filed on the

next court day. This paragraph concerns only the effective date of filing. Any document that is received electronically must be processed and satisfy all other legal filing requirements to be filed as an official court record.

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

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

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403 to:

(A) Serve all documents electronically, except when personal service is required by statute or rule;

(B) File all documents electronically; or

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

(2) If the court proposes to make any order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after notice is mailed or such later time as the court may specify.

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

~~(b) Additional provisions of order~~

(4) The court's order may also provide that:

~~(1)~~(A) Documents previously filed in paper form may be resubmitted in electronic form; and

~~(2)~~(B) When the court sends confirmation of filing to all parties, receipt of the confirmation constitutes service of the filing if the filed document is available electronically.

~~(c) Filing in paper form~~

~~When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to serve, file, or serve and file the document in paper form.~~

Advisory Committee Comment

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

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

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

Rules 2.254. Responsibilities of court

(a) Publication of electronic filing requirements

Each court that permits or mandates electronic filing must publish, in both electronic and print formats, the court's electronic filing requirements.

(b) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing during the court's regular filing hours, it must promptly take reasonable steps to provide notice of the problem.

(c) Public access to electronically filed documents

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

Rule 2.256. Responsibilities of electronic filer

(a) Conditions of filing

Each electronic filer must:

(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;

(2) Furnish information the court requires for case processing;

(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; ~~and~~

(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address~~.~~; and

(6) If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

(b) Format of documents to be filed electronically

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

(1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.

(2) The printing of documents must not result in the loss of document text, format, or appearance.

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

Rule 2.258. Payment of filing fees

(a) Use of credit cards and other methods

A court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of filing fees associated with electronic filing, as provided in Government Code section 6159, rule 10.820, and other applicable law. A court may also authorize other methods of payment.

(b) Fee waivers

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code sections 68630–68641, rule 2.252~~(c)~~(f), and division 2 of title 3 of these rules.

Rule 2.259. Actions by court on receipt of electronic filing

(a)–(b) * * *

(c) Document received after close of business

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

(d)–(f) * * *

ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:

REQUEST FOR EXEMPTION FROM MANDATORY ELECTRONIC FILING AND SERVICE

1. I, *(name of applicant):* _____, request to be exempt from the requirements for electronic
   ☐ filing ☐ service in this case because It would cause undue hardship or significant prejudice for the following reasons:
   a. ☐ I do not readily have access to a computer with Internet access.
   b. ☐ Other *(please specify):* _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
EFS-007 [New July 1, 2013]

Cal. Rules of Court, rule 2.253
www.courts.ca.gov

ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
ORDER OF EXEMPTION FROM ELECTRONIC FILING AND SERVICE	

The court has reviewed the request for exemption and makes the following orders:

1. ☐ The court **grants** the request for exemption. The applicant may:
   ☐ file ☐ serve all documents in this case in paper form.
2. ☐ The court **denies** the request for exemption for the following reason: _____
   _____
   _____
3. ☐ The court needs more information to decide whether to grant the application request. The applicant must appear in court on the date below:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____
_____

Date:

_____
JUDICIAL OFFICER

Clerk's Certificate of Service

I certify that I am not a party to this action and *(check one)*:

☐ A certificate of mailing is attached.
☐ I handed a copy of this order to the applicant listed above, at the court, on the date below.
☐ This order was mailed first class, postage paid, to the applicant at the address listed above, from *(city)*: , California on the date below.

Date:

By: _____
DEPUTY CLERK

Form Approved for Optional Use
Judicial Council of California
EFS-008 [New July 1, 2013]

Cal. Rules of Court, rule 2.253
www.courts.ca.gov

Guidelines for Reports on Mandatory Electronic Filing and Service

Introduction

Pursuant to Assembly Bill 2073, the Judicial Council has adopted uniform statewide rules on mandatory electronic filing and service. Courts that establish mandatory electronic filing and service programs must provide semiannual reports to the Judicial Council. (See Cal. Rules of Court, rule 2.253(b)(8).) The purpose of the reports is to enable the council to evaluate the mandatory electronic filing programs and improve electronic filing and service in the courts. These guidelines are intended to assist the courts in preparing and submitting their reports.

Time of Submission

Reports are due semiannually and should be submitted by July 1 and January 1 of each year.

Place of Submission

The reports should be submitted by e-mail to the Judicial Council's Technology Committee at: mefs@jud.ca.gov

Contents of reports

The reports should contain, at a minimum, the following information:

- A description of the court's electronic filing and service programs, including both mandatory and voluntary programs;
- A description of all categories and types civil cases that the court requires to be filed electronically;
- The number of cases in each category or type filed electronically rather than in paper each month under the court's mandatory and voluntary electronic filing programs;
- The number of requests for exemption from mandatory e-filing submitted each month and their disposition;
- Whether the court uses the "close of business" standard or the "file until midnight" standard for determining the effective date of filings, and a description of the court's and users' experience with the standard or standards used by the court;
- Estimated time to process documents filed electronically as opposed to paper filings;
- Estimated costs of establishing and maintaining the court's mandatory electronic filing program, and estimated savings from the program;
- The identities of the electronic filing service providers used by the court;
- The nature and amount of any fees charged by electronic filing service providers or by the court for electronically filing documents;
- A description of the services that the court and any local legal aid or other organizations are providing to assist self-represented parties to file and serve documents electronically;
- Any other information that is relevant to evaluating the mandatory electronic filing and service programs in the court; and
- Any recommendations for improving electronic filing and service in the state courts.

The reports should attached copies of all local rules and forms adopted by the court to implement mandatory electronic filing and service.

Approved by the Technology Committee of the Judicial Council of California effective July 1, 2013.

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
General Comments, List of All Commentators, and Overall Positions on the Proposals				
1.	American LegalNet By: Erez Bustan CEO	A	Great move by state and the county all for it and its working great for all parties.	The commentator's support is noted.
2.	California Commission on Access to Justice By: Hon. Ronald B. Robie Chair	NI	The Commission on Access to Justice has the following comments in response to the Invitation to Comment on *Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073.* (See the commentator's specific comments 116, 158, 187, 226 and 276 below.)	(See responses to specific comments below.)
3.	California Family Law Facilitator's Association By: Melanie Snider Vice President	AM	The California Family Law Facilitator's Association is pleased to submit the following comments regarding mandatory e-filing and service as they apply to the self help litigants who frequently access our services. (See the commentator's specific comments 83, 102, 117, 136, 147, 159, 171, 188, 199, 211-220, 227, 241, 148, 260, 268 and 277 below.)	(See responses to specific comments below.)
4.	California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel	N/I	CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: (1) E-filing should not be made mandatory unless and until the court has the technological capacity sufficient to implement it, and (2) Self-represented litigants should be exempt from mandatory e-filing requirements.	

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

W13-05
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
			(See specific comments 34, 40 and 269 below.)	(See responses to specific comments below.)
5.	Consumers Union By: Suzanne Martindale Staff Attorney	N/I	Consumers Union, the policy and advocacy arm of *Consumer Reports*®, appreciates the opportunity to comment on the Judicial Council's proposed uniform rules to implement AB 2073. The comments below focus on the key issue of whether self-represented litigants should be subject to e-filing requirements, with an "opt-out" mechanism for hardship cases, or be exempted with an "opt-in" mechanism for those who want to file documents electronically. (See specific comment 41 below.)	(See responses to specific comment below.)
6.	Martin Dean Essential Publishers LLC	AM	(See specific comments 35, 103, 118, 137, 148, 160, 172, 189, 200, 212, 221, 228, 242, 249, 261, 270 and 278 below.)	(See responses to specific comments below.)
7.	Family Violence Law Center By: Rebecca Bauen Executive Director Oakland	N/I	I am writing on behalf of Family Violence Law Center to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group. We disagree with the proposed changes. (See comments by Legal Aid Association of California (LAAC) [similar]. The complete comments by LAAC are attached as Attachment A to this chart.)	(See responses to specific comments by LAAC below.)
8.	Julie A. Goren, Attorney	N/I	(See specific comments 42, 94, 104, 120, 138,	(See responses to specific comments below.)

	Commentator	Position	Comment	Committees' Response
	Lawdable Press		149, 161, 173, 174 and 250 below.)	
9.	IOLTA-Funded California Disability Advocacy Organizations • Disability Rights California • Disability Rights Education for Defense Fund • Disability Rights Legal Center • The Legal Aid Society – Employment Law Center	N/I	On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we applaud the Court Technology and Civil and Small Claims Advisory Committees' efforts to craft an appropriate uniform rule to address issues related to electronic filing and electronic service in the state's trial courts. We appreciate this opportunity to offer the attached insights and recommendations in response to the Invitation to Comment ("Invitation"). (The IOLTA-Funded Disability Advocacy Organizations' complete comments are attached to this chart as Attachment B.)	(See responses to comment 83 below.)
10.	Stew Jenkins, Attorney San Luis Obispo	N	. . . . The Judicial Council, being a representative arm of an independent branch of the Judiciary, should refrain from adopting a rule infringing guaranteed rights of people, whether lawyers or nonlawyers, petitioning the courts for redress of grievances by defending liberty, property the pursuit of safety, happiness or privacy through application of due process and equal protections of the law. Article I, Sections 1 & 7. After instituting the right to petition for redress of grievances in subprovision (a) of Article I, § 3, the people of this state imposed a precondition on restricting access to the courts	In enacting Assembly Bill 2073, the Legislature determined that providing for mandatory electronic filing and service was in the public interest. Furthermore, the bill includes a specific requirement that the Judicial Council "shall, on or before July 1, 2014, adopt uniform rules to permit mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state . . . ." (Code Civ. Proc. § 1010.6(f).) Thus, the legislation explicitly requires that rules of the kind recommended be adopted by the Judicial Council. The commentator misinterprets the meaning of "access" as used in the constitutional provisions

	Commentator	Position	Comment	Committees' Response
			in § 3, subprovision (2) requiring that "**A statute, court rule, or other authority … shall be broadly construed if it furthers the people's right of access. A** statute, **court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest."** Clearly a mandatory rule which bars a person, or an attorney, from filing pleadings and exhibits, unless those *documents* are translated into an electronic format constitutes a limitation on the right to access the courts. Requiring a person or an attorney to pay an extra fee to a private electronic service provider, or requiring a person or an attorney to purchase some favored commercial software provider that will interface with the court's electronic filing system, all constitute limitations on the person's right to access justice. Requiring a person or an attorney to pay to maintain bandwidth and electronic storage capacity that will allow an unlimited sized and digital density of document transmission (service) imposes a limit on access to the courts. No findings required by Article 1, §3, subprovision (2) appear in either AB 2073, or in the proposed rules amendments to CRC 2.250, 2.251, 2.253, 2.254, 2.256, 2.258 or 2.259. And no rational finding could be made that requiring	referred to. These provisions concern "the right of access to information concerning the conduct of the people's business," such as the meetings of public bodies and the writings of public officials. (See Cal. Const. Art. I, § 3(b)(1) & (5).) The type of "access" involved in filing papers with the courts is a different kind of access than that addressed in the constitutional provisions. In any event, the committees disagree that the rules, as proposed for adoption, will limit access to persons filing with the courts. The rules will in fact improve most filers' ability to file documents quickly and efficiently. To the extent mandatory e-filing and service would impose undue burdens on any particular groups or individuals, the rules provide for appropriate exceptions, safeguards and protections for those groups and individuals. The rules are consistent with the statute on electronic filing and service that expressly authorizes courts to use electronic filing service providers and provides protections for the members of the public, particularly indigent persons. The statute states, among other things: "Any fees charged by an electronic filing service provider shall be reasonable and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver." (Code Civ. Proc. § 1010.6(d)(1)(B).) As indicated above, the access that is the subject of Art. I, § 3 (i.e., access to public records and to meetings of public bodies) is not involved here;

	Commentator	Position	Comment	Committees' Response
			filing of documents and exhibits electronically serves any critical governmental interest by limiting filing to electronic means. The goals of the legislation, and of the proposed rule, is to reduce cost of storage and adopt and fund rules providing for uniform electronic viewing of the public records in civil case files; so a goal of making documents more accessible to the public who may be interested in the proceedings of private and public parties litigating maters does not appear to be an interest protected by limiting who can participate in litigation before the courts. THREE SIMPLE SUGGESTIONS to save the proposed rules: ONE: Proposed: Rule 2.251 (c) (1) A Court may ~~require~~ encourage parties to serve documents electronically in specific actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules of this chapter. (c) (2) ~~Except when personal service is otherwise required by statute or rule,~~ [A] party that ~~is required to~~ files documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless: …. TWO: Proposed Rule 2.252 **Subprovision (a)** should remain permissive, in	hence, the requirement for findings in section 3(b)(2) do not apply. If the requirements had applied, findings could certainly be made that the statute and rules on electronic filing and service serve a valid public interest. This suggestion is inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service. This suggestion is inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service. Making this subdivision only permissive would be

	Commentator	Position	Comment	Committees' Response
			place of the words "provide for" in the first phrase. To provide inducement, and recognize that the court is seeking to reduce its own processing costs, the judicial council should consider a uniform reduction in any filing fees for documents filed electronically equating with the savings the court will received in storage/processing costs. **Subprovision (b)** needs to mandate an open court by requiring any court providing for electronic filing to accept direct filing by electronic means, without additional charges above those that would be charged to file hard copy documents across the Clerk's counter. **Omitted provision:** There is no process which imposes by rule a uniform mechanism that will provide a party filing electronically with a "file stamp" or other conformation that the document has actually been "filed" with the court. THREE: Proposed Rule 2.253 **Subprovisions (a)** – again, clarification that a court permitting electronic filing must provide for direct filing without the need for an electronic service provider at no charge additional to over the counter filing lest the rule infringe public access to the court. **Subprovision (b)** – Mandatory electronic filing can only be saved from constitutional infirmity in this proposed rule if subprovisions (b) (2) – (4) are collapsed and replaced with an opt out	inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service. Reducing filing fees would require additional legislation, which is beyond the scope of this rule proposal implementing AB 2073. Requiring courts to accept direct filings in civil cases, and to do so without any additional charges, is economically unfeasible. The statute and rules on electronic filing are reasonable in recognizing that electronic filing service providers may be relied on to assist with the electronic filing of documents and may charge a reasonable fee, subject to fee waivers. Rule 2.259 provides that courts must provide electronic filers with a confirmation of filing of a document. Many courts return a file stamped copy to the filer, although that is not expressly provided for in the rules. As discussed above, it is not feasible to require that all courts to accept direct filings, without use of electronic filing service providers and at no additional cost. The rules, which provide relief for persons with fee waivers and for persons who can demonstrate they are eligible for an exemption from mandatory e-filing, do not infringe on public access. The committees do not agree with the proposed

	Commentator	Position	Comment	Committees' Response
			provision such as a new subdivision (b) (2) reading substantially as follows: "Any party may opt-out of requirements for electronic filing by serving (by personal or mail delivery) on the other parties, and filing with the court, a declaration that the party is opting out of electronic service and filing. No reason need be given. Parties that do not opt-out may file pleadings and documents electronically with the court, but shall serve any party opting out of electronic service and filing by mail, personal delivery, or by facsimile transmission as provided by law." Obviously the proposed Request for Exemption (form EFS-007) would need revision, and the proposed Order of Exemption (form EFS-008) would not be needed (saving the court and clerk processing time.)	revisions to the rules and forms. The changes are not practical or legally necessary, and they are inconsistent with AB 2073.
			Subprovision (b) (5) permits an additional fee for the required electronic filing not charged for over the counter paper filing. This barrier to access can be removed by requiring that the electronic filing fee be without charge, or actually by providing a discount on the filing fee that recognizes the savings in processing which the court will reap through electronic filing.	This provision concerning the fee is consistent with the e-filing statute, which like the rule also provides for waiver of the fee. (See Code Civ. Proc. § 1010.6(d)(1)(B).)
			In closing, let me observe that dependency on written paper pleadings in our judicial system dates back to well before the time of Henry II of England *during the 1100s*. Those helping our judiciary incorporate new technological	Continuing to rely on paper filings as the "one method" for conducting court business is neither feasible nor desirable in the twenty-first century. Documents today are created and, for the most part, stored electronically. It is important to move

	Commentator	Position	Comment	Committees' Response
			methods should be praised; but seeking to harness those new technologies should not inadvertently set up barriers to people and attorneys accessing the courts through the one method that has well served us for a millennium. For the whole history of our judicial system, filing a written paper document, and handing a copy of it to the other party or other attorneys in a proceeding as notice, has been a hallmark of due process. The rule should permit and encourage evolution in pleadings and service procedures; not mandate extinction of paper pleadings and service prior to the public and courts having a full opportunity over through usage to see whether pitfalls will result from use (by those choosing the usage) of virtual electronic methods for notice and pleading.	from paper to electronic means of conducting business, including the business of the courts, for many reasons—including increased public access to the courts, ease and speed of business, greater efficiencies, and reduced costs. This transition can be done in a manner that takes into account the situations and needs of the diverse populations that use the courts.
11.	Legal Aid Association of California By: Salena Copeland Directing Attorney	N/I	I am writing on behalf of the Legal Aid Association of California (LAAC) to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group. Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB 2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement.	

	Commentator	Position	Comment	Committees' Response
			I am the Directing Attorney of LAAC. Founded in 1984, LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits in the state. The attorneys at our member programs represent low-income clients in matters in California's civil courts. These civil cases frequently involve critically important access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system. These low-income Californians are court users who rely on the civil court system to protect and enforce their rights in ways that are critically important to these individuals, their families, and ultimately to our society as a whole. If not for our member organizations, most, if not all, of these represented court users would be self-represented litigants. Our member organizations also work closely with their local courts through partnerships with Self-Help Centers and Offices of the Family Law Facilitator. Without fully accessible courts, including the local Self-Help Centers and Family Law Facilitators, our members' clients and self-represented litigants would be unable to safeguard rights that many Californians take for granted. Based on this	

	Commentator	Position	Comment	Committees' Response
			larger context of the importance of access to the courts, LAAC provides the following comments to the working group's specific questions in the Request for Specific Comments and with additional thoughts. (See LAAC's specific comments 36, 43, 74, 84, 121, 175 and 230 below. LAAC's complete comments are attached to this chart as Attachment A.)	(See responses to LAAC's specific comments below.)
12.	Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney	N/I	On behalf of the Legal Aid Foundation of Los Angeles (LAFLA), we provide these comments to the Judicial Council as it considers the implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants. We would like to recognize the public comments offered by the Legal Aid Association of California (LAAC); State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS); California Commission on Access to Justice; and various other legal services and advocacy groups addressing the general impact of this rule, issues related to fee waivers, limited scope representation, disability access and other concerns facing legal services-eligible Californians. We note our agreement with the insights and recommendations offered in those comments and urge the Judicial Council's close attention to them.	

	Commentator	Position	Comment	Committees' Response
			LAFLA comments here separately to focus on language access issues within the scope of our experiences and expertise with limited-English proficient (LEP) litigants and communities. Through our six community offices, court-based clinics and self-help centers, multi-lingual hotlines, and community-based clinics, LAFLA provides free direct legal services to over 14,000 people annually and assists an additional 55,000 become more knowledgeable about their legal rights. Submitted via electronic mail to *invitations@jud.ca.gov* (See commentator's specific comments 44, 61, 75 and 87 below. The Foundation's complete comments are attached to this chart as Attachment C.)	(See responses to specific comments below.)
13.	Legal Aid Society of Orange County		(See specific comments 85, 122, 139, 150, 162, 176, 190, 201, 213, 151 and 262 below.)	(See responses to specific comments below.)
14.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney	N/I	This letter contains the comments of Legal Services of Northern California (LSNC) on the proposed court rules on mandatory e-filing. LSNC is the federally funded legal services program for 23 Northern California counties. LSNC strongly supports the comments of other organizations that efiling should not be mandatory for in pro per litigants. LSNC also strongly supports the comments of the Legal Aid Foundation of Los Angeles about access for limited English proficient litigants and the comments of the Disability Rights Education	

	Commentator	Position	Comment	Committees' Response
			and Defense Fund about access for litigants with disabilities. In addition to those comments, LSNC adds the following: (See specific comments 45, 53, 66, 67, 71, 86, 123 and 140 below.)	(See responses to specific comments below.)
15.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney	N/I	I am writing on behalf of the Los Angeles Center for Law and Justice (LACLJ) to provide public comment to the Judicial Council as it considers the implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants. We would like to recognize the simultaneously submitted public comments being offered by the State Bar of California Standing Committee on the Delivery of Legal Services (of which I am a member); Legal Aid Association of California; California Commission on Access to Justice; and various other legal services community and advocacy groups addressing the general impact of e-filing and e-service, including issues related to fee waivers, limited scope representation, disability access and other concerns facing legal services-eligible Californians. We note our agreement with the insights and recommendations offered in those comments and urge the Judicial Council's close attention to them. **We write here to focus on low-income and**	

	Commentator	Position	Comment	Committees' Response
			self-represented litigants' access issues within the scope of our experiences and expertise. Our agency provides free family law and housing law services to high need populations, including both court representation and advice to self-represented litigants. LACLJ focuses on serving very low-income families with children; 92% of clients live below 100% of the federal poverty line (which is a family of four earning less than $23,050 per year). Many are victims of domestic violence, limited English proficient (LEP), immigrants, and individuals with very low levels of literacy. More than 80% of LACLJ clients are female, and 90% are Latino. More than half of LACLJ's clients have not graduated from high school; of these, half have less than an eighth grade education. LACLJ clients already face significant barriers to filing, service and participation in litigation; we are very concerned that required e-filing, e-service and the receipt of e-service will pose insurmountable barriers to low-income and self-represented litigants. In light of these concerns, I am writing today with comments regarding specific questions set forth in the Invitation to Comment, as well as additional thoughts. (See specific comments 76, 81, 88, 95, 105, 124, 151, 163, 177, 191, 202, 231, 243 and 252 below.)	(See responses to specific comments below.)
16.	National Housing Law Project By: Renee Williams Executive Director	N/I	I am writing on behalf of the National Housing Law Project to provide public comment to the Judicial Council as it considers the	

	Commentator	Position	Comment	Committees' Response
			implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants. (See specific comments by Legal Aid Foundation of Los Angeles (LAFLA) [similar]. LAFLA's complete comments are attached to this chart as Attachment C.)	(See responses to specific comments by LAFLA.)
17.	OneJustice By: Linda S. Kim Deputy Director	N/I	I am writing on behalf of OneJustice to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-Filing Working Group. Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement. OneJustice's mission is to resolve legal problems by removing barriers to justice. OneJustice is the critical link between life-saving affordable legal services and people in need. Our state's most vulnerable poor, persons with disabilities, senior citizens, limited English-speakers, women, single-parent families and at-risk children face significant barriers to justice. Without proper representation and advocacy they endure innumerable assaults and	

	Commentator	Position	Comment	Committees' Response
			affronts to dignity. This advocacy requires accessible and fully-functioning court systems, so we took great interest in the proposal on Mandatory E-Filing. (See specific comments 125 and 178 and comments by Legal Aid Association of California (LAAC) [similar].)	(See responses to comments 125 and 178, and to comments by LAAC.)
18.	Press Groups By: Holm, Roberts & Owen LLP, Rachel Matteo-Boehm, Attorney	N/I	On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (the "Press Groups"), we make this submission in response to the invitation for comments on "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073." [Note: The following additional organizations have joined in the comments by The Press Groups: Bay Area News Group, The Press Democratic Media Company and Los Angeles Times Communications, LLC.] (See specific comment 64 on definition of electronic filing below. The Press Groups' complete comments are attached to this chart as Attachment D.)	(See response to comment 64 below.)
19.	Public Law Center By: Elizabeth Gonzalez Lead Attorney	AM	Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The Advisory Committees and the AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a	

	Commentator	Position	Comment	Committees' Response
			mandatory e-filing requirement The Public Law Center is a qualified legal services program providing access to justice for low income Orange County residents. Through volunteers and staff, the Public Law Center provides free civil legal services, including counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices. In 2011, PLC worked with nearly 1,200 volunteer lawyers, paralegals and law students from throughout the county who volunteered their time and expertise to assist over 18,000 low-income children, adults and seniors. Because the Public Law Center is located in Orange County, we are uniquely situated to comment on the statewide implementation of mandatory e-filing. We are writing today with answers to the working group's specific questions in the Request for Specific Comments and with additional thoughts. (See comments 78, 90, 105, 129 and 254 and comments by Legal Aid Association of California (LAAC) [similar].) . . . . We are also aware that the Legal Aid Foundation of Los Angeles and others plan to	(See responses to specific comments and to comments by LAAC.)

	Commentator	Position	Comment	Committees' Response
			submit a comment addressing concerns with e-filing and litigants with limited English proficiency. We would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California. Since Public Law Center is located in Orange County, currently the only county with mandatory e-filing in civil cases, we are already seeing changes being made to the process to provide better access to the courts for self-represented parties. The lessons being learned in Orange County will be very useful as mandatory e-filing and e-service spreads to other counties across the state.	
20.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel	N/I	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports the proposal, subject to the following general comments and responses to the requests for specific comments. The Invitation to Comment raises a series of questions concerning an opt-out process, which are set out below along with CAJ's responses.	

	Commentator	Position	Comment	Committees' Response
			(See specific comments 38, 47, 54, 68, 141, 164, 179, 193 and 203 below.) . . . . This position is only that of the State Bar of California's Committee on Administration of Justice. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	(See responses to specific comments below.)
21.	State Bar of California, Litigation Section By: Saul Bercovitch	N/I	The Rules and Legislation Committee of the State Bar of California's Litigation Section has reviewed the Invitation to Comment on Mandatory E-Filing (W13-05) and appreciates the opportunity to submit these comments. (See specific comments 37, 48, 55, 65, 72 and 293 below.) . . . . This position is only that of the State Bar of California's Litigation Section. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	(See responses to specific comments below.)
22.	State Bar of California, Standing	AM	(See specific comments 79, 91, 107, 127, 152,	(See responses to specific comments below.)

	Commentator	Position	Comment	Committees' Response
	Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		165, 180, 204, 214, 222, 234, 244 and 254 below.) . . . . This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	
23.	Superior Court of Los Angeles County	N	The proposal goes too far, too soon. Statewide rules, which will tie the hands of individual courts, are being implemented before the pilot projects of Orange County and other courts provide the necessary experiences and insight into the best decisions on the issues raised by this proposal. We should wait until 2014 to implement any rules. Wait until the pilot projects reveal how the rules impact self-represented litigants, hardship guidelines, fee waivers, definition of "close of business," etc. (See also specific comments 96, 108, 128, 142, 153, 166, 181, 194, 205, 225, 235, 245, 255, 263, 271 and 279 below.)	The committees disagreed with this suggestion to postpone action on the rules until 2014. The proposed rules are an important and timely step towards expanding electronic filing and service in California. The rules do not go too far: they are reasonable and practical; they draw upon the state trial courts' experiences with electronic filing, including the experience so far of the Superior Court of Orange County with mandatory e-filing. Based on information received from the pilot project, further improvements and adjustments, of course, may be made to the rules in the future. But to enable other courts to begin implementing mandatory e-filing promptly and realize the benefits, the proposed rules should not be delayed. (See responses to specific comments below.)

W13-05
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
24.	Superior Court of Orange County By: Jeff Wertheimer General Counsel	A	The comments below only address the merits of mandatory e-filing for civil cases. There are a number of issues unique to probate, family law, juvenile, etc. that caution against expanding into these areas until considerable more effort is put into studying the impact mandatory e-filing will have on these constituencies. (See specific comments 97, 109, 129, 143, 154, 167, 182, 195, 206, 216, 236, 256, 264, 272, 283, 288, 294 and 299 below.)	(See responses to specific comments below.)
25.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer	AM	(See specific comments 98, 110, 130, 144, 155, 168, 183, 196, 207, 217, 223, 237, 246, 257, 269, 273, 280, 284, 289, 295 and 300 below.)	(See responses to specific comments below.)
26.	Superior Court of Sacramento County By: William Yee Research Attorney	AM	Agree with proposal if modified as indicated below. (See specific comments 52, 56, 73, 81, 111, 131 and 285 below.)	(See responses to the specific comments below.)
27.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer	N/I	Thank you for the opportunity to review the draft Uniform Rules on E-Filing to Implement Assembly Rule 2073. We would first like to commend the Court Technology Advisory and Civil and Small Claims Advisory Committees for their expeditious development of these draft rules. At this time of great budget challenges for the courts, it is imperative to move forward with the implementation of efficiencies, such as mandatory e-filing. We greatly appreciate the	The court's support for the rules as efficiency measures and for the early adoption of the rules is noted.

	Commentator	Position	Comment	Committees' Response
			work of the committees in bringing this effort forward well ahead of the statutory deadline. We would offer some specific comments on the recommendations following the outline provided in the request for comments: (See specific comments 59, 70, 99, 112, 132, 208, 286, 296 and 300 below.)	(See responses to specific comments below.)
28.	Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer	AM	(See specific comments 82, 92, 100, 113, 133, 145, 156, 169, 184, 197, 209, 218, 224, 238, 258, 266, 274, 281 and 297 below.)	(See responses to specific comments below.)
29.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer	N/I	The Superior Court of California, County of Santa Clara respectfully submits the following feedback on the proposed "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073". The proposal was also discussed with trial courts who are participating in the e-filing workstream sponsored by the Technology Committee's Judicial Branch Technology Initiatives Working Group. Courts from the following counties participate in the e-filing workstream: Alameda, Amador, Orange, Riverside, San Bernardino, San Mateo, and Santa Clara. Although the feedback contained in this memo represents the opinions of Santa Clara, we have noted areas where our feedback is consistent with the participants of the e-filing workstream. (See specific comments 101, 114, 134, 146,	(See responses to specific comments below.)

	Commentator	Position	Comment	Committees' Response
			157, 170, 185, 198, 210, 219, 225, 239, 247, 259, 267, 275, 282, 287, 290 and 300 below.)	
30.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice, Fourth District Court of Appeal	AM	The Task Force on Self-Represented Litigants thanks the Court Technology Advisory Committee for the excellent work they have done on the issue of e-filing and their serious consideration of the impact on self-represented litigants. (See specific comments 49, 58, 63, 80 and 291 below.)	(See responses to specific comments below.)
31.	Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJAC/CEAC) Joint Rules Committee	AM	The TCPJAC/CEAC Joint Rules Working Group (JRWG) agrees with the proposed changes if modified. (See specific comments 39, 50, 60, 115, 292 and 298 below.)	(See responses to specific comments below.)
32.	Western Center on Law and Poverty By: Mona Tawatao Senior Litigator	AM	I submit these comments on behalf of the Western Center on Law & Poverty (WCLP) to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group. Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. We appreciate that the AB 2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and costs of a mandatory e-filing requirement.	

	Commentator	Position	Comment	Committees' Response
			WCLP advocates on behalf of low-income Californians through litigation and legislative and policy advocacy in the areas of housing, health care and public benefits. Ensuring that our state's lower-income residents have equal access to the courts is also a high priority for our organization. I submit the following answers to the working group's specific questions in the Request for Specific Comments along with some additional thoughts. (See specific comments by Legal Aid Association of California (LAAC) [similar]).	(See responses to specific comments by LAAC.)
33.	Yuba Sutter Legal Center for Seniors By: Susan Townsend Directing Attorney	N/I	I am writing on behalf of the Yuba Sutter Legal Center for Seniors. This office provides free legal services to seniors in Yuba and Sutter Counties as small claims assistance to Yuba County small claims litigants. I wish to comment on the recommendations of the Mandatory E-filing Working Group. (See specific comment 51 below.)	(See responses to specific comment below.)
Authorization for mandatory electronic filing (rule 2.253(b))				
34.	California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel	N/I	CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: (1) E-filing should not be	The committees note the CJA's support for mandatory electronic filing and agreed with the caveats presented by the CJA.

	Commentator	Position	Comment	Committees' Response
			made mandatory unless and until the court has the technological capacity sufficient to implement it	
35.	Martin Dean Essential Publishers LLC		Requirements for Mandatory Electronic Filing – Number of EFSP's required: We note that the legislation requires that TWO OR MORE EFSP's be available to accept electronic filings for the court. It also appears that the court itself could be an EFSP and would therefore be counted as well. However, the rule as proposed does not reflect the "two or more" requirement. It should.	Under AB 2073, electronic filing is subject to certain conditions, including "The court and all parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court . . . ." (Code Civ. Proc., §1010.6(d)(1)(B); see also Code Civ. Proc., §1010.6((g)(2).) The language in the proposed rules is consistent with the statutory language.
36.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Phase in Courts Requiring Mandatory E-filing** LAAC recommends that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.	It is not necessary to establish a requirement that only a certain number of courts can implement mandatory e-filing each year. As a practical matter, mandatory e-filing will be phased in gradually around the state as courts acquire the capacity to introduce it. Courts acquiring the capacity to institute mandatory e-filing later will be able to learn from the experience of those who acquire it earlier, including how to structure support for self-represented litigants who opt in.
37.	State Bar of California, Litigation Section By: Saul Bercovitch		**Mandatory Electronic Filing and Service** Rule 2.253 covers both mandatory electronic filing and electronic service, but the headings, subheadings, and text of rule 2.253 do not	For clarity, "and service" has been added to rule 2.253, though rule 2.251 is the main rule on electronic service and includes more specific

	Commentator	Position	Comment	Committees' Response
			consistently so state. We note that the definition of "electronic filing" in rule 2.250(b) does not encompass electronic service. The committee suggests modifying rule 2.253 to state explicitly that some of its provisions cover both mandatory e-filing and e-service: "Rule 2.253. Permissive electronic filing, mandatory electronic filing and service, and electronic filing and service by court order "(a) Permissive electronic filing . . . "(b) Mandatory electronic filing and service "A court by local rule may require parties ~~by local rule~~ to electronically file documents in civil actions directly ~~through~~ with the court, or directly through the court and through one or more approved electronic service providers, or through more than one approved electronic service provider, and may require parties to electronically serve documents in civil actions, subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and the following conditions: . . . "(c) Electronic filing and service	provisions on mandatory electronic service. (See rule 2.251(c).)

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

	Commentator	Position	Comment	Committees' Response
			required by court order"	
Scope of mandatory e-filing: Types and categories of civil cases (rule 2.253(b)) (See also comments on Question 2 below)				
38.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Scope of the Proposed Rules** **Juvenile Cases** CAJ concurs with the view that the e-filing and e-service rules should be broadly implemented, subject to leaving discretion at the individual court level to exclude certain types of cases. With the exception of small claims cases, discussed in the following section, there appears to be little reason to exclude certain types of cases from the mandatory rules. If certain cases (such as family law cases) were exempt from the rules, practitioners who handle both such cases and other types of cases would have to practice under two sets of rules in the same court—mandatory e-filing and e-service for certain cases, but no such filing and service for others. Juvenile cases are the only category of cases the proposed rules would exclude. Members of CAJ have no particular expertise in juvenile cases, and express no views on that exemption, either pro or con. **Small Claims Cases** CAJ recommends that small claims cases *not* be included in the mandatory e-filing and e-service	The committees agreed that the rules should be broadly implemented and, to authorized the broadest possible range of civil cases, have eliminated the proposed exclusion of juvenile cases. While the rules on mandatory e-filing and e-service do not expressly exclude small claims

	Commentator	Position	Comment	Committees' Response
			rules. First, as the Invitation to Comment notes, such cases typically involve only self-represented parties, for whom mandatory e-filing and e-service may be more problematic. Second, there are relatively few pleadings in small claims court cases, and at least the initial claim will need to be personally served on the defendant. Thus, the benefits of electronic filing and service in such cases are minimal. While CAJ recommends not including small claims court cases in mandatory electronic filing and service rules, CAJ notes that there could be substantial benefit to permitting at least the filing of pleadings in such cases through electronic means. The Orange County Superior Court pilot project allows the filing of the initial claim and answer electronically. See http://www.occourts.org/directory/small-claims/efiling.html.	cases, they would exempt self-represented parties and so, in effect, make e-filing and e-service optional for small claims parties who are always self-represented. As the CAJ notes, there may be substantial benefits for small claims parties to file electronically. So courts should institute means to encourage small claims parties to voluntarily file documents electronically, if feasible. To promote such filing, under the rules, electronic filing for small claims and other self-represented parties litigants would not be deemed consent to electronic service. Legal aid and self-help centers should be able to assist these parties to file documents electronically even if the parties do not have the ability later to electronically serve and receive service of documents.
39.	TCPJAC/CEAC Joint Rules Working Group		Regarding the scope of the proposal, the JRWG requests that juvenile cases not be excluded outright.	The mandatory electronic filing and service rules have been revised to not exclude juvenile cases. An Advisory Committee comment has been added to rule 2.253 stating that the rule "allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate." The comment also states, however, that, "in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may easier and more cost-effective to implement at the outset while other types may involve special procedures or other

	Commentator	Position	Comment	Committees' Response
				considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts."
Scope of mandatory e-filing: Exclusion or inclusion of self-represented parties (rule 2.253(b)) (See also comments on Question 3 below)				
40.	California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel	N/I	CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: . . . . (2) Self-represented litigants should be exempt from mandatory e-filing requirements.	The committees note the CJA's support for mandatory electronic filing and agreed that self-represented litigants should be exempted from such filing requirements.
41.	Consumers Union By: Suzanne Martindale Staff Attorney		**We strongly believe that if self-represented litigants are to be subject to e-filing requirements at all, they should be protected by an "opt-in" system that exempts them from e-filing requirements unless they provide affirmative consent.** At the same time, we would otherwise support requiring e-filing (with an "opt-out" exemption for hardship cases) for represented parties. This will strike the right balance between promoting the use of e-filing and ensuring access to justice and the courts for individuals from vulnerable populations that may find e-filing burdensome and difficult. AB 2073 authorizes California courts to amend their local rules to mandate e-filing for almost all types of civil cases. As a result, two common	The committees agreed with the commentator and recommend that self-represented parties be exempt from e-filing requirements unless they affirmatively consent. Also, to implement AB 2073, the committees agreed that it is appropriate to require represented parties to file electronically in specified civil cases (with an opt-out exemption available based on hardship). Like the commentator, the committees think this approach strikes the right balance.

	Commentator	Position	Comment	Committees' Response
			types of civil cases – unlawful detainer and debt collection – will be subject to mandatory e-filing. Defendants in these cases often find themselves at an inherent disadvantage when confronted with litigation. These individuals face severe economic distress: consumers are struggling with debts in the case of debt collection suits, and tenants in eviction cases are often sued over non-payment of rent. In light of such financial constraints, they are much less likely to have access to legal representation. If they do at all, they may only receive limited-scope assistance from legal aid or legal services organizations that can help prepare court documents but do not have the resources to act as attorneys of record in their clients' cases. Tenants in unlawful detainer actions have the added pressure of being subject to summary proceedings with short timelines: they must file responsive pleadings within five calendar days to avoid losing by default. **Therefore we support "Option 1" for amending Rule 2.253(b)(2),** which encourages but does not require e-filing for self-represented litigants. The "opt-in" protection would ensure that self-represented litigants are not unfairly disadvantaged due to lack of access to, or facility with, the technologies needed for e-filing. Although individuals in low-income communities are increasingly able to access the Internet, they are more likely to do so through a mobile phone as opposed to a computer; thus technological barriers still exist in those	

	Commentator	Position	Comment	Committees' Response
			populations. Furthermore, individuals who are elderly or disabled may find it more difficult to use e-filing for technological and/or cognitive reasons. These same populations may also find it hard even to apply for a hardship exemption in order to opt out of e-filing, since doing so creates an extra step in the litigation process that could take time and require assistance. An "opt-in" system would also ensure that legal aid and legal services organizations can continue to provide competent assistance to their clients despite typically limited resources. Legal aid and legal services organizations – often the only resource available for vulnerable populations in need of legal assistance – will indirectly bear the burden of these new requirements, and may not have the staff or equipment in some counties to handle a massive influx of cases where clients must e-file responsive pleadings or apply for hardship exemptions. In order to create a system that is internally consistent with respect to self-represented parties, we would also support conforming exemptions with an "opt-in" for electronic service and any other documents to be submitted to the court. **However, we would not object to the proposed amendments to Rule 2.253(b)(3) requiring e-filing for represented parties in "mixed cases,"** where one of the parties is self-represented, so long as the self-represented	The committees agreed that electronic service for self-represented parties should also be on an "opt in" basis. (See rule 2.251(c).) The commentator's support for the provision in rule 2.253(b)(3) for "mixed cases" is noted. This provision has been retained in the final version of the rules recommended to the Judicial Council.

	Commentator	Position	Comment	Committees' Response
			party is still served those documents by non-electronic means. Lawyers with the resources to represent litigants in court by and large have access to the technologies necessary for e-filing, as well as the requisite level of sophistication. In some cases, mandatory e-filing may pose a hardship even for them – but should that occur, the hardship exemption amendments proposed for Rule 2.253(b)(4) should be sufficient to preserve represented litigants' rights. In conclusion, we appreciate the courts' efforts to implement technological advances which, if well-tailored, can both reduce court costs and facilitate the administration of justice. In this crucial period of transition, however, and in light of the continuing barriers to equal justice that affect vulnerable communities, it is important that the new rules are flexible enough to meet the needs of those litigants who would be effectively barred from meaningful access to the courts by newer technologies. We look forward to working with the Judicial Council in these and future efforts to update and improve the civil court system.	
42.	Julie A. Goren, Attorney Lawdable Press		**<u>Not exempting self-represented parties</u>** eFiling and eService presents significant cost and time savings which self-represented parties should enjoy. They should definitely not be automatically excluded. I believe that it is the responsibility of the EFSPs, not the court, to help the self-represented parties wind their way	Based on all the comments, the committees concluded that self-represented parties should be excluded from mandatory electronic filing as well as electronic service. At the same time, the voluntary participation of self-represented persons in electronic service and filing should be

	Commentator	Position	Comment	Committees' Response
			through the EFSP's system. Each EFSP should be required to have a tutorial or webinar on their website, and no self-represented party should be able to request an exemption on grounds of undue hardship or prejudice until after they have watched that tutorial or webinar and at least tried, with the help of the EFSP, to get through the process. There will be a learning curve, but once they get it, their lives will be made much easier. On the other hand, I can see issues in multi-party cases with a self-represented party, where everyone is eServed except that one party. Different deadlines would apply to those different service methods, making things more difficult.	encouraged. The more that electronic filing and service can be made accessible to self-represented, the better. Courts, self-help centers, legal aid organizations, and EFSPs can all play a party in promoting electronic filing and service.
43.	Legal Aid Association of California By: Salena Copeland Directing Attorney		. . . . LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analyzed.	The committees think that the final proposal submitted to the Judicial Council properly recognizes the potential impact of mandatory e-filing on the public and vulnerable Californians and includes proper safeguards and protections.
44.	Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney		**Certain Populations Should Be Automatically Exempted, Not Forced to Opt-Out** We strongly support the comments of other organizations in recommending that self-represented litigants be automatically exempt, but be able to "opt-in" if they choose to electronically file documents. Self-represented litigants may not have access to computers and may have difficulty filing documents	The committees agreed with these comments. They recommend that self-represented parties be exempt from e-filing and e-service requirements but be able to affirmatively consent to electronic filing and service.

	Commentator	Position	Comment	Committees' Response
			electronically. This is particularly true for litigants with limited-English proficiency, who are more likely than English-speaking litigants to be living in poverty and face more barriers to accessing the courts. Many self-represented litigants lack access to technology and even if such technology is provided by the courts or public access areas, those who are LEP will experience even more confusion attempting to navigate unfamiliar equipment and terminology. Litigants may have to learn how to use scanners, printers, modems, software to "save as" PDFs, etc., as well as compose and send private personal information via a public library or court terminal. LEP litigants are more likely to lack comprehension regarding how to send and confirm transmittal of an electronic document, which could greatly impede these litigants from having their cases fairly presented and heard. Forcing self-represented litigants to opt-out would be overly burdensome. In many immigrant communities, there is already a pervasive problem with many LEP self-represented litigants seeking assistance from unscrupulous notarios and brokers, who charge exorbitant fees to assist individuals with form preparation, which is usually very poor quality. Placing further burdens and barriers on the low-income LEP population would only create new opportunities for these notarios and brokers to take advantage of litigants facing desperate	

	Commentator	Position	Comment	Committees' Response
			situations. If there is no exemption for all self-represented litigants, certain types of cases should be exempted, such as domestic violence restraining order proceedings, civil harassment restraining order proceedings, elder abuse cases, unlawful detainer proceedings, and all family law cases. These cases have an overwhelming number of self-represented litigants and critical issues at stake, including fundamental rights regarding the care of minor children and relief from abuse. The recent Elkins Family Law Task Force's Final Report and Recommendations, released in April 2010 by the Judicial Council of California Administrative Office of the Courts, found that in many communities, more than 75% of family law cases have at least one self-represented litigant. In many immigrant LEP communities, underreporting of domestic violence is a serious problem, and imposing additional requirements may serve as further impediments for victims seeking needed protection. **Notice of the Exemption and Opt-In/Opt-Out Process Should be Made Clear** If there is an exemption, the exemption and opt-in process should be made very clear so that self-represented litigants understand that it is not mandatory for them. This is especially important for LEP litigants. As detailed further below, we recommend that any notices and outreach regarding new court policies should be translated into the top five most widely spoken	In light of the proposed general exemption of self-represented parties, the committees do not recommend exempting certain types of cases. Self-represented parties in these types of cases may choose to file, serve, and be served by conventional means. The point is well-taken that it should be clear to self-represented parties that they are exempt from electronic filing and service requirements and that they may opt-in voluntarily. Courts instituting mandatory e-filing should make it explicit who is covered by the requirements and who are not— in their rules, on their websites, and in informational materials. Information and assistance on how to opt in should also be provided, to the extent feasible.

	Commentator	Position	Comment	Committees' Response
			non-English languages in each county. Further, court staff who are bilingual or have access to interpretive services should be available to explain any new rules to LEP litigants. Further, if a self-represented litigant opts-in, there should be an opportunity to opt-out later if the litigant discovers that electronic filing or service of documents is not appropriate for that person. Accessing electronically served documents in public libraries, borrowed computers, smart phones, or dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion. Any opt-in forms should offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet. Many low-income litigants also obtain attorneys for limited periods and often go in and out of being self-represented. This is very common with LEP litigants because they often cannot understand their court filings, cannot obtain qualified interpreters for their hearings, or access traditional legal services. As a result, they may hire an attorney for one hearing or limited scope, and then be self-represented	The committees will look further at this issue to determine what additional actions might be taken in the future to make the process of opting out clearer and easier to deal with, including possible revisions to forms. *Substitution of Attorney - Civil* (form MC-050)

	Commentator	Position	Comment	Committees' Response
			again. There must be a meaningful way for these litigants to opt-out easily if this occurs. For example, a represented party who has consented to e-filing and e-service but becomes unrepresented should be exempt from that point on unless they opt-in and/or become represented again. The *Substitution of Attorney – Civil* form should be modified to include an opt-out box to check, so that both the court and other parties are aware that the self-represented litigant is no longer subject to e-filing or e-service. If an LEP litigant, now self-represented, is unaware that she must e-file and receive e-service, there could be disastrous consequences in her legal case.	may be used for this purpose. On the form, a self-represented party can indicate that he or she is substituting in for an attorney and can provide the physical address where he or she is to be served. Because of the way in which the *Substitution of Attorney – Civil* form is currently organized, a party can already provide notice to the other parties of the physical address at which service is to be made, so changes (such as the proposed opt-out box) are not necessary. However, the committees may review this and other forms in the future for the purpose of determining whether they should be modified to be more user-friendly for persons opting out and opt in to e-filing and e-service.
45.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		If the Judicial Council decides that efiling will be mandatory for everyone, there must be an easy way for pro per litigants to opt-out of efiling. There should not be a requirement for good cause or for a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests. LSNC supports the proposal on page 8 of the Invitation to Comment that in mixed cases, represented parties be required to use efiling	The committees are recommending that self-represented parties be exempt from mandatory electronic filing and service, so no simplified opt-out process for self-represented parties in necessary. The provision in rule 2.253(b)(3) relating to mixed cases has been retained.

	Commentator	Position	Comment	Committees' Response
			while unrepresented parties not be required to use efiling. The reasons that pro per litigants should not be required to use efiling apply equally in cases where the opposing party is represented, and the efiling rules for pro per litigants should not change only because the opposing party happens to be represented. In fact, the opt-in to efiling can be even more important for pro per litigants in mixed cases because it will be easier for a represented opposing party to take advantage of an inability to access or properly navigate efiling.	
46.	National Housing Law Project By: Renee Williams Executive Director		(See comment 44 by Legal Aid Foundation of Los Angeles.)	(See responses to comment 44 by LAFLA.)
47.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Application to Self-Represented Parties** **A. Opt-In vs. Opt-Out** CAJ recommends that an opt-in approach for electronic service and filing be adopted for self-represented parties. Proposed rule 2.253(b)(2) provides: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6." CAJ recommends that this rule be adopted and that self-represented parties be exempt from having to mandatorily participate in electronic service and filing. CAJ believes that an opt-in approach for self-	**A. Opt-In vs. Opt-Out** The committees agreed that an opt-in approach to electronic filing and service should apply to self-represented parties. The proposed rules submitted to the Judicial council recommend that self-represented parties be exempt from participating in mandatory electronic filing and service.

	Commentator	Position	Comment	Committees' Response
			represented parties will avoid confusion and an undue burden on the courts, likely to result if self-represented parties are required to opt out of electronic service and filing. An opt-in approach will continue to permit all self-represented parties to fully participate with their litigation and, at the same time, will allow those self-represented parties who have the resources and ability to electronically serve and file to take part in the benefits associated with electronic service and filing and the implementation of the proposed rules. Even though a computer and the Internet may be available to most people, they are not available to all. And while many people have access to the Internet, they may not have access to the necessary technology or know how to scan documents or engage in the other steps that may be required for electronic service and filing. The practical reality is that while not all self-represented parties are indigent or lacking access to the necessary technology, many are, and many are not as technologically sophisticated as lawyers representing parties in litigation. CAJ believes that imposing an *opt-out* on that portion of the population who – whether by choice or necessity – appear as self-represented parties would in effect (i) create an additional roadblock for this class of litigants; and (ii) impose another layer of burden on participation in the process, *i.e.*, obtaining an exemption. For	

	Commentator	Position	Comment	Committees' Response
			these reasons, CAJ opposes mandatory participation for self-represented parties. **B. Additional Suggestions** 1. *A comment should be added to proposed rule 2.253(b)(2).* One alternative proposed in the Invitation to Comment is that the proposed opt-in rule include the bracketed text below, encouraging self-represented parties to participate voluntarily in the electronic filing and service methods: Proposed Rule: 2.253(b)(2): Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. [However, self-represented parties are encouraged to participate voluntarily in electronic filing and service. Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.] CAJ believes that if the bracketed material is adopted, it should be inserted into a comment to the rule, not the rule itself, with the following deletions: [~~However,~~ [S]elf-represented parties are	**A. Additional Suggestions** 1. *A comment should be added to proposed rule 2.253(b)(2).* The committees agreed that the bracketed text should be moved from the rule into an Advisory Committee Comment. The deleted text has been removed from the

	Commentator	Position	Comment	Committees' Response
			encouraged to participate voluntarily in electronic filing and service. ~~Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties.~~ To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.] 2. *The rule should specifically reference electronic service*. Proposed rule 2.253(b)(2) provides: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6." To avoid confusion, the rule should be written to include an explicit reference that self-represented parties are also exempt from mandatory electronic service. A possible revision is: Self-represented parties are exempt from any mandatory electronic filing <u>and service</u> requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.	Advisory Committee Comment. 2. *The rule should specifically reference electronic service*. The committees agreed with this suggestion. Although the exclusion of self-represented parties from mandatory service requirements is also addressed in rule 2.251(c), including it in rule 2.253(b)(2) makes the scope of the exemption even clearer.
48.	State Bar of California, Litigation Section By: Saul Bercovitch		The Rules and Legislation Committee agrees with the proposal to exempt self-represented parties from any mandatory e-filing or e-service requirement while permitting them to opt-in. The committee also approves the proposed optional language encouraging self-represented parties to opt-in.	The committees agreed with the proposed approach recommended by the State Bar's Litigation Section.

	Commentator	Position	Comment	Committees' Response
			The committee suggests modifying rule 2.253(b)(2) to make it clear that self-represented parties are exempt from both mandatory e-filing and e-service (additions underscored): "Self-represented parties are exempt from any mandatory electronic filing or electronic service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. . . ."	The committees agreed with this suggestion. Although the exclusion of self-represented parties from mandatory service requirements is also addressed in rule 2.251(c), including it in rule 2.253(b)(2) makes the scope of the exemption even clearer.
49.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal		The Task Force on Self-Represented Litigants strongly recommends that self-represented litigants be exempt statewide from any mandatory e-filing requirement. The task force does not believe that an "opt-out" option is reasonable or practical for self-represented litigants, or for the court. Self-represented litigants should, however, be permitted to "opt-in" to e-filing. The task force objects to any portion of the rule that would allow each trial court to implement its own set of e-filing requirements for self-represented litigants. The task force believes a statewide rule setting out uniform statewide e-filing requirements for self-represented litigants is needed in order to avoid the confusion that would arise if each of California's 58 trial courts chose different and potentially conflicting local e-filing rules for these litigants. Different service requirements might result, and the types of staff services that the court would have to	The committees agreed with the Task Force that self-represented litigants should be exempt from mandatory e-filing requirements. The proposed rules would provide for a generally uniform approach to all mandatory electronic filing and service in the trial court, effective July 1, 2013, although there would be a limited exception relating to the effective time of filing. Because of the wide divergence of opinions among commentators and the limited information presently available on the issue of whether parties' filings after the "close of business" should be deemed effective on the next court day or parties should be allowed to file documents electronically up until midnight on a court day,

	Commentator	Position	Comment	Committees' Response
			make available to self-represented litigants would vary significantly. The task force supports the proposal for a pilot project in Orange County to help find practical solutions to this and to the concerns set out below. The task force also recommends that the Judicial Council incorporate an evaluation process at the end of the pilot project, so that lessons learned can be incorporated and reflected in a subsequent statewide e-filing rule.	the committees recommend permitting flexibility and experimentation on this issue. The rules on the effective time of electronic service would remain unchanged, however. In addition to the reports required on the pilot project in Orange County, the committees recommend requiring reports from other courts instituting mandatory e-filing and service for the purpose of evaluating and improving the processes of e-filing and e-service throughout the state.
			Barriers for Litigants. The task force believes that making e-filing mandatory for self-represented litigants poses a number of serious access barriers for the litigants by making the court process more difficult, especially in areas with high percentages of self-represented litigants such as family law, domestic violence, child support, unlawful detainer, small claims, probate, and limited civil. (a) Reliance on Legal Aid services to assist self-represented litigants with e-filing is not a realistic solution. Legal Aid services are not available in all locations and many do not handle family law matters. (California Commission on Access to Justice September 2010 Report - Improving Civil Justice in Rural California.) Additionally, Legal Aid services	**Barriers for Litigants.** The committees agreed that requiring self-represented litigants to file and serve documents electronically may pose problems and recommend that self-represented parties be exempt.

	Commentator	Position	Comment	Committees' Response
			have specific eligibility requirements, such as income and citizenship, which many self-represented litigants cannot meet. Even for community legal services not subject to federal funding requirements, restrictions exist related to income and the types of cases or parties served. All community legal services are currently vastly underfunded and unable to withstand this added demand. (b) Self-represented litigants should be able to receive the education and assistance they now receive at a court's self-help center and then file the paperwork at that same courthouse without having to go to a separate location, such as a community legal service, to get e-filing assistance (c) Not all self-represented litigants have access to personal computers and many public computers have time limits. Locations with public computer access may not be open during optimum times for self-represented litigants to make use of them for e-filing. Furthermore, many self-represented litigants do not have credit cards with which to pay fees. (d) Not all self-represented litigants are computer savvy. In a survey conducted of 310 self-help center litigants, 40% did not have a computer at home, only 44% felt very comfortable using a computer, and only 20% felt comfortable using a computer without help of staff. (SHARP Computer Use Survey -	

	Commentator	Position	Comment	Committees' Response
			regional collaboration model self-help program –for Butte, Lake and Tehama courts). Although this study was limited to a rural area, when added to observational data, it strongly suggests that many who attempt to file and serve electronically will need technical assistance in addition to legal information. (e) Emergency situations are of particular concern. In domestic violence cases, a person seeking a restraining order, and who is not computer savvy would find that mandatory e-filing poses an additional barrier in an already traumatic situation. Even though no filing fee is charged to file a restraining order request, the requirement that this person go through a process to "opt out" of e-filing creates another barrier that must be overcome before he or she can even file their request. Someone who has recently been the victim of domestic violence should not have to face a procedure in which they must demonstrate grounds to be excused from e-filing – a procedure that may potentially require a court appearance. This additional burden could cause the litigant to abandon the effort to seek help from the court thereby remaining without court protection and possibly leaving a child in danger. (f) Making e-filing mandatory for self-represented litigants, then requiring them to "opt-out" creates the potential for significant additional time burden on all such litigants. For example, a self-represented litigant seeking to	

	Commentator	Position	Comment	Committees' Response
			modify child support might file a Simplified Modification of Support and a Simplified Financial Form. If a fee waiver is needed, two additional forms are required plus a potential appearance at a hearing. If this person is also required to "opt-out" of e-filing, additional forms are needed as well as the potential for another hearing. If so, this litigant could be required to attend two hearings before their motion is ever heard. Furthermore, litigants are likely to have serious problems finding out what to do if their request to "opt-out" is denied. (g) Self-represented litigants should not be subject to the provisions of proposed rules 2.251 and 2.256 that require a litigant to accept service by e-mail if documents have been e-filed. Many self-represented litigants do not have personal email addresses. Litigants without access to computers or who for any reason do not use email, would find that receiving actual timely service is a serious problem The need to find a public computer, establish an e-mail there, then return periodically to see if anything has been served does not seem to be a practical expectation. Furthermore, if a litigant is attempting to serve by e-mail only to find that the e-mail provided by the opposing party no longer works, the probability of finding a solution without staff assistance is low. The resulting confusion can cause significant notice issues for the court to resolve at the time set for hearing.	

	Commentator	Position	Comment	Committees' Response
			. . . . Further recommendation. The task force recommends that any language encouraging self-represented litigants to use e-filing in proposed rule 2.253 should be deleted and only included, if at all, in commentary. If any language encouraging self-represented litigants to e-file is included in the commentary, it should not include any statements that electronic filing is not a barrier or impediment to access or can provide improved access for self-represented parties. The task force does not agree that these statements are necessarily correct.	
50.	TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC		Regarding an exemption from mandatory e-filing requirements for self-represented litigants, the JRWG recommends that the rules be modified to effectuate the following: a. Make mandatory e-filing applicable to self-represented litigants, while providing them with the ability to opt out of this requirement due to undue hardship or significant prejudice, and file by conventional means; or b. Allow each trial court to determine by case type whether it is mandatory for self-represented litigants to file electronically or whether they may file by conventional means. Where mandatory, the self-represented litigant must request permission to opt out of the requirement based on undue hardship or significant prejudice.	a. Based on consideration of all the comments, the committees recommend exempting self-represented litigants entirely from mandatory e-filing rather than requiring them to e-file with the ability to opt out. b. The committees recommend giving courts broad leeway to determine in what types of civil cases represented parties must file and serve documents electronically. But they do not recommend authorizing courts to mandate e-filing or e-service for self-represented parties; instead, self-represented parties should be encouraged and assisted to voluntarily e-file and e-serve

	Commentator	Position	Comment	Committees' Response
				documents.
51.	Yuba Sutter Legal Center for Seniors By: Susan Townsend Directing Attorney		I am the directing attorney of the Yuba Sutter Legal Center. We provide free legal services to the elderly in these two counties. Each year we directly assist about 250 seniors. Another 100 or so are given help through advice letters. We frequently turn clients away due to our caseload. The Legal Center is also the designated small claims advisory service for Yuba County. As small claims advisor, we review small claims forms, explain small claims procedures, service, etc. I have reviewed the recommendations. I urge you to seriously consider exempting self represented parties from the mandatory E-filing requirements. Most of the seniors I work with, and they range in age from early 60's to over 80, are simply not that computer savvy. The idea that everyone is electronically connected overlooks the fact that many of my clients do not have computers, let alone e-mail, Twitter, etc. While both public libraries here have computers, there several limitations to their use. First, the person has to have some basic computer literacy; many of our clients do not. Second, time on the library computers is	The committees agreed and recommend exempting self-represented litigants from mandatory e-filing.

	Commentator	Position	Comment	Committees' Response
			limited, usually must be reserved ahead of time, and there is no privacy. The library has a central printer which again is not private. Third, libraries here have reduced their hours and days of operation to accommodate reduced budgets. Fourth, and perhaps most important, is that many clients, both seniors and small claims, need help filling out the judicial council forms. They do not understand the legal terms; many of the small claims litigants are not only low income but also have limited education. I think that legal professionals, who deal with legal forms and terms daily, often fail to comprehend how difficult it is for a lay person to prepare legal documents and deal with the court system. When we cannot assist seniors, due to our caseload, or when we advise small claims litigants, we usually have to review the court forms to make sure they are filled out properly, etc. Printing out the forms, etc., so they can be reviewed just adds another step for the pro per litigant. With paper filings, we can review and often send them right down to the court to file. With electronic filing, they may have to go back on line and redo the forms and then file them. Since most will be limited to using the library	

	Commentator	Position	Comment	Committees' Response
			computers, they will have to reserve time again, etc. It is not clear how pro per clients would electronically file exhibits which may be needed. For instance, the local courts sometimes require proof, such as an award letter, that a litigant receives Medi-Cal prior to waiving fees. Is it going to be necessary for them to scan documents in order to attach them as exhibits? Again, this requires both computer access and computer literacy that many lack. I urge you to exempt pro per litigants from the mandatory electronic filing for now. When the courts have had more experience with electronic filing, it will be easier to adapt it to the needs of pro per litigants.	
Scope of Mandatory E-Filing: Hardship Exception (Rule 2.253(b) (See also comments on Questions 3, 4 and 7 below)				
52.	Superior Court of Sacramento County By: William Yee Research Attorney		**Rule 2.253** On page 28, subsection [b](4), the word "must" should be replaced with "may." As proposed, the court "must" excuse a party from the requirements if they show a hardship; however, "hardship" has not been defined causing the paragraph to be vague. Exemptions should be determined by the court based on local criteria and procedures.	**Rule 2.253** The committees did not agree that "must" should be changed to "may" in (b)(4). The statute on which the rule is based evidences a legislative intent that exemptions be made available to any party based on hardship or significant prejudice: "The court shall have a procedure for the filing of nonelectronic documents to prevent the program from causing undue hardship or significant prejudice to any party in an action . . . ." (Code

	Commentator	Position	Comment	Committees' Response
				Civ., Proc., § 1010.6(d)(1)(C).). The commentator is correct that "hardship" is not defined— nor is "significant prejudice"; so it will be up to the court considering an application for exemption to determine how those standards are to be determined.
Effective date of electronic filing: to be determined by "close of business," midnight on filing day, or "time of transmission" (rule 2.253(c)(7), rule 2.259(c)) (See also comments on Questions 13 and 14 below)				
53.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		LSNC believes that efiling should be effective on transmission. This is important to ensure that documents are considered to be timely filed in the event of delays by either the efiling vendor or the court clerks. Documents should be deemed timely filed if they are transmitted by 11:59 p.m. on the day they are due. The ability to file at any time on the day a document is due is important for low wage workers who often work retail jobs with unconventional hours.	Based on the other comments, the committees do not recommend making e-filing effective on transmission. Instead, they recommend that the rules of court on mandatory electronic filing provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.
54.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Time-of-Day Deadline for Electronic Filing** **A Substantial Majority of CAJ's Members Recommend a Midnight Filing Deadline** Approximately two-thirds of CAJ's members recommend that the Judicial Council adopt a midnight filing deadline for electronic filing. These members believe that a midnight deadline will increase access to the courts, decrease confusion among litigants, and advance the goal	The divergent positions within this committee and among all the other commentators indicate that this is an area in which it may be premature to make a definitive decision. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until

	Commentator	Position	Comment	Committees' Response
			of encouraging e-filing. First, having a midnight deadline may increase access for working-class litigants. Some attorneys who provide direct services to working-class litigants have expressed their desire to have time to meet with their clients who cannot do so during work hours. Self-represented litigants who can and choose to e-file (assuming they are exempt from mandatory e-filing) could also benefit from being able to file documents after work. They will not have to take time off work to travel to and from the court, wait in line, and personally file those documents. Second, one of the goals behind this proposal is to promote the use of e-filing, which, among other things, could reduce court operating expenses and increase efficiency. Providing an advantage to those who file electronically may incentivize litigants to file electronically (i.e., encourage parties to opt in if there are exemptions, and minimize requests to opt out if parties are not covered by any exemption). Some members of CAJ believe the question should not be framed in terms of creating a potential "disadvantage" to those who do not or cannot file electronically. All parties who file electronically would be given more time, and those who do not or cannot will not be losing any rights they currently have today. Third, a number of solo practitioners and	midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.

	Commentator	Position	Comment	Committees' Response
			attorneys from small firms disagree with the minority's contention below—that a midnight filing deadline will benefit large law firms. According to these practitioners, a midnight standard would actually help attorneys from small firms because they have to juggle numerous matters simultaneously. Thus, for example, while a solo or small firm practitioner is trying a case during the day, a midnight deadline for e-filing will allow that practitioner to work on and electronically file motions for other matters in the evening. Finally, federal courts have long used a midnight deadline with no known problems for the litigants (so far as CAJ is aware), and many practitioners are accustomed to that standard. Using a different standard could create confusion, especially if that standard is not uniformly applied across the state. The close-of-business deadline as defined in Code of Civil Procedure section 1010.6(b)(3), for example, currently requires litigants to file by 4:30 p.m. in one county (Los Angeles Superior Court), while litigants in an adjacent county must file by 4:00 p.m. (San Bernardino Superior Court). Other variations of that deadline exist, depending upon the county and the particular day of the week. **A Minority of CAJ's Members Support a Close-of-Business Deadline** A minority of CAJ's members favor a filing	

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

	Commentator	Position	Comment	Committees' Response
			deadline at the close of business (or a specific time, such as 5:00 p.m.) for several reasons. Those who favor the "close of business" deadline, as currently defined in Code of Civil Procedure section 1010.6(b)(3), believe this deadline provides an even playing field in which all litigants will have the same filing time, and no one would have the advantage of additional hours in which to prepare and file pleadings. Permitting a later deadline for those who electronically file will probably give practitioners with abundant resources the upper hand, while self-represented litigants without access to computers or lacking in skills, like senior citizens and the underprivileged, would have less time than other litigants to prepare and file pleadings. *Cf.* Susan P. Crawford, *The New Digital Divide*, N.Y. TIMES, Dec. 4, 2011, at SR1 ("According to numbers released . . . by the Department of Commerce, a mere 4 out of every 10 households with annual household incomes below $25,000 in 2010 reported having wired Internet access at home, compared with the vast majority — 93 percent — of households with incomes exceeding $100,000."). The minority also believes that no public policy reasons for e-filing weigh in favor of changing the existing close of business deadline. They believe there is no need to expand the time for filing simply because the technology makes it possible, and believe there is no hardship under the current rules. They further note that the e-filing program is designed to satisfy a number	

	Commentator	Position	Comment	Committees' Response
			of issues, concerns, and pressures on the court, including cost concerns. None of these concerns include the need or desire to expand or to amend the time limitations on filing pleadings with the court. A number of CAJ's members expressed a concern that a midnight filing time would have a negative impact on law office staff members, who would be asked to remain at work until late hours. In addition, public entities and small law offices may not have the financial resources to keep staff that late at the office (e.g., to pay overtime), thus the extended filing cut-off would effectively expand the time allowed for filing documents for larger private law firms willing and able to extend their hours of operations. Some CAJ members with the minority view do not favor "close of business" as currently defined in Code of Civil Procedure section 1010.6(b)(3), but do favor 5:00 p.m. as a uniform statewide deadline for e-filing. **Need to Define Time of Transmission** Separate and apart from the question of the filing deadline is the general use of the expression "time of transmission." As noted in the Invitation to Comment, "the expression is not defined. If an electronic filing service provider (EFSP) is used, is the 'time of transmission' the time of transmission by the	**Need to Define Time of Transmission** The committees agreed that the meaning of the "time of transmission" should be clearer in the rules. Hence, they recommended adding at the end of proposed rule 2.251(h)(1): "If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the

	Commentator	Position	Comment	Committees' Response
			EFSP to the court or the time of transmission by the filer to the EFSP? This expression should probably be interpreted to mean the time of transmission by the EFSP to the court—not the time of the transmission by the filer to the EFSP, though this is not expressly stated anywhere in the rules or statute. Comments are invited on whether this issue needs to be addressed in the rules, and, if so, how." CAJ agrees that "time of transmission" should be clarified and defined in the rules.	document or sends electronic notification of service."
55.	State Bar of California, Litigation Section By: Saul Bercovitch		**Effective Time of Mandatory Electronic Filing and Electronic Service** The committee prefers the midnight rule for mandatory electronic filing as stated in the second option for rule 2.253(b)(7). We believe that the midnight rule is practical, consistent with e-filing rules in California appellate courts and in federal courts, and avoids uncertainties caused by inconsistent and changing closing times of filings windows. We also agree with the corresponding change to rule 2.259(c). a. We suggest that language be added to rule 2.253(b)(7) to make it clear that the midnight filing rule does not excuse any party from any legal requirement to file or serve a document by a particular time of day, such as the following: "This provision does not excuse any party from any requirement imposed by law, court order, or	The Litigation Section's support for the "file until midnight" standard is duly noted, although a number of other commentators argued for the "close of business" standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation.

	Commentator	Position	Comment	Committees' Response
			stipulation to file or serve a document by a particular time of day." Such language should alleviate the need to specifically address the time to e-file ex parte applications (as the statute currently does). b. In response to the question whether the standard as to the effective time of filing should be uniform for voluntary and mandatory e-filing, we believe that the answer is yes. c. The committee believes that the midnight rule should be adopted for mandatory e-filing effective July 1, 2013, despite the fact that the rule for mandatory e-filing would be inconsistent with the statutory "close of business" rule for permissive e-filing. We believe that the rule for permissive e-filing should be changed to the midnight rule and believe that the temporary lack of uniformity between the mandatory and permissive rules would be preferable to adopting a close of business rule for mandatory e-filing and later changing it. d. The committee agrees with the proposal to amend rule 2.251(h)(4) to state the midnight rule for electronic service so as to make the effective time for electronic service consistent with that for mandatory electronic filing. We understand that this would make the midnight effective time for electronic service (whether permissive or mandatory) different from the	

	Commentator	Position	Comment	Committees' Response
			close of business effective time for permissive electronic filing, but we believe that such an inconsistency is tolerable until the statutory close of business rule for permissive electronic filing is changed.	
56.	Superior Court of Sacramento County By: William Yee Research Attorney		In terms of the effective time of electronic filing and service, . . . we recommend adopting the first version of the rule as follows: "(7) Any document that is electronically ~~filed with~~ transmitted to the court after the close of business on any day is deemed to have been ~~filed on~~ received by the court the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record." The "close of business" standard should be adopted for determining the effective date of electronic filings. We disagree with the proposed amendments to Rule 2.259 (c) and propose that the existing rule remain to clarify that a document that is received after the court closes is deemed to have been received the next court day.	The commentator's support for the "close of business" standard is duly noted, although a number of other commentators argued for the "file until midnight" standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation.
57.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Effective Time of Electronic Filing and Service:** • We recommend the "Close of business as determined by the Court" standard be retained	**Effective Time of Electronic Filing and Service:** The commentator's support for the "close of business" standard is duly noted, although a

	Commentator	Position	Comment	Committees' Response
			for e-filing. While we concur that this is a somewhat dated standard, the fact that exemptions will be available and granted means that not all parties will be filing electronically. To maintain a fair and level playing field for all parties, a common standard must exist for filing deadlines. • We recommend the "Close of business" standard also be used for service to avoid any potential confusion, and for consistent application for all parties.	number of other commentators argued for the "file until midnight" standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation. The "close of business" standard for electronic service has been retained in the rules of court. (See amended rule 2.251(h)(4).)
58.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal		The "close of business" rule should continue. Allowing until midnight for electronic filers would be unfair to the other side that is not e-filing, or does not have access to a computer after work hours.	Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.
59.	TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC		Regarding the effective time of e-filing, the JRWG recommends that the effective time be by the same time as required by the court for any other method of filing.	Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until

	Commentator	Position	Comment	Committees' Response
				midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.
Mandatory electronic service (rule 2.251(a), rule 2.251(f)(4)) (See also comments in Question 6 below)				
60.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**E-Service Concerns** As mentioned earlier, there must be an easy way for self-represented litigants to opt out of electronic service even after electronically filing early papers. Many self-represented litigants may have help filing out judicial council forms at a legal services limited scope clinic and may electronically file documents at that clinic. However, those litigants must be able to state in that process that they are not consenting to electronic service of all documents related to the case. If a litigant does not opt-in to e-filing or opts out of it, service cannot be electronically; it must be "manually," even if an email is provided. The opt-out form should allow a litigant to opt-out of everything. One suggestion is to change the opt-out form to have a #2, that allows the litigant to "opt-in" to certain things, such as only for filing or only for service or only for receipt of service, with an explanation for "receipt of service" that says "If I check this box, I understand that I must provide a valid email address, I must be able to check that email address regularly and I will not	**E-Service Concerns** The committees agreed that electronic service should be treated separately from electronic filing. For self-represented parties, they recommend that the rules provide that these parties are exempt from mandatory electronic service and must affirmatively agree to serve or be served electronically. (See amended rules (c)(2)(B) and 2.253(b)(2).) Also, the rule that voluntary e-filing is deemed consent to e-service should not apply to self-represented parties. (See amended rule 2.251(b)(1)(B).) If self-represented parties are exempted from e-service, they will not have to opt out unless they have voluntarily opted in. Rather than changing the "opt out" form to also include "opt in" for electronic service, any party—including a self-represented party —who wants to voluntarily opt in to electronic service should use *Consent to Electronic Service and Notification of Electronic Service Address* (form EFS-005). In the future, the committees may consider whether additional forms or changes to

	Commentator	Position	Comment	Committees' Response
			have additional time to respond to filings."	current forms are needed to assist self-represented parties who want to serve and file documents electronically.
61.	Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney		**Electronic Filing vs. Electronic Service** Separate forms and procedures should be available for e-filing and e-service. Self-represented LEP litigants who choose to e-file will likely have to obtain assistance preparing their paperwork and filing. Thus it may be possible for a self-represented LEP litigant to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home. These limitations will affect self-represented LEP litigants not only during the filing process, but during the service process. Even if they do have access to an email account, self-represented LEP litigants may not be able to understand what they are receiving or that they are being served documents in this manner. Therefore, e-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.	**Electronic Filing vs. Electronic Service** The committees agreed that electronic service should be treated separately from electronic filing. For self-represented parties, they recommend that the rules provide that these parties are exempt from mandatory electronic service as well as from mandatory electronic filing, and must affirmatively agree to serve or be served electronically. (See amended rules (c)(2)(B) and 2.253(b)(2).) Also, the rule that voluntary e-filing is deemed consent to e-service should be amended to not apply to self-represented parties. (See amended rule 2.251(b)(1)(B).) If self-represented parties are exempted from e-service, they will not have to opt out unless they have voluntarily opted in. For the purpose of opting in to electronic service, they may use *Consent to Electronic Service and Notification of Electronic Service Address* (form EFS-005). To voluntarily e-file at a court that has such a program, self-represented parties should follow the procedures available at the court.
62.	National Housing Project By: Renee Williams Executive Director		(See comment 61 by Legal Aid Foundation of Los Angeles.)	(See responses to comment 61 by LAFLA.)
63.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary		Self-represented litigants who choose to e-file should not be required to accept future service by email. Furthermore, the ability of a self-	The committees agreed that the rule that voluntary e-filing is deemed consent to e-service should be amended to not apply to self-represented parties.

	Commentator	Position	Comment	Committees' Response
	Presiding Justice Fourth District Court of Appeal		represented litigant to use e-filing may not be consistent throughout a case. A litigant may be able to accomplish e-filing at one point in the case, and not at another. A self-represented litigant would then need a process by which to "opt-out" even after initially e-filing.	(See amended rule 2.251(b)(1)(B).) Thus, a self - represented party who initially files electronically would not need to opt out of electronic service unless they had affirmatively agreed to such service.
Definition of electronic filing (rule 2.250(b)(7), rule 2.253(b)(7), rule 2.259(c))				
64.	Press Groups By: Holm, Roberts & Owen LLP Rachel Matteo-Boehm, Attorney		(See complete comments from Press Group and joinders to comments attached to this chart as Attachment D.)	The Press Group objects to the specific proposed rule changes on the grounds that they are supposedly intended to delay access to court records. It also objects to the adoption of the mandatory e-filing rules on the ground that these rules should not be adopted until the Orange County pilot project has been completed. (See comment chart, Attachment D, page 2.) These comments are based on a misunderstanding of the purposes and processes of mandatory e-filing, and of e-filing as a whole. Due to the severe fiscal restraints on the courts, clerk's offices are encountering difficulties and delays in processing paper filings. As a result, some members of the Press Group may be encountering difficulties in getting quick access to filed documents. This is doubtless the source of the frustrations expressed in the Press Group's comments. Yet far from being a means to delay access, e-filing will enable courts to process filings more quickly and thus make them more accessible. Even in the best of times, it takes time for the

	Commentator	Position	Comment	Committees' Response
				clerks to review papers presented for filing—to determine, for example if fees have been paid or the papers contain any sealed or statutorily confidential information that requires special processing. Although the courts would generally prefer, if possible, to be able to file complaints on the same day that they are submitted and make the filed complaints available to the public, to do so is sometimes simply not possible—especially in the current drastic fiscal circumstances under which courts have been compelled to lay off employees, close courtrooms, and cutback on services. But with the introduction of e-filing and its expansion under mandatory e-filing, courts will be able to more quickly process case filings—and thereby make them available sooner to the public. The Press Group's comments are also inconsistent with the law on court records. A "court record" is defined under California law as a record that has been *filed*— i.e., put in a file or its equivalent. (Gov. Code, § 681512(a).) Also, the law provides that electronic court records shall be made *reasonably* accessible to the public. (Government Code section 68150(*l*).) The law, however, does not require courts to provide immediate public access to all documents as soon as they are received by the court, even though they have not yet been filed— i.e., not yet become court records. California law recognizes that documents may sometimes not be filed until a day or more after they are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of

	Commentator	Position	Comment	Committees' Response
				filing. (See Cal. Rules of Court, rule 1.20(a): "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.") Like rule 1.20(a), the proposed clarification of the definition of "electronic filing" in this rule proposal is intended to protect the rights of filers—in this case electronic filers. The rule changes would clarify that, for purposes of the effective date of filing, the date of receipt applies, even if the filing process is not completed until a later date. Even though such a provision is likely to be of less importance in the e-filing context than the paper filing context because most electronic filings will be completed quite quickly, if not instantaneously, it still has a valuable part to play in protecting the rights of litigants and should be included in the e-filing rules.
Direct and indirect electronic filing (rule 2.252(b))				
65.	State Bar of California, Litigation Section By: Saul Bercovitch		**Means of Electronic Filing** a. Rule 2.252(b) states that a court may allow electronic filing by three different means. The committee finds the terms "direct" and "indirect" useful to distinguish between filing *directly* with the court and *indirectly* through an approved electronic filing service provider, and suggests that the word "indirectly" be added to the second line. The word "indirectly" would serve as a useful referent so as to limit the meaning of the term "indirect means" in the	**Means of Electronic Filing** a. The committees agreed with the suggested changes to the language and have incorporated them into the rule.

	Commentator	Position	Comment	Committees' Response
			final clause to indirectly through an approved electronic filing service provider, as distinguished from indirectly through some other means. We also note that "electronic filing service provider" is a defined term (rule 2.250(b)(8)) and suggest that "electronic service providers" in rule 2.252(b) should be changed to "electronic filing service providers." Accordingly, the committee suggests modifying rule 2.252(b) as follows (additions underscored and deletions shown by strikethrough): "Except as otherwise provided by law, a court may provide for the electronic filing of documents directly ~~through~~ with the court, indirectly through one or more approved electronic filing service providers, or . . . ." b. The final clause of rule 2.252(b) refers to electronic filing through "a combination of direct and indirect means." The committee finds this language somewhat unclear. The word "combination" seems to suggest that a particular document could be filed using both direct and indirect means, but we do not understand how this could be so. If something else is intended, such as to authorize courts to allow parties to choose whether to file documents directly with the court or indirectly through a service provider, rather than mandate a single means, or authorize courts to allow	b. The committees did not think that the language needs to be changed, particularly if the word "indirect" is added earlier in the sentence (as suggested in a).The "combination" refers to a combination of different means of electronic filing, such as directly with the court through a portal or indirectly through an EFSP.

	Commentator	Position	Comment	Committees' Response
			parties to file some documents directly with the court and other documents indirectly through a service provider, then we suggest modifying rule 2.252(b) to more explicitly so state. . . . . The first paragraph of rule 2.253(b) states that a court may allow electronic filing by three different means. Those three means roughly parallel the three options set forth in rule 2.252(b), so our comments above apply here as well. We believe that the language in the first paragraph of rule 2.253(b) describing the three options should closely parallel that in rule 2.252(b).	Changes to rule 2.253(b) similar to those in rule 2.252(b) have been made.
Notification of EFSPs (rule 2.256(a)(6))				
66.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		LSNC believes there should be an addition to proposed rule 2.256(a)(6) about the requirement to report changes in email addresses. The rule should require courts to provide pro per litigants with information about when changes need to be reported and how that change can be reported. Pro per efilers need to be informed of the requirement and how to change an email address in writing. Including the requirement to report email address changes in court rules is insufficient because pro per litigants are not informed about the existence of the court rules.	The committees did not think that it is necessary to add a requirement to the rule that courts provide notice to self-represented litigants about the need to report changes of address. This information can and should be available from many sources—self-help centers, legal aid organizations, printed information, and websites as well as courts.
Fee and Fee Waivers (rule 2.253(b)) (See also comments on Question 12)				
67.	Legal Services of Northern California		The court rules need to be clear that any extra	To the extent there is ambiguity in the rule, it

	Commentator	Position	Comment	Committees' Response
	By: Stephen Goldberg Senior Attorney		fees for efiling are waivable on same terms as any other filing fees. Proposed rule 2.253(b)(6) does not do this because it states fees charged by an electronic filing service provider must be waived "when deemed appropriate by the court." This gives courts complete discretion when to waive the electronic filing service provider fees. The rule should require that electronic filing service provider fees be waived automatically when a fee waiver is granted using the same standard as any initial filing or first paper fee. This would prevent low income litigants from losing their day in court because of filing fees and would allow for consistency in how filing fees are waived.	derives from the statute which provides that fees "shall be waived when deemed appropriate by the court, including but not limited to, for any party who has received a fee waiver." (Code Civ. Proc. § 1010.6((d)(1)(B).) The qualifying language referring to "any party who has received a fee waiver" appears to mean that any such party should not be required to pay fees for electronic filing. But if the statute and rule language poses any problems in practice, clarifying legislation can be sought in the future.
68.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		CAJ's recommendations on the topic of fee waivers are limited because (i) as noted in Code of Civil Procedure section 1010.6(b)(6), sections 68630 to 68641 of the Government Code already contain provisions regarding applications for waivers of other types of court fees and costs, and (ii) the Judicial Council has already promulgated mandatory "FW" forms that implement the existing fee waiver provisions. CAJ does not believe it is necessary or would be prudent to create a new "shadow" set of fee waiver rules solely for the purpose of accommodating the new electronic filing and service provisions. The proposed language of rule 2.253(b) largely mirrors the statute. Nonetheless, CAJ agrees that there are advantages to including these	The committees agreed that fee waiver provisions in the proposed rules should not be changed.

	Commentator	Position	Comment	Committees' Response
			provisions in the rules. Doing so would place these provisions alongside other important rules relating to electronic filing. CAJ also recommends that the following additions to the rules be considered: 1. Proposed paragraph 5 of rule 2.253(b) should use the alternate bracketed language, *i.e.*, "Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents" rather than "Any fees charged by the court shall be for no more than the actual cost of the electronic filing and service of the documents." The bracketed language makes clear that the court cannot charge the parties for electronic filing fees that have been incurred by a person or entity other than the court. 2. Because it may not always be the case that a party for whom electronic filing fees should be waived will have already been granted a fee waiver in the matter, the rule should elaborate on when fees for electronic filing may be waived. This could be as straightforward as a cross-reference to the Judicial Council's fee waiver forms such as Form FW-001 and Form FW-001-INFO. Suggested language is: "An application to waive fees for electronic filing and service that are charged by the court or by an electronic filing service provider must be made in the manner specified in rule 3.51."	1. The committees agreed and recommend this language. 2. The committees did not think it is necessary to elaborate on how to request a fee waiver in this rule on mandatory e-filing.

	Commentator	Position	Comment	Committees' Response
			3. A party who has applied for an electronic filing fee waiver may need to file documents before the court rules on his or her application. Accordingly, the rule should explain whether and how electronic filing fees will be accrued or imposed while an application for a fee waiver is pending. One potential rule, which CAJ favors, would be that the filing of an application to waive electronic filing fees is deemed granted unless denied by the court. This seems the most efficient approach because most fee waiver applications will be granted and because that is the approach already taken by the rules regarding fee waiver applications. Suggested language is: "An application to waive fees for electronic filing and service that are charged by the court or by an electronic filing service provider is deemed granted in the manner specified in rule 3.53."	3. The statutory procedures relating to requesting a fee waiver in connection with an electronic filing appear to cover this situation: "The court may permit a party or attorney to file an application for a waiver of court fees and costs, in lieu of requiring payment of the filing fee, as part of the process involving the electronic filing of a document." (Code Civ. Proc., § 1010.6((b)(6).) If based on experience additional rules are necessary on this subject, they can be developed in the future.
			4. The Judicial Council forms associated with fee waiver applications (forms having the "FW" prefix) should be revised to reflect that fees associated with electronic filing may be waived. For example, Form FW-001-INFO (and the corresponding Spanish-language translation, FW-001-INFO S) could be amended by adding a bullet point in section 1 that reads: "Electronic filing and service of documents in superior court." If that amendment is made, then the same language should be added to the following forms: • Form FW-003 (and the corresponding	4. The committees will look at the fee waiver forms in the future to determine whether they need to be revised.

	Commentator	Position	Comment	Committees' Response
			Spanish-language translation, FW-003 S), section 4(a)(1); • Form FW-005 (and the corresponding Spanish-language translation, FW-005 S), section 4; • Form FW-008 (and the corresponding Spanish-language translation, FW-008 S), section 5(a)(1); and Form FW-012 (and the corresponding Spanish-language translation, FW-012 S), section 6(d)(2). 5. Because Code of Civil Procedure section 1010.6(d)(1)(B) requires that fees for electronic filing and service be waived for any party who has received a fee waiver, CAJ recommends that rule 3.55 be amended as follows: Court fees and costs that must be waived upon granting an application for an initial fee waiver include: (1) Clerk's fees for filing papers; (2) Clerk's fees for reasonably necessary certification and copying; (3) Clerk's fees for issuance of process and certificates;	5. The committees will look at the fee waiver rules in the future to determine whether they need to be amended.

	Commentator	Position	Comment	Committees' Response
			(4) Clerk's fees for transmittal of papers; (5) Court-appointed interpreter's fees for parties in small claims actions; (6) Sheriff's and marshal's fees under article 7 of chapter 2 of part 3 of division 2 of title 3 of the Government Code (commencing with section 26720); (7) Reporter's daily fees for attendance at hearings and trials held within 60 days of the date of the order granting the application; (8) The court fee for a telephone appearance under Code of Civil Procedure section 367.5; ~~and~~ (9) Clerk's or electronic filing and service provider's fees for electronic filing and service of papers; and ~~(9)~~ (10) Clerk's fees for preparing, copying, certifying, and transmitting the clerk's transcript on appeal to the reviewing court and the party. A party proceeding under an initial fee waiver must specify with particularity the documents to be included in the clerk's transcript on appeal.	
69.	Superior Court of Sacramento County By: William Yee Research Attorney		**Rule 2.253** [In] subsection [b](6), we recommend that the word "must" be replaced with "may" and a period be placed at the end of the second sentence following the word "court," as follows:	**Rule 2.253** The committees disagreed with this suggestion. The recommended new language is inconsistent with the statutory language. The statute reads: "Any fees charged by the court…shall be waived

	Commentator	Position	Comment	Committees' Response
			Any fees for electronic filing charged by the court or by an electronic filing service provided ~~must~~ may be waived when deemed appropriate by the court~~, including providing a waiver of the fees for any party that has received a fee waiver.~~ It is unclear what the rest of the sentence is trying to convey about a previously approved waiver of court fees and costs. The court is responsible for waiving e-filing or e-service so there is no need to mention a previously filed fee waiver in the rule.	when deemed appropriate by the court, including but not limited to, for any party that has received a fee waiver. Any fees charged by an electronic filing service provider shall be…waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver." (Code Civ., Proc., §1010.6(d)(1)(B).) Proposed rule 2.253(b)(6) tracks this statutory language but condenses it for the sake of clarity and simplicity.
70.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		•The existing rules on fee waivers allow fee waivers to be filed electronically, but do not address whether e-filing charges, whether court or EFSP-based, must be included in the fees being waived. We recommend that an e-filing fee implemented by a court acting as their own EFSP should be included in the fees waived by a fee waiver. • Where the court is acting as its own EFSP, there will typically be only one method of gaining access (no competition); and, • The court will have already taken judicial notice of the need for a fee waiver. It would be inconsistent to then charge its own fee. • However, where e-filing fees are levied by EFSP's we recommend that these fees not be impacted by fee waivers. • There will be multiple EFSP's available,	The recommendations of the commentator appear to be consistent with the applicable statutory and proposed rule provisions on fee waivers. (See Code Civ. Proc., § 1010.6(d)(1)(B) and rule 2.253(b)(6).)

	Commentator	Position	Comment	Committees' Response
			working to keep the cost low; and, • The legal aid and other non-profit agencies will work to provide services in this area. Again, keeping charges low, but requiring some level of funding to be able to operate.	
Forms (form EFS-007, form EFS-008)				
71.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		[T]he proposed e-filing exemption form should be clarified in the event that e-filing is mandatory for everyone. The proposed form implies that pro per litigants need good cause to opt out beyond just being pro per. That should not be the case. The court rules should be clear on that point as well. A box on the form for pro per litigants to opt out would solve the problem. Moreover, the proposed *Order of Exemption From Electronic Filing* should include a way for the person making the opt-out request to ask for a hearing. As written, the form only allows for the court to set a hearing. This process should be like fee waivers where the requester can ask for a hearing on the form whenever there is a denial.	The committees are recommending that self-represented parties be exempt from mandatory electronic filing and service. Hence, the form for requesting an exemption will be used only by *represented* parties. For such parties, the form correctly identifies the grounds for exemption to be a showing of undue hardship or significant prejudice. No box on the form to identify self-represented parties is needed. The order form that is issued by the court would not be one that could be used by a party to request a hearing. In the future, the committees might consider developing a separate form for this purpose.
72.	State Bar of California, Litigation Section By: Saul Bercovitch		**Proposed Forms** a. The committee agrees that the proposed forms should be optional rather than mandatory. We see no need at this time to preclude a party requesting an exemption from mandatory filing and service from filing papers in a different format.	**Proposed Forms** a. The committees recommend that the form be optional.

	Commentator	Position	Comment	Committees' Response
			b. The clerk's certificate of service on the form order refers to service on the moving party, but does not require service on other parties. The committee believes that the form should be modified to require service on other parties. c. The caption of both forms, at the bottom right, includes a box to indicate the court department, judicial officer, and date the complaint was filed, in addition to "CASE ASSIGNED TO:." In light of the other information requested, we are uncertain what information should be provided after "CASE ASSIGNED TO:" and suggest that this language be deleted.	b. The Clerk's Certificate of Service on form EFS 008 provides for three options, including "a certificate of mailing is attached" which can be used show service on other parties. Often, however, this order will be served directly on the applicant at or near the commencement of an action before the other parties have been served; hence, including options for service on the applicant alone is appropriate. c. The committee agreed that the box should be box be modified. It should be consistent with other Judicial Council forms that generally do not require the information requested. Also, insofar as these forms would frequently be used connection with initial filings, the fields of information that are identified in the box would not yet be available.
73.	Superior Court of Sacramento County By: William Yee Research Attorney		We agree with the proposed Judicial Council forms used to request an exemption from electronic filing and service, however, we recommend that they be adopted for optional use.	The committees recommend that the forms be optional.
Limited Scope and Pro Bono Representation				
74.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Pro Bono Clients and Legal Services Clients** In addition to self-represented parties, parties represented pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of filing. The	**Pro Bono Clients and Legal Services Clients** These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law are entitled to request a waiver of their electronic

	Commentator	Position	Comment	Committees' Response
			clients represented by pro bono attorneys are essentially in the same situation as self-represented parties financially and added expenses may prevent access to the courts even for parties represented by pro bono attorneys.	filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law. On the other hand, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, *but not limited to*, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(italics added).) There may also be some other ways to address the commentators concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.
75.	Legal Aid Foundation of Los Angeles By: JoAnn Lee Directing Attorney		**Pro Bono Clients and Legal Services Clients** In addition to self-represented parties, parties represented by pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of electronic filing. As a legal services provider that represents many LEP litigants, we are uncertain of whether we will have the personnel and resources to meet the technological requirements for electronic filing. Without such an option, added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients.	**Pro Bono Clients and Legal Services Clients** These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law are entitled to request a waiver of their electronic filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law. On the other hand, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing

	Commentator	Position	Comment	Committees' Response
				service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, *but not limited to*, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(italics added).) There may also be some other ways to address the commentators concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.
76.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		What if a party is represented and consents to e-filing, e-service and receipt of e-service, then becomes self-represented. Should the self-represented party become exempt? How should Limited Scope Representation be handled? If a represented party who has consented to e-service becomes unrepresented, that party should be exempted from e-filing and e-service, unless the party chooses to opt-into e-filing and e-service and/or becomes represented again by counsel. Civil forms, such as the proposed EFS-007 and EFS-008, or the Substitution of Attorney-Civil, could be used to request such a change in status, or this may be done when the court grants substitution of counsel. Notice would then be given to the other parties that the now self-represented litigant is no longer subject to e-filing and e-service.	Under the committees' proposals, if a party who had been represented becomes self-represented, that person would become exempt from mandatory electronic filing and service unless the person affirmatively opts in to e-filing, e-service, or both. The committees agreed with this comment, and recommend the version of the proposed rules that provides for an exemption from mandatory e-filing and e-service for self-represented parties. Because self-represented parties would be exempt from the requirements, no request would be necessary. The commentator is correct that the *Substitution of Attorney–Civil* form could be used by self-represented persons to indicate a change of status.

	Commentator	Position	Comment	Committees' Response
			The rules should require creation of a mechanism for parties whose attorneys substitute out as counsel of record. E-filing and e-service exemptions should be assessed after a party substitutes in as her own counsel. In the court's order granting substitution of counsel, the self-represented party could be directed to file an exemption request with the clerk's office within five days of the order's date. The order would trigger a mechanism by which all represented parties send hard copies of filings to the self-represented litigant. If a represented party who has consented to e-service becomes unrepresented, the party should be exempt from mandatory e-filing from that point on unless they opt-in and/or become represented again. Either EFS-007 and EFS-008 can be used to request a change in status OR the Substitution of Attorney – Civil form can be modified so that if a party is becoming self-represented then a notice informing the other parties that the SRL is no longer subject to e-filing/e-service. As Limited Scope Representation is encouraged and widely used in family law cases, the Notice of Limited Scope Representation form should be changed. Low- and moderate-income litigants in family law often hire attorneys for court appearances or limited time periods, due to the often extensive duration and cost of family law matters. These litigants should not be required to request permission to be	Once an attorney substitutes out and a party represents himself or herself, the party would be exempt from electronic filing and service. No order would be required for an exemption; it would be automatic. However, the party would need to give notice of their new service address to the other parties in the action and the court. To provide notice, a self-represented party can use *Substitution of Attorney–Civil* (form MC-050), which has places for the party to indicate that he or she is self-represented and to provide the street address where he or she can be served. If the party wants to be served electronically, he or she can use the EFS forms for this purpose. The committees, or other advisory committees, may review the limited scope representation forms in the future to determine whether these forms should be modified to make them more usable in the context of electronic filing and service. The rules have been modified to clarify that, if a person is self-represented, they must be served by conventional means unless they affirmatively

	Commentator	Position	Comment	Committees' Response
			exempted from e-filing and e-service each time they hire a limited scope attorney, and litigants and attorneys who oppose SRLs should have clear direction on how and whom to serve. As such, the Notice of Limited Scope Representation should be changed to reflect whom and how to serve the party, and on what issue.	consent to electronic service. (See rule 2.251(c)(2)(B).) On the other hand, if an attorney is providing limited scope representation in a case subject to mandatory e-filing and e-service, the attorney must serve documents on all other represented parties by electronic means unless they have requested and been granted an exemption.
77.	National Housing Law Project By: Renee Williams Executive Director		(See comment 75 by Legal Aid Foundation of Los Angeles above.)	(See responses to comment by LAFLA.)
78.	Public Law Center By: Elizabeth Gonzalez Lead Attorney		**Pro Bono Clients and Legal Services Clients** In addition to self-represented parties, litigants represented by pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of e-filing. Clients of qualified legal services programs are essentially in the same financial situation as many self-represented parties and added expenses may prevent access to the courts even though they are represented by pro bono or legal services attorneys. Legal services programs have limited financial ability to absorb fees and costs and requiring pro bono attorneys to absorb them may chill some lawyers, particularly those in small firm or solo practice settings, from volunteering. For that reason, we suggest that either the court provide a free way to e-file documents or require electronic filing service providers to allow for no-fee transmissions for litigants represented by legal services programs or pro	**Pro Bono Clients and Legal Services Clients** The suggestions regarding pro bono attorneys are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law would be entitled to a waiver of their electronic filing fees under the current statute and rule, providing fee waivers for attorneys who are representing pro bono persons who are not eligible for fee waivers would require changes in the law. There might be some other ways to address the commentators concerns, however. For example, legal aid organizations that become electronic filing service providers might offer to provide electronic filing to pro bono attorneys free of charge. Also, courts' contracts with private EFSPs might be able to provide for some relief in this area.

	Commentator	Position	Comment	Committees' Response
			bono attorneys working with legal services programs.	
79.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**What if party is represented and consents to e-service. Attorney subs out. Is party still submitting to e-service?** Under the process wherein a self-represented litigant is automatically exempted from mandatory e-filing and e-service, and a represented party who has consented to receipt of e-service becomes unrepresented, that party should be exempted from e-filing and e-service as a self-represented litigant. That party may e-file and receive e-service by choosing to opt- in to it or by becoming represented again by counsel. Civil forms, such as the proposed EFS-007 and EFS-008, the Substitution of Attorney-Civil and the Notice of Limited Scope Representation, could be modified and used to request such a change in status, or this may be done when the court grants substitution of counsel. Notice would then be given to the other parties that the now self-represented litigant is no longer subject to e-filing and e-service.	**What if party is represented and consents to e-service. Attorney subs out. Is party still submitting to e-service?** The committees agreed with this comment and recommend rules that would exempt self-represented parties from mandatory electronic filing and service. Because self-represented parties would be exempt from the requirements, no request would be necessary. The commentator is correct that the *Substitution of Attorney–Civil* form could be used by self-represented persons to indicate a change of status.
80.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal		The representational status of self-represented litigants is often not consistent within a single case. For example, in family law, a litigant may start out represented, then lose that attorney at some future point due to lack of funds. The e-filing rule should address this situation clearly	Under the proposed rules recommended by the committees, a person who becomes self-represented would be exempt from electronic filing and service unless the person affirmatively opts in to electronic filing or service, or both.

	Commentator	Position	Comment	Committees' Response
			by setting out a process by which a litigant who becomes self-represented during a case, is automatically then excluded from mandatory e-filing unless that person "opts-in".	
Court-Ordered Electronic Filing (Rule 2.253(c))				
81.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		Should Rule 2.253(c), regarding mandatory e-filing for consolidated cases, be considered consolidated for this rule? Consolidated family law, domestic violence, probate and housing actions should be exempted from Rule 2.253(c), given the extraordinary number of SRLs, and the regular (proposed) rules regarding opt-ins to e-filing and service should apply.	The committees did not think that rule 2.253(c) on court-ordered electronic filing and service in complex cases needs to be changed. The provisions on court-ordered filing and service in these cases have been working effectively for a number of years without apparent difficulties.
82.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order "in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403..." and there is no requirement for having two electronic service providers. Because some courts have court ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order "e-filing through the court directly or through an electronic service provider." If this were not clarified, our court	The committees do not think that the requirement in the statute and in rule 2.253(b) for more than one electronic filing service provider applies to court-order electronic filing and service in complex cases under (c). Nonetheless, to make this clear and address the concerns of the Superior Court of San Diego County, the committees recommend adding an explanatory Advisory Committee Comment. This Comment would state shat court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6 because court-ordered filing and service do not require more than one electronic filing service provider.

	Commentator	Position	Comment	Committees' Response
			would potentially need to discontinue e-filing in these court ordered cases until it gets a second electronic service provider and then restart the process once the second provider is brought on board. This would be unduly burdensome to the court and the parties in these cases since our court has found that the process of getting an electronic service provider set up with our court takes in excess of a year to complete. The cost and staffing levels required to complete such a process create significant barriers at this time due to reduced funding.	
Additional Issues				
83.	IOLTA-Funded California Disability Advocacy Organizations		(See complete comments attached to this chart as Attachment B.)	The comments are well-taken. As the commentators observe, the self-represented population includes many persons with disabilities, low-incomes, and limited English proficiency. Electronic filing and service may pose challenges for many of these persons. The committees' response is, first of all, to recommend that electronic filing and service not be made mandatory for self-represented persons. These persons would continue to have the ability to file and serve documents by conventional means. E-filing and e-service would be strictly voluntary for them. At the same time, the committees think that technology can be of substantial assistance to self-represented persons, including those with disabilities. Thus, self-represented parties should definitely be given the opportunity to "opt in" to

	Commentator	Position	Comment	Committees' Response
				e-filing and e-service to the extent that is feasible. Third, courts implementing e-filing should undertake to ensure that, as e-filing expands, it is developed in a manner that addresses the needs and situations of persons with disabilities, low-income individuals, and persons with limited English proficiency. See *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012.) This includes taking into account the need of persons with limited English proficiency to have information about e-filing and e-service provided in different languages.
84.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Access for People with Disabilities:** LAAC is aware that Disability Rights Education and Defense Fund and other organizations have submitted a comment addressing accessibility issues. LAAC defers to the expertise of those groups in this area and reiterate four major concerns for e-filing and people with disabilities: (1) need to protect confidentiality of disability-related information, (2) need to include check-boxes for disability accommodation, (3) need to be compatible with specific access considerations, (4) need for coordination with California Rule of Court 1-100, which established procedures for persons with disabilities to request accommodation; and (5) need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers.	See response to comment 83.

	Commentator	Position	Comment	Committees' Response
			Language Access: LAAC is also aware that the Legal Aid Foundation of Los Angeles and others plan to submit a comment addressing concerns with e-filing and litigants with limited English proficiency. LAAC would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California. Any e-filing programs would ideally be provided in the primary languages spoken in California, including Spanish, Vietnamese, Korean, Mandarin/Cantonese, and Tagalog. At a minimum, the notice of the requirement to opt-in/opt-out must be provided in each of those languages so that litigants are aware of the requirement and can take steps to complete the proper form. . . . . LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analysed.	
85.	Legal Aid Society of Orange County		<u>E-Filing in Small Claims Cases</u> Many litigants and the courts would benefit from the ability to e-file small claims cases. The Rules ought to have the flexibility to allow	<u>E-Filing in Small Claims Cases</u> Code of Civil Procedure section 1010.6 and the rules of court have allowed courts to institute e-filing for small claim cases for a number of years,

	Commentator	Position	Comment	Committees' Response
			individual courts to adopt rules allowing e-filing. <u>Statewide and Local Rules</u> When adopted, do these rules supersede the Orange County local rules on e-filing?	and the proposed rule changes would not alter that. <u>Statewide and Local Rules</u> Once the statewide rules are adopted, the local rules including those in Orange County will need to be consistent with those statewide rules.
86.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		LSNC believes the e-filing rules should be express about ex parte filing in order to avoid any possible ambiguity. This is the possibility mentioned on page 12 of the Invitation to Comment in the heading "Other electronic filing issues." Legal services programs assist pro per litigants with many ex parte applications, including ex parte applications for orders shortening time in Unlawful Detainers for both pre-trial and post-trial motions and ex parte applications for restraining orders. The rules for filing these applications need to be very clear to avoid issues that can cause delay in these types of emergency situations.	A special provision regarding ex parte applications does not appear necessary, especially if certain other changes are made to the rules, as proposed. The same deadlines that apply to conventionally filed documents also apply to electronically filed documents. (See current Cal. Rules of Court, rule 2.252(f) ("Filing a document electronically does not alter any filing deadline.") Because ex parte applications follow this general rule, there is no reason to single out ex parte applications for special attention in the rule. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper. To the extent that there has been some ambiguity about the rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue is addressed in the proposed rules by relocating the provision in rule 2.252(f) to be more prominent. (See amended rule 2.252(c)(2). Only if e-filed documents would require a *different* treatment from conventionally filed documents would it be important to have a specific rule; otherwise, it seems preferable to rely on the general rule rather

	Commentator	Position	Comment	Committees' Response
				than adding specific rules on each type of proceeding to the e-filing rules.
			The court rules should require that if a clerk rejects a document that is filed electronically that there be an explanation why the filing was rejected. This is the only way any litigant, but most importantly pro per litigants, can know why a filing is rejected and either correct it accordingly or challenge the rejection as being incorrect.	It is anticipated that courts that reject an electronic filing will inform the filer of the reasons, just as they do for paper filings. Thus, it does not appear necessary to include this in the rules.
			The court rules should include a way to demand that documents be filed when a document that is filed electronically is rejected or some other way to challenge an improper rejection by a clerk. Absent that, there is will be no way to get past clerks improperly rejecting filings. One way to do this could be to deem all e-filings as requests for filing on demand, meaning all e-filings would be lodged but could be returned by a clerk for correction.	Like paper filings, electronic filings should be liberally accepted by the courts. A court's duty to accept filings is well-established in the in the case law; there does not appear to be a need for special rules on this subject as it relates to electronic filings.
			The court rules should specify a file format or require local rules to specify file format for each court so everyone is on notice and there cannot be arbitrary rejections because of file format.	It appears premature to specify particular file formats in the statewide rules on electronic filing and service until the courts and litigants have had more experience with electronic filing.
			The court rules should specify that authorized file formats should not require special software. For example, courts should not require a .pdf format that requires a special version of Adobe software that is not free. Such special file formats would be an impossible barrier for	In developing local rules and eventually in developing statewide rules on format, this point should be considered.

	Commentator	Position	Comment	Committees' Response
			many low income pro per litigants because they could not afford the special software and libraries do not generally have such special software.	
87.	Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney		**Introduction**[1] California is a state that is racially, ethnically, and linguistically diverse. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally. Californians speak over 220 languages and 43 percent of Californians speak a language other than English in their homes. The top five primary languages spoken at home after English include Spanish (8.1 million speakers), Chinese (815,386 speakers), Tagalog (626,399 speakers), Vietnamese (407,119 speakers), and Korean (298,076 speakers). While the wide variety of languages spoken in the state enriches California culturally, individuals who speak other languages at home may also be limited-English proficient (LEP). In fact, approximately 6 million Californians "experience some difficulty speaking English," with "roughly 40% of Latinos and Asians overall and half of certain Latino and Asian ethnic groups being LEP." Limited-English proficiency impacts one's "ability to access fundamental necessities such as employment, police protection, and healthcare." While underrepresented groups among native English speakers often face	LAFLA provides helpful comments here about the importance of considering the needs of persons with limited-English proficiency. (For LAFLA's specific comments on key issues and the committees' responses, see comments 44, 61, and 75 above.)

[1] Footnotes have been omitted. The complete version of the comment (Attachment C to this chart) includes the footnotes.

	Commentator	Position	Comment	Committees' Response
			similar challenges, these challenges are compounded for LEP individuals who must also contend with an incredible language barrier. Thus, unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California. As the California Commission on Access to Justice observed in its 2005 report, "[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and The report notes that approximately 7 million Californians "cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter." To ensure that the California state court system is promoting justice for all Californians regardless of language ability, issues concerning language access and limited-English proficiency in the courts must be addressed in light of the proposed rule change concerning mandatory electronic filing and service. **Legal Background and Mandates** Safeguards protecting limited-English proficient individuals in accessing the courts can be found in both state and federal statutes. California Government Code §§ 11135, *et seq.* and its accompanying regulations provide that no one	

	Commentator	Position	Comment	Committees' Response
			shall be "denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of "linguistic characteristics." Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin, which has been interpreted to include meaningful language access. As recipients of federal financial assistance, California courts are subject to the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts, and on June 18, 2002 issued guidance to recipients of such funding detailing these mandates. This guidance is clear that language access to litigants be provided both inside and outside the courtroom. **Overview of Key Issues Affecting LEP Litigants and Communities** We do not wish to duplicate comments on general topics concerning low-income, legal services-eligible individuals and court access, as these are well-documented in other comments	

	Commentator	Position	Comment	Committees' Response
			submitted by the organizations referenced above. We want to emphasize that the needs of and mandates regarding LEP litigants must be incorporated into all aspects of any rule. The points below highlight and support some key areas that we believe are especially critical for LEP litigants and communities. [Specific comments by LAFLA on exemption of self-represented litigants, electronic service, and pro bono representation are elsewhere in this chart. See comments 44, 61, and 75.] **Translating Materials and Forms** The proper translation of state court materials and forms is essential to bridging the language divide between the California court system and the LEP populations it serves. The following suggestions are ways in which state courts can make themselves more accessible to LEP populations, should the proposed mandatory electronic filing rule be adopted. First, courts in each county should work with their vendors to create introductory materials and clear guidance such that LEP individuals understand the steps they need to take in order to successfully complete necessary transactions and electronic filings. Each county's courts should provide any such materials and/or guidance in the five most widely spoken non-English languages in each county. Courts should also have bilingual staff or access to interpretive services at filing windows, public kiosks and	[Responses to specific comments by LAFLA on exemption of self-represented litigants, electronic service, and pro bono representation are located elsewhere on the chart. See responses to comments 44, 61, and 75.] The committees agreed that proper translation of materials and forms is important, and recommend that courts instituting mandatory electronic filing consider the comments and suggestions submitted by LAFLA.

	Commentator	Position	Comment	Committees' Response
			self-help centers so LEP litigants can ask questions and seek assistance. Similarly, courts in each county should provide bilingual forms containing translated text written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The courts should create one such form for each of the five most widely spoken non-English languages in their respective counties. Third, courts should be strongly discouraged from using Google Translate or similar services to translate court webpages, as the translations have been proven to be inaccurate and confusing to non-English speakers. The use of online translators such as Google is not an adequate substitute for human translation. Our bilingual staff attempted to explore the website of the Orange County Courts (www.occourts.org), where a pilot project of this mandatory rule is being conducted, using the Google translation offered on the homepage. Navigating the website in some of the Asian languages, as translated by Google, did not provide meaningful translation of the content and was very confusing to the reader. The court forms were too large to translate and the services provided by the vendor were not translated. Finally, the courts must conduct effective outreach to LEP communities concerning any	

	Commentator	Position	Comment	Committees' Response
			changes to court rules regarding electronic filing. Courts in each county should create signs and flyers to be posted prominently in each courthouse detailing electronic filing requirements. These signs and flyers should appear in the five most widely spoken non-English languages in the county. Additionally, courts should consider placing translated notices pertaining to the changes in local media that reach LEP communities, such as non-English language newspapers. This multilingual outreach should clearly explain both changes to the electronic filing requirements and any exemptions that may apply. Effective outreach is essential in ensuring that LEP communities receive fair and proper notice concerning any changes to state court filing requirements.	
88.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		Of additional concern is the demand for additional resources by low-income and self-represented litigants. They often seek services from free and low-cost legal services providers, including legal aid organizations, non-profit legal services organizations, paralegals, and notaries. If they are not exempted from mandatory e-filing requirements, court self-help centers and free legal services providers will simply be unable to meet the demand without substantial increases in personnel and technology budgets. For-profit notarios, particularly those serving Spanish-speaking litigants, will be able capitalize on this unmet need, and without regulation this could be	The committees are recommending that self-represented parties by exempted from mandatory electronic filing and service.

	Commentator	Position	Comment	Committees' Response
			disastrous. Family law and eviction defense services are, necessarily, a huge part of what any legal aid organization provides on behalf of their low-income clients. These organizations often provide representation, often in limited scope, in all types of civil matters. Any software and technology requirements for e-filing, e-service and receipt of e-service should be easily accessible and available to low- or no-cost. Systems that require the purchase of costly software programs or vast amounts of internet storage space may be a disincentive for these agencies to representing low-income litigants.	The commentator is correct that increasing the voluntary use of e-filing by self-represented parties will necessarily involve substantial support from legal aid organizations, using appropriate technology at a reasonable cost.
89.	National Housing Law Project By: Renee Williams Executive Director		(See comments above by Legal Aid Foundation of Los Angeles.)	(See response to comments by Legal Aid Foundation of Los Angeles.)
90.	Public Law Center By:Elizabeth Gonzalez Lead Attorney		. . . . To ensure that all litigants understand applicable e-filing procedures, we suggest that the first time a litigant files a document electronically in a particular case they are provided with an "E-filing Information Sheet." The handout would provide information regarding that particular clerk's office closures and cutoffs for manual filing, manual service and e-filing and e-service. This sheet should be provided in the litigant's primary language.	This suggestion for a handout on e-filing is a good idea. It should be considered by courts instituting e-filing.
91.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS)		The proposal does not make specific reference to accommodate people with disabilities. However, many low-income and moderate-	Although the rules on mandatory electronic filing

	Commentator	Position	Comment	Committees' Response
	By: Sharon Ngim		income individuals in California are people with disabilities who will be subject to the proposed rules. Accordingly, it would be prudent and appropriate to add references to relevant sections of California and Federal rules and regulations that speak to the need to provide accommodations to people with disabilities and the need to make online content accessible to people with disabilities, such as Rule 1.100 of the California Rule of Court, and pertinent sections of the Unruh Civil Rights Act, California Civil Code Sections 54 through 55.2, Title 24 California Building and Standards Code (Physical Access Regulations), California Government Code Section 11135-11138, and the Fair Employment and Housing Act, as well as the Federal Rehabilitation Act and Americans with Disabilities Act. Further, the proposal should align with Court Rule 1.100 so as to avoid confusion or redundancy	and service do not make specific reference to laws relating to persons with disabilities, they obviously must be implemented consistent with those laws. The commentator's suggestion about providing references, however, seems intended to apply more broadly than to just these rules—for example, the comment mentions the need to make online content accessible. Providing references to the law on accommodations for people with disabilities in the relevant rules of court is a project that a committee or committees might look at in the future.
92.	Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer		The rules should provide that courts have the right to require paper courtesy copies be provided to the court in any proceedings that are going to be held within one day of the electronic filing since it could, depending on the press of business, take that long for an electronic filing to be processed and available on the court's case management system.	The committees do not recommend adoption of a rule on this subject at this time; however, the suggestion will be explored in the future. If a rule is developed, it would be circulated for public comment.
Question No. 1 – General - Does the proposal appropriately address the stated purpose?				
93.	California Family Law Facilitator's Association		**Does the proposal appropriately address the stated purpose?**	**Does the proposal appropriately address the stated purpose?**

	Commentator	Position	Comment	Committees' Response
	By: Melanie Snider Vice President		Yes.	No response required.
94.	Julie A. Goren, Attorney Lawdable Press		**Does the proposal appropriately address the stated purpose?** Yes.	**Does the proposal appropriately address the stated purpose?** No response required.
95.	Los Angeles Center for Law and Justice By: Suma Mathai Supervising Family Law Attorney		**Does the proposal appropriately address the stated purpose?** The purpose of the proposed shift to e-filing and e-service is unclear. Is the purpose of the proposal to increase accessibility to the court? Is the purpose ultimately to streamline filing and service procedures and allow for future outsourcing and/or reduction in the court's physical facilities? Is the purpose to allow for future access of all court records online? Is the purpose to ultimately save money or catch up with technology? Having a clear statement of the goals and purpose of this proposal would help the legal community better tailor responses and attempt to address the needs of our constituencies and the court. This proposal addresses both e-filing and e-service/receipt of e-service, which are fundamentally different and pose different challenges for low-income and self-represented litigants. For reasons outlined below, we believe that each should be addressed separately and comprehensively.	**Does the proposal appropriately address the stated purpose?** The immediate purpose of the proposal, as stated in the Invitation to Comment, is to amend the California Rules of Court to provide uniform rules on mandatory electronic filing and service in the trial courts. The rule implements Assembly Bill 2073, which requires the Judicial Council to adopt rules to permit the electronic filing and service of documents in specified civil actions on or before July 1, 2014. The rationale for the legislation is provided in the Senate Judiciary Analysis of AB 2073: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2073_cfa_20120618_163341_sen_comm.html . The commentator is correct that the proposal addresses both e-filing and e-service/receipt of e-service. The committees agreed that each should be addressed separately and comprehensively.

	Commentator	Position	Comment	Committees' Response
96.	Superior Court of Los Angeles County		**Does the proposal appropriately address the stated purpose?** If the working group thought it was necessary to provide alternatives on key issues, we should not be making decisions without the input from the courts which will run the pilot projects. The rules should provide more flexibility on how rules apply to different case types.	**Does the proposal appropriately address the stated purpose?** Alternatives were provided to give the bar, the courts, legal aid organizations, other interested entities, and the public the fullest opportunity to comment on, and provide suggestions about, the best way to implement mandatory e-filing and e-service. Broad input is important for many reasons, including that, because there is only one authorized pilot project, getting input from other sized courts and diverse populations is valuable. Although other courts may not have mandatory e-filing, they may have experience with voluntary e-filing. The rules provide great flexibility as to the how courts may implement mandatory e-filing go for different types of civil cases. (See proposed rule 2.253(b)(1) and Advisory Committee Comment on rule 2.253 ("This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate.").)
97.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Does the proposal appropriately address the stated purpose?** The proposal appropriately addresses the stated purpose of the Invitation to Comment.	**Does the proposal appropriately address the stated purpose?** No response required.
98.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Does the proposal appropriately address the stated purpose?**	**Does the proposal appropriately address the stated purpose?**

	Commentator	Position	Comment	Committees' Response
			Yes.	No response required.
99.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Does the proposal appropriately address the stated purpose?** Yes, we feel the proposal adequately and appropriately addresses the need for rules needed to implement mandatory e-filing in local courts.	**Does the proposal appropriately address the stated purpose?** No response required.
100.	Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer		**Does the proposal appropriately address the stated purpose?** Yes.	**Does the proposal appropriately address the stated purpose?** No response required.
101.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Does the proposal appropriately address the stated purpose?** Yes. This feedback is in alignment with the e-filing workstream participants.	**Does the proposal appropriately address the stated purpose?** No response required.
Question No. 2 - On the rules on mandatory e-filing: scope. Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?				
102.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Is the scope of the proposal for the rules on mandatory e-filing—i.e. that the rules would apply to all civil cases except juvenile cases—appropriate?** No. The scope would include family law cases and, for reasons explained further, would	**Is the scope of the proposal for the rules on mandatory e-filing—i.e. that the rules would apply to all civil cases except juvenile cases—appropriate?** The commentator's main concern appears to be that self-represented parties would suffer hardship

	Commentator	Position	Comment	Committees' Response
			potentially cause great hardship and result in inequitable access for some self-represented litigants.	and inequitable access if they are included in mandatory e-filing, especially in family law cases. These concerns would be addressed by exempting such parties from mandatory e-filing. Once this approach is adopted and only represented parties would be required to file electronically, it seems appropriate to include all civil cases—including family and juvenile cases— in the group of cases that might, on a court-by-court-basis, be included in mandatory e-filing programs.
			Should the scope be narrowed to exclude any types of categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile cases)? Yes. It may be acceptable and even beneficial to allow voluntary participation in the e-filing program for some family law cases—for example those cases in which both sides are represented by counsel. But a requirement forcing self-represented litigants to e-file (unless the court will be providing access to the service to the self-help centers and allowing waivers of costs for those litigants who otherwise qualify for such waivers) would be onerous for many self-represented litigants.	**Should the scope be narrowed to exclude any types of categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile cases)?** The committees agreed that self-represented litigants should not be required, but should be encouraged voluntarily in appropriate cases, to file electronically in family law.
103.	Martin Dean Essential Publishers LLC		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be**	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be**

	Commentator	Position	Comment	Committees' Response
			narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)? Our experience indicates that the scope of filing types should be as broad as possible. We do not believe however, that mandatory eFiling should necessarily apply over all case types in a single court. For instance, there could be mandatory eFiling in Civil cases, and opt-in eFiling in Family law cases. We also believe that it is early in the game for rules regarding electronic filing. Therefore, we believe that they should be as open as flexible as possible so as not to stifle the natural growth and direction of this new court service.	**narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees agreed that the permissible scope of filing should be as broad as possible. The rules on mandatory e-filing would be flexible—permitting each court to determine for itself what specific types of civil cases should be subject to mandatory e-filing. (See proposed rule 2.253(b)(1) and Advisory Committee Comment on rule 2.253 ("This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate.").)
104.	Julie A. Goren, Attorney Lawdable Press		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate?** Yes. **Should the scope be narrowed to exclude any type or categories or civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** No.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate?** No response required. **Should the scope be narrowed to exclude any type or categories or civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** No response required.
105.	Los Angeles Center for Law and		**Is the scope of the proposal for the rules on**	**Is the scope of the proposal for the rules on**

	Commentator	Position	Comment	Committees' Response
	Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The scope of the proposal for the rules on mandatory e-filing should consider not only what types of civil cases the mandatory e-filing rules should apply to, but also whether specific categories of litigants should be exempted. We propose that cases involving domestic violence restraining orders, civil harassment restraining orders, probate guardianship and conservatorship and unlawful detainers should be exempted from the mandatory e-filing and e-service rules due the time-sensitive nature of these cases. The rule should not be expanded to include juvenile cases, for the same reason that criminal cases are not included.	**mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The key recommendation of the committees is that self-represented parties be exempted from mandatory e-filing and e-service. Once this approach is adopted, only represented parties will be required to file and service electronically. The argument for excluding particular case types from mandatory e-filing is no longer persuasive if all the filings are being done by an attorney. Indeed, e-filing by attorneys will often have benefits (e.g., speed and efficiency) in many of the specific types of cases mentioned by the commentator. Furthermore, in an exceptional case, the attorney could request an exemption based on hardship or substantial prejudice. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore would not be excluded under this proposal; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)
106.	Public Law Center		**Is the scope of the proposal for the rules on**	**Is the scope of the proposal for the rules on**

	Commentator	Position	Comment	Committees' Response
	By: Elizabeth Gonzalez Lead Attorney		**mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** As to the scope of areas of law covered by the mandatory e-filing and e-service requirements, Orange County currently does not require e-filing for family law or probate/mental health cases. Additionally, in Unlawful Detainer cases, defendants – who are frequently self-represented – are required to be served with the opt-out form along with the summons and complaint. We recommend that the exclusion for family law and probate/mental health cases be implemented state-wide. We also recommend that Unlawful Detainer cases be excluded. The majority of litigants in these three types of cases are frequently self-represented and requiring them to opt-out could impose a burden on the courts. The shorter timelines that often occur in family law, probate/mental health and unlawful detainer cases could create an access to the courts issue if e-filing were required and particularly if the procedure were an opt-out procedure.	**mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** This information is useful. The court is implementing mandatory e-filing and e-service in a flexible, selective manner. This approach makes good sense. (See Advisory Committee Comment to rule 2.253.) The committees do not recommend categorically excluding any of the case types mentioned from mandatory e-filing, but recommend giving courts the flexibility to choose not to institute mandatory e-filing in those types of cases. The commentator's main concern about instituting mandatory e-filing in these types of cases appears to be that they involve many self-represented parties. However, the committees are recommending excluding self-represented parties from mandatory e-filing. If this is done, there should be fewer access and other issues. Also, with automatic exclusion, no burden will be imposed on the courts from requiring self-represented parties to follow opt-out procedures.

	Commentator	Position	Comment	Committees' Response
107.	State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The rule should not be expanded to include juvenile cases, for the same reason that criminal cases are not included. For the reasons discussed in detail below, SCDLS strongly believes that self-represented litigants should be exempted from mandatory e-filing and e-service, but allowed to opt-in. If all self-represented litigants are not automatically exempted from mandatory e-filing and e-service, then certain types of cases should be exempted. These include domestic violence cases, civil harassment, and unlawful detainer actions. This is due to the fact that these cases oftentimes involve self-represented litigants and are particularly time-sensitive. Further, given the large number of self-represented litigants involved, family law cases should be automatically exempted from mandatory e-	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees disagreed about excluding juvenile cases. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore would not be excluded under this proposal; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.) The committees agreed that self-represented parties should b exempt from mandatory e-filing but allowed to opt-in. As SCDLS indicates, the argument for excluding various types of cases is based principally on the fact that these types of cases involve substantial numbers of self-represented litigants for whom e-filing would be challenging. But if self-represented litigants are excluded and only litigants represented by an attorney would be required to e-file, the argument for excluding a particular case type basically disappears. In fact, e-filing might be quite helpful in more time-sensitive cases.

	Commentator	Position	Comment	Committees' Response
			filing and e-service, assuming there is no general exemption for all self-represented litigants.	
108.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The scope is appropriate. The rules should apply to all civil cases except juvenile cases. The rules, however, should be flexible so that different rules can apply to different case types. As discussed below, the rule regarding self-represented litigants should be different for general civil cases than it is for family law.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)
109.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize**	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize**

	Commentator	Position	Comment	Committees' Response
			mandatory e-filing in juvenile law cases)? The scope should be a broadly-worded mandate to authorize e-filing in as many categories of civil cases as the local trial court deems appropriate. The local courts should be permitted to generate as many efficiencies as possible through civil e-filing. The rules, as written, contain sufficient safeguards to insure that fairness will not be compromised in the event of widespread usage.	**mandatory e-filing in juvenile law cases)?** The committees agreed that the trial courts should be given broad leeway to institute mandatory e-filing in all types of civil cases. (See responses to comments 96, 103, 106, and 108 above.)
110.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** Yes. Not having to go back to the Legislature repeatedly to expand the scope is efficient and economical. E-filing capabilities should be allowed to grow independently in each court and not require the rule to be changed to allow each incremental advancement.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees recommend that the rules apply broadly to all categories and types of civil cases, including juvenile cases. They agreed that it would not be desirable to be required to go back repeatedly to the Legislature or to frequently change the rules to expand the scope of mandatory e-filing.
111.	Superior Court of Sacramento County By: William Yee Research Attorney		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases)**	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be**

	Commentator	Position	Comment	Committees' Response
			or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)? We agree with the scope of the proposed rule but recommend that "small claims" cases be added to the types of civil cases that may be included. In proposed Rule 2.253(b)(1), we recommend that the specific categories in subsections (A) through (G) be omitted allowing local courts to define the categories/combinations of cases included.	**expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The scope of the proposed rule is very broad---permitting mandatory e-filing in virtually all types of civil cases. (See rule 2.253(b)(1).) But small claims a cases would not be covered. Even though rule 2.253(b)(1) allows mandatory e-filing in virtually all types of civil cases, the exclusion of self-represented parties from mandatory e-filing under rule 2.253(b)(3) means that mandatory e-filing would not be able to be instituted in small claims cases, where all parties are self-represented. The list of categories in (A) through (G) is helpful and should be retained in the rule: it shows the range of options and possible combinations available to the courts, and is in no way restrictive.
112.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** Yes, we feel the proposed scope of the rules is adequate and appropriate; including family law and excluding juvenile cases. Family Law represents a large and challenging set of cases within the trial courts and all measures which	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are

	Commentator	Position	Comment	Committees' Response
			could assist in the effective and efficient resolution of these cases should be available.	represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)
113.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** Yes, the rules as drafted will allow trial courts the ability to decide what civil cases would be included and to expand civil case types as court staff and resources allow.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated.
114.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Center		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** Yes, however, we recommend that Small Claims cases be explicitly included in the scope.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The scope of the proposed rule is very broad---permitting mandatory e-filing in virtually all types

	Commentator	Position	Comment	Committees' Response
				of civil cases. (See rule 2.253(b)(1).) But small claims a cases would not be covered. Even though rule 2.253(b)(1) allows mandatory e-filing in virtually all types of civil cases, the exclusion of self-represented parties from mandatory e-filing under rule 2.253(b)(3) means that mandatory e-filing would not be able to be instituted in small claims cases, where all parties are self-represented.
115.	TCPJAC/CEAC Joint Rules Working Group		**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** Regarding the scope of the proposal, the JRWG requests that juvenile cases not be excluded outright.	**Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?** The committees agreed. They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)
Question No. 3 – On the rules on mandatory e-filing: exemptions. Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons				

	Commentator	Position	Comment	Committees' Response
requesting hardship exemptions?				
116.	California Commission on Access to Justice By: Hon. Ronald B. Robie Chair		**Should self-represented parties be exempt from mandatory e-filing? If so, why?** Self-represented parties should be exempt from mandatory e-filing, but should have the opportunity to opt in. As the *Invitation to Comment* states, "for many self-represented litigants, e-filing would be challenging. Many of them may not have access to computers. Even if they do, the process of filing documents electronically may be difficult. Requiring them to file papers electronically may create significant barriers to access to the courts." Most self-represented parties do not retain counsel for economic reasons, and access to computers correlates with economic status, as well as with geographical location. Urban home broadband access is at 56 percent compared to 51 percent in rural homes. Lower average rural income is part of the equation: There is Internet access in 47 percent of state households with incomes under $40,000 and in 94 percent where income is over $80,000. (see *Improving Civil Justice in Rural California*, a report by the Commission on Access to Justice at page 25).	**Should self-represented parties be exempt from mandatory e-filing? If so, why?** The committees agreed with the Commission that self-represented parties should be exempt from mandatory electronic filing and should have the opportunity to opt in.
117.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**

	Commentator	Position	Comment	Committees' Response
			Yes. The self-help centers in Butte County, Tehama County and Lake County conducted surveys of their litigants regarding computer use. These surveys were conducted in April and July of 2011. The purpose of the survey at that time was to determine if the self-help center's litigants would be served if the centers offered litigants the use of computer-based resources in conjunction with their litigation. The results of the survey indicated that a significant portion of the self-help centers' clientele lack access to computers as well as the skill and comfort level to use computers without assistance. Some significant results of the survey indicate that only 60% of the self-help center litigants even have a computer at home, and of those litigants, only 86% have internet access. Of all litigants surveyed, only 30% use a computer at work. Nearly 50% of the litigants who have a computer or access to a computer use it for social networking and less than 40% have the skills to use a computer for more sophisticated purposes. Another indication that the digital divide still looms in California's rural counties, our survey results indicate that 15% of those responding litigants who do use computers do not use the internet at all. Overall, about 35% of the litigants responding to the survey do not use the internet for business or court purposes.	The committees agreed with the commentator that self-represented parties should be exempt from mandatory electronic filing. The survey information provided by the commentator was useful.

	Commentator	Position	Comment	Committees' Response
			As to the skill level of many of our self represented litigants who live in rural areas, less than 44% of those surveyed indicated that they are "very" comfortable using computers, 21.6% are "fairly" comfortable, while 14.8% are "okay with using computers for games, email and the internet". The remaining 20% were "not very" or "not at all" comfortable using computers. Again, these survey results indicate the existence of a digital divide in California. If the courts are to require filing and service of documents electronically, it is likely that 40% of the family law litigants in rural counties will be adversely affected and will either not have access or will not have equal access to the courts. It could affect due process for these litigants and result in poor rulings by the court that adversely affect children. In addition to the barriers many of these litigants face accessing and using computers, many of the self-help litigants are indigent or impoverished. Any costs associated with filing and accepting service electronically may also serve as a barrier to justice for these litigants. This barrier may be lowered if the rules regarding fee waivers apply to electronic filing, but there may still be access issues if the waiver provisions do not apply to private filing services. Currently litigants experience barriers when using the "Court-Call" service because that service is privately operated and litigants cannot get the "Court Call" fees waived. The	The applicable statute and the proposed rules provide that eligible parties are be entitled to request waivers from paying electronic filing fees to vendors or the courts. (See Code Civ. Proc., 1010.6(d)(1)(B) and rule 2.253(b)(6).) Similarly, waivers are available for the fees charged for appearances by telephone. (See Code Civ. Proc., § 367.6((b) and Cal. Rules of court, rule 3.670(k)(1).)

	Commentator	Position	Comment	Committees' Response
			result is that some litigants cannot appear telephonically because the "Court Call" fees are onerous to them and so they cannot make necessary appearances in some cases without traveling great distances. This is an inequitable situation and results in unequal access to the courts for the impoverished.	
118.	Martin Dean Essential Publishers LLC		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** Our experience (100,000+ electronic filings in 3 California venues) is likely somewhat different from that of other commenters. Our rule for electronic filing has always been "Don't make it mandatory, make it irresistible." Sacramento has been accepting electronic filings (2GEFS) for more than 7 years. They accept electronic filings only in Unlawful Detainer and Small Claims cases. For both case types, eFiling has been voluntary. The percentage of electronic filers has not varied for years. Sacramento reports that electronically filed Unlawful Detainer cases represent 90+% of their filings, and as best as we can recall, 70±% in Small Claims. At the California Public Utilities Commission their 2GEFS electronic filing capability has been in use for 5 years. Their electronically filed document percentage is about 93%. Their filing is also voluntary.	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The commentator's point about the importance of developing effective, user-friendly technology before instituting mandatory e-filing for self-represented parties is well-taken.

	Commentator	Position	Comment	Committees' Response
			Until well designed user interfaces that are as good as other commercial web based or even desktop based software; that create a process environment that requires no manual, no training, and is designed for use just once by non-lawyer users are common, we believe that mandatory electronic filing places a too heavy burden on self-represented litigants. We believe that once the industry of electronic filing has evolved to meet these standards, deciding about mandatory filing will be obvious. We believe that the industry would be best served by moving in this direction, rather than spending precious court or judicial time trying to decide whether the use of a particular user interface on a computer is a hardship.	
119.	Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See comment below by Legal Aid Association of California (LAAC) [similar]).	(See response to comment below by LAAC.)
120.	Julie A. Goren, Attorney Lawdable Press		**Should self-represented parties be exempt from mandatory e-filing?** No. **If so, why? If not, what procedures and criteria for exemptions should apply to self-**	**Should self-represented parties be exempt from mandatory e-filing?** Based on other comments, the committee disagreed with this conclusion. **If so, why? If not, what procedures and criteria for exemptions should apply to self-represented**

	Commentator	Position	Comment	Committees' Response
			represented persons requesting hardship exemptions? If they don't have a computer with internet service, then they should be exempt.	**persons requesting hardship exemptions?** For self-represented parties, the committees do not recommend an individualized exemption process based on specific criteria, but rather a general exemption.
121.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Should self-represented parties be exempt from mandatory e-filing? If so, why?** Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. LAAC echoes the concerns of the working group that self-represented litigants may not have access to computers and may have difficulty filing documents electronically. Allowing self-represented parties to be exempt addresses many of the concerns about barriers to justice and the courts. Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly because of their inability to access a computer or other required equipment such as a scanner, a printer, a modem, software to "save as" pdfs, etc., discomfort with composing and sending private personal information via a public library or court terminal, and a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented litigants may have to rely on public computer portals that do	**Should self-represented parties be exempt from mandatory e-filing? If so, why?** The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.

	Commentator	Position	Comment	Committees' Response
			not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Many self-represented litigants also do not have access to an email address, or access to an email address that they can check regularly. If a self-represented litigant opts in, there should be an opportunity to opt out later if the litigant discovers that electronic services of documents is not appropriate for that person. Accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion. LAAC suggests that the opt-in form offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet. **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** LAAC strongly urges the Judicial Council to adopt an exemption for self-represented parties.	The committees will consider this comment and review the opt-in form in the future. **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** Like the commentator, the committees recommend an exemption for self-represented

	Commentator	Position	Comment	Committees' Response
			If self-represented litigants are not exempt, the procedure must be simple and easy to complete. LAAC recommends, as one procedural option, that any party who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, parties who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service." However, if a litigant requests a fee waiver, she should be *allowed* to opt-in, but providing an automatic exemption for litigants filing a fee waiver could simplify the process. No fee waivers should be required to be filed electronically. **Other Questions** All other questions below are only relevant if the Judicial Council does not adopt an exemption. If there is an opt-out, rather than an opt-in exemption, each court will have to ensure that all litigants' access to the courts is protected. Requiring an opt-out procedure further complicates litigants' experience with the courts as self-represented litigants must understand when to file a request before they've missed early deadlines. Requiring an opt-out procedure will increase the burden on the courts because self-represented litigants will inevitably require individualized	parties. **Other Questions** As the commentator notes, the other questions are relevant only if an exemption for self-represented parties is not adopted.

	Commentator	Position	Comment	Committees' Response
			assistance and review or analysis. Additionally, some protections for self-represented litigants may need to be implemented, for example, tolling the time to file an answer while the litigant requests an opt-out. LAAC is concerned about what may happen to the litigants' filing while the request to opt-out is pending. It must be considered filed as of the day of filing, otherwise a self-represented litigant would be required to file early and to approximate how long it would take the court to review and grant or deny the opt-out request.	
122.	Legal Aid Society of Orange County		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** SRLs should be automatically exempted from mandatory e-filing and receipt of e-service requirements, but encouraged to opt-into e-filing. Many LASOC clients still do not have readily accessible internet access, do not have email addresses, or do not use the internet or email proficiently. Additionally, many low-income litigants do not have credit cards. As a result they cannot e-file, register or pay. If self-represented parties are made to opt-out of e-filing, rather than the desired opt-in	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.

	Commentator	Position	Comment	Committees' Response
			procedure, then the exemption process should be modeled upon the fee waiver process.	
123.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney		1. If the Judicial Council agrees that efiling should be optional for pro per litigants, there needs to be an easy way for a pro per litigant to opt-out of efiling after they opt-in if efiling turns out not to work for them. This should be an easy process that does not require a showing of good cause or a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests. 2. If the Judicial Council decides that efiling will be mandatory for everyone, there must be an easy way for pro per litigants to opt-out of efiling. There should not be a requirement for good cause or for a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests.	1. The proposed rules are clear that self-represented parties are not subject to mandatory electronic filing or service and must affirmatively consent to either or both. The committees will consider in the future the issue of how to improve the opt-out process for self-represented parties who have voluntarily opted in to e-filing and/or e-service. 2. The committees are not recommending that e-filing be mandatory for everyone—just for represented parties.
124.	Los Angeles Center for Law and Justice By: Suma Mathai Supervising Family Law Attorney		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**

	Commentator	Position	Comment	Committees' Response
			We advocate strongly that low-income and self-represented litigants should be exempted from mandatory e-filing and e-service rules, as detailed below. While we recognize that e-filing and e-service may be feasible for some low-income and self-represented litigants, it will be an additional hurdle that most must overcome, and requiring mandatory participation may effectively close the Court's door to them. Adoption of an "opt-out" procedure, whether through use of request for exemption or a hearing, will place a significant burden on low-income and self-represented litigants, who already have difficulties navigating the legal system. Forcing self-represented litigants to opt-out would be overly burdensome. In many immigrant communities, there is already a pervasive problem with many low-income and self-represented litigants – particularly those who are immigrants and/or limited English proficient (LEP) - seeking assistance from unscrupulous notarios and document preparers, who charge exorbitant fees to assist individuals with form preparation, which is usually very poor quality. Placing further burdens and barriers on these populations would only create new opportunities for these notarios and document prepares to take advantage of litigants facing desperate situations. Therefore, we strongly urge that low-income	The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.

	Commentator	Position	Comment	Committees' Response
			and self-represented litigants be exempted from mandatory e-filing and e-service rules, and be allowed to "opt-in" if they desire. We also recommend that significant outreach be conducted and informational materials be made available to advise low-income, self-represented and LEP communities of the consequences and benefits of opting-in to e-filing and e-service prior to the advent of widespread e-filing. Low-income and self-represented litigants should be exempt from mandatory e-filing requirements for the following reasons: • Lack of Access to Technology: Mandatory e-filing, e-service and receipt of e-service for self-represented litigants would create a serious barrier to access to the courts. Low-income and moderate-income Californians are more likely to be self-represented litigants, as the inability to afford legal representation is the primary reason litigants decide to represent themselves. See, "Handling Cases Involving Self-Represented Litigants: A Bench Guide for Judicial Officers," Administrative Office of the Courts (Jan. 2007), at: http://www.courts.ca.gov/documents/benchguide_self_rep_litigants.pdf. Moreover, low-income Californians are far less likely to have to an electronic device with internet connection, a secure e-mail address, and a scanner for	The committees agreed that it is important to provide outreach to low-income, self-represented and LEP communities about the consequences and benefits of opting-in to e-filing and e-service.

	Commentator	Position	Comment	Committees' Response
			scanning documents with original signatures—all necessary equipment for e-filing, e-service and receipt of e-service. This is particularly true for litigants with limited English proficiency, who are more likely than English-speaking litigants to be living in poverty and face more barriers to accessing the courts. According to 2010 United States Census Bureau statistics, for example, over 34% of households with an annual income of $50,000 or less do not have a computer. (By contrast, 98.8% of households with an annual income of $150,000 or more have a computer.) See, "Computer and Internet Use in the United States: 2010," U.S. Department of Commerce, United States Census Bureau, available at: http://www.census.gov/hhes/computer/publications/2010.html. Given this lack of personal resources by low-income Californians, all California state courts would need to be equipped with that technology for use by self-represented litigants. Given the current court funding crisis, however, it is highly unlikely that such resources are available. Litigants without the personal resources to own the necessary devices can access them at a local library or court without cost, or	

	Commentator	Position	Comment	Committees' Response
			pay for access at an internet café or other location. However, this raises many concerns, as litigants who must utilize public resources to e-file, e-serve and receive e-service: o Are restricted to the hours and locations these agencies are open, which often wax and wane depending on public funding (e.g. public libraries); o May compromise their privacy and safety, particularly in domestic violence cases, if they must generate and transmit private personal information via a public terminal; o May not have access to scanners (currently unavailable at public libraries and courts in Los Angeles County); o May have difficulty saving their documents if they are unable to complete them in one sitting. Even if litigants are able to access, understand and effectively use technology to e-file, the mandatory receipt of e-service requires that these litigants have **daily** access to that technology to ensure that the are receiving documents in a timely fashion that allows them proper notice and an opportunity to respond. Given that many low-income and self-represented litigants may access technology via public	

	Commentator	Position	Comment	Committees' Response
			institutions, requiring low-income and self-represented litigants to **receive e-service** will pose an immeasurable burden on them. • Computer Literacy: Even assuming all California state courts were equipped with computers, scanners, and internet access for use by low-income and self-represented litigants, many of those individuals may lack the computer skills necessary to e-file, e-serve, and receive e-service. We are concerned that low-income and self-represented litigants who lack sufficient computer literacy will be unable to e-file, even if equipped with the necessary technology; thus, they will be denied or discouraged from accessing the courts. In order to guarantee access to the courts in the event of mandatory e-filing, California courts would need to supply hands-on assistance for self-represented litigants. Again, given the precarious financial condition of the state courts, they will most likely not be able to sustain such added strain on their sparse resources. • Excessive Cost to Courts: In order to ensure that low-income and self-represented litigants would continue to have access to the courts in the event that are not automatically exempted from e-filing and e-service/receipt of e-	The committees recognize that electronic service may be challenging for self-represented parties and are recommending rules on electronic service that take into account this issue. (See rule 2.251(b)–(c).)

	Commentator	Position	Comment	Committees' Response
			service, every courthouse in the State would need to invest significant resources to assist those litigants who lack access to technology and/or sufficient computer literacy, including providing computers, scanners, and hands-on assistance with e-filing. California state courts are currently in the midst of an unprecedented financial crisis, as court staff, hours, and budgets have been drastically cut. Simply, the California state courts do not have the resources to ensure growing numbers of low-income and self-represented litigants are able to access the courts by fulfilling mandatory e-filing requirements. (In 2004, more than 4.3 million of California's court users were self-represented. See, "California Courts Self-Help Centers," Administrative Office of the Courts' Report to the California Legislature (June 2007), available at: http://www.courts.ca.gov/documents/LegRpt2007Self-Help.pdf.) • Cost to Self-Represented Litigants: Any costs associated with e-filing and e-service/receipt of e-service that are not covered by fee waiver applications would pose a significant barrier to the courts for low-income and self-represented litigants and the legal services organizations that assist them.	

	Commentator	Position	Comment	Committees' Response
			In addition, even if Electronic Filing Service Providers do honor Orders on Fee Waiver, to the extent that they still require a credit card to be able to access the service at all will effectively shut out the segment of the low-income and self-represented population that do not qualify for or are unable to obtain credit.	
			None of these comments are meant to limit low-income and self-represented litigants from voluntarily opting into e-filing and e-service/receipt of e-service requirements. One method for exempting self-represented litigants from mandatory e-filing is simply to allow them to file, either in person or through a designee, in hard copy at the usual court location. Represented parties would be required to e-file and hard copies would not be accepted at a clerk's filing window unless an exemption was requested and granted. The original filing method (in hard copy or e-filing) would then be continued in the same manner until a party requests a change. Exempted litigants could opt-in to e-filing at any time simply by e-filing.	The commentator's support for voluntary electronic filing and service by self-represented parties is noted.
			Additionally, if self-represented litigants who have opted in to e-filing no longer have the ability to e-file, they should be able to revert to paper filing simply by filing hard copies of new documents directly with the court. If this is not feasible, then they should be able to request an	The committees will look further into the issues involved with self-represented parties opting out of e-filing and e-service in the future to determine if any additional rules or clarification of the rules are needed.

	Commentator	Position	Comment	Committees' Response
			exemption at any point in the case. In addition, given the prevalence of Limited Scope Representation, streamlined and standardized procedures should be developed to manage cases in which a litigants' representation status is fluid. Exempting self-represented litigants from mandatory e-filing but allowing them to e-file when they are able will minimize difficulties for litigants who receive limited scope services on occasion from free and low-cost legal services providers including legal aid and non-profit legal services offices, paralegals and notaries. If fluidity in the e-filing process is allowable and low-income and self-represented litigants are able to e-file whenever possible without obligating them to e-file forever after, legal services providers assisting self-represented litigants may e-file on their behalf without prejudicing them and self-represented litigants who are no longer eligible or can no longer afford legal services are not then obligated to continue e-filing. Further, if case-by-case exemptions are made for low-income and self-represented litigants and they are required to "opt-out" rather than "opt-in," then certain procedures should be put into place in addition to those above, such as: • All vendors must have an alternative registration process which does not require a credit card, allowing those	In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered.

	Commentator	Position	Comment	Committees' Response
			who qualify for fee waivers and who do not have a credit card access to the e-filing vendor sites; • All vendors should offer a secure e-filing portal for users to obtain their documents which have been served through e-file; • Self-represented litigants should be able to e-file without paying the convenience fee if they file from a court's Self-Help Center; • While a request for exemption from mandatory e-filing or e-service is pending, the documents that the party is seeking to file should be accepted in hard copy in order to preserve the file date and thus meet any statutory timelines. Thus, no defaults would result from the exemption process itself.	
125.	OneJustice By: Linda S. Kim Deputy Director		**Should self-represented parties be exempt from mandatory e-filing?** (See comment 121 by LAAC [similar].) **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See comment 121 by LAAC [similar].)	**Should self-represented parties be exempt from mandatory e-filing?** (See responses to comment 121 by LAAC.) **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See responses to comment 121 by LAAC.)
126.	Public Law Center By: Elizabeth Gonzalez		**Should self-represented parties be exempt from mandatory e-filing? If so, why?**	**Should self-represented parties be exempt from mandatory e-filing? If so, why?**

	Commentator	Position	Comment	Committees' Response
	Lead Attorney		Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. As the Invitation to Comment recognized, self-represented parties may not have access to computers and may have difficulty filing documents electronically. Exempting self-represented parties from mandatory e-filing would address many of the concerns about barriers to justice and the courts. Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly for various reasons. For example, self-represented parties may be unable to access a computer or other required equipment or technology such as a scanner, a printer, a modem, software to "save as" pdfs, etc. In addition, self-represented parties may be uncomfortable with composing and sending private personal information via a public library or court terminal, and may have a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented parties may have to rely on public computer portals that do not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Finally, accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet may create additional barriers to accessing court files and may lead to additional confusion.	The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.

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

	Commentator	Position	Comment	Committees' Response
			For instance, Public Law Center attorneys have had to type up Word documents, request credit reports online and complete fillable pdfs for clients because of their lack of understanding of computers, their lack of access to a printer and their frustration with time-limited computer access. Self-represented parties who opt-in to e-filing (and e-service) should have an opportunity to later opt-out if the litigant discovers that electronic filing and service of documents is not feasible for them. It may not be until a self-represented party attempts electronic filing or electronic service that the party realizes that he or she does not have the necessary tools to e-file or e-serve. This is also important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-out of e-filing for an individual filing. It may also be helpful to allow a self-represented party to e-file one document but not be required to e-file all documents in a case. To achieve this, the opt-in form could provide two options, opt-in for the entire case or opt-in for an individual filing. Legal services organizations often assist self-represented parties in pro per with answers and other filings. Legal services organizations also provide limited scope assistance under the California Rules of Court provisions authorizing limited	The committees will look further into the issues involved with self-represented parties opting out of e-filing and e-service in the future to determine if any additional rules or clarification of the rules are needed.

	Commentator	Position	Comment	Committees' Response
			scope representation. In these cases, the legal services organization may be able to assist the litigant with the electronic filing of a single document but may not be able to represent the litigant for the remainder of the case. As such, the self-represented party would require manual filing for the remainder of the case. **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** We strongly urge the Judicial Council to adopt an exemption for self-represented parties. If self-represented parties are not exempt, the procedure must be simple and easy to complete. We recommend, as one procedural option, that any litigant who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, litigants who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service." In either case, self-represented parties who are exempted from electronic filing should be given the opportunity to opt-in for the remainder of the case or for a single filing, as discussed above. Although not entirely related to this question, Public Law Center would like to encourage State Courts to allow hardship exemptions to be	**If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered.

	Commentator	Position	Comment	Committees' Response
			filed electronically. From the perspective of a pro bono organization, requiring that fee waivers be manually filed may limit the availability of a pro bono attorney. In Bankruptcy Court, fee waivers cannot yet be filed electronically. Because of this, the Public Law Center has encountered attorneys who are unwilling to accept fee waiver cases because of the burden it imposes on them. The Bankruptcy Court is moving to allow fee waivers to be filed electronically and Public Law Center recommends that State Courts allow e-filing of hardship exemptions from the beginning.	
127.	State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See comment 124 above by Los Angeles Center for Law and Justice on this question [similar].)	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See response to comment 124 by LACLJ on this question.)
128.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** One rule should not apply to all civil case types. A court should be allowed to exempt self-represented litigants from family law and small claims cases, but not in general civil	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees do not support providing courts with the authority to decide locally whether exemptions for self-represented parties should be allowed in certain types of civil cases and not

	Commentator	Position	Comment	Committees' Response
			cases. The rules should provide some flexibility so that an individual court can decide whether exemptions should occur in certain case types. Individual courts have different demographics, budget constraints, availability of self-help, availability of pro-bono groups, etc. The rules should allow the individual court to decide if its circumstances make it necessary or preferable for a different decision on exemption. If only one rule must apply, then self-represented litigants should be exempt. Too many self-represented litigants do not have access to computers and the Internet. The rules to opt-out may discourage these litigants from fully participating in the legal process.	others. Most of the arguments for exempting self-represented parties presented by many commentators would apply across different case types. Also, providing for exemptions that differ from county to county would be inconsistent with the goal of uniformity that is part of AB 2073. The committees agreed that, assuming one rule must apply, then self-represented parties should be exempt.
129.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** Self-represented litigants should not be categorically exempt from mandatory e-filing. In order to realize the full benefits of e-filing for both litigants and the court, the rule should start with the presumption that all parties will be treated equally. Starting with the presumption that self-represented litigants are incapable or unwilling to take advantage of e-filing does them a significant disservice. By initially treating them like all other litigants, we will encourage all parties to e-file from the comfort of their home, office, or through an assistance	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.

	Commentator	Position	Comment	Committees' Response
			group such as self-help or legal aid, and enable the court to benefit from the financial efficiencies generated by mandatory e-filing. Simple electronic and over-the-counter procedures will be available to address the needs of the small minority of litigants who are unable to file electronically. Although it is only a brief snapshot, Orange County's first eight days of mandatory e-filing brought in over 22,000 civil e-filings and only one hundred and ten requests for e-filing exemptions, indicating that the large majority of litigants are both capable and willing to electronically file their documents. We anticipate the percentage of exemption requests to actually decrease as the technology improves and the local population becomes more comfortable with e-filing. For these reasons, we encourage the Committee to amend proposed Rule 2.253(b)(2) to put the presumption in favor of requiring self-represented litigants to e-file their documents.	
130.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** Opt Out (Option 2) is the most desirable Mechanism. If a blanket exemption existed they would be relieved of e-filing with no apparent justification for the exemption. If an exemption	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing

	Commentator	Position	Comment	Committees' Response
			for all self-represented litigants existed, those who wanted the benefit of e-filing would need to opt IN. With Opt Out, all filers may start with the benefits of e-filing.	would not be realized for those filers.
131.	Superior Court of Sacramento County By: William Yee Research Attorney		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** We recommend that self-represented parties not be exempted from mandatory e-filing. Courts should establish a process allowing self represented and represented parties alike to apply for an exemption of the mandatory e-filing and electronic service requirements if they feel they have a hardship. The local courts should establish the criteria and procedures used to assess a hardship including the approval authority for exemption requests, which may include delegating responsibility to the clerk's office to approve, not deny, requests based on specific criteria.	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.
132.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** It is our recommendation that self-represented parties should be included within the scope of	The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even

	Commentator	Position	Comment	Committees' Response
			mandatory e-filing, but that there must be a simple, paper-based request for exemption available.	though some of the benefits of mandatory e-filing would not be realized for those filers.
133.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** Yes. Self-represented litigants should be exempt from the mandatory requirements of e-filing and our court agrees with option one in the proposal; however, self-represented litigants should be allowed to participate in e-filing if they choose to do so. The language in rule 2.253(b) (2) should state: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. However, self-represented parties are encouraged to participate voluntarily in electronic filing and service." Self-represented litigants often do not have the resources, knowledge and/or access to the facilities required to e-file documents and, making this mandatory, could result in creating a barrier to justice.	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in. The statement about encouraging self-represented parties to voluntarily file and serve electronically has been preserved but relocated to an advisory committee comment rather than being directly in the rule.
134.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**	**Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**

	Commentator	Position	Comment	Committees' Response
			We recommend that self-represented parties should not be exempt from mandatory e-filing and the proposed "Option 2: Mandating e-filing with a procedure for self-represented persons and others to "opt out" " be adopted. The benefits of mandatory e-filing cannot be realized if a substantial portion of filers is exempt by default. Those courts that feel there would be too high of a burden on self-represented parties for mandatory e-filing should not implement mandatory e-filing and should just implement voluntary e-filing for the court. This feedback is in alignment with the e-filing workstream participants.	The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.
135.	Western Center on Law and Poverty By: Mona Tawatao Senior Litigator		**Should self-represented parties be exempt from mandatory e-filing? If so, why?** (See comment 121 above by LAAC [similar].) **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See comment 121 above by LAAC [similar].)	**Should self-represented parties be exempt from mandatory e-filing? If so, why?** (See response to comment 121 by LAAC.) **If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?** (See response to comment 121 by LAAC.)

Question No. 4 – Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?

	Commentator	Position	Comment	Committees' Response
136.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex-parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** Yes. If it is determined that the process for all civil cases including family law shall include mandatory e-filing, the rules should include details regarding the procedures for the requests. Because the procedures required may significantly increase court costs for processing and handling such requests—for instance if the process includes mandatory hearings then, of course, court calendars will be larger to handle the requests—any rules that are developed should include details regarding procedures.	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex-parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
137.	Martin Dean Essential Publishers LLC		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were**	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were**

	Commentator	Position	Comment	Committees' Response
			originally presented to the court? We don't believe that there is yet enough data to make a recommendation. As of today there are two courts in the State that accept electronic filings in cases where self-represented litigants would ordinarily file. We don't know for instance, whether mandatory filing will drive down the number of SRL filings because of some perceived barrier to access by potential users. If an exemption is in fact determined necessary, our experience would indicate that a procedure that matches a Fee Waiver Request be implemented. But when it comes to defining "hardship" as used in proposed rules and forms, we find it difficult, without statutory support to determine what constitute a "hardship"? Consequently we would argue that question #1 in the form EFS-007 should not be free form as it is now, but rather a checklist of specific reasons why a filer should be excused from electronic filing: • Filer does not possess the necessary English Language skills • Filer does not have regular access to a computer connected to the Internet • Filer does not have an email account (after all, CCMS court policies require that a filer provide an email address so that they can be served) • Filer does not understand the nature of the litigation.	**originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures and forms to be used by these litigants do not need to be considered.

	Commentator	Position	Comment	Committees' Response
			- Filer has a religious prohibition against the use of a computer - Filer does not have the necessary personal skills or training to use and understand a computer. - Filer is unable to afford or gain access to the necessary assistance in order to respond to the claim against him/her. While this list is only intended as an example, we believe that a checklist is far better than a free form empty space.	
138.	Julie A. Goren, Attorney Lawdable Press Sherman Oaks		**Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** Leave it to local rule.	**Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.

	Commentator	Position	Comment	Committees' Response
139.	Legal Aid Society of Orange County		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** LASOC believes that self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service requirements, but allowed to opt-in. The rules should contain more detailed procedures for the exemption process. The application for exemption should be made ex parte without a hearing similar to the Fee Waiver process. Even represented parties may suffer a hardship. Two examples: **1. Pro bono placement.** LASOC assists litigants up to 200% of FPG [Federal Poverty Guidelines]. Their fee waiver requests are often not granted. Some of those cases are placed with pro bono attorneys. If required to pay the mandatory fees the client would suffer a significant hardship. Attorneys may decide to no longer be listed as attorney of record and instead	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in. In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory. These suggestions regarding pro bono and reduced fee representation are beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law would be entitled to waivers of their electronic filing fees under the current statute and rule, providing fee waivers for attorneys who are representing clients pro bono or for a reduced fee but the clients are

	Commentator	Position	Comment	Committees' Response
			have the litigant file in pro per requesting an exemption and then file a substitution of attorney, or make a limited scope appearance on a case that they may have been attorney of record. **2. Modest Means Panels.** LASOC runs a state bar certified LRS. Some attorneys agree to take cases for a reduced fee. I have spoken to several attorneys who confirmed that the additional fees will be a hardship for those clients.	not eligible for fee waivers would require changes in the law. There might be some other ways to address the commentators concerns, however. For example, legal aid organizations that become electronic filing service providers might offer to provide electronic filing to pro bono attorneys free of charge. Also, courts' contracts with private EFSPs might provide for some relief in this area.
140.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** There should be more detailed procedures contained within the rules, as rules regarding filing and service are fundamental to the issue of court access. A process similar to that for evaluating fee waivers should be considered, including: • The proposed form EFS-007 can be submitted ex-parte without a hearing, by parties with attorneys requesting	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.

	Commentator	Position	Comment	Committees' Response
			hardship exemption or by low-income or self-represented litigants who have previously opted in to e-filing and/or e-service. However, a hearing may be held if a judicial officer requires additional information; • EFS-007 should not be required for low-income and self-represented litigants who file hard copy documents in the clerk's office (meaning the litigant is exempted and does not need to file a document to opt-out); • Like a fee waiver request, the matter should be decided expeditiously within a certain time (10 days) or deemed granted; • If ultimately granted, the documents should be deemed filed as of the date they were originally presented to the court; • If denied, the litigant should be able to request a hearing set within a reasonable time; • If the litigant attempted to file in hard copy concurrent with a request for exemption, no default should be taken against the litigant; • Further, if the Rules require "opt-out" rather than "opt-in," self-represented parties should be exempted from the requirement for the first year to afford time for widespread outreach and education, with self-represented parties	

	Commentator	Position	Comment	Committees' Response
			being encouraged to participate in e-filing for that first year.	
141.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Should the rule contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** There was some disagreement within CAJ on whether the procedures for seeking an exemption from the mandatory rules—*e.g.*, whether ex parte basis without a hearing or a noticed motion should be used—should be left to the individual counties or be part of the statewide rules. The majority of CAJ believes that the procedure should be part of the uniform statewide rules. A potentially serious problem with the proposed rules is their failure to address compliance with the mandatory service and filing requirements during the time between the filing of a request for an exemption and the time of a ruling on that exemption. For example, what happens if party who is filing a complaint (or other pleading) cannot comply	**Should the rule contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.

	Commentator	Position	Comment	Committees' Response
			with the e-filing rules and wants to seek an exemption? Should a mechanism be available to permit pleadings to be filed manually at the clerk's office, pending approval of an ex parte application to be excused from the e-filing rules? And how would an ex parte application be made if the case has not yet been filed? What happens if a manual filing is attempted on the last day of a limitations period? Can the clerk's office refuse to file it? CAJ believes that the failure of the rules to address these issues is problematic. CAJ suggests that a stopgap mechanism be formulated to deal with what happens during the interim between the time a request to be excused from electronic filing or service is made and the time an order on that request is made.	
142.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** No. The individual courts should be allowed to determine the procedures for that court.	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** For represented parties, the proposed rule on hardship exemptions, which reflects the statutory

	Commentator	Position	Comment	Committees' Response
				provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
143.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** Certain basic statewide guidelines similar to those established for fee waiver applications found in Gov. Code Section 68632, et seq., would be useful, such as: 1. They can be submitted ex parte; 2. A hearing is not required, unless the judicial officer requires additional information; 3. The Court can grant the clerk's office the authority to grant if the party meets certain basic criteria (e.g., there is a previously granted fee waiver on file, a party is submitting fee waiver application with filing and indicates receipt of government assistance or income below poverty level, or a party does not have access to a computer);	**Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory. Thus, the court providing these comments and suggestions may implement them on its own for represented parties seeking an exemption based on hardship or substantial prejudice.

	Commentator	Position	Comment	Committees' Response
			4. Documents submitted with application should be filed the day application is received to preclude statutory deadline or default issues. However, the rules should be left sufficiently flexible to enable local trial courts to enact their own procedures for exemptions. Every court has already created their own local processes for how to handle the exemption requests arising out of a variety of hardships in a number of different circumstances. In all likelihood, the local courts will process the requests for e-filing exemptions the same way they process other similar requests.	
144.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** No. These situations should be covered by Local Rules.	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts,

	Commentator	Position	Comment	Committees' Response
				appears to be satisfactory.
145.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** No, individual trial courts should be allowed to establish their own rules and/or procedures for these types of requests.	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
146.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?**	**Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?**

	Commentator	Position	Comment	Committees' Response
			Yes. In particular there should be consistency in forms used and the timing for submitting and processing the requests.	In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures and forms to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
Question No.5 – Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?				
147.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** Yes. There should be rules specifying to whom the request for exemption and request for hardship shall be made. Further, such information should be posted in the courthouses, and available to the public through the self-help centers and the family law facilitators. Many self-represented litigants, particularly in family law, struggle to understand the legal process now. Questions that may seem simple for those educated persons drafting rules are often burdensome and confusing for those litigants who are not so sophisticated. It is feared that the e-filing requirement is going to create confusion and fear among many self-represented litigants.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.

	Commentator	Position	Comment	Committees' Response
			It would be helpful if the rules specify to whom the request is to be made. It would also be helpful if the person to whom the requests are to be made would be authorized to give legal information to litigants in the event they are confused by the whole process.	
148.	Martin Dean Essential Publishers LLC		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** We believe that [no]thing other than the actual filing of the EFS-007 in person or by mail is all that should be expected of a filer.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
149.	Julie A. Goren, Attorney Lawdable Press		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted must specify to whom the request for a hardship exemption is to be made?** Local rules.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed

	Commentator	Position	Comment	Committees' Response
				rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
150.	Legal Aid Society of Orange County		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** Self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service requirements. The rules should specify that when a party even if represented seeks an exemption from mandatory e-filing and receipt of e-service, the initial filings and exemption form should be submitted to the clerk of the court. The request for exemption should be deemed granted, subject to review by a judicial officer. Before the judicial officer denies a request, the court should schedule a hearing on the matter and allow a party to submit additional justification at the hearing on the application or in a subsequent request.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** The committees agreed that self-represented parties should be exempted from mandatory e-filing. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
151.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** The rules should specify that the clerk's office designate a filing window and staff member to	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from

	Commentator	Position	Comment	Committees' Response
			handle exemption requests. Coordinating the fee waivers with e-filing exemption status would be a logical overlap.	mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
152.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** (See comment 140 above by Los Angeles Center for Law and Justice [similar].) If the rules ultimately require self-represented litigants to "opt-out" rather than "opt-in," SCDLS suggests that the following procedures be contained within the rules: • The Request for Exemption is granted concurrent with the filing of petition or response, the requesting party should serve the order along with the petition/response in the same manner that the petition/response is required to be served. For instance, if a Request for Exemption is granted at the same time a Petition for Dissolution of Marriage is filed, the Order on Request for Exemption should be personally served along with the Summons and Petition.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** (See response to comment 140 above by Los Angeles Center for Law and Justice [similar].) In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered.

	Commentator	Position	Comment	Committees' Response
			• Self-represented parties should be exempted from the requirement to e-file, e-serve, and receive e-service for a grace period, so as to allow public services to create infrastructure to assist self-represented litigants, with those parties being encouraged to participate in e-filing, and not opt out.	
153.	Superior Court of Los Angeles County		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** The local rules should cover this.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
154.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** (See comment 143 above.)	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** (See response to comment 143 above.)

	Commentator	Position	Comment	Committees' Response
155.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** This situation should be covered by Local Rules.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
156.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** No. Individual trial courts should be allowed to establish their own rules and/or procedures for who should hear these types of requests.	**Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
157.	Superior Court of Santa Clara County By: Robert Oyung		**Should the rules specify to whom a request for exemption shall be made or require that**	**Should the rules specify to whom a request for exemption shall be made or require that the**

	Commentator	Position	Comment	Committees' Response
	Chief Technology Officer		**the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** No. The rules should be flexible to allow each court to decide. This feedback is in alignment with the e-filing workstream participants.	**local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?** In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
Question No.6 – Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?				
158.	California Commission on Access to Justice By: Hon. Ronald B. Robie Chair		**Should a party be able to request exemption from electronic service and other relief?** A party should be able to request exemption from electronic service. Whether or not electronic service is required should be a separate question from whether or not e-filing is employed. Receiving documents electronically requires steady access to and ease with e-mail, as well as some means to store or print documents.	**Should a party be able to request exemption from electronic service and other relief?** The committees agreed that electronic service should be addressed separately from electronic filing. For self-represented parties, electronic service —like electronic filing—should be voluntary; hence, no request for exemption would be needed. The rule on electronic service has been revised to provide expressly for self-represented parties. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c): see also amended rule 2.253(b)(3).)
159.	California Family Law Facilitator's		**Should a party be able to request exemption**	**Should a party be able to request exemption**

	Commentator	Position	Comment	Committees' Response
	Association By: Melanie Snider Vice President		**from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** Yes. Particularly in the areas of family law, and if the decision is made to apply the electronic filing rules to the juvenile dependency courts, indigent litigants and those who are incapable of using computers will potentially effectively be denied access to the court process. Therefore, if the rules allow for an exemption from electronic service and mandatory e-filing, these litigants would at least have access. It would be preferable to have voluntary e-filing and e-service with an opt-in requirement rather than an opt-out requirement. This would reduce the number of additional litigants in the self-help centers and at the clerks' windows who are applying for exemption from the process. It would also eliminate the additional burdens created by the need for additional hearings to either approve an application or to hear reasons why a denial was in appropriate, for clerks to process requests for exemption, and for the courts to file and store the additional paperwork created by litigants filing requests for exemption.	**from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** See response to comment 158 above.
160.	Martin Dean Essential Publishers LLC		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**

	Commentator	Position	Comment	Committees' Response
			[T]he current CCMS/Court Policy requirements require the inclusion of an email address in a filing (both initiating and subsequent). If a filer has an email address to attach to a filing, then arguably they have access to a computer. Thus it seems an artificial division to separate the filing of a document with the court and service of that filer. Both require an email address, and some computer skills. While we clearly understand that court efficiency is best served if it receives no paper at all, we believe that we do not yet have enough data to make choices such as these. Perhaps a 6 month trial of this form and the accompanying rules would be a good place to start, but not necessarily end.	For represented parties, the point that e-filing and e-service are often closely connected and linked to having a computer seems valid. For self-represented parties, however, e-filing and e-service may be disparate. A self-represented party may receive assistance with e-filing from a self help-center or a legal aid organization, yet not have a home computer or other ready means of access to e-mail. Hence, the rules need to take into account the situation of self-represented parties regarding e-service. The committees recommend that such parties be exempt from mandatory e-service and be allowed to voluntarily opt in if they have the means and skill to do so. If self-represented parties are exempt from mandatory e-service, they will not need to use the opt out procedures or the form. On the other hand, the form and opt out rules will be used by represented parties—so, as the commentator suggests, the form and rules can be evaluated after a period of use.
161.	Julie A. Goren, Attorney Lawdable Press		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** Yes – again only if they don't have a computer with internet.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** The committees recommend that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent

	Commentator	Position	Comment	Committees' Response
				(opt in) to electronic service. (See amended rule 2.251(b)–(c): see also amended rule 2.253(b)(3).)
162.	Legal Aid Society of Orange County		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** LASOC believes that self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service, but allowed to opt-in. LASOC believes that tying e-filing and e-service together will greatly increase the requests for exemptions. As an example, LASOC can help many pro per litigants file their pleadings but is resistant because of the e-service component. As explained previously, many LASOC clients still do not have readily accessible internet access, do not have email addresses, or do not use the internet or email proficiently. Since they do not have access to the internet and are not accustomed to checking sites on the internet regularly they will miss important deadlines and hearing dates. Additionally, many low-income litigants do not have credit cards. As a result they cannot e-file, register or pay.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** The committees agreed that self-represented parties should be exempt from mandatory e-service but should be able to opt in.
163.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**

	Commentator	Position	Comment	Committees' Response
			Yes, parties should be able to request exemption from e-service and receipt of e-service. E-filing would require litigants to have access to an electronic device with internet access at the time they choose to file their documents. Courts can provide such devices, along with other resources necessary to e-file. However the automatic inclusion of e-service would be a hardship for those parties who do not have regular access to internet-capable electronic devices. The hardships that would come from receipt of e-service would include having to check their e-mail accounts daily, which may entail having to travel to a public institution if they could not afford a personal computer or smartphone with internet access. Even if a litigant had the means to travel to a public library or court, they may not have the means to do so on a daily basis, or to pay for usage fees to check their e-mail accounts. With the exception of homeless litigants, who must find a stable address to receive mail, all other litigants living at a fixed location have access to mail service via the United States Postal Service. The mail comes to them without any additional costs to them, and is protected by federal law from tampering. Access to an e-mail service is not free, nor easily accessible, to all those living at a fixed location. Delay in checking e-mail could result in significant prejudice against litigants if they	The committees recommend that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. Self-represented parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c): see also amended rule 2.253(b)(3).)

	Commentator	Position	Comment	Committees' Response
			are e-served with documents that have pending deadlines or court dates. The burden of mandatory e-receipt of service is significantly higher than mandatory e-filing and e-service. Low-income and self-represented litigants who were able to access assistance with document preparation through a self-help center or legal services agency may be able to receive one-time assistance in e-filing, but no one provider can assist litigants with free, daily access to electronic devices with internet and scanner or PDF conversion software. Thus, even if parties must e-file or can opt-in to do so, they should be able to request exemption from mandatory receipt of e-service.	
164.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from e-filing requirements?** Yes. The proposed form has a box to check for exemptions from e-service as well as e-filing. Assuming a simplified opt-out procedure is adopted for mandatory e-filing (e.g. permitting the clerk to allow the exemption), that simplified procedure should also cover an exemption from mandatory e-service.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from e-filing requirements?** The committees recommend that, for self-represented parties, electronic service—like electronic filing— should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c): see also amended rule 2.253(b)(3).)
165.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS)		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing**	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing**

	Commentator	Position	Comment	Committees' Response
	By: Sharon Ngim		**requirements?** SCDLS believes that self-represented litigants should be automatically exempted from e-service and receipt of e-service, but allowed to opt-in. However, if this exemption is not automatically granted, parties should be able to request exemption from e-service and receipt of e-service. E-filing requires litigants to have access to an electronic device with internet access at the time they choose to file their documents with the court. Courts can provide such devices, along with other resources necessary to e-file, at the time of filing. However the automatic requirement of e-service and receipt of e-service for those who e-file would be a hardship for those parties who do not have regular access to internet-capable electronic devices, as this would be an ongoing need for such devices, rather than the discretionary access needed for e-filing. The hardships that would come from receipt of e-service to those people without regular access to internet-capable devices would include having to check their e-mail accounts daily. Given that they do not have regular access to such devices, this may entail having to travel to a public institution to gain access so as to ascertain whether they have been served electronically on that day. Even if a litigant had such means to travel to a public institution, they may not have the means to do so on a daily basis, or to pay for usage fees to check their e-	**requirements?** The committees agreed that, for self-represented parties, electronic service—like electronic filing— should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c): see also amended rule 2.253(b)(3).)

	Commentator	Position	Comment	Committees' Response
			mail accounts for receipt of e-service. With the exception of homeless litigants, who must find a stable address to receive mail, all other litigants living at a fixed location have access to mail service via the United States Postal Service. The mail comes to them without any additional costs to the litigants, and is protected by federal law from tampering. Access to an e-mail service is not free, nor easily accessible, to all those living at a fixed location. Delay in checking e-mail could result in significant prejudice to litigants. Even if parties must e-file or can opt-in to do so, they should be able to request exemption from mandatory e-service and receipt of e-service. Further the clerk's office staff could be trained to assist the self-represented litigants with the e-service procedure, in addition to administering the e-filing service, though this would entail a cost upon the courts that would not otherwise have been endured if not for mandatory e-service and receipt of e-service.	
166.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** If a party is bound by e-filing, that party should be bound by electronic service.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** The committees agreed that this should be the rule for represented parties. (See amended rule 2.251(c).) On the other hand, self-represented parties should be exempt from both e-filing and e-

	Commentator	Position	Comment	Committees' Response
				service. See amended rule 2.251(b)–(c) and amended rule 2.253(b).)
167.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** Yes, a party should be able to request exemption from both electronic filing and service requirements or from either requirement separately. Rule 2.253(b)(3) should be revised in order to accurately reflect the hardships imposed by electronic service. As currently proposed, Rule 2.253(b)(3) encourages represented parties to file and serve documents electronically, yet in the same sentence self-represented parties are instructed to file, serve, and be served documents by non-electronic means. For the reasons detailed below, represented parties are being instructed to electronically serve documents on parties that may not be required or able to accept electronic service. The rule should mandate electronic filing and service by all parties, with easily accessible methods for claiming exemptions for service, as detailed below. With respect to e-service, Rule 2.251(b) should be revised to accommodate the needs of those who do not have ready access to equipment or services allowing electronic filing or service.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** The committees agreed that, for represented parties who are required to serve and file documents electronically, a procedure must be available for those parties to request an exemption from electronic service, electronic filing, or both, based on undue hardship or significant prejudice. (See amended rule 2.251(c)(2)(A) and amended rule 2.253(b)(4).) However, the committees recommend that self-represented parties be exempt entirely from mandatory electronic service and filing, though they should be encouraged to voluntarily opt in. (See amended rule 2.253(b)(2) and Advisory Committee Comment to rule 2.253.) The committees did not agree that the rules should mandate electronic filing by all parties, including self-represented parties. The committees agreed that rule 2.251(b) needed to be revised to address the situation of parties who may receive assistance so that they can file documents electronically but do not have the

	Commentator	Position	Comment	Committees' Response
			As currently written, the rules provide that any party who electronically files automatically consents to e-service. For self-represented parties who electronically file through Legal Aid or other assistance centers, they often do not have the technological or financial wherewithal to accept e-service. Even if they had the skills and ability to understand the importance and intricacies of e-service, it is often expensive and time consuming for these individuals to continually travel to the self-help or legal aid center to check their emails to determine if they have been e-served with documents. There must be a procedure to excuse self-represented litigants from e-service even if they are able to e-file. We suggest adding the following as CRC, Rule 2. 251(b)(3): (3) The court shall have a procedure for the filing of request for a waiver from consent to electronic service if such service shall cause undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties. Such a process will prevent attorneys from e-serving documents to an email address that an unrepresented party is unable to check. It will also further encourage self-represented litigants to e-file because they will no longer be concerned about the problems associated with consenting to e-service at an email address they	ability to serve and receive service of documents electronically. To address the problem raised by the commentator (i.e., that the presumption that electronic filing constitutes consent to e-service may be a problem for some parties) and consistent with the committees' recommendation the exclude self-represented parties from mandatory e-serve as well as e-filing, it recommends that following version of amended rule 2.251(b)–(c) be adopted: **(b) Electronic service by consent of the parties** ~~(2)~~(1) Electronic service may be established by consent of the parties in an action. A party indicates that the party agrees to accept electronic service by: (A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The

	Commentator	Position	Comment	Committees' Response
			either do not or cannot monitor.	notice must include the electronic service address at which the party agrees to accept service; or (B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). This subpart (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subpart (A) ~~(3)~~(2) A party that has consented to electronic service under ~~(2)~~(1) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service. **(c) Electronic service required by local rule or court order**

	Commentator	Position	Comment	Committees' Response
				(1) A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter. (2) Except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless: (A) The court orders otherwise, or (B) The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service. (3) Each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and

	Commentator	Position	Comment	Committees' Response
				the court of any changes under (f).
168.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** Parties should be able to request exemption of either or both Filing and Service. The court could then achieve benefits of documents e-filed where the filer does not have the capability to receive eService.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** The committees agreed that, for represented parties who are required to serve and file documents electronically, a procedure must be available for those parties to request an exemption from electronic service, electronic filing, or both, based on undue hardship or significant prejudice. (See amended rule 2.251(c)(2)(A) and amended rule 2.253(b)(4).) However, the committees recommend that self-represented parties be exempt entirely from mandatory electronic service and filing, though they should be encouraged to voluntarily opt in. (See amended rule 2.253(b)(2) and Advisory Committee Comment to rule 2.253.)
169.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** Yes.	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?** See responses to comments 167 and 168.
170.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**	**Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?**

	Commentator	Position	Comment	Committees' Response
			No. This should be an "all or nothing" exemption. The party may either fully "opt in" or "fully opt out." It will cause a high administrative overhead to exempt portions of the program. This feedback is in alignment with the e-filing workstream participants.	The committees disagreed. See responses to comments 167 and 168.
Question No.7 – Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?				
171.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should the same procedures that are used for the hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** It depends on whether the need for the exemption is based upon financial need or some other reasoning. If the issue is limited to e-filing and the courts and/or self-help centers are given the resources necessary to assist litigants to file electronically so that the barrier for the litigant is solely financial (inability to pay the filing fee) then it would make sense that a litigant who qualified for a fee waiver in a family law case should use the same procedures (filing forms FW-001 and FW-003) to request a waiver of the filing fees. If the reason the process is	**Should the same procedures that are used for the hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** In light of the committees' recommendation to exempt self-represented parties altogether from mandatory e-filing, the question of whether a simplified opt-out procedure should be developed for these parties does not need to be considered.

	Commentator	Position	Comment	Committees' Response
			burdensome for the litigant is not financial, then the current procedures will not suffice. For instance, if the requirement is to accept e-service and the litigant does not have an email account or access to a computer so that they can regularly check to determine whether or not they have been served with process, then it will not matter whether or not they have been granted a fee waiver.	
172.	Martin Dean Essential Publishers LLC		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed be all that is required for self-represented litigants?** Yes, see above.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed be all that is required for self-represented litigants?** See response to comment 171.
173.	Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** (See comment 175 by LAAC below [same].)	See response to comment 171.
174.	Julie A. Goren, Attorney Lawdable Press		**Should the same procedures that are used for hardship requests generally also apply to**	**Should the same procedures that are used for hardship requests generally also apply to self-**

	Commentator	Position	Comment	Committees' Response
			self-represented persons? Yes. **Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** No.	**represented persons?** See response to comment 171. **Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
175.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** If self-represented litigants must opt-out, the procedure must be simple. The "Request for Exemption From Electronic Filing and Service" meets that requirement. Separate forms and procedures should be available for e-filing and e-service. It may be possible for someone to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** See response to comment 171.

	Commentator	Position	Comment	Committees' Response
176.	Legal Aid Society of Orange County		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** The exemption process should follow along the same lines as the fee waiver requests. A standardized form requesting exemption from e-filing and receipt of e-service should be filed with the clerk and granted.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
177.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** A standardized procedure should be developed, similar to the ones developed for fee waiver requests with accompanying forms and rules. Further, the rule should be to automatically opt litigants out of e-filing and e-service/receipt of e-service. Setting the default as filing hard copy at court and service by mail does not automatically disadvantage any litigant, though it may inconvenience the court. However the	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.

	Commentator	Position	Comment	Committees' Response
			cost to litigants who do not realize that they have been automatically opted into e-filing and e-service/receipt of e-service is a great deal more onerous and runs the risk of ultimately closing the court's doors to them.	
178.	OneJustice By: Linda S. Kim Deputy Director		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** (See comment 175 by LAAC above [same].)	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** See response to comment 171.
179.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** CAJ believes that self-represented parties should be exempt from mandatory participation. If, however, self-represented parties are not exempt, CAJ would support a simple procedure for seeking an exemption for those parties, such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed, with no additional	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.

	Commentator	Position	Comment	Committees' Response
			requirements.	
180.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** If self-represented litigants are not exempted from mandatory e-filing and e-service, a standardized procedure should be developed, similar to the ones developed for fee waiver requests with accompanying forms and rules. SCDLS believes the process should be made as simple as possible, such as filing a standardized request to be excused from e-filing with the initial papers to be filed.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
181.	Superior Court of Los Angeles County		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** A simpler request should apply to self-represented litigants. The critical criteria should be whether the litigant has access to a computer with Internet access.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.

	Commentator	Position	Comment	Committees' Response
182.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** The same procedures for hardship requests, developed by the individual trial courts, should continue to apply to self-represented persons. Any proposed rule should have the same essential elements as outlined above, while leaving the discretion for processing the requests in the purview of the local trial courts.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
183.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** Each court should be allowed to decide what it would like to do to make hardship requests easy. Again, self-represented should not be associated with hardship. These are two distinct situations.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
184.	Superior Court of San Diego County By: Michael M. Roddy		**Should the same procedures that are used for hardship requests generally also apply to**	**Should the same procedures that are used for hardship requests generally also**

	Commentator	Position	Comment	Committees' Response
	Executive Officer		**self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** As set forth above, our court believes self-represented litigants should be exempt from mandatory e-filing requirements.	**apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
185.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** Yes. This will ensure consistency.	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.
186.	Western Center on Law and Poverty By: Mona Tawatao Senior Litigator		**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?** (See comment 175 by LAAC above [same].)	**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?** See response to comment 171.

	Commentator	Position	Comment	Committees' Response
Question No.8 – Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?				
187.	California Commission on Access to Justice By: Hon. Ronald B. Robie Chair		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** The decision whether to allow a self-represented parties to opt out of e-filing should be ministerial rather than discretionary. Requiring judges to rule on those requests will further burden an overburdened system.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** In light of the committees' recommendation to exempt self-represented parties altogether from mandatory e-filing, the question of whether a clerk's office should be able to grant an exemption or a hearing should be required is inapplicable to those litigants. For represented parties, the proposed rule—which simply provides that the court must have a procedure for requesting exemptions—appears satisfactory. (See amended rule 2.253(b)(4).) If based on experience, further rules on this subject are warranted, they can be developed.
188.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** If the rules are going to mandate that everyone participate in e-filing and e-service with an opt-out provision in the case of hardship, the clerk's office should be able to grant such requests but very specific rules about who would qualify and who would not qualify would need to be developed. Otherwise each clerk would have discretion based upon whim to determine who would be exempt and who would not be exempt.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
189.	Martin Dean Essential Publishers LLC		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** Yes, we don't believe that creating any barrier to access such as a court appearance will encourage the SRL to file electronically. There is no data that would support this approach.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
190.	Legal Aid Society of Orange County		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** Yes, see [previous comments] above.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
191.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** The clerk's office should be able to grant a party's request to be exempt from mandatory e-service/receipt of e-service without a hearing, unless the request is denied; then a hearing should be available in all cases. A process similar to the ones developed for fee waiver requests should be developed, with accompanying forms and rules. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
192.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch		**Should the clerk's office be able to grant such requests with no appearance or hearing**	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?**

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

	Commentator	Position	Comment	Committees' Response
	Legislative Counsel		**required unless the request is denied?** CAJ believes the clerk's office should be able to grant a request for an exemption, but that a judicial officer should be required to consider a request before it is denied.	See response to comment 187.
193.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** The clerk's office should be able to grant a party's request to be exempted from e-filing pleadings, with no appearance or hearing, in all cases, unless the request for exemption is denied. A process similar to the ones developed for fee waiver requests should be developed, with accompanying forms and rules. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
194.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** The individual court should make this decision by local rule.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
195.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** The decision on how to process these should be	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.

	Commentator	Position	Comment	Committees' Response
			left to the discretion of the trial court, but the same options provided in Gov. Code Section 68632, et seq. [on fee waivers] should be made available in this context as well. It is unlikely any court would require an appearance or hearing, but there is no need to prohibit them.	
196.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** Yes.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
197.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** Trial courts should be allowed to delegate this authority if they deem it to be appropriate.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
198.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** Yes. This will avoid unnecessary processing. This feedback is in alignment with the e-filing workstream participants.	**Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?** See response to comment 187.
Question No.9 –Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified? (a) Request for Exemption from Mandatory Electronic Filing and Service (form EFS007) and (2) Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).				

	Commentator	Position	Comment	Committees' Response
199.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** The forms appear to address the problem if it is determined that there should be an opt-out provision. The problem that may result from this process is related to delays caused when the matter is set for a hearing. The effect this process may have on legal timelines and upon the dynamics of conflicted family law matters may become problematic.	**Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** As a result of the recommendation to exempt self-represented parties altogether from mandatory e-filing, the two optional forms will be used only by represented parties seeking exemptions. Based on other comments discussed below, some modifications have been made to the forms. The problems raised that may result from delays caused when the matter is set for a hearing and how these problems are addressed will depend not on the forms but on the local court procedures adopted to enable represented parties to request exemptions. (See rule 2.253(b)(4).)
200.	Martin Dean Essential Publishers LLC		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** *Request for Exemption from Mandatory Electronic Filing and Service* (form EFS-007) Yes, there are several parts of this form which can be improved. The data in the caption that requires the court to enter data about to whom the case has been assigned, the department, the judicial officer and date of the filing of the complaint would I	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** *Request for Exemption from Mandatory Electronic Filing and Service* (form EFS-007) The fields for this information in the caption have been removed from the form.

	Commentator	Position	Comment	Committees' Response
			believe require that the court modify its file stamp to be able to enter data into these fields. That is not an insignificant requirement. And, of course the filer cannot enter this data.	
			Question one part A should not have so many choices (filing, service, receipt of service). We don't believe that the average user will understand the difference between service and receipt of service, and so three choices will not be effective. Just eliminate the parts to this question.	The committees agreed that "receipt of service" should be deleted as a separate category; it is covered by "service."
			Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008)	*Order on Request for Exemption from Mandatory Electronic Filing and Service* (form EFS-008)
			Wouldn't it be possible to combine with form (somehow) with EFS-007? Wouldn't this cut down on the paper that goes into the court file, and make the processing easier.	The committees do not recommend combining the two forms. Processing may be easier if the application and order are processed separately. Also, since the forms are optional, courts may elect to use their own orders.
			The FW-001 does not require Proof of Service by Mail, why should this form? It would only be necessary to notify the other party if that party would have standing to object to the waiver request, and if they don't, why use up the bottom 1/3rd of the form, when instead the court can use this to either grant or deny the request. Eliminating the EFS-008 altogether.	The committees agreed that a Proof of Service is not needed on form EFS-007, but a clerk's certificate of service is useful on EFS-008.
201.	Legal Aid Society of Orange County		**Are the proposed two new optional forms . . . for use in requesting an exemption from**	**Are the proposed two new optional forms . . . for use in requesting an exemption from**

	Commentator	Position	Comment	Committees' Response
			mandatory e-filing appropriate or do they need to be modified? Commenting on these forms is difficult. These forms will be used in many different scenarios. With that in mind suggestions for modification are below. **Form EFS-007** **CAPTION Section:** Add "optional" after email and fax number. Litigants who fill out these forms are confused and ask what to do when they do not have a fax number. Email address (Optional): Fax Number (Optional): In the PLAINTIFF/PETITIONER box add "OTHER PARTY" **APPLICATION section:** Isn't 1(a) an example of 1(b)? Does the applicant need more than 1(a)? Proposed language: I _____ am unable to electronically ( ) file ( ) serve ( ) and receive	**mandatory e-filing appropriate or do they need to be modified?** **Form EFS-007** **CAPTION Section:** The committees disagreed with this suggestion. As on party-prepared pleadings (see rule 2.111), the information about fax numbers and e-mail address requested on Judicial Council forms is generally not optional, unless the forms are of a type (e.g., domestic violence prevention forms) where providing the information publicly may pose risks or create problems for the filers. The committees recommend adding "OTHER." **APPLICATION section:** The committees agreed that the proposed language is more logical and has modified the form.

	Commentator	Position	Comment	Committees' Response
			forms electronically because: It would cause undue hardship or significant prejudice as: ( ) I do not readily have access to a computer with internet access, or ( ) Other _____ _____	
			On the signature line, change "DECLARANT" to "APPLICANT/DECLARANT." The consistency will help SRLs. Often they get confused on who is supposed to sign documents.	This change is not necessary. The person signing is a "declarant." This term should not cause confusion; the form will generally be used by represented parties because self-represented parties will be exempt from electronic filing and service.
			PROOF OF SERVICE BY MAIL Section: This should be the back page of the form with instructions. Untrained litigants may believe they are supposed to put the court's address in the box and mail it to the court, not the other parties. Must this form be served on all other parties, those who have been served, or those who have appeared in the action? *Draft* sample instructions include: If you are the plaintiff: You do not need to fill out this section if you are starting the case. If however, you have already filed papers, opted into e-fiilng, or someone has	**PROOF OF SERVICE BY MAIL Section:** Based on a separate comment, the Proof of Service has been removed. Because the parties using form EFS-007 will be represented, the attorney could provide a proof of service of the application when it is appropriate. Also, the suggested instructions are not needed because applications will be filed by represented, not self-represented, parties.

	Commentator	Position	Comment	Committees' Response
			e-filed papers for you then you need to complete this section and have it served on all other parties/attorneys in the case. Put the names and addresses of the people who have filed papers in this case below. If you are the defendant: A copy of this form must be served on all other parties who are involved in the case. If the party has an attorney, place the attorney's address in the box otherwise place the unrepresented party's address. If you need additional space prepare an attachment listing the other names and addresses of the parties/attorney's where you mailed a copy of this form.	
			Form EFS-008 This Order ought to be granted at the window. If the court denies the request, it can then send out a notice of hearing. Otherwise, paragraph #2 ought to add at the end: 2. … _____ _____ _____ _____ "You may file another request providing more information about the reasons why it would be hard to file, serve and/or receive service electronically."	**Form EFS-008** Assuming this procedure is followed, the additional statement at the end of item 2 is not necessary. Adding this statement at the end of 2 would be confusing if item 3 is checked.

	Commentator	Position	Comment	Committees' Response
202.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** We recommend that EFS-007 be amended as follows: • In the caption box, "Optional" should be listed after "Telephone No.," "Fax No.," and "E-mail address." • Under the parties' names, an additional space for "Other Party/Claimant" should be added. • Number 1 should read: "I, *(name of applicant):* request to be exempt from the requirements for electronic ☐ filing ☐ service ☐ receipt of service in this as it would cause undue hardship or significant prejudice because: a. ☐ I do not readily have access to a computer with Internet access; or b. ☐ Other: _____ • The Proof of Service portion of the form should be stricken. Like the fee waiver application, application for exemption should not be served on the other party; the Order on Request for Exemption should be served. In addition, we suggest that the following forms should be developed:	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** See response to comment 201. The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional

	Commentator	Position	Comment	Committees' Response
			• ***Information Sheet on Electronic Filing and Service***, explaining exactly what opting in means and how to request an exemption • ***Information Sheet on Receipt of Electronic Service***, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have email addresses specifically designated for litigation to avoid official court documents being mixed with other mail • ***Request for Hearing About Exemption from Electronic Filing and Service*** • ***Notice on Hearing About Exemption from Electronic Filing and Service*** • ***Order After Hearing on Request for Exemption from Electronic Filing and Service***	forms in the future.
203.	State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		Proposed form EFS-007 has three boxes which may be checked to request exemption from electronic (i) filing; (ii) service; and (iii) receipt of service: In rule 2.251(c)(2) and (3) the terms "serve" and "accept service" are in the conjunctive: (2) Except when personal service is otherwise required by statute or rule, a party that is required to file	

	Commentator	Position	Comment	Committees' Response
			documents electronically in an action *must also serve documents and accept service of documents* electronically from all other parties, unless: (A) The court orders otherwise, or (B) The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by (3) Each party that is *required to serve* and *accept service* of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes under (f). Given that electronic service and receipt of service appear to be tethered as one item in rule 2.251(c), the question is whether a party could (or should) be excused from one but not the other. Some members of CAJ believe that to avoid confusion, the proposed forms should be revised to combine the boxes for service and receipt of service into one box. On the other hand, some members of CAJ believe there may be situations where a party might seek to be	The committees agreed that the two boxes on "service" and "receipt of service" should be combined into one box on "service"; "service" includes "receipt of service."

	Commentator	Position	Comment	Committees' Response
			excused from serving documents electronically or from receiving documents electronically, but not both. In that case, the form would remain as proposed. However this issue is ultimately resolved, the same resolution would need to carry over to proposed form EFS-008, the order granting or denying the exemption. In addition, if the clerk can issue that order, the line "JUDICIAL OFFICER" should be changed to read "JUDICIAL OFFICER OR CLERK," and the references to "The court" should be revised. Regarding the "Clerk's Certificate of Service," CAJ did not entirely understand whether or why the clerk is to be responsible for serving all the parties in the case.	The committees did not agree to change the signature line on optional form EFS-008 as proposed. If the court has a different procedure that allows a clerk to grant an application, it can develop a local form for that purpose.
204.	State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** As noted above, SCDLS strongly urges that the self-represented litigants be exempted from mandatory e-filing and e-service. In any event, SCDLS suggests that the forms be changed so as to make clearer as to whom the forms should be sent, and when they should be sent. To be more specific, the proof of service section should be modified to explain when the form needs to be served, and to whom the form	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** The committees agreed with this recommendation. See responses to comment 201.

	Commentator	Position	Comment	Committees' Response
			should be served upon. Further, EFS-007 should be modified as follows: I _____ am unable to electronically ( ) file ( ) serve ( ) and receive forms electronically because: It would cause undue hardship or significant prejudice as: ( ) I do not readily have access to a computer with internet access, or ( ) Other _____ _____ This is because the Committee believes that lack of access to a computer with internet access is a type of undue hardship or significant prejudice, and not a separate reason for an exemption. As well, on the signature line of EFS-007, the form should be changed to read "DECLARANT/APPLICANT" instead of "DECLARANT" to avoid confusion. If mandatory exemption from e-filing and e-service for self-represented litigants is not made the rule, then the Committee suggests that in the alternative, EFS-008 (Order of Exemption from Electronic Filing and Service) note clearly that one rejection of a request for exemption does not mean the end of the exemption process. The	As indicated in the report and in response to previous comments, the committees are recommending that self-represented parties be exempt from mandatory electronic filing and service.

	Commentator	Position	Comment	Committees' Response
			form can do this by changing the second paragraph of EFS-008 by adding "you may file another request to provide more information for the reasons why you seek an exemption from the requirements to file, serve, and receive service electronically."	It is not necessary to add this language and it might be confusing, particularly if item 3 is checked.
			Finally, EFS-007 and EFS-008 should be used to request changes in status during pendency of a case.	Nothing on the form precludes this use.
			1. Should these forms be made mandatory rather than optional?	*Should these forms be made mandatory rather than optional?*
			The Committee could not come to a consensus as to whether the forms should be made mandatory or optional. The mandatory forms make it easier to adopt statewide, however optional forms make it easier for local courts to adapt to their procedures. Both methods have their advantages and disadvantages.	The committees recommend that the forms be optional, as proposed.
			2. Are any other forms needed to implement the rules on mandatory e-filing?	*Are any other forms needed to implement the rules on mandatory e-filing?*
			Additional forms should be developed, as listed below: • ***Election Regarding Electronic Filing and Service*** (mandatory); • ***Information Sheet on Electronic Filing***, explaining exactly what opting in means;	The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional forms in the future.

	Commentator	Position	Comment	Committees' Response
			• ***Information Sheet on Electronic Service***, specifying the file types and size of electronic documents that can be served, and that hyperlinks should be sent if files exceed a certain size; • ***Information Sheet on Receipt of Electronic Service***, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have e-mail addresses specifically designated for litigation to avoid official court documents being mixed with other mail; • ***Request for Hearing about Exemption from Electronic Filing and Service***; • ***Notice on Hearing about Exemption from Electronic Filing and Service***; • ***Order on About Exemption from Electronic Filing and Service After Hearing***.	
205.	Superior Court of Los Angeles County		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** They are appropriate.	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** Based on other comments discussed above, some modifications have been made to the forms.
206.	Superior Court of Orange County		**Are the proposed two new optional forms . . .**	**Are the proposed two new optional forms . . .**

	Commentator	Position	Comment	Committees' Response
	By: Jeff Wertheimer General Counsel		**for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** *Request for Exemption from Mandatory Electronic Filing and Service (form EFS-007)* The title of the form should be changed to "Request for Exemption from mandatory Electronic Filing and/or Service" to reflect the fact that the form gives the filer the ability to opt out of electronic filing and/or service. *Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).* Same as above.	**for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** *Request for Exemption from Mandatory Electronic Filing and Service (form EFS-007)* The committees declined to make this change. The specific text of the application form makes it clear that the request can be for an exemption from electronic filing, electronic service, or both. *Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).* The committees declined to make this change. The specific text of the order makes it clear that the order can be used to grant or deny an exemption from electronic filing, electronic service, or both.
207.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** Yes they are appropriate and do not need to be modified.	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** Based on other comments discussed above, some modifications have been made to the forms.
208.	Superior Court of San Bernardino County By: Stephen Nash		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they**	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need**

	Commentator	Position	Comment	Committees' Response
	Court Executive Officer		**need to be modified?** The proposed optional forms EFS-007 and EFS-008 appear reasonable and appropriate for this purpose and satisfy the broader requirement for a hardship exemption from e-filing. We would however recommend three changes to the proposed forms: • Simplify the proposed forms to eliminate the separate boxes for e-filing, e-service, and e-receipt of service. Instead, an exemption should be an exemption from all electronic requirements as implied by the form name, "Request for Exemption from Electronic Filing and Service"; • On Form EFS-007, we would suggest adding "(check all that apply)" at the end of question 1, before the check boxes; and • We question whether service of the "Request for Exemption from Electronic Filing and Service" on the other parties in the case is necessary. Similar to a Fee Waiver, service may not be required.	**to be modified?** The committees agreed with this suggestion and have eliminated "receipt of service"; "service" included receipt of service. The language in item 1 has been revised based on other comments. In the revised version, it would not be necessary to state "check all that apply." The commentator is correct that service of the application would not always be necessary (e.g., at the time of initial filing before other parties have been served); hence, the Proof of Service has been removed from the form. If service on other parties is required (e.g., later in the action), the represented party's attorney can serve the application and provide proof of service.
209.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they**	**Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need**

	Commentator	Position	Comment	Committees' Response
			need to be modified? We agree with the forms as drafted.	**to be modified?** Based on other comments discussed above, some modifications have been made to the forms.
210.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** On form EFS-007, we recommend the following changes: 1. Question 1: remove the check box choices for what the party wishes to opt out of. It should only state: "…request to be exempt from the requirements for electronic filing and service in this case for the following reasons:" This is due to our recommendation for an "all or nothing" opt out model. 2. Questions 1b: provide a check box list of acceptable hardship choices similar to what is provided on the standard fee waiver form.	**Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?** 1. The committees disagreed with this suggestion. There may be circumstances in which a party should be exempted from electronic filing or from electronic service, but not both. 2. It is not necessary to provide a list. Especially because only represented parties will be requesting exemptions, a party's attorney can explain the undue hardship or substantial prejudice that warrants granting an exception.
Question No.10 –Should these forms be made mandatory rather than optional?				
211.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should these forms be made mandatory rather than optional?** If the forms remain optional, the court could make orders sua sponte which may eliminate	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.

	Commentator	Position	Comment	Committees' Response
			some of the problems created by the process that would ensue if the forms are mandatory.	
212.	Martin Dean Essential Publishers LLC		**Should these forms be made mandatory rather than optional?** Mandatory. This assures that court that the data will come to the court in the same format for each case and that all data will be included. These forms will be used by SRL's they need the guidance offered by mandatory forms.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
213.	Legal Aid Society of Orange County		**Should these forms be made mandatory rather than optional?** These forms ought to be optional. As electronic filing is implemented, courts may find clauses or instructions that should be included to assist informing the public about its specific procedures.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
214.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Should these forms be made mandatory rather than optional?** The Committee could not come to a consensus as to whether the forms should be made mandatory or optional. The mandatory forms make it easier to adopt statewide, however optional forms make it easier for local courts to adapt to their procedures. Both methods have their advantages and disadvantages.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
215.	Superior Court of Los Angeles County		**Should these forms be made mandatory rather than optional?**	**Should these forms be made mandatory rather than optional?**

W13-05
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
			Optional.	The committees recommend that the forms be optional, as proposed.
216.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should these forms be made mandatory rather than optional?** The forms should be strongly recommended, but possibly provide for flexibility to accommodate those members of the public who are facing a deadline and unfamiliar with the forms.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
217.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should these forms be made mandatory rather than optional?** Yes.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
218.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should these forms be made mandatory rather than optional?** The forms should not be mandatory.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
219.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should these forms be made mandatory rather than optional?** Yes. Mandatory to ensure consistency.	**Should these forms be made mandatory rather than optional?** The committees recommend that the forms be optional, as proposed.
Question No.11 –Are any other forms needed to implement the rules on mandatory e-filing?				
220.	California Family Law Facilitator's Association		**Are there any other forms needed to implement the rules on mandatory e-filing?**	**Are there any other forms needed to implement the rules on mandatory e-filing?**

	Commentator	Position	Comment	Committees' Response
	By: Melanie Snider Vice President		The answer to this question is unclear and probably will not be determined until the pilot project is implemented and the results of the pilot are analyzed.	The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional forms in the future.
221.	Martin Dean Essential Publishers LLC		**Are any other forms needed to implement the rules on mandatory efiling?** No.	**Are any other forms needed to implement the rules on mandatory efiling?** See response to comment 220.
222.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Are any other forms needed to implement the rules on mandatory e-filing?** Additional forms should be developed, as listed below: • ***Election Regarding Electronic Filing and Service*** (mandatory); • ***Information Sheet on Electronic Filing***, explaining exactly what opting in means; • ***Information Sheet on Electronic Service***, specifying the file types and size of electronic documents that can be served, and that hyperlinks should be sent if files exceed a certain size; • ***Information Sheet on Receipt of Electronic Service***, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through	**Are any other forms needed to implement the rules on mandatory efiling?** See response to comment 220.

	Commentator	Position	Comment	Committees' Response
			hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have e-mail addresses specifically designated for litigation to avoid official court documents being mixed with other mail; • ***Request for Hearing about Exemption from Electronic Filing and Service***; • ***Notice on Hearing about Exemption from Electronic Filing and Service***; • ***Order on About Exemption from Electronic Filing and Service After Hearing***.	
223.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Are any other forms needed to implement the rules on mandatory e-filing?** No.	**Are any other forms needed to implement the rules on mandatory efiling?** See response to comment 220.
224.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Are any other forms needed to implement the rules on mandatory e-filing?** Trial courts should be allowed to develop additional forms they deem appropriate to implement mandatory e-filing.	**Are any other forms needed to implement the rules on mandatory efiling?** See response to comment 220.
225.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Are any other forms needed to implement the rules on mandatory e-filing?** No.	**Are any other forms needed to implement the rules on mandatory efiling?** See response to comment 220.
Question No.12 –Are any more specific rules needed on fee or fee waivers than are currently provided?				
226.	California Commission on Access to		**Are any more specific rules needed on fee or**	**Are any more specific rules needed on fee or**

	Commentator	Position	Comment	Committees' Response
	Justice By: Hon. Ronald B. Robie Chair		**fee waivers than are currently provided?** To acquire a fee waiver a party must file a request to be determined by the judge who can waive fees. With e-filing, this request should not require a filing fee from either an attorney that represents a qualified party or from an indigent self represented party. The process for handling fee waivers is not outlined in detail in the regulations, and may require further study.	**fee waivers than are currently provided?** The committees do not consider any additional rules on fees or fee waivers to be necessary at this time, but based the courts' and the public's experiences with mandatory e-filing and e-service may consider possible additional rules on these subjects in the future.
227.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Are more specific rules needed on fee or fee waivers than are currently provided?** The answer to this question is also unclear and probably will not be determined until the pilot project is implemented and the results of the pilot are analyzed.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
228.	Martin Dean Essential Publishers LLC		**Are any more specific rules needed on fee or fee waivers than are currently provided?** No.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
229.	Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		**Are any more specific rules needed on fee or fee waivers than are currently provided?** (See comment 230 below by Legal Aid Association of California.)	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
230.	Legal Aid Association of California By: Salena Copeland Directing Attorney		**Are any more specific rules needed on fee or fee waivers than are currently provided?**	**Are more specific rules needed on fee or fee waivers than are currently provided?**

	Commentator	Position	Comment	Committees' Response
			LAAC agrees with the recommendation of the working group to include the suggested language in rule 2.253(b) regarding permitting the court to charge only actual costs and requiring reasonable fees of the electronic filing service provider. Additionally, LAAC agrees that the fees must be waived when deemed appropriate by the court. This means that, if mandatory e-filing is required, the court must provide a free way to file documents or require electronic filing service providers to allow for no-fee transmissions. Many self-represented litigants qualify for fee waivers and truly cannot afford the costs of litigation. If an attorney is able to represent them pro bono, it is important to keep the costs low despite the presence of an attorney. Pro bono clients remain responsible for the costs and passing on the cost of e-filing to the client could mean that litigation is cost prohibitive for some legal services' poorest clients.	See response to comment 226.
231.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**Are any more specific rules needed on fee or fee waivers than are currently provided?** Specific rules should be developed regarding fees charged by electronic filing service providers (EFSP). The proposed rule states that fees should be "reasonable," but there are no provisions for review, judicial or otherwise, to determine reasonability. Fees charged by EFSPs may be prohibitive to many of the underserved, especially if e-filing is made opt-	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.

	Commentator	Position	Comment	Committees' Response
			out rather than opt-in. Given this, as well as current demands upon the courts making judicial review inappropriate, a citizen committee or volunteer lawyer commission should be given authority to rule what fees charged by EFSPs are reasonable or not. Further if the courts wish to encourage e-filing by low-income litigants, particularly those being assisted by legal service providers and self-help centers, then fee waivers should also cover fees charged by EFSPs.	Code of Civil Procedure section 1010.6(d)(1)(B) provides: "Any fees charged by an electronic filing service provider…shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver." (See also rule 2.253(b)(6).).
232.	OneJustice By: Linda S. Kim Deputy Director		**Are any more specific rules needed on fee or fee waivers than are currently provided?** (See comment 230 above by LAAC [similar].)	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
233.	Public Law Center By: Elizabeth Gonzalez Lead Attorney		**Are any more specific rules needed on fee or fee waivers than are currently provided?** (See comment 230 above by LAAC [similar].)	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
234.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Are any more specific rules needed on fee or fee waivers than are currently provided?** The charges assessed by e-filing service providers to low-income litigants who do not qualify for fee waivers are potentially significant to the litigants and to the attorneys who take their cases on flat-fee or reduced fee arrangements. The current range of charges in Orange County from $9.00 to $9.95 per filing	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.

	Commentator	Position	Comment	Committees' Response
			can quickly become a substantial burden on the filer. In a collections defense action, for example, the service provider charges at the demurrer stage alone can approach $100, not including the fees charged by the court. Any law and motion after that, as well as all filings required prior to trial, have the real possibility of eating up any margin for the attorney or, if shifted to the client, make it economically infeasible to defend the case. In its initial phase, e-filing charges may be affordable, but without some type of guidelines other than "reasonable," it is easy to foresee that providers will increase fees, effectively barring the courthouse door for many low-income litigants. The issue of charges by e-filing providers could be initially addressed by setting a ceiling of no more than four or five dollars per filing, with a review period after the system has been in place for a year.	
235.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Are any more specific rules needed on fee or fee waivers than are currently provided?** No.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
236.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Are any more specific rules needed on fee or fee waivers than are currently provided?** No, this should be left to the discretion of the local trial courts.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
237.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Are any more specific rules needed on fee or fee waivers than are currently provided?**	**Are more specific rules needed on fee or fee waivers than are currently provided?**

	Commentator	Position	Comment	Committees' Response
			Yes. Each EFSP must have a fee waiver process consistent with the court they are e-filing into.	See response to comment 226.
238.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Are any more specific rules needed on fee or fee waivers than are currently provided?** No. Our court believes the rules related to fees and fee waivers are sufficient.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
239.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Are any more specific rules needed on fee or fee waivers than are currently provided?** No. This feedback is in alignment with the e-filing workstream participants.	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
240.	Western Center on Law and Poverty By: Mona Tawatao Senior Litigator		**Are any more specific rules needed on fee or fee waivers than are currently provided?** (See comment 230 above by LAAC [similar].)	**Are more specific rules needed on fee or fee waivers than are currently provided?** See response to comment 226.
Question No.13 –How should the effective time of electronic filing and service be determined?				
241.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**How should the effective time of electronic filing and service be determined?** Someone needs to analyze the effect on litigation-particularly in the situation where some litigants file electronically and others file in the traditional manner. This is because there may be an inequality created when a litigant with a paper filing is limited by the fact that the Clerk's office is closed yet the e-filer can file	**How should the effective time of electronic filing and service be determined?** The pilot study under AB 2073 and the proposed new provision in rule 2.253(d)(8) requiring courts to report on their mandatory electronic filing and service programs should provide more information.

	Commentator	Position	Comment	Committees' Response
			until midnight. Also, no one has mentioned a situation where the filing goes out and is later rejected and the person filing receives a "MAILER-DAEMON" notice that the e-filing was unsuccessful. An occurrence like this may either lead an e-filer to believe that something was filed and, in fact, it was not or it may lead to a situation in which filers can deceive the court and/or the other parties.	Based on the experiences of the courts and the public with e-filing, it should be possible to determine how often this situation arises and what should be done about it. For the court's responsibility to address problems that impede or preclude electronic filings that it becomes aware of, see rule 2.254 (b).
242.	Martin Dean Essential Publishers LLC		**How should the effective time of electronic filing and service be determined?** In days gone by, the notion that extending the time for a user to file – until midnight – was thought of as an inducement filers to use electronic methods of delivering filings to the court. With mandatory filing this inducement becomes moot. Additionally midnight filings in electronic filings can and will cause general confusion amongst the entire filing population: • If for example a county has required electronic filing for all civil cases, optional electronic filing for Probate, and no electronic filing for Family law cases, how do you expect a law firm staff to deal with two different filing times each day. • If in fact, the filing time for civil filings is set for midnight, and SRL's are	**How should the effective time of electronic filing and service be determined?** The commentator's support for the current "close of business" standard rather than the "file until midnight" standard is noted. For more on this subject, see report and comments 248 through 259 below.

	Commentator	Position	Comment	Committees' Response
			allowed to file paper, doesn't that give a substantial advantage to those who file electronically. • What will happen if some courts choose the midnight filing cut off and other courts choose the court window hours for cut off? It is not reasonable to expect filers to keep track of these rule variants. They're just not necessary. • Nope, we believe that there is absolutely no benefit to the filer or the court to extending the filing time beyond window hours.	
243.	Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**How should the effective time of electronic filing and service be determined?** Effective times of electronic filing and service should ensure a level playing field between parties. . . .	**How should the effective time of electronic filing and service be determined?** The commentator's concern is duly noted.
244.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**How should the effective time of electronic filing and service be determined?** Effective times for e-filing and e-service should mirror current standards.	**How should the effective time of electronic filing and service be determined?** The commentator's support for the current "close of business" standard is noted. For more on this subject, see report and comments 248 through 259 below.
245.	Superior Court of Los Angeles County Los Angeles County Superior Court		**How should the effective time of electronic filing and service be determined?**	**How should the effective time of electronic filing and service be determined?**

	Commentator	Position	Comment	Committees' Response
			This decision should be determined after the pilot projects have had time to provide sufficient experiences.	As explained in the report, the committees' recommended approach is that the rules of court on mandatory electronic filing, effective July 1, 2013, should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will provide an opportunity for experimentation. The committees also recommend that courts with mandatory e-filing programs be required to provide semiannual reports to the Judicial Council to be used to evaluate the courts' different approaches and improve e-filing processes and procedures in the future.
246.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**How should the effective time of electronic filing and service be determined?** There should be a uniform statewide rule permitting the "file until midnight" option – the second of the three options listed under CRC Rule 2.253(b)(7). This will be a significant benefit to the attorneys who will have more time to draft their pleadings, and very little hardship to the local courts. By giving attorneys more flexibility, it will provide an additional incentive for them to adopt e-filing. The third proposed option recommends basing the filing date on the time the document is transmitted to the court. This has the potential to create numerous conflicts over when a document was transmitted and whether the transmitted document was actually filed or even suitable for filing. It is the modern day	**How should the effective time of electronic filing and service be determined?** The court's support for the "file until midnight" standard is noted. As the pilot court under AB 2073, it is presently authorized by statute to experiment with this approach. Under the proposed rules, it could continue by local rule to experiment with this standard. (See amended rule 2.253(b)(7).) For more on this subject, see report and comments 248 through 259 below.

	Commentator	Position	Comment	Committees' Response
			equivalent of deeming a document filed the moment the messenger leaves the attorney's office and begins transporting it to court. The document can only be deemed filed at the point it is actually filed, not when it is transmitted to the court.	
247.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**How should the effective time of electronic filing and service be determined?** Submission time should be captured by the e-filing system but acceptance or initiation time is determined by when the document is processed by the clerk.	**How should the effective time of electronic filing and service be determined?** The rules would be amended to clarify the distinction between the time of receipt of the filing (which determines the effective date and time of the filing) and the subsequent acceptance of the filing by the court. See amended rules 2.250(b)(7), 2.253(b)(7), and 2.259(c).)
Question No.14 –Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?				
248.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should the "close of business", the "file until midnight" or the "time of transmission" standard-or some other standard-be adopted for determining the effective date of electronic filings?** It should be "close of business" with the court. This is because it is inherently unfair to allow someone with access to a computer to file at midnight but the opposing side—who may be already disadvantaged because of the financial disparity between the parties—must file by "close of business" at the Clerk's office, which	**Should the "close of business", the "file until midnight" or the "time of transmission" standard-or some other standard-be adopted for determining the effective date of electronic filings?** The commentators are clearly divided on the issue of whether the close of business" or the "file until midnight" standard should be adopted. The committees recommend that the rules of court on mandatory electronic filing, effective July 1, 2013, provide for the "close of business" standard, but give individual courts the option of adopting

	Commentator	Position	Comment	Committees' Response
			in some counties is as early as 1 or 2 o'clock each day.	instead the "file until midnight" standard by local rule. (See amended rules 2.253(b)(7) and 2.259(c).) This flexibility will give the courts an opportunity to experiment and will generate further information on which a more definite decision about the better standard can be made in the future. The committees also recommend that courts that establish mandatory e-filing programs report to the Judicial Council on their experiences, including their experiences with different effective times of filing. (See amended rule 2.253(b)(8).) The Superior Court of Orange County already needs to provide information on its pilot project under AB 2073. The additional reporting requirement in rule 2.253 will ensure that information from other courts' mandatory e-filing programs will also be available to the Judicial Council.
249.	Martin Dean Essential Publishers LLC		**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See comment 242 above.	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.
250.	Julie A. Goren, Attorney Lawdable Press		**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?**	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?**

	Commentator	Position	Comment	Committees' Response
			First, practitioners have been used to 5:00 deadlines for decades. Extending the deadline to midnight cannot be necessary, and I cannot see how it could benefit anyone, particularly the attorneys and staff forced to work so late. Second, there historically has been concern over ensuring a level playing field between eFilers and non. A midnight deadline for eFilers is as unlevel as it could get. Third, given the fact that the new rules propose to require that eFilers eServe, and the likely scenario is that eFilers will have their EFSP's do both simultaneously, the midnight deadline is problematic because it would be different from the current eService deadline. This presents a potential trap for the unwary. The eFiling and eService deadlines need to be the same (more below), and to accomplish this, the provisions re eFiling and the provisions re eService must be revised. With regard to the eFiling deadline, CCP 1010.6(b)(3) currently provides that "close of business" means "5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier." (emphasis added) It is my recollection that when it was passed, courts routinely were open until 5 p.m., so that the "whichever is earlier" language was of no moment (and now most practitioners probably don't even realize that the language is	See response to comment 248 above.

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

	Commentator	Position	Comment	Committees' Response
			there). I recall it being written this way so that eFilers would not get an advantage over paper filers by being able to file later. With today's court closures and limited service days, it makes no sense. Surely there is no reason to peg the time to the court's filing counter in any event. If pegged to anything, it should be the court's drop box, typically open 1-2 hours later than the filing counter. So, one fix could be changing "whichever is earlier" to "whichever is later" (likely 5:00 p.m.). However, for purposes of uniformity, I think the eFiling deadline for all cases should simply be 5:00 p.m. Then the eService deadline needs to be changed to match that. With regard to the eService deadline, mirroring CCP 1010.6(b)(3), current CRC Rule 2.250(b)(10) provides that "Close of business" is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier." (emphasis added) Current CRC 2.251(f)(4) provides that "Service that occurs after the close of business is deemed to have occurred on the next court day." Although unlikely the intent of the drafters, read literally, someone who eServes notice of an MSJ at 3:15 p.m. on the last day to do so via eService in a court whose filing counter happens to close at 3:00 p.m. that day was too late.	

	Commentator	Position	Comment	Committees' Response
			Similarly, if a midnight eFiling deadline goes into effect and the eService provision either remains as is or is changed to 5:00 p.m., then someone simultaneously eFiling and eServing at 11:45 p.m. would satisfy the eFiling deadline but blow the eService deadline if they are eFiling and eServing on the last day to do so. This type of trap needs to be avoided. Calculating deadlines in CA is difficult enough already. Certainty and uniformity – a 5:00 p.m. eFiling deadline and a 5:00 p.m. eService deadline for all cases – will do just that. Speaking of uniformity, the deadline to serve by mail is 5:00 p.m. The deadline to serve by fax is 5:00 p.m. The deadline to serve personally is 5:00 p.m. The eService deadline should be no different.	
251.	Legal Aid Society of Orange County		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** LASOC believes that the standard should be file until midnight. This would allow greater access for clients who come in after the close of business, as well as evening clinics, to be able to e-file their documents. This is particularly important for litigants who need to file answers to an Unlawful Detainer action.	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.
252.	Los Angeles Center for Law and		**Should the "close of business," the "file until**	**Should the "close of business," the "file until**

	Commentator	Position	Comment	Committees' Response
	Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		**midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** The current standard should be maintained, that is determining that any document e-filed with the court after the close of business (which should be a standard time such as 5pm, since different courts close at different times) on any day is deemed to have been filed on the next court date. This is to ensure fairness to those who do not have the resources to e-file and must do so before the close of business and not give an unfair advantage to those who do have the resources to e-file and may do so before midnight.	**midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.
253.	Public Law Center By: Elizabeth Gonzalez Lead Attorney		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** We are suggesting that the cut-off for filing should be the time of the court closure. Setting the cut-off for filing at 11:59 pm may create a challenge for self-represented parties who have opted out of electronic filing and service. This situation would likely manifest itself during motion practice when the moving party files a motion at 11:59 pm the day the motion is due. A self-represented party who is, according to the Code, required to receive personal service of	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.

	Commentator	Position	Comment	Committees' Response
			the motion by close of business may not be served until the following day, effectively depriving the litigant of the notice required under the Code. In addition, self-represented parties who do not opt-in to electronic filing would have less time to prepare filings if they are required to file at the clerk's window by 4:00 pm (or other close of business) but their opponent is allowed to electronically file until 11:59 pm.	
254.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** Ultimately no consensus was reached by SCDLS on how to best answer this question. The Committee was able to see benefits and drawbacks to both allowing for the "file until Midnight" standard as well as for "file until 5 PM" standard. No member of the Committee was in favor of a "close of business" standard as currently defined in Code of Civil Procedure section 1010.6(b)(3), as this would allow for wide variations in filing times – which continue to change – dependent upon the different courts and different days of the week. Some members felt that allowing for a "file until Midnight" standard would allow for those assisting low-income litigants to be able to e-file after normal business hours. Yet this would	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.

	Commentator	Position	Comment	Committees' Response
			also allow for those opposing low-income litigants to take advantage of e-filing to the detriment of low-income or self-represented litigants. An example of this would be a landlord's attorney filing for default during the night, when a low-income or self-represented litigant would be unable to file during that time due to lack of resources. Before, the litigant would be able to file an answer with the court by going in person and being the first to file, perhaps even after the statutory deadline has passed; now the landlord's attorney is able to file for default during the night, depriving the low-income or self-represented litigant the opportunity to file an answer. Other members favored a "file at 5 PM" standard, which would provide less of a difference between the time allowed for paper filing and electronic filing than a midnight e-filing deadline, but would create a uniform statewide deadline for e-filing, unlike the "close of business" deadline. Yet this standard would deprive those assisting low-income and self-represented litigants the opportunity to e-file file after normal business hours.	
255.	Superior Court of Los Angeles County		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** Close of business. Adopting this standard would	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.

	Commentator	Position	Comment	Committees' Response
			provide for a consistent standard for all filings regardless of the process by which they are received.	
256.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard-be adopted for determining the effective date of electronic filings?** See [comment 246] above.	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comments 246 and 248 above.
257.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard-be adopted for determining the effective date of electronic filings?** 'Time of Transmission' should never be used as the standard. 'Time of Receipt at the court' should be the standard. File until midnight has most appeal because all courts across the state do not close at the same time. This is also a tangible benefit of e-filing for the filers but may put a burden on the court.	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.
258.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard-be adopted for determining the effective date of electronic filings?** Our court believes the rules should adopt a close of business standard. With the severe staffing	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.

	Commentator	Position	Comment	Committees' Response
			shortages, allowing filing until midnight would backlog items for processing by court staff the next business day and this would make it more difficult to process emergency requests in a timely manner. It also would create inconsistency in the code related to when documents must be filed, which would be unmanageable for court personnel. Our court also believe that this makes it fair for all litigants because some, like self-represented parties, may not have access to e-filing, which would put them on an unequal playing field.	
259.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?** We recommend "close of business as determined by the court." This option provides equal access to justice and ensures consistency at a specific court without imposing a particular time on all courts. This does not eliminate the option for a party to submit the document after hours, however it will not be considered filed until it is processed by a clerk during business hours.	**Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?** See response to comment 248 above.
Question No.15 –Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?				
260.	California Family Law Facilitator's		**Regardless of what standard is adopted,**	**Regardless of what standard is adopted, should**

	Commentator	Position	Comment	Committees' Response
	Association By: Melanie Snider Vice President		**should the standard be uniform for voluntary and mandatory e-filing?** Yes, for the same reasons listed in the answer to question [14].	**the standard be uniform for voluntary and mandatory e-filing?** Though uniformity remains the eventual goal, the committees recommend that the rules of court on mandatory electronic filing, effective July 1, 2013, provide for the "close of business" standard, but give individual courts the option of adopting instead the "file until midnight" standard by local rule. (See amended rules 2.253(b)(7) and 2.259(c).) This flexibility will give the courts an opportunity to experiment and will generate further information on which a more definite decision about the better standard can be made in the future.
261.	Martin Dean Essential Publishers LLC		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Yes, see above.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.
262.	Legal Aid Society of Orange County		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** The standard should be made uniform in order to reduce confusion.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.
263.	Superior Court of Los Angeles County Los Angeles County Superior Court		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Yes.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.

	Commentator	Position	Comment	Committees' Response
264.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Yes.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.
265.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Uniform.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.
266.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Yes, it would be extremely difficult for court staff to have to stop and determine whether the case upon which a filing received is voluntary or mandatory e-filing, and then apply a different deadline based upon the case type. In addition, our court does not have an easy way to indicate whether a case is voluntary or mandatory e-file, which would make it even more time consuming for staff to attempt to make this determination.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.
267.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** Yes. To ensure consistency.	**Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?** See response to comment 260.

	Commentator	Position	Comment	Committees' Response
			This feedback is in alignment with the e-filing workstream participants.	
Question No.16 –If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?				
268.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** It should be postponed until legislation is enacted or at least until enough time has passed after implementation of the Orange County pilot project so that some analysis can be made regarding the effects of the various times for filing.	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
269.	California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel		**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** You asked for feedback as to how to resolve the standard for the effective date of filing. CJA	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.

	Commentator	Position	Comment	Committees' Response
			recommends adopting the "close of business" rule. It avoids problems that otherwise arise with the "up to midnight" rule, as the proposal discusses.	
270.	Martin Dean Essential Publishers LLC		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** As we've stated two different standards for electronic filers and papers files; two different standards for filers amongst case types; and different standards between different courts, far outweigh any purported convenience of midnight filing. Although we know that the Federal Pacer system allows for midnight filing, this is a uniform standard applied to all filers in all Pacer courts. That works. But what happens when we file a case at 11:59 pm on the day that a statute of limitations expires, while the court paper filing window has closed at 4:00 pm the same day. Are we now providing additional benefits to electronic filers in extending the Statute by 1/3 of a day? It's just not necessary.	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
271.	Superior Court of Los Angeles County		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be**	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made**

	Commentator	Position	Comment	Committees' Response
			made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing? Should be postponed.	**applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
272.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** The "file until midnight" standard should be made applicable to mandatory e-filing beginning on July 1, 2013. For the reasons stated above, it will simplify the determination of when a document is filed, and encourage hesitant attorneys to adopt e-filing in order to take advantage of the flexible filing options.	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
273.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?**	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?**

	Commentator	Position	Comment	Committees' Response
			If a standard is adopted it should begin on July 1, 2013 to evaluate how the standard works.	See response to comment 260.
274.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** Our court does not believe either of these standards should be adopted; however, if one is adopted as the standard, we believe this change would need to be postponed until the filing times are uniform for both mandatory and permissive e-filing.	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
275.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** Not applicable based on our recommendation.	**If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?** See response to comment 260.
Question No.17 –Should any of the other rule changes in this proposal be modified? If so, how?				
276.	California Commission on Access to Justice		**Should any of the other rule changes in this proposal be modified? If so, how?**	**Should any of the other rule changes in this proposal be modified? If so, how?**

W13-05
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
	By: Hon. Ronald B. Robie Chair		It is not uncommon for parties to be represented for part of their case and unrepresented for another part, either by design or because they unexpectedly run out of funds, so the Commission suggests the following: • Where there is limited scope representation, the initial filing form should allow a party to opt in to e-filing and/or electronic service for some parts of the case, and opt out for other parts of the case. • A represented party who has consented to e-service but becomes unrepresented should be exempt from mandatory e-filing from that point on unless they opt-in and/or become represented again. The Substitution of Attorney – Civil form should be modified to include an opt-out box to check, so that both the court and other parties are aware that the self-represented litigant is no longer subject to e-filing or e-service. Two years after these new rules are implemented, a second invitation for public comment should be issued, so that these new procedures can be evaluated again with regards to their workability, cost-effectiveness, and whether or not they improve access to justice for Californians.	The Commission correctly identifies changes in representation and limited scope representation as issues that need to be considered in connection with electronic filing and service. • Existing Judicial Council forms can be used: (1) To opt in to e-filing and service (form EFS-005); and (2) To notify other parties that a party has become self-represented (form MC-050). • The recommended rules would achieve the proposed result: they provide that self-represented parties are exempt from e-filing and e-service, unless the parties affirmatively consent. The present *Substitution of Attorney – Civil* (form-050) already has places for a party to indicate that he or she has become self-represented and to indicate the new physical address where the party should be served— so it does not have to be modified. Still, the committees may review this and other forms in the future to determine if the forms should be modified to be more easily used for electronic filing and service. The new rules will be reviewed and evaluated in the future. To make this process more effective, the committees are recommending that courts instituting mandatory e-filing be required to report

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

	Commentator	Position	Comment	Committees' Response
				periodically on their experiences to the Judicial Council. (See amended rule 2.253(b)(8).)
277.	California Family Law Facilitator's Association By: Melanie Snider Vice President		**Should any of the other rule changes in this proposal be modified? If so, how?** Not that we can determine at this time.	**Should any of the other rule changes in this proposal be modified? If so, how?** No response required.
278.	Martin Dean Essential Publishers LLC		**Should any of the other rule changes in this proposal be modified? If so, how?** We believe in cautious development of rules which affect the rights of persons who want to file documents with the courts. We believe that these rules are a great start, but that we don't know enough about their effect to be able to accurately predict what this application of technology to the legal rights of filers will bring. Let's implement what we have, and watch carefully for consequences before we add more rules.	**Should any of the other rule changes in this proposal be modified? If so, how?** The committees have made the recommendations for the basic rule changes needed at this time for the trial courts that want to do so to institute mandatory e-filing. As the commentator suggests, based on the experience of the courts with these rules, the rules can later be modified or expanded.
279.	Superior Court of Los Angeles County		**Should any of the other rule changes in this proposal be modified? If so, how?** The other issues, including "time of transmission," notification to the EFSPs, sealing of records, etc., should not be decided until we have more input from the courts which are conducting pilot projects.	**Should any of the other rule changes in this proposal be modified? If so, how?** Some of the other rule changes raised in the invitation to comment (such as defining the "time of transmission" and the notification of EFSPs) are included in the present proposal; however, others (such as how to handle sealed records) have been deferred for future consideration.
280.	Superior Court of Riverside County By: Sherri R. Carter		**Should any of the other rule changes in this proposal be modified? If so, how?**	**Should any of the other rule changes in this proposal be modified? If so, how?**

	Commentator	Position	Comment	Committees' Response
	Court Executive Officer		No.	No response required.
281.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		**Should any of the other rule changes in this proposal be modified? If so, how?** Yes. Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order "in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403..." and there is no requirement for having two electronic service providers. Because some courts have court ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order "e-filing through the court directly or through an electronic service provider." If this were not clarified, our court would potentially need to discontinue e-filing in these court ordered cases until it gets a second electronic service provider and then restart the process once the second provider is brought on board. This would be unduly burdensome to the court and the parties in these cases since our court has found that the process of getting an electronic service provider set up with our court takes in excess of a year to complete. The cost and staffing levels required to complete such a process create significant barriers at this time due to reduced funding.	**Should any of the other rule changes in this proposal be modified? If so, how?** The committees agreed that the rules should clarify the difference between mandatory e-filing authorized by statewide and local rules for specified types of civil cases and court-ordered e-filing in complex cases with respect to the number of electronic filing service providers required. Hence, the committees recommend adding an explanatory Advisory Committee Comment stating that court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6: court-order filing does not require more than one electronic filing service provider.

	Commentator	Position	Comment	Committees' Response
282.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Should any of the other rule changes in this proposal be modified? If so, how?** No. This feedback is in alignment with the e-filing workstream participants.	**Should any of the other rule changes in this proposal be modified? If so, how?** No response required.
Question No.18 –Would the proposal provide cost savings? If so, please quantify?				
283.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Would the proposal provide cost savings? If so, please quantify.** An electronically filed document saves the Court $2.00-3.50/document depending on the type of document and whether the Court has an existing "electronic document" capability. The savings can be found in: Filing: - Data entry - Docketing - Scheduling - Payment processing Managing the Case File: - Photocopies - File Jackets - Storage - File runners If the Court has an existing scanning capability to convert paper documents into electronic	**Would the proposal provide cost savings? If so, please quantify.** This information is helpful. Additional information received from the pilot court later this year will be important in evaluating the implementation of mandatory electronic filing and service.

	Commentator	Position	Comment	Committees' Response
			documents, the Court will also save labor: - Scanning the paper documents - Verifying the quality of the scan - Linking the document to the case record	
284.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Would the proposal provide cost savings? If so, please quantify.** Yes. Huge cost savings by eliminating the cost of processing paper, scanning, and maintaining the paper file.	**Would the proposal provide cost savings? If so, please quantify.** This comment is helpful, though more information will eventually be needed to properly evaluate the benefits and costs of implementing mandatory electronic filing and service in the California courts.
285.	Superior Court of Sacramento County By: William Yee Research Attorney		**Would the proposal provide cost savings? If so, please quantify.** The proposal will not provide a cost savings. Estimated costs associated with staff training, revising processes and procedures and changing or modifying case management systems is not included because we simply do not have the resources to estimate such impacts.	**Would the proposal provide cost savings? If so, please quantify.** This conclusion is quite different from the views of other courts. In any event, more information will need to be collected to properly evaluate the benefits and costs of implementing mandatory electronic filing and service in the California courts. .
286.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Would the proposal provide cost savings? If so, please quantify.** A significant potential cost savings exists as several other courts across the nation have implemented mandatory e-filing and reduced their storage, filing, handling and copying charges while providing improved, more convenient options to the Public for filing documents. The ability to realize these benefits	**Would the proposal provide cost savings? If so, please quantify.** This comment is helpful, though more information will eventually be needed to properly evaluate the benefits and costs of implementing mandatory electronic filing and service in the California courts.

	Commentator	Position	Comment	Committees' Response
			is significantly increased where mandatory e-filing supports the implementation of a fully digital court record.	
287.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Would the proposal provide cost savings? If so please quantify.** Yes, but only if the majority of parties do not "opt out." No explicit cost analysis has been completed at this time.	**Would the proposal provide cost savings? If so please quantify.** This comment is helpful, though more information will eventually be needed to properly evaluate the benefits and costs of implementing mandatory electronic filing and service in the California courts.
Question No.19 –What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system?				
288.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** I. <u>The Technology</u> A. Determine how Data / Document Collection occur (vendor or Court developed solution) B. Integrate e-filing into Case Management System	**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** This information is about the implementation requirements in the pilot court is helpful.

	Commentator	Position	Comment	Committees' Response
			C. Integrate e-filing into Document Management System D. Determine which e-filing standards will be followed E. Determine how the Court will do E-Service and Court Noticing F. Develop tools to enable Judicial use of electronic documents II. Legal Things A. Contract with E-Filing Service Providers B. Determine if the electronic record will be the "Official" Record C. Determine which case types will be included D. Implement local rules (as required) for exception handling E. Determine support services for Self-represented Litigants and public agencies III. The Administration A. Determine how payment processing will be handled and implement B. Determine how Fee waivers will be handled and implement	

	Commentator	Position	Comment	Committees' Response
			C. Establish service level goals (e.g., New complaints processed in less than 2 business hours; 95% of all document processed in less than 24 business hours) D. Staff and train the e-filing unit IV. Marketing and Training A. Marketing with Bar associations, legal services providers, and legal secretaries B. Provide training for e-filers	
289.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** In our situation there will not be any changes in the docket codes in the CMS. Our court is "Paper on Demand" now, so the only training necessary will be for the intake clerks to learn the clerk review process.	**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** This information about the implementation requirements is helpful.
290.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising**	**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures**

	Commentator	Position	Comment	Committees' Response
			processes and procedures (please describe), changing docket codes in case management system, or modifying case management system. Assuming that an e-filing capability is already in place, implementation requirements will primarily be procedural and a matter of incorporating into the normal business work load. However, if no e-filing capability exists, the implementation requirements will be significant from a work load, technology, and capital investment perspective.	**(please describe), changing docket codes in case management system, or modifying case management system.** This information about the implementation requirements is helpful.
291.	Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal		**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** Increased burden on court staff. The task force believes that making e-filing mandatory for self-represented litigants also poses potential problems for the courts. (a) E-filing will drastically change trial court processes and the way court users interact with the clerks' offices. Unfortunately, the majority of the trial courts do not have the capacity or resources to undertake this technological advance at this time.	**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** This information about the implementation requirements is helpful. It should be noted that, if the committees' recommendation that self-represented parties be entirely exempt from mandatory e-filing is adopted , many of the potential problems identified by the commentator should not arise.

	Commentator	Position	Comment	Committees' Response
			(b) The cost-savings gained by e-filing will not be realized by making it mandatory for self-represented litigants unless these individuals have consistent access to computers, e-mails, and basic computer skills. The task force believes that these things are not available for large numbers of self-represented litigants. Therefore, cost savings in data entry time gained by e-filing may easily be neutralized by an increased need to provide e-filing assistance. This would be in addition to the assistance already provided by the self-help center and the overall result would be more staff time spent per litigant rather than less. (c) In FY 2010/2011, the court self-help centers and family law facilitators provided over 1.2 million services to self-represented litigants. There is a steady stream of people who are new to the courts, so the need to teach and familiarize them with the e-filing system would be continuous. (d) For the reasons stated previously, reliance on Legal Aid and other community legal services to meet this need is not realistic. (e) Court self-help centers have maximized scare staffing resources by providing forms assistance to self-represented litigants using workshops. It would significantly increase staff time to have to provide individual assistance with forms (because they are required to be e-	

	Commentator	Position	Comment	Committees' Response
			filed on a computer) instead of providing help to several litigants at a time in a workshop – or after a workshop to provide individual computer-use support. (f) Making e-filing mandatory for self-represented litigants and requiring them to "opt-out" creates an additional layer of paperwork that the business office must process. It also requires additional judicial time to make decisions on requests to "opt-out." This additional paperwork burden on the court would be expected to be significant since the self-represented litigants' population in the courts is so high. Estimates are approximately 4 million per year. Furthermore, the types of cases in which self-represented litigants most commonly appear are often in areas of law that are seriously under-resourced.	
292.	TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC		**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** Because participation in an e-filing program is not mandatory for the courts, there are no automatic fiscal/operational impacts on the trial courts as a whole. Each court that decides to participate will have to identify and assess	**What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.** This point about the ability of the courts to decide whether to adopt mandatory e-filing is important. As the Joint Rules Committee correctly indicates, each court that decides to participate in mandatory e-filing will have to identify and assess for itself

	Commentator	Position	Comment	Committees' Response
			potential fiscal/operational impacts to its operations.	the potential fiscal and operation impacts of the program.
Question No.20 –Is the proposed effective date of July 1, 2013 for the rules appropriate?				
293.	State Bar of California, Litigation Section By: Saul Bercovitch		**Is the proposed effective date for the rules appropriate?** The Invitation to Comment asks whether the proposed effective date of July 1, 2013, for the new rules is appropriate. The committee believes that the answer is yes, so the courts and litigants can begin to enjoy the advantages of more widespread electronic filing and electronic service sooner. The committee suggests, however, that the Judicial Council should consider an evaluation of the Orange County pilot program before adopting the proposed new rules. Code of Civil Procedure section 1010.6, subdivision (f) appears to contemplate that the new rules on mandatory e-filing and e-service will be informed by the Judicial Council's evaluation of the Orange County pilot program. Such an evaluation is required by subdivision (d)(2). Although the deadline to report to the Legislature on the evaluation is not until December 31, 2013, the committee suggests that some form of evaluation of the pilot program—perhaps an interim evaluation that could be followed later by a final	**Is the proposed effective date for the rules appropriate?** The commentator's support for the proposed effective date of July 1, 2013 is noted.

	Commentator	Position	Comment	Committees' Response
			evaluation—be completed and considered by the Judicial Council before adopting the proposed new rules.	
294.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**Is the proposed effective date of July 1, 2013 for the rules appropriate?** Yes. Most trial courts will not be able to implement immediately, but those that are capable should be allowed to do so immediately to maximize savings and improve/maintain service to the public.	**Is the proposed effective date for the rules appropriate?** The commentator's support for the proposed effective date of July 1, 2013 is noted.
295.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**Is the proposed effective date of July 1, 2013 for the rules appropriate?** Yes.	**Is the proposed effective date for the rules appropriate?** The commentator's support for the proposed effective date of July 1, 2013 is noted.
296.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**Is the proposed effective date of July 1, 2013 for the rules appropriate?** Yes, particularly given the need for courts to cut costs in light of the dramatic budget reductions.	**Is the proposed effective date for the rules appropriate?** The commentator's support for the proposed effective date of July 1, 2013 is noted.
297.	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		**Is the proposed effective date of July 1, 2013 for the rules appropriate?** Yes.	**Is the proposed effective date for the rules appropriate?** The commentator's support for the proposed effective date of July 1, 2013 is noted.
298.	TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC		**Is the proposed effective date of July 1, 2013 for the rules appropriate?**	**Is the proposed effective date for the rules appropriate?**

	Commentator	Position	Comment	Committees' Response
			The effective date of July 1, 2013 appears to be feasible.	The commentator's support for the proposed effective date of July 1, 2013 is noted.
Question No.21 –How well would this proposal work in courts of different sizes?				
299.	Superior Court of Orange County By: Jeff Wertheimer General Counsel		**How well would this proposal work in courts of different sizes?** As long as the local courts are given the flexibility to create their own procedures, it will work extremely well in courts of all sizes.	**How well would this proposal work in courts of different sizes?** This comment is helpful.
300.	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		**How well would this proposal work in courts of different sizes?** If many of the detailed choices are implemented in LOCAL rules, the proposal will work for courts of all sizes. Courts will have varying levels of effectiveness because of their varying levels of automation within the court. E-Filing will not be effective if the court does not have a document management system. E-filing will be most effective if the Official Record is the electronic record.	**How well would this proposal work in courts of different sizes?** This comment is helpful.
301.	Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		**How well would this proposal work in courts of different sizes?** This proposal is carefully crafted to be appropriate for courts of all sizes.	**How well would this proposal work in courts of different sizes?** The committees agreed.
302.	Superior Court of Santa Clara County		**How well would this proposal work in courts**	**How well would this proposal work in courts of**

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
	By: Robert Oyung Chief Technology Officer		**of different sizes?** We anticipate the proposal would be appropriate for courts of all sizes.	**different sizes?** This comment is helpful.

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

Attachment A

"The Unified Voice of Legal Services"

LAAC
Legal Aid Association
of California

January 23, 2013

Attn: Invitations to Comment
Administrative Office of the Courts
455 Golden Gate Ave.
San Francisco, CA 94102
invitations@jud.ca.gov

Re: Public Comment re: Item W13-05,
Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073

To Whom It May Concern:

I am writing on behalf of the Legal Aid Association of California (LAAC) to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group.

Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement.

I am the Directing Attorney of LAAC. Founded in 1984, LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits in the state.

The attorneys at our member programs represent low-income clients in matters in California's civil courts. These civil cases frequently involve critically important access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system.

These low-income Californians are court users who rely on the civil court system to protect and enforce their rights in ways that are critically important

to these individuals, their families, and ultimately to our society as a whole. If not for our member organizations, most, if not all, of these represented court users would be self-represented litigants. Our member organizations also work closely with their local courts through partnerships with Self-Help Centers and Offices of the Family Law Facilitator. Without fully accessible courts, including the local Self-Help Centers and Family Law Facilitators, our members' clients and self-represented litigants would be unable to safeguard rights that many Californians take for granted. Based on this larger context of the importance of access to the courts, LAAC provides the following comments to the working group's specific questions in the Request for Specific Comments and with additional thoughts.

Threshold Question
Should self-represented parties be exempt from mandatory e-filing?

Answer:
Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. LAAC echoes the concerns of the working group that self-represented litigants may not have access to computers and may have difficulty filing documents electronically. Allowing self-represented parties to be exempt addresses many of the concerns about barriers to justice and the courts.

Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly because of their inability to access a computer or other required equipment such as a scanner, a printer, a modem, software to "save as" pdfs, etc., discomfort with composing and sending private personal information via a public library or court terminal, and a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented litigants may have to rely on public computer portals that do not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Many self-represented litigants also do not have access to an email address, or access to an email address that they can check regularly.

If a self-represented litigant opts in, there should be an opportunity to opt out later if the litigant discovers that electronic services of documents is not appropriate for that person. Accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion.

LAAC suggests that the opt-in form offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet.

Other Questions

All other questions below are only relevant if the Judicial Council does not adopt an exemption. If there is an opt-out, rather than an opt-in exemption, each court will have to ensure that all litigants' access to the courts is protected. Requiring an opt-out procedure further complicates litigants' experience with the courts as self-represented litigants must understand when to file a request before they've missed early deadlines.

Requiring an opt-out procedure will increase the burden on the courts because self-represented litigants will inevitably require individualized assistance and review or analysis. Additionally, some protections for self-represented litigants may need to be implemented, for example, tolling the time to file an answer while the litigant requests an opt-out.

LAAC is concerned about what may happen to the litigants' filing while the request to opt-out is pending. It must be considered filed as of the day of filing, otherwise a self-represented litigant would be required to file early and to approximate how long it would take the court to review and grant or deny the opt-out request.

Question:
If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?

Answer:
LAAC strongly urges the Judicial Council to adopt an exemption for self-represented parties. If self-represented litigants are not exempt, the procedure must be simple and easy to complete. LAAC recommends, as one procedural option, that any party who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, parties who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service."

However, if a litigant requests a fee waiver, she should be *allowed* to opt-in, but providing an automatic exemption for litigants filing a fee waiver could simplify the process. No fee waivers should be required to be filed electronically.

Question:
Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?

Answer:
If self-represented litigants must opt-out, the procedure must be simple. The "Request for Exemption From Electronic Filing and Service" meets that requirement.

Separate forms and procedures should be available for e-filing and e-service. It may be possible for someone to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home.

Question:
Are any more specific rules needed on fee or fee waivers than are currently provided?

Answer:
LAAC agrees with the recommendation of the working group to include the suggested language in rule 2.253(b) regarding permitting the court to charge only actual costs and requiring reasonable fees of the electronic filing service provider. Additionally, LAAC agrees that the fees must be waived when deemed appropriate by the court. This means that, if mandatory e-filing is required, the court must provide a free way to file documents or require electronic filing service providers to allow for no-fee transmissions.
Many self-represented litigants qualify for fee waivers and truly cannot afford the costs of litigation. If an attorney is able to represent them pro bono, it is important to keep the costs low despite the presence of an attorney. Pro bono clients remain responsible for the costs and passing on the cost of e-filing to

the client could mean that litigation is cost prohibitive for some legal services' poorest clients.

Additional concerns

Access for People with Disabilities:

LAAC is aware that Disability Rights Education and Defense Fund and other organizations have submitted a comment addressing accessibility issues. LAAC defers to the expertise of those groups in this area and reiterate four major concerns for e-filing and people with disabilities: (1) need to protect confidentiality of disability-related information, (2) need to include check-boxes for disability accommodation, (3) need to be compatible with specific access considerations, (4) need for coordination with California Rule of Court 1-100, which established procedures for persons with disabilities to request accommodation; and (5) need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers.

Language Access:

LAAC is also aware that the Legal Aid Foundation of Los Angeles and others plan to submit a comment addressing concerns with e-filing and litigants with limited English proficiency. LAAC would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California.

Any e-filing programs would ideally be provided in the primary languages spoken in California, including Spanish, Vietnamese, Korean, Mandarin/Cantonese, and Tagalog. At a minimum, the notice of the requirement to opt-in/opt-out must be provided in each of those languages so that litigants are aware of the requirement and can take steps to complete the proper form.

Phase in Courts Requiring Mandatory E-filing

LAAC recommends that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.

E-Service Concerns

As mentioned earlier, there must be an easy way for self-represented litigants to opt out of electronic service even after electronically filing early papers. Many self-represented litigants may have help filing out judicial council forms at a legal services limited scope clinic and may electronically file documents at that clinic. However, those litigants must be able to state in that process that they are not consenting to electronic service of all documents related to the case.

If a litigant does not opt-in to e-filing or opts out of it, service cannot be electronically; it must be "manually," even if an email is provided. The opt-out form should allow a litigant to opt-out of everything.

One suggestion is to change the opt-out form to have a #2, that allows the litigant to "opt-in" to certain things, such as only for filing or only for service or only for receipt of service, with an explanation for "receipt of service" that says "If I check this box, I understand that I must provide a valid email address, I must be able to check that email address regularly and I will not have additional time to respond to filings."

Pro Bono Clients and Legal Services Clients

In addition to self-represented parties, parties represented pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of filing. The clients represented by pro bono attorneys are essentially in the same situation as self-represented parties financially and added expenses may prevent access to the courts even for parties represented by pro bono attorneys.

LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analyzed.

Thank you for your consideration,

Salena Copeland
Directing Attorney
Legal Aid Association of California

Attachment B

January 25, 2013

Attn: Invitations to Comment
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Comments of IOLTA-Funded California Disability Advocacy Organizations re Proposed Mandatory E-Filing and E-Service Rules to Implement AB 2073
Item Number: W13-05

Submitted via Electronic Mail to *invitations@jud.ca.gov*

To Whom It May Concern:

On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we applaud the Court Technology and Civil and Small Claims Advisory Committees' efforts to craft an appropriate uniform rule to address issues related to electronic filing and electronic service in the state's trial courts. We appreciate this opportunity to offer the attached insights and recommendations in response to the Invitation to Comment ("Invitation").

Our four offices are either solely or significantly devoted to advancing and protecting the civil rights of people with disabilities. All signatories have an extensive presence in California, and are nationally recognized for their decades-long experience with and expertise in both federal and California disability civil rights law analysis. Additional description of each of the signatory offices, with complete addresses, is attached as Appendix A.

Respectfully submitted,

DRC by Catherine J. Blakemore, catherine.blakemore@disabilityrightsca.org
DREDF by Linda D. Kilb, lkilb@dredf.org
DRLC by Paula D. Pearlman, paula.pearlman@lls.edu
DRLC by Lani M. Sen Woltman, lani.woltmann@ills.edu
LAS-ELC by Claudia B. Center, center@las-elc.org

TABLE OF CONTENTS

General Principles & Recommendations

We begin by highlighting the following general principles and recommendations, which should undergird any Judicial Council e-filing and e-service rule:

- **Endorsement of other legal services community comments**

We are aware of the simultaneously submitted public comments being offered by the Legal Aid Association of California (LAAC) and other legal services commenters regarding the general impact of e-filing on legal services-eligible Californians.[1] We note our agreement with the insights and recommendations offered in those comments, and urge the Judicial Council's close attention to them. We write separately here to focus on the disability access issues within the scope of our collective expertise.[2]

---

[1] The California legal services system is empowered to offer free civil legal services to persons with incomes of 125% or less of the current federal poverty guidelines — meaning, generally, households with incomes from approximately $14,000 to $48,000 (depending on size of family). Additionally, the system is empowered to serve persons eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. See Cal. Bus. & Prof. Code § 6213(d). As consistently confirmed by decentennial U.S. census data, and other statistical data, there is a strong correlation between disability and poverty, as well as between disability and age.

People with disabilities are thus disproportionately eligible for California legal aid, and disproportionately likely to be among the low-income and disadvantaged parties that comprise the bulk of self-represented litigants. Concerns of relevance to legal aid-eligible and self-represented Californians are thus of particular relevance to people with disabilities.

See data available at http://www.census.gov/prod/2011pubs/p60-239.pdf; and http://www.cdc.gov/ncbddd/disabilityandhealth/data.html.

[2] To avoid redundancy, we do not address or duplicate comments as to "scope of cases covered," and issues of "fees and fee waivers," and "effective time of electronic filing and service." We recognize the critical importance of these issues to all attorneys and litigants, including attorneys and litigants with disabilities. But their implications are well-addressed in other submissions. We have no more specific insights to offer on those issues, beyond our general emphasis on the need to incorporate disability access mandates and principles into all aspects of any rule.

- **Recognition of multi-faceted impact of technology on disability access**

We commend the Judicial Council for recognizing that technological advances — including the availability of e-filing and e-service — can be highly beneficial to many attorneys and litigants.[3] Moreover, because they are disproportionally eligible for critical public cash, housing and health care benefits, those with lower incomes often have both more, and more important, interactions with government systems. In addition to turning to the courts for the myriad reasons that might bring any litigant before the bench, they are more likely to need to draw on the interpretive and enforcement powers of the state judiciary to secure and maintain those benefits and protect their housing. Wider availability of e-filing and e-service options can thus be a great boon to lower- income constituencies.

In a similar vein, in the upcoming rule the Judicial Council should explicitly recognize that technological advances can be highly beneficial for people with disabilities. Again, interactions with government and the state courts are often heightened for the disability community, which is disproportionately lower-income, and eligible for specific government benefits due to disability. Persons with disabilities that preclude or limit travel, limit functioning to certain times of day (e.g., due to endurance issues or effect of medication), or require extended or repeated information review can greatly benefit from automated services, electronic access, and the 24/7 cyber world. Indeed, there are many instances where use of technology is necessary — and therefore legally required under the disability rights laws discussed below — to eliminate disability access barriers.

However, unless designed and implemented with attention to a wide range of needs, new technologies can also create new access barriers. Again, this is true for

---

[3] This reality is noted in *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012)("*Advancing Access*"), which was referenced in the Invitation at 5. See *Advancing Access*, Principle 1 at 4 ("Remote services allow those with geographic, age, health, financial, or other restrictions to access the courts in a more comfortable fashion at their convenience.")

the population at large, as well as for various specific subpopulations.[4] New technologies have clear physical, policy and electronic access implications for people with disabilities. They raise specific variable concerns for people with mobility, manual, sensory and cognitive disabilities. There will be people who either cannot afford — or cannot find, because it does not yet exist — computer technology with the added adaptive features necessary to make it usable in light of particular individual disabilities.

The Judicial Council — and the implementing courts — are thus faced with a nuanced reality. Depending on the particular circumstance, attorney or litigant involved, true disability access requires both the availability of and right to use technology when it eliminates barriers, and the right to bypass technology when it creates barriers. The rule to be issued here must reflect both of these equally critical aspects of access.[5]

- **Need to explicitly recognize statutory disability rights mandates**

We commend the Invitation for demonstrating the Committees' awareness of the significance of e-filing and e-service issues, particularly for self-represented litigants, and the need to proceed thoughtfully in addressing these issues. To help underscore that significance, we urge the Judicial Council to explicitly identify federal[6] and state[7] statutory disability civil rights mandates in the upcoming uniform rules.

---

[4] See *Advancing Access*, Principle 3 at 7 ("But not everyone is able to afford these technologies or is comfortable using them."); and Principle 4 at 8 ("Considerations for those with special needs, those for whom English is not their first language, or those who might access such services from remote locations such as a library are critical in establishing an online service system that is equitable and usable.")

[5] See *Advancing Access*, Principle 1 at 1 ("[I]ntroduction of technology or changes in the use of technology must not reduce and should advance access or participation whenever possible."); and Principle 3 at 7 ("[I]t is important to design online systems in a way that is consistent with and complementary to the in-person experience.")

[6] Relevant federal mandates include Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, implemented by 28 C.F.R. §§ 42.501 et seq.

These mandates — which include entitlements to physical and communication access, and reasonable policy modification[8] — should be explicitly acknowledged and reflected in the specifics of any rules ultimately adopted.[9]

(relevant to all public and private recipients of federal financial assistance)("Section 504"); Title II of the Americans with Disabilities of 1990, as amended, 42 U.S.C. §§ 12131-12134, implemented by 28 C.F.R. Part 35 (relevant to public entities, including the California state court system)("ADA Title II"); and Title III of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12181-12189, implemented by 28 C.F.R. Part 36 (relevant to private entities offering goods or services, including privately owned and operated electronic filing service providers (EFSPs))("ADA Title III").

[7] Relevant state mandates include California Government Code Section 11135 (relevant to the state of California and any entity receiving state financial assistance)("Section 11135"); the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. ("the Unruh Act")(covering "all businesses of every kind whatsoever" in California); and the California Disabled Persons Act, Cal. Civ. Code §§ 54.1 et seq. ("the CDPA")(covering California "public accommodations"). Notably, all of these state statutes incorporate federal disability rights mandates as a floor of protection, but also establish independent California disability rights mandates that may exceed federal protections. See particularly Cal. Gov. Code §§ 11135(d)(2) and (d)(3).

[8] See, e.g., 28 C.F.R. §§ 35.149-35.152 (ADA Title II mandate for "program accessibility," addressing physical barriers); 28 C.F.R. §§ 35.160-35.164 (ADA Title II mandate for "communication access"); and 28 C.F.R. § 35.130(b)(7)(ADA Title II mandate for "reasonable modifications in policies, practices or procedures"). See also, 28 C.F.R. §§ 36.304-36.305, and 36.401-36.406 (ADA Title III mandates regarding physical access and barrier removal); 28 C.F.R. § 36.303 (ADA Title III mandate for "effective communication" and provision of "auxiliary aids and services") and 28 C.F.R. § 36.302 (ADA Title III mandate for "reasonable modifications in policies, practices or procedures"). See also Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, implemented by 29 C.F.R. § 35.130 and 36 C.F.R. Part 1194.

[9] AB 2073 (2012) itself made no explicit reference to disability rights statutes because it is, of course, not necessary for new legislation to reference existing laws with which it can be harmonized. However, it is important that more detailed implementing regulations offer explicit discussion of the ways in which pre-existing

- **Need to coordinate and align with CRC 1-100**

For consistency with previously implemented legal mandates, and to facilitate practical administration, the new rule should explicitly coordinate and align with existing California Rule of Court (CRC) 1-100. This existing rule states and implements the policy of the California courts to "ensure that persons with disabilities have equal and full access to the judicial system." CRC 1.100(b). It establishes procedures for persons with disabilities to request accommodation,[10] and broadly defines "accommodation" to include a range of adjustments likely to be of equal relevance to e-filing and e-service requirements. CRC 1.100(a)(3).[11] CRC 1-100

---

legal requirements have legal and practical relevance to new rules. It is particularly important here, where disability rights mandates clearly dictate or constrain particular aspects of this rulemaking.

[10] Specifically, requests for accommodation "may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally." CRC 1.100(c)(1). Requests "must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment." CRC 1.100(c)(2). The submission deadline is at least five court days before the requested implementation date, although the court may waive the requirement. CRC 1.100(c)(3). Requests are to be forwarded to the court's ADA coordinator. CRC 1.100(c)(1).

[11] Rule 1.100(a)(3) defines accommodations as "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation."

[12] Under the rule, requests for accommodation are to be forwarded to the court's ADA coordinator. CRC 1.100(c)(1). Upon submission, the court "must consider, but is

and related case law establishes that the California courts have an obligation to process, consider and clearly respond to accommodation requests.[12] Such requests may only be denied for specifically enumerated reasons.[13] There is also a review procedure to ensure that initial accommodation decisions comport with specified entitlements and requirements.[14]

- **Need to ensure confidentiality of disability-related information**

We again reference and endorse the insights and recommendations of other commenters as to general confidentiality concerns of relevance to all attorneys and litigants (particularly those who must rely on shared public computers for electronic access). But in addition, we emphasize the need for any e-filing and e-service protocols to reflect and preserve specific statutory privacy protections for disability-related information. Here again the rule should be coordinated and aligned with the already existing provisions of CRC 1.100.[15]

---

not limited by [the Unruh Act & the ADA] and other applicable state and federal laws" in determining "whether to grant an accommodation request or provide an appropriate alternative accommodation." CRC 1.100(e)(1). Failure to rule on a CRC 1.100 request creates structural error. *Biscaro v. Stern* (2d. App. Dist. 2010) 181 Cal.App.4th 702, 710.

[13] Specifically, the court may deny a request for an accommodation only when it determines that: (1) the applicant fails to satisfy the requirements of the rule; (2) the requested accommodations "would create an undue financial or administrative burden on the court;" or (3) the requested accommodation "would fundamentally alter the nature of the service, program, or activity." CRC 1.100(f); *In re Marriage of James M. and Christine J.C.* (4th App. Dist. 2008), 158 Cal.App. 4th 1261, 1273.

[14] Denials by non-judicial court personnel are subject to review by the presiding judge or designated judicial officer. Denials by the presiding judge or designated judicial officer are subject to review via petition for mandate. CRC 1-100(g).

[15] Specifically, CRC 1.100(c)(4) provides: "The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential

- **Need to recognize *physical* and *policy* — as well as *electronic* — components of technology access**

As noted by other commenters, there is a well-documented "digital divide," which refers to the lack of access that lower-income households have to various kinds of communication and information technologies. Because people with disabilities are disproportionately lower income, they are clearly affected by this general "divide," which has profound implications for equal access to the wide range of life activities that increasingly involve or depend on new technologies.

In particular, many low-income people with disabilities cannot afford personal computers, and thus will need to rely on shared, publically available computers to accomplish e-filing, or receive e-service.[16] For these constituencies, it is important to recognize that technology access involves not just *cyberspace* (and the software used to reach it), but also *physical* space, and the *policies* that govern such space. Certainly the public and private entities offering shared public computers have their own legal obligations to ensure the accessibility of those computers.[17] But the new rule — and the implementing courts — must also recognize that California courts have their own *independent* legal obligations to ensure the accessibility of shared public computers, to the extent that they rely on them as an integral part of the delivery of court programs involving e-filing and e-service activities.[18]

---

information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation."

CRC 1.100 (g)(3) additionally mandates that "confidentiality of all information of the applicant concerning the request for accommodation and review under [CRC 1.100] (g)(1) or (2) must be maintained as required under [CRC 1.100] (c)(4)."

[16] *See Advancing Access*, Principle 2 at 6 (Self-represented litigants "are likely to access court systems from home, public libraries, legal aid offices, and court self-help centers. Security precautions and registration requirements may need to be tailored to make accessing online court services from these locations feasible and secure.")

[17] See the disability civil rights law mandates cited above at nn.6-8.

[18] See, e.g., 28 C.F.R. § 35.130(b)(1) (prohibiting ADA Title II public entities such as California courts from engaging in disability discrimination "directly or through contractual, licensing, or other arrangements" when providing "any aid, benefit or service"). See also *Armstrong v. Schwarzenegger* (9th Cir. 2010) 622 F.3d. 1058.

The e-filing and e-service rule must anticipate that many litigants will turn to shared public computers available at public libraries, public and private law libraries, court self-help centers, and legal services offices. As judicially-related e-communication becomes more prevalent (and particularly to the extent mandated), courts may also move to providing shared public computers in clerk's offices or court buildings. All of these sites must be anticipated by the rule.

- **Physical access concerns**

It is critically important for any e-filing and e-service rule to recognize that the following *location* and *hardware-related* features of the buildings housing shared public computers are necessary to ensure disability-accessibility:

- proximity to disability-accessible public transit and paratransit service areas;

- availability of disability-accessible parking;

- unobstructed, disability-accessible path-of-travel from the outside of the building to the location of the shared public computer;

- disability-accessibility of public restrooms serving the facility; and

- unobstructed, disability-accessible workspace around the shared public computer (e.g., sufficient under-table clearance for persons using wheelchairs, computer screen sight-lines accessible to persons using wheelchairs, and appropriate positioning of hardware for people with limited manual dexterity).

- **Policy access concerns**

The rule must also recognize the ways in which the following related *policies* are necessary to ensure disability-accessibility:

- sufficient open hours on different days of the week, and different hours of the day, (particularly important to people with disabilities that affect ability to undertake tasks at certain times (e.g. morning medication grogginess); people with time-restricted access to accessible transit; and

people with cognitive disabilities who require extended or repeated access to e-communications);

- availability and willingness of staff to remove obstructions and reposition computer hardware as needed; and

- availability and willingness of staff to modify other standard rules, practices or protocols (e.g., permitting extended or repeated access to computers; permitting presence of companions or service animals; accepting alternative forms of identifications for people whose disabilities preclude obtaining a drivers' license).

♦ **Electronic access concerns**

In addition, the rule must ensure the disability-accessibility of the *electronic* aspects of the e-filing and e-service experience. This includes all relevant software and website features, and electronic interfaces, and needs to encompass all of the disability-specific access concerns highlighted below (e.g., ensuring compatibility with visual captioning of aural content, amenability to review via screen reader technology, ability to bypass visual "CAPTCHA" challenge-response tests, ability to bypass "timeout" barriers that penalize those not able to respond quickly to instructions).

♦ **Need to decouple e-filing and e-service**

The access issues that arise in connection with e-filing and e-service are sufficiently distinct and unique that they should be decoupled in the rule. E-filing involves affirmative contact with the court at the initiation of attorneys and litigants. In contrast, e-service may occur at the initiation of the court or opposing parties. In contrast to e-filers, who can choose the date and time of their communications, e-service recipients are not necessarily on notice that the communication will be coming or available at a specific date or time. Such uncertainty creates particular barriers for those who must rely on shared public computers. There may well be instances where an attorney or litigant would benefit from an e-filing option, but will not be able to successfully access e-service in an efficient or timely manner. Additionally, there may be instances where an attorney or litigant can effectively access e-service, but will have barriers to e-filing (for example, parties with home computers may be set up to receive and review incoming documents, but lack the ability to submit outgoing documents due to disability-specific access barriers of the kind identified below). The

rule should ensure that e-filing and e-service obligations and entitlements are addressed separately, so that where appropriate an attorney or litigant can e-file but avoid e-service, or vice versa, as needed.

- **Strong recommendation for exclusively "opt-in" process**

We again reference and endorse the insights and recommendations of other commenters as to the importance of implementing an "opt-in" (rather than "opt-out") process. This is particularly important to attorneys and litigants with disabilities, given the additional unique physical, policy and technology issues that affect disability-accessibility. ***We strongly urge the Judicial Council to avoid a "mandatory opt-out" requirement.***

- **Need for appropriate pre-conditions for any mandatory "opt-out" process**

At a minimum, if any type of "mandatory opt-out" requirement is still contemplated, it should be issued and implemented *only* under the following conditions:

-it should be rolled out in stages, beginning with "attorneys only", with a specified timeline and process in place to evaluate the first stage experience before it is expanded;

-any subsequent expansion to self-represented litigants should be pilot-tested in a limited region for a limited period of time, again with specified timeline and process in place for evaluation; and

-the rule should explicitly state — and in implementation all courts should be similarly explicit — that existence of *physical*, *policy* or *electronic* barriers to disability-accessibility are an appropriate basis for exemption.

♦ **Need for appropriate exemptions process**

Regardless of whether the rule specifies an "opt-out" or "opt-in" process — but particularly in the event the Judicial Council decides to proceed with "opt-out" — the rule must include a clear exemptions process that should have all of the following features:

- compliant with federal and state disability civil rights law requirements;
- coordinated and aligned with the existing provisions of CRC 1.100;
- clearly and sufficiently detailed as to all aspects of the process (including eligibility requirements; timelines and mechanisms for submitting requests and issuance of decisions; identification of initial screener(s) authorized to rule on exemption requests; and identification of oversight process for review of initial decisions); and
- clearly memorialized, widely distributed and easily available in multiple accessible formats relevant to people with various disabilities.

♦ **Need for technology access advisory resources**

Technology is currently developing and changing with enormous speed, and all iterations of technology affect people with different disabilities in variable and complex ways. Any e-filing and e-service rule will be adopted and implemented against the backdrop of this dynamic reality. While AB 2073 and the Judicial Council have generally recognized this reality, there has not yet been specific outreach as to, and consideration of, technical issues and standards of potential relevance to the disability-accessibility of expanded e-filing and e-service requirements. We thus strongly recommend that the Judicial Council undertake the following activities before and in connection with issuing the upcoming rule:

- solicit specific public comment on disability access issues (including outreach in multiple accessible formats to disability community organizations throughout California);

- retain and consult experts with technical knowledge of disability access issues (including all of the access issues identified in this comment) to advise the Judicial Council in the crafting of this rule;[19]
- direct courts implementing the rule to retain and consult experts with technical knowledge of disability access issues (including all of the access issues identified in this comment); and

- invite participation of users with disabilities in technical system design and testing.[20]

Experience has demonstrated that entities that fail to incorporate appropriate technical expertise into new online rollouts frequently end up with disability-inaccessible systems that ultimately prove more costly. Particularly when overall cost is a concern, it is far preferable for entities to pay for and incorporate appropriate advice at the design and testing stage, rather than face exposure to the more expensive legal and retrofit costs that result when systems are rolled out without appropriate disability accessibility.[21]

♦ **Need for ongoing feedback mechanisms**

The upcoming e-filing and e-service expansion will be novel and complex in its own right. It will also be affected by the ongoing broader patterns of technology

---

[19] We note that commitment to obtain the services of technical experts comports with *Advancing Access*, Principle 1 at 4 (Recognizing that goal to ensure access and fairness "includes building accessible websites and tools as well as providing content in multiple languages."). We would be happy to recommend appropriate experts.

[20] See *Advancing Access*, Principle 4 at 8 ("[T]he overall suite of solutions should provide multiple services or layered services that meet the needs of a broad range of court users. An important way to ensure that systems meet user requirements is to have users participate in system design and testing before launch.")

[21] As one recent example, we cite to the disability access failures that attended the Secretary of State's September 2012 launch of the California Online Voter Registration (COVR) website. More information about voting access available at http://www.disabilityrightsca.org/news/2012_newsabout%20us/pressrelease%202012-09-25%20Voting.htm.

development. As the Judicial Council has already recognized, this means that the rule and the implementing courts must be attentive not only to user insights, but also to technology changes that will occur over time.[22] The rule should establish clear and detailed feedback mechanisms to permit modifications as necessary, and to ensure its real-world workability over time.[23]

Comments as to Proposed Forms

- **Should include separate forms for e-filing and e-service**

Consistent with the decoupling recommendation discussed above, the proposed forms should be amended to include separate forms related to e-filing and e-service, respectively. The proposed order form should similarly be amended to decouple documentation of rulings as to e-filing and e-service. We recognize that as drafted the forms seem to allow for the possibility of distinct requests and ruling as to e-filing and e-service. However, many self-represented litigants — particularly those both unfamiliar with legal terminology and lacking in computer skills — can be reasonably expected to be confused about the difference between these two activities. Combining the two in the same request form and order also creates a greater risk that courts will fail to appropriately consider e-filing and e-service independently.

- **Should include specific check-boxes for disability accommodation**

Both the e-filing and e-service forms should include a check-box specific to disability accommodations. They could explicitly read, respectively, "I do not have computer or Internet access to e-file because of my disability" and "I do not have

---

[22] See *Advancing Access*, Principle 3 at 7 ("Newer, more advanced technologies are appearing in the marketplace at an astonishing rate."); and Principle 10 at 16 ("With the rapid state of innovation and the corresponding evolution in people's expectations of what they can do with technology, courts must consider future change and growth with any technology project. Building a technology infrastructure that can grow and adapt is critical to the sustainability and evolution of online services.")

[23] See *Advancing Access*, Principle 2 at 5 (the "framework of policies, laws, and rules supporting e-filing will need to evolve"); and Principle 2 at 6 ("implications regarding access will evolve and so should court policies.")

computer or Internet access for e-service because of my disability." The order forms should also have corresponding a check-box, reading, respectively "The court grants the application for exemption from e-filing as a disability accommodation," and "The court grants the application for exemption from e-service as a disability accommodation."

- **Should be "fillable"**

The final forms available to the public must be "fillable," so there is no need to print the form as hard-copy and input requested information on a hard-copy form.

- **Should be compatible with specific access considerations below**

All software and website features, and electronic interfaces, relevant to the forms must be disability-accessible, and form accessibility needs to encompass all of the disability-specific access concerns highlighted below.

Comments as to Specific Access Considerations

- **Access for people with mobility disabilities**

  Examples of barriers include:
  -reach ranges for controls
  -viewing angles of controls, displays or information
  -heights of work surfaces
  -size, placement, slope and surface of path of travel and clear floor space

- **Access for people with manual dexterity disabilities**

  Examples of barriers include:
  -objects required for interaction (styli, card swipes, keypads, mobile devices) that are hard to retrieve, hold, position, manipulate, and stow
  -keypads and buttons (physical or on-screen) that are small or require precision to operate or don't work with prosthetic devices
  -input mechanisms that time out

- **Access for people with vision disabilities**
  Examples of barriers include:
  -touch screen interfaces without audio and tactile input options
  -visual (on-screen or printed) information without audio, tactile, large print, or high contrast output options
  -video information without audible description
  -biometric authorization, authentication, or identification mechanisms that depend on retina or iris
  -input mechanisms that time out
  -untagged visual images
  -lack of text-only versions
  -posting of documents in PDF versions that are not searchable or readable by screen readers
  -lack of HTML structure
  -presence of inaccessible pop-up windows

- **Access for people with hearing disabilities**
  Examples of barriers include:
  -audio or video information that is not captioned or otherwise available in visual format
  -audio information without volume control
  -hearing aid interference

- **Access for people with cognitive and learning disabilities**
  Examples of barriers include:
  -content, authorization/authentication systems, and navigational controls that are complicated, lack simple cues, or use multiple media at the same time

Conclusion

Again, we commend the Invitation for demonstrating the Committees' awareness of the significance of e-filing and e-service issues, particularly for self-represented litigants, and the need to proceed thoughtfully in addressing these issues. We would be happy to serve as a further resource to the Judicial Council as to the recommendations memorialized in this comment.

APPENDIX A:

(Descriptions of Signatory Offices)

Disability Rights California (DRC) (formerly Protection & Advocacy) is a private non-profit agency established under federal law to advance the rights of Californians with disabilities. DRC receives California IOLTA funding as a qualified legal services project. Contact via Catherine J. Blakemore, Esq., Executive Director, Disability Rights California, 1831 K Street, Sacramento, CA 9581, catherine.blakemore@disabilityrightsca.org

Disability Rights Education & Defense Fund (DREDF) is a national nonprofit law and policy center founded in 1979 by adults with disabilities and parents of children with disabilities, dedicated to advancing and protecting the civil rights of people with disabilities. DREDF receives California IOLTA funding as the Support Center offering disability rights expertise to the California legal services system. Contact via Linda D. Kilb, Esq., Director, DREDF IOLTA Support Center Program, Disability Rights Education & Defense Fund, 3075 Adeline Street, Suite 210, Berkeley, CA 94703, lkilb@dredf.org

Disability Rights Legal Center (DRLC) has worked to implement the civil rights of people with disabilities for over 35 years. DRLC is the oldest cross-disability legal advocacy organization in the country, championing the rights of people with disabilities through education, advocacy and litigation. DRLC provides assistance through its four programs: Civil Rights Litigation Project, Cancer Legal Resource Center, Education Advocacy Project, and Community Advocacy Program, and receives California IOLTA funding as a qualified legal services project. Contact via Paula D. Pearlman, Esq, Executive Director, Lani M. Sen Woltmann, Esq., Pro Bono Director, Disability Rights Legal Center, 800 South Figueroa Street, Suite 1120, Los Angeles, CA 90017, paula.pearlman@lls.edu, and lani.woltmann@ills.edu

Legal Aid Society–Employment Law Center (LAS-ELC) is a nonprofit, legal services organization that has been assisting California's low-income working families for more than 90 years. LAS-ELC has a Disability Rights Program specifically dedicated to disability rights law issues. LAS-ELC receives California IOLTA funding as a qualified legal services project. Contact via Claudia B. Center, Esq., Director, Disability Rights Program, Legal Aid Society-Employment Law Center180 Montgomery Street, Suite 600, San Francisco, CA 94104, center@las-elc.org

ADMINISTRATIVE OFFICE OF THE COURTS

LEGAL SERVICES OFFICE

Proceedings in Which Official Shorthand Court Reporters Are Required or May Be Required

October 2012

General categories of case types are listed below, followed by specific proceedings within those categories.

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
Unlimited Civil	Yes, on the order of the court or at the request of a party[1] (Code Civ. Proc., §§ 269(a)(1) and 274a.)	No
Felony Criminal	Yes, on order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant[2] (Code Civ. Proc., §§ 269(a)(2) and § 274a; Gov. Code, § 69952; Pen. Code, § 869.)	No
Family Law	Yes, at the court's discretion	No

[1] Each court must adopt a local policy enumerating the departments in which the services of official court reporters are normally available. (Cal. Rules of Court, rule 2.956(b)(1).) Unless the court's policy states that all courtrooms normally have the services of official court reporters available for civil trials, the court must require that each party file a statement before the trial date indicating whether the party requests the presence of an official court reporter. (Cal. Rules of Court, rule 2.956(b)(3).) If a party requests the presence of an official court reporter and it appears that none will be available, the clerk must notify the party of that fact as soon as possible before the trial. (*Id.*) Additionally, if the services of an official court reporter will not be available during a hearing on law and motion or other nontrial matters in civil cases, that fact must be noted on the court's official calendar. (Cal. Rules of Court, rule 2.956(b)(4).) When the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange, at its own expense, for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. (Cal. Rules of Court, rule 2.956(c).)

[2] Government Code section 69952's enumeration of the circumstances where the court may require an official court reporter overlaps with Code of Civil Procedure section 269. Government Code section 69952 provides, in pertinent part, that the court may specifically direct the making of a verbatim record in the following cases: criminal matters, juvenile proceedings, proceedings to declare a minor free from custody, proceedings for involuntary civil commitment, and "as otherwise provided by law." Government Code section 69952(b) states, in part: "Except as otherwise authorized by law, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Section 269 of the Code of Civil Procedure. . . ." Government Code section 69953 states, in part:

> In any case where a verbatim record is not made at public expense pursuant to Section 69952 or other provisions of law, the cost of making any verbatim record shall be paid by the parties in equal proportion; and either party at his option may pay the whole. In either case, all amounts so paid by the party to whom costs are awarded shall be taxed as costs in the case. The fees for transcripts and copies ordered by the parties shall be paid by the party ordering them.

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	
Probate	Yes, at the court's discretion (Code Civ. Proc., § 274a.)	No
Juvenile	Yes, required in proceedings conducted by a juvenile court judge, or juvenile court referee (Code Civ. Proc., § 274a; Gov. Code, § 69952; Welf. & Inst. Code, §§ 347 and 677; Cal. Rules of Court, rules 5.532, 5.536(b), and 5.538(a).)	No
Limited Civil	Yes, on the order of the court or at the request of a party (Code Civ. Proc., § 269(a)(1).)	Yes (Gov. Code, § 69957(a).)[3]
Involuntary Civil Commitment	Yes, at the court's discretion	No

[3] Government Code section 69957(a) states, in part:

> If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge.

Further, Government Code section 69957(b) states that courts may use electronic recording equipment "for the internal personnel purpose of monitoring the performance of subordinate judicial officers . . . hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance shall not be used for any other purpose and shall not be made publicly available."

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	(Gov. Code, § 69952; Code Civ. Proc., § 274a.)	
Criminal Misdemeanor/ Infraction	Yes, at the court's discretion (Code Civ. Proc., § 269(a)(3).) In addition, on defendant's request, the court must provide a method for creating a verbatim record of oral proceedings (*In re Armstrong* (1981) 126 Cal.App.3d 565, 574.)	Yes (Gov. Code, § 69957(a).)
Traffic	Yes, at the court's discretion (Code Civ. Proc., § 269(a)(3).) In addition, on defendant's request, the court must provide a method for creating a verbatim record of oral proceedings. (*In re Armstrong* (1981) 126 Cal.App.3d 565, 574.)	Yes (Gov. Code, § 69957(a).)
Small Claims	No "The hearing and disposition of the small claims action shall be informal, the object being to dispense justice promptly, fairly, and inexpensively." (Code Civ. Proc., § 116.510.)	Yes (Gov. Code, §69957(a); Code Civ.Proc., § 87; *General Electric Capital Auto Financial Services, Inc. v. Appellate Division* (2001) 88 Cal.App.4th 136, 138.)
Small Claims Appeals	No	N/A

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	"The hearing on an appeal to the superior court shall be conducted informally." (Code Civ. Proc., § 116.770(b).)	

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
CRIMINAL		
Case in which death sentence may be imposed	Yes "In any case in which a death sentence may be imposed, all proceedings conducted in the superior court, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present." (Pen. Code, § 190.9(a)(1).)	No
Hearing before magistrate after arrest of defendant who has threatened to commit an offense	Yes, at the discretion of the magistrate "When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence shall be reduced to writing and subscribed by the witnesses. The magistrate may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witnesses shall be authenticated in the form prescribed in Section 869." (Pen. Code, § 704.)	No
Oral statement under oath of probable cause for arrest by a peace officer	Yes "The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court."	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Pen. Code, § 817(c)(1).)	
Testimony in homicide case	Yes "The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction . . ." (Pen. Code, § 869.)	No
Criminal cause investigated before the grand jury	Yes "Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented." (Pen. Code, § 938(a).)	No
Plea made in open court	Yes "Every plea must be made in open court and, may be oral or in writing, shall be entered upon the minutes of the court, and shall be taken down in shorthand by the official reporter if one is present. All pleas of guilty or nolo contendere to misdemeanors or felonies shall be oral or in writing." (Pen. Code, § 1017.)	No, except in misdemeanor or infraction case (Gov. Code, § 69957(a).)
Court's oral instructions in criminal trial	Yes "All instructions given shall be in writing, unless there is a phonographic reporter present and he takes them down, in which case they may be given orally; provided	No, except in misdemeanor or infraction case

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	however, that in all misdemeanor cases oral instructions may be given pursuant to stipulation of the prosecuting attorney and counsel for the defendant." (Pen. Code, § 1127.)	(Gov. Code, § 69957(a).)
Examination by magistrate of person seeking a warrant and any witnesses the person may produce	Yes "The oath shall be made under penalty of perjury and recorded and transcribed." (Pen. Code, § 1526(b)(1).)	No
In camera hearing in a criminal proceeding (outside the presence of the defendant and his counsel) on whether to disclose the identity of the informant	Yes "A reporter shall be present at the in camera hearing." (Evid. Code, § 1042(d).)	No, except in misdemeanor or infraction case (Gov. Code, § 69957(a).)
In camera hearing on motion to exclude the public from any portion of a criminal proceeding to prevent disclosure of trade secrets	Yes "A court reporter shall be present during the hearing." (Evid. Code, § 1062(b).)	No, except in misdemeanor or infraction case (Gov. Code, § 69957(a).)
Any opinion given or rendered by the judge in the trial of a felony case	Yes, at the court's discretion "Any judge of the superior court may have any opinion given or rendered by the judge in the trial of a felony case . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
CIVIL		
Any necessary order, petition, citation, commitment or judgment in any proceeding concerning new or additional bonds of county officials	Yes, at the court's discretion "Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any . . . proceeding concerning new or additional bonds of county officials . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court." (Code Civ. Proc., § 274a.)	No
Any opinion given or rendered by the judge in the trial of an unlimited civil case	Yes, at the court's discretion "Any judge of the superior court may have any opinion given or rendered by the judge in the trial of . . . an unlimited civil case, pending in that court . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court." (Code Civ. Proc., § 274a.)	No
Court's ruling on motion for summary judgment	Yes, at the court's discretion "Upon denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order." (Code Civ. Proc., § 437c.)	
Party's objections to evidence in the papers on a motion for summary judgment	Yes, at the party's option "A party desiring to make objections to evidence in the papers on a motion for summary judgment must either: (1) Submit objections in writing under rule 3.1354; or (2) Make arrangements for a court reporter to be present at the hearing. (Cal. Rules of Court, rule 3.1352.)	No
Pre-voir dire conference	Yes "Before the examination the trial judge should, outside the prospective jurors' hearing and with a court reporter present, confer with counsel, at which time specific questions or areas of inquiry may be proposed that the judge in his or her discretion may inquire of the jurors. Thereafter, the judge should advise counsel of the questions or areas to be inquired into during the examination and voir dire procedure. The judge should also obtain from counsel the names of the witnesses whom counsel then plan to call at trail and a brief outline of the nature of the case,	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	including any alleged injuries or damages and, in an eminent domain action, the respective contentions of the parties concerning the value of the property taken and any alleged severance damages and special benefits." (Cal. Rules of Court, rule 3.25.)	
View by trier of fact of property which is the subject of litigation, place where any relevant event occurred or any object, demonstration, or experiment, a view of which cannot with reasonable convenience be viewed in the courtroom	Yes, to the same extent as proceedings in the courtroom "On such occasion, the entire court, including the judge, jury, if any, court reporter, if any, and any necessary officers, shall proceed to the place, property, object, demonstration, or experiment to be viewed. The court shall be in session throughout the view. At the view, the court may permit testimony of witnesses. The proceedings at the view shall be recorded to the same extent as the proceedings in the courtroom." (Code Civ. Proc., § 651.)	N/A
Proceedings concerning involuntary civil commitment	Yes at the judge's discretion "The court may specifically direct the making of a verbatim record . . . in the following cases: . . . Proceedings under the Lanterman-Petris-Short Act . . ." (Gov. Code, § 69952(a)(4).)	No
FAMILY LAW		
Hearing, attended by conference call, on contested motions in dissolution of marriage/legal	Yes "A court-ordered case management plan, as stipulated by the parties, may include all of the following: . . . Use of telephone conference calls for	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
separation proceedings	hearing contested motions. These conference call hearings shall be recorded by a court reporter." (Fam. Code, § 2451(e).)	
Hearing on motion or petition to withdraw consent to stepparent adoption	Yes "At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury." (Fam. Code, § 9005(d).)	No
Testimony or judgment relating to the custody or support of minor children	Yes at the judge's discretion "Any judge of the superior court may have . . . the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court." (Code Civ. Proc., § 274a.)	No
JUVENILE		
Any necessary order, petition, citation, commitment or judgment in any juvenile court proceeding	Yes, at the judge's discretion "Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any . . . juvenile court proceeding . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	
Juvenile court dependency hearings conducted by a juvenile court judge	Yes "At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall . . . take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing." (Welf. & Inst. Code, § 347.)	No
Juvenile court dependency hearings conducted by a juvenile court referee	Yes, at the court's discretion "At any juvenile court hearing . . . conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing . . ." (Welf. & Inst. Code, § 347.)	No
Testimony of minor in chambers in juvenile court dependency hearing	Yes "After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents." (Welf. & Inst. Code, § 350(b).)	No
Juvenile court hearings involving wards of the court conducted by a juvenile court judge	Yes "At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall . . . take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing . . . "	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Welf. & Inst. Code, § 677.)	
Juvenile court hearings involving wards of the court conducted by a juvenile court referee	Yes, at the court's discretion "At any juvenile court hearing . . . conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all personal appearing at the hearing . . ." (Welf. & Inst. Code, § 677.)	No
PROBATE		
Any necessary order, petition, citation, commitment, or judgment in any probate proceeding	Yes, at the judge's discretion "Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any probate proceeding . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court." (Code Civ. Proc., § 274a.)	No

Attachment C

Legal Aid Foundation of Los Angeles

API Unit
1102 Crenshaw Boulevard
Los Angeles, CA 90019
Phone: (323) 801-7989
Fax: (323) 936-6898
www.lafla.org

Other Office Locations:

Central Office, 1550 W. 8th Street, Los Angeles, CA 90017 T: (213) 640-3881
East Los Angeles Office, 5228 Whittier Boulevard, Los Angeles, CA 90022 T: (213) 640-3883
Long Beach Office, 601 Pacific Avenue, Long Beach, CA 90802 T: (562) 435-3501
Santa Monica Office, 1640 5th Street, Suite 124, Santa Monica, CA 90401 T: (310) 899-6200
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003 T: (213) 640-3950
West Office, 1102 Crenshaw Boulevard, Los Angeles, CA 90019 T: (323) 801-7989

Writer's Direct Line (323) 801-7976

Our File Number 00-00001402

January 25, 2013

Attn: Invitations to Comment
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Submitted via electronic mail to *invitations@jud.ca.gov*

Re: Proposed Mandatory E-Filing: Uniform Rules to Implement AB 2073, Item Number: W13-05

To Whom It May Concern:

On behalf of the Legal Aid Foundation of Los Angeles (LAFLA), we provide these comments to the Judicial Council as it considers the implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants.

We would like to recognize the public comments offered by the Legal Aid Association of California (LAAC); State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS); California Commission on Access to Justice; and various other legal services and advocacy groups addressing the general impact of this rule, issues related to fee waivers, limited scope representation, disability access and other concerns facing legal services-eligible Californians. We note our agreement with the insights and recommendations offered in those comments and urge the Judicial Council's close attention to them.

LAFLA comments here separately to focus on language access issues within the scope of our experiences and expertise with limited-English proficient (LEP) litigants and communities. Through our six community offices, court-based clinics and self-help centers, multi-lingual hotlines, and community-based clinics, LAFLA provides free direct legal services to over 14,000 people annually and assists an additional 55,000 become more knowledgeable about their legal rights.

Introduction

California is a state that is racially, ethnically, and linguistically diverse. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally.[1] Californians speak over 220 languages[2] and 43 percent of Californians speak a language other than English in their homes.[3] The top five primary languages spoken at home after English include Spanish (8.1 million speakers), Chinese (815,386 speakers), Tagalog (626,399 speakers), Vietnamese (407,119 speakers), and Korean (298,076 speakers).[4] While the wide variety of languages spoken in the state enriches California culturally, individuals who speak other languages at home may also be limited-English proficient (LEP). In fact, approximately 6 million Californians "experience some difficulty speaking English," with "roughly 40% of Latinos and Asians overall and half of certain Latino and Asian ethnic groups being LEP."[5]

Limited-English proficiency impacts one's "ability to access fundamental necessities such as employment, police protection, and healthcare."[6] While underrepresented groups among native English speakers often face similar challenges, these challenges are compounded for LEP individuals who must also contend with an incredible language barrier. Thus, unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California.[7]

As the California Commission on Access to Justice observed in its 2005 report, "[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and

---

[1] *See* U.S. Census Bureau, "State & County QuickFacts," available at: http://quickfacts.census.gov/qfd/states/06000.html (listing 2007-2011 figures for foreign-born individuals).
[2] *See* California Commission on Access to Justice, "Language Barriers to Justice in California" at 1 (2005), available at: http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216
[3] *See* U.S. Census Bureau, "State & County QuickFacts," available at: http://quickfacts.census.gov/qfd/states/06000.html (listing percentage of people over age 5 speaking language other than English at home, 2007-2011).
[4] Asian Pacific American Legal Center of Southern California and APIAHF, "California Speaks: Language Diversity and English Proficiency by Legislative District" at 5 (2009), available at http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf
[5] *Id.* at 6.
[6] *Id.* at 2.
[7] *See* U.S. Census Bureau, American Fact Finder, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1603&prodType=table (listing characteristics of people by language spoken at home, 2011 American Community Survey 1-Year Estimates).

therefore cannot rely on an attorney to ensure they understand the proceedings."[8] The report notes that approximately 7 million Californians "cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter."[9] To ensure that the California state court system is promoting justice for all Californians regardless of language ability, issues concerning language access and limited-English proficiency in the courts must be addressed in light of the proposed rule change concerning mandatory electronic filing and service.

Legal Background and Mandates

Safeguards protecting limited-English proficient individuals in accessing the courts can be found in both state and federal statutes. California Government Code §§ 11135, *et seq.* and its accompanying regulations provide that no one shall be "denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of "linguistic characteristics".[10]

Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin, which has been interpreted to include meaningful language access.[11] As recipients of federal financial assistance, California courts are subject to the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts, and on June 18, 2002 issued guidance to recipients of such funding detailing these mandates. This guidance is clear that language access to litigants be provided both inside and outside the courtroom.[12] The DOJ has

---

[8] "Language Barriers to Justice" at 1.
[9] *Id.*
[10] California Government Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).
[11] 42 U.S.C. § 2000d (2004); *Lau v. Nichols*, 414 U.S. 563, 568-569 (1974) ("Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations.").
[12] 67 Fed. Reg. 41455-41471 (2002).

released a number of guidance letters to recipients on this issue, including one on August 16, 2010, making it clear that Title VI requires state courts to provide free interpreter services in all civil, criminal, and administrative proceedings.[13] This mandate is also for services outside the courtroom, as well:

> Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriffs offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.[14]

Therefore, any implementation of new requirements mandating electronic filing and electronic service must take into consideration the needs of LEP litigants at every stage of the court process.

Overview of Key Issues Affecting LEP Litigants and Communities

We do not wish to duplicate comments on general topics concerning low-income, legal services-eligible individuals and court access, as these are well-documented in other comments submitted by the organizations referenced above. We want to emphasize that the needs of and mandates regarding LEP litigants must be incorporated into all aspects of any rule. The points below highlight and support some key areas that we believe are especially critical for LEP litigants and communities.

1. Certain Populations Should Be Automatically Exempted, Not Forced to Opt-Out

We strongly support the comments of other organizations in recommending that self-represented litigants be automatically exempt, but

[13] www.lep.gov/final_courts_ltr_081610.pdf
[14] *Id.*

able to "opt-in" if they choose to electronically file documents. Self-represented litigants may not have access to computers and may have difficulty filing documents electronically. This is particularly true for litigants with limited-English proficiency, who are more likely than English-speaking litigants to be living in poverty and face more barriers to accessing the courts.

Many self-represented litigants lack access to technology and even if such technology is provided by the courts or public access areas, those who are LEP will experience even more confusion attempting to navigate unfamiliar equipment and terminology. Litigants may have to learn how to use scanners, printers, modems, software to "save as" PDFs, etc., as well as compose and send private personal information via a public library or court terminal. LEP litigants are more likely to lack comprehension regarding how to send and confirm transmittal of an electronic document, which could greatly impede these litigants from having their cases fairly presented and heard.

Forcing self-represented litigants to opt-out would be overly burdensome. In many immigrant communities, there is already a pervasive problem with many LEP self-represented litigants seeking assistance from unscrupulous notarios and brokers, who charge exorbitant fees to assist individuals with form preparation, which is usually very poor quality. Placing further burdens and barriers on the low-income LEP population would only create new opportunities for these notarios and brokers to take advantage of litigants facing desperate situations.

If there is no exemption for all self-represented litigants, certain types of cases should be exempted, such as domestic violence restraining order proceedings, civil harassment restraining order proceedings, elder abuse cases, unlawful detainer proceedings, and all family law cases. These cases have an overwhelming number of self-represented litigants and critical issues at stake, including fundamental rights regarding the care of minor children and relief from abuse. The recent Elkins Family Law Task Force's Final Report and Recommendations, released in April 2010 by the Judicial Council of California Administrative Office of the Courts, found that in many communities, more than 75% of family law cases have at least one self-represented litigant. In many immigrant LEP communities, underreporting of domestic violence is a serious problem, and imposing additional requirements may serve as further impediments for victims

seeking needed protection.[15]

2. Notice of the Exemption and Opt-In/Opt-Out Process Should be Made Clear

If there is an exemption, the exemption and opt-in process should be made very clear so that self-represented litigants understand that it is not mandatory for them. This is especially important for LEP litigants. As detailed further below, we recommend that any notices and outreach regarding new court policies should be translated into the top five most widely spoken non-English languages in each county. Further, court staff who are bilingual or have access to interpretive services should be available to explain any new rules to LEP litigants.

Further, if a self-represented litigant opts-in, there should be an opportunity to opt-out later if the litigant discovers that electronic filing or service of documents is not appropriate for that person. Accessing electronically served documents in public libraries, borrowed computers, smart phones, or dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion. Any opt-in forms should offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet.

Many low-income litigants also obtain attorneys for limited periods and often go in and out of being self-represented. This is very common with LEP litigants because they often cannot understand their court filings, cannot obtain qualified interpreters for their hearings, or access traditional legal services. As a result, they may hire an attorney for one hearing or limited scope, and then be self-represented again. There must be a meaningful way for these litigants to opt-out easily if this occurs. For example, a represented party who has consented to e-filing and e-service but becomes unrepresented should be exempt from that point on unless they opt-in and/or become represented again. The Substitution of Attorney – Civil form should be modified to include an opt-out box to check, so that

[15] National Asian Women's Health Organization, "Silent Epidemic: A Survey of Violence Among Young Asian American Women." 2002, p. 9.

both the court and other parties are aware that the self-represented litigant is no longer subject to e-filing or e-service. If an LEP litigant, now self-represented, is unaware that she must e-file and receive e-service, there could be disastrous consequences in her legal case.

3. Electronic Filing vs. Electronic Service

Separate forms and procedures should be available for e-filing and e-service. Self-represented LEP litigants who choose to e-file will likely have to obtain assistance preparing their paperwork and filing. Thus it may be possible for a self-represented LEP litigant to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home. These limitations will affect self-represented LEP litigants not only during the filing process, but during the service process. Even if they do have access to an email account, self-represented LEP litigants may not be able to understand what they are receiving or that they are being served documents in this manner. Therefore, e-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.

4. Opting-Out of Electronic Filing and Electronic Services

If the Judicial Council does not adopt an exemption, and there is an opt-out, rather than an opt-in exemption, each court will have to ensure that all litigants' access to the courts is protected. Requiring an opt-out procedure further complicates litigants' experience with the courts as self-represented litigants must understand when to file a request before they miss early deadlines. Again, for self-represented LEP litigants, this creates an additional barrier in accessing the courts. We request that courts provide appropriate written translations and have staff with access to interpretive services available to explain the new requirements, so that LEP litigants can meaningfully access the court process. Requiring an opt-out procedure will increase the burden on the courts because self-represented LEP litigants will inevitably require individualized assistance in their language.

Like the current fee waiver process, litigants must be permitted to paper file any documents or pleadings with their request to opt-out. It must be considered filed as of the day of filing, and the litigant must be given an

opportunity to cure any defects in the request within a reasonable period of time.

5. Pro Bono Clients and Legal Services Clients

In addition to self-represented parties, parties represented by pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of electronic filing. As a legal services provider that represents many LEP litigants, we are uncertain of whether we will have the personnel and resources to meet the technological requirements for electronic filing. Without such an option, added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients.

Translating Materials and Forms

The proper translation of state court materials and forms is essential to bridging the language divide between the California court system and the LEP populations it serves. The following suggestions are ways in which state courts can make themselves more accessible to LEP populations, should the proposed mandatory electronic filing rule be adopted.

First, courts in each county should work with their vendors to create introductory materials and clear guidance such that LEP individuals understand the steps they need to take in order to successfully complete necessary transactions and electronic filings. Each county's courts should provide any such materials and/or guidance in the five most widely spoken non-English languages in each county. Courts should also have bilingual staff or access to interpretive services at filing windows, public kiosks and self-help centers so LEP litigants can ask questions and seek assistance.

Similarly, courts in each county should provide bilingual forms containing translated text written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The courts should create one such form for each of the five most widely spoken non-English languages in their respective counties.

Third, courts should be strongly discouraged from using Google Translate or similar services to translate court webpages, as the translations have been proven to be inaccurate and confusing to non-English speakers. The use of online translators such as Google is not an

adequate substitute for human translation. Our bilingual staff attempted to explore the website of the Orange County Courts (www.occourts.org), where a pilot project of this mandatory rule is being conducted, using the Google translation offered on the homepage. Navigating the website in some of the Asian languages, as translated by Google, did not provide meaningful translation of the content and was very confusing to the reader. The court forms were too large to translate and the services provided by the vendor were not translated.

Finally, the courts must conduct effective outreach to LEP communities concerning any changes to court rules regarding electronic filing. Courts in each county should create signs and flyers to be posted prominently in each courthouse detailing electronic filing requirements. These signs and flyers should appear in the five most widely spoken non-English languages in the county. Additionally, courts should consider placing translated notices pertaining to the changes in local media that reach LEP communities, such as non-English language newspapers. This multilingual outreach should clearly explain both changes to the electronic filing requirements and any exemptions that may apply. Effective outreach is essential in ensuring that LEP communities receive fair and proper notice concerning any changes to state court filing requirements.

If you have any questions regarding these comments, please feel free to contact Joann Lee at jlee@lafla.org or (323) 801-7976. Thank you very much for your consideration.

Sincerely,

Silvia R. Argueta
Executive Director

Joann H. Lee
Directing Attorney

Attachment D

Rachel Matteo-Boehm
Direct: 415-268-1996
Fax: 415-430-4396
rachel.matteo-boehm@bryancave.com

January 31, 2013

VIA HAND DELIVERY AND E-MAIL

Camilla Kieliger
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Press Group Comments on Mandatory E-Filing:
Uniform Rules to Implement Assembly Bill 2073 (Item W13-05)

Dear Ms. Kieliger:

On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (the "Press Groups"), we make this submission in response to the invitation for comments on "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073."

The proposed rule changes include an ostensibly minor revision that could be used to work a fundamental change in access to court records – a change not contemplated or authorized by Assembly Bill 2073. Namely, the proposed rules would create a new category of court records: those that have been "officially filed," as opposed to "filed" for all other purposes.

At best, the proposed changes are confusing without serving any meaningful function. However, based on past statements by court administrators, it appears the true purpose of introducing the concept of an "officially filed" document into the Rules of Court is to provide administrators with justification for denying public access to records that have been "filed," under the long-understood meaning of that term, until ***after*** they have been "***officially*** filed," an event that, under the proposed rules, would not occur until after "the processing and review of the document" by court staff, whenever that might be. Proposed Rule 2.250(b)(7) (emph. added).[1]

The proposed rule changes would thus give court administrators unbridled discretion to delay press and public access to fundamentally public records until administrators decide such access is appropriate – even if it is days or weeks after the "filed" date.

[1] Also at issue are proposed changes to Rule of Court 2.259(c) and proposed new Rule 2.253(b)(7).

Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel (415) 268-2000
Fax (415) 268-1999
www.bryancave.com

As detailed in part II of these comments, changing the technical definition of "filing" cannot alter the fundamental federal constitutional requirement of timely public access to records submitted to the court. Adopting the proposed changes, if used to justify access delays, would put the Rules of Court in violation of this federal constitutional mandate.

And as explained in part III, the adoption of these proposed changes would put the revised rules in conflict with the legislative treatment of court records in this state, which comports with the federal constitutional standard. The proposed rules, if adopted, would thus also violate Article VI, § 6(d) of the California Constitution, which provides that while the Judicial Council may "adopt rules for court administration, practice and procedure," those rules "shall not be inconsistent with statute." To avoid these federal and state constitutional concerns, the proposed rule changes that would divide e-filed documents into "filed" and "officially filed" records should be removed or revised along the lines suggested in part IV to make clear that they may not be used to delay access to court records.

Finally, as discussed in part V, rushing to adopt statewide mandatory e-filing rules to be effective in July 2013 completely undermines the rationale for operating a mandatory e-filing pilot program in the first place. Assembly Bill 2073 explicitly requires the Judicial Council to adopt mandatory e-filing rules that are "informed" by a study of a pilot program at the Orange County Superior Court. Code of Civ. Proc. § 1010.6(d)(2) & (f). But instead of following this mandate, the proposed rules were drafted and circulated before the Orange County pilot program even ***began***. Both as a matter of prudent policymaking and under the express terms of § 1010.6, the proposed rules are premature, especially considering the serious federal and state constitutional concerns that adoption of the proposed rules would create.

The prospect of precipitously adopting mandatory e-filing rules without first going through a pilot program is especially troubling in light of the recent debacle over the California Case Management System ("CCMS"). Although CCMS was adopted in only a few courts, Orange County – the site of the pilot program envisioned by AB 2073 – was one of them. Given the enormous amount of public funds spent on that failed project, caution is essential to ensure that the past mistakes associated with CCMS are not repeated and that the delays and inconsistencies in public access associated with CCMS in Orange County – as well as in the handful of other courts that were early adopters of CCMS – do not carry over into the expansion of e-filing authorized by AB 2073.

I. About The Press Groups Submitting These Comments

The California Newspaper Publishers Association ("CNPA") is a nonprofit trade association that represents the mutual interests of the state's newspapers, from the smallest weekly to the largest metropolitan daily. Its 850 daily, weekly, and student newspaper members depend on quick and complete access to court records to inform the public about criminal and civil cases and the judicial system.

The First Amendment Coalition ("FAC") is an award-winning, nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. It serves the public, public servants, and the media in all its forms. It is committed to the principle that government is accountable to the people, and strives through education, public advocacy, litigation, and other efforts to prevent unnecessary government secrecy and to resist censorship of all kinds.

Californians Aware is a nonprofit organization established to help journalists and others keep Californians aware of what they need to know to hold government and other powerful institutions accountable for their actions. Its mission is to support and defend open government, an enquiring press, and a citizenry free to exchange facts and opinions on public issues.

Courthouse News Service ("Courthouse News") is a legal news service for lawyers and the news media that focuses on civil lawsuits, from the initial filing on through to appellate rulings. It covers every major civil courthouse in every county in California on a regular basis, as well as in major cities across the nation. Other news outlets increasingly look to Courthouse News to provide them with information about newsworthy civil filings, which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' media subscribers include such California entities as the Los Angeles Times, the San Jose Mercury News, and the Los Angeles Business Journal. Several academic institutions, including UCLA, also subscribe to Courthouse News' reports.

II. Defining "Filed" To Mean Something Other Than What "Filed" Has Traditionally Meant Would Not Solve Any Existing Problem But Would Create Serious New Ones

The Rules of Court currently define "electronic filing" as "the electronic transmission to a court of a document in electronic form." Rule 2.250(b)(7). This definition is consistent with existing rules and law governing paper records, as well as traditional understandings of what it means to file a document with a court.

The proposed changes would add the following sentence to the current definition: "For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed."

This proposed language, perhaps innocuous at first glance, is potentially profound in significance. The concept of an "officially filed" document – and the notion that such status is dependent on the completion of unspecified tasks associated with "processing and review" – is foreign to California law. It appears the primary – and perhaps sole – purpose of the "officially filed" concept is to justify arguments by court administrators that the public has no right to access a court record until court staff deem it fit for public viewing. The access delays that would inevitably result would violate the federal constitutional right of timely access to court records and be contrary to the practices of state and federal courts around the nation.

The "officially filed" concept is echoed in the three variations of proposed Rule 2.253(b)(7) concerning the time by which a document must be filed to satisfy deadlines: "Any document that is electronically filed with the court after the close of business on any day is deemed to have been filed on the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record." This second sentence – which appears in all three variations of proposed Rule 2.253(b)(7) – also appears in the proposed changes to Rule 2.259(c).

A. Recent History Suggests The Proposed Change In What It Means To "File" A Record Electronically Is Meant To Allow Court Administrators To Delay Public Access To Court Records Until After "Processing And Review"

As far as the Press Groups can determine, the first public attempt by court administrators to suggest "filed" means something other than what the bar and the public have always understood it to mean occurred in 2010, in connection with public comments relating to a draft document prepared by the Administrative Office of the Courts entitled "Trial Court Records Manual" ("TCRM").

In September 2010, the same coalition of press groups submitting these comments responded to an invitation for comment on the TCRM. The Press Groups noted that the TCRM laudably recognized that "providing a 'complete, accurate, and accessible court record, created and available in a timely manner,' is a 'basic role[] of the judiciary,'" but that it provided no specific guidance or requirements to counteract the increasing degree to which trial courts in California were failing to fulfill this basic role. Press Groups' Comments on TCRM at 2 (quoting TCRM at 3)) (attached as **Exhibit A**).

As the Press Groups noted, delays in public and press access to newly filed court documents are almost always caused by internal procedures in the clerk's office that require the completion of administrative "review" and/or "processing" (amorphous terms that can include any number of administrative tasks and can take days or even weeks) ***before*** the press or public is allowed to view documents filed with the court. *Id.* at 4-5. But as reflected in the survey of other state and federal courts' access procedures attached as **Exhibit B**, courts around the country provide access to newly filed documents prior to review or processing.

Putting review and processing – whatever that may mean and however long it takes – before access makes the speed of access wholly dependent on court staffing and other administrative resources, commodities in short supply in California's courts. Though speedier access is a virtue espoused by proponents of Assembly Bill 2073,[2] the Press Groups observed that e-filing has not always provided

---

[2] *See, e.g.*, Assem. Comm. on Judiciary, Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 6 (April 23, 2012) (noting Orange County Superior Court's representation that "[e]-filing makes the court records available faster and sooner to everyone, including the public"); Sen. Judiciary Comm., Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 9 (June 18, 2012) (noting bill author's identification of "easier and timelier access to records and documents by the courts and the public" as an advantage of e-filing).

that result because e-filing systems are just as susceptible to processing delays as paper-based courts (and perhaps more so, depending on how the system is operated). *Id.* at 9-10. The Press Groups' comments therefore recommended that whatever intake procedures were adopted should ensure there is some means for timely, traditional same-day access to newly filed court records. *Id.* at 5-7.

The official response to the Press Groups' comments – included in a report by William Vickery, then-Administrative Director of the Courts, to the Judicial Council – was surprising. Rather than address the delays in access created by making administrative procedures a precondition to access, the response effectively denied their existence. Agreeing that the public has a right to access "documents that have been ***filed*** with the court," the response suggested that filing did not mean what the press and public – and the bar and other members of the judicial community – had long thought it did. December 14, 2010 Report from William Vickery to Judicial Council ("Report"), at 6-10.[3] "[D]ocuments that have been received [by the court], but not yet processed for filing," the Report opined, were "pre-filed documents" that the public had no right to see. *Id.* at 7-9.

As far as we are aware, the notion of a "pre-filed document" did not appear again in official discourse after the Report, perhaps because the notion of a "pre-filed document" is so clearly at odds with traditional conceptions of what it means to "file" a document with a court. But the impulse to put administrative procedures ahead of public access remains, and the proposed rules appear to be an attempt to play a similar semantic game with respect to the public's right of access to court records.[4]

In the proposed rules, the dubious notion of a "pre-filed" document has been replaced with the equally dubious notion of an "officially filed" document. The proposed rules would retain the traditional understanding of "filing" as a document crossing the threshold of the clerk's window, passing from the possession of the litigant to the possession of the court for its consideration and action. But, as in the "pre-filed" conception, the proposed changes would create a second threshold for the document to cross – one that separates "filed" from "officially filed" documents.

---

[3] The Report is attached as **Exhibit C**. According to the Report, the TCRM was prepared by the Court Executives Advisory Committee's Working Group on Records Management, comprised of court executive and technology officers from various counties, including Orange County, and the responses to the Press Groups' comments were recommended by the Committee. Report, at 3 & nn.5, 7.

[4] Alan Carlson, the CEO of the Orange County Superior Court – the site of the e-filing pilot program envisioned by AB 2073 – has previously asserted that a court record is not a public record until after a certain amount of processing has been completed. Similarly, the CEO of the Ventura County Superior Court, which has not adopted e-filing, has taken the position that he will not provide press or public access to newly filed civil complaints until after the "requisite processing" has been completed and the complaints are "approved for public viewing." The delays in access flowing from that position – more than 75% of complaints delayed by two or more court days, with actual delays stretching up to 34 calendar days – are the subject of litigation filed by Courthouse News against the Ventura County CEO, currently pending before the Ninth Circuit. *See Courthouse News Service v. Planet*, U.S. Court of Appeals Docket No. 11-57187.

If this new category is intended to give court staff authority to decline requests to access newly filed documents for some undetermined amount of time, until after a document has been deemed "officially filed," the result would be repeated violations of the federal constitutional right of access, as explained further below.

It would also mark a dramatic departure from the many other courts, both state and federal, that provide access to court records upon receipt, before review or processing by court staff. As reflected in the nationwide survey of court access procedures attached as **Exhibit B**, this access was traditionally provided in the paper-based world and continues with e-filing.

For example, in many federal courts, newly e-filed documents flow instantly onto PACER for online paid viewing – and at public access terminals at the courthouse where the same documents can be viewed free of charge – without any human intervention prior to public access. In other federal courts where newly filed documents do not flow automatically onto PACER, alternative provisions are made so that interested persons can nevertheless access the new filings as they are received by the court, such as setting up a separate electronic queue where new documents can be accessed before they have been reviewed or processed by court staff, in some instances even before a case number has been assigned. Similar procedures for access prior to review or processing by court staff have been are in use by state courts, including those that have transitioned to e-filing, as is also reflected in **Exhibit B**.[5]

Indeed, there is nothing inherently different about e-filing versus paper filing that would justify delaying public and press access to newly filed court records until after processing and review. As demonstrated by the courts that already do it, there is no technological barrier to providing electronic access – either at the courthouse itself through public access terminals, or online over the Internet, or both – as soon as a document is received by the court. And unlike in the paper world, where access is usually provided to the original paper document, e-filing means a court can provide an electronic ***copy*** for viewing by interested persons while retaining, at all times, physical possession of the document itself.

B. Adopting A New Definition of "Filed," In An Attempt To Justify Delays In Access During "Processing," Would Violate The Federal Constitutional Right Of Access

The Judicial Council should not countenance the definitional sleight of hand reflected in the proposed rule changes when the public's access to court records – a right that is fundamental to the transparency of the judicial branch of our government – is at issue. Just as a court may not "carve[] out an[] exception" to the right of access "by determining that if a document is lodged, rather than

---

[5] In contrast, and despite the Legislature's express intent that AB 2073 speed public access, Orange County Superior has refused requests to make newly filed documents available for review upon their receipt by the court through an electronic queue similar to that adopted by other courts. Instead, newly e-filed documents are made available for review through the court's web site, and only after they have been processed, the result of which has been persistent delays in access.

filed, with the court, it is not a judicial record," *Rocky Mt. Bank v. Google, Inc.*, 428 Fed. Appx. 690, 692 (9th Cir. 2011), neither may the Judicial Council sanction an attempt to circumvent the right of access to documents "[o]nce ... filed with the court." *In re Marriage of Johnson*, 598 N.E.2d 406, 410 (Ill. App. 1992). The proposed changes would put the Rules of Court in conflict with the First Amendment only a dozen years after the Judicial Council revised the Rules to bring them into compliance with the First Amendment in light of *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999).

1. The Federal Constitutional Right Of Access Applies To Substantive Records As Soon As They Are Received By The Court, Whether "Filed," "Lodged" Or "Submitted"

The press and public have a federal right of access under the First Amendment and the common law to civil court cases, including court records. *See, e.g., Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988); *In re Continental Ill. Secur. Litig.*, 732 F.2d 1302, 1308-09 (7th Cir. 1984).

The federal right of access attaches to "judicial records," which includes all substantive "'written documents submitted in connection with judicial proceedings.'" *Vasquez v. City of New York*, 2012 U.S. Dist. LEXIS 138444, *8 (S.D.N.Y. 2012) (quoting *Lugosch v. Pyramid Co.*, 435 F.3d 110, 124 (2d Cir. 2006)); *accord, e.g., Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) ("[b]y submitting pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny") (quoting *Mokhiber v. Davis*, 537 A.2d 1100, 1111 (D.C. App. 1988)); *United States v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989) (access attaches to "documents submitted in connection with a judicial proceeding"); *F.T.C. v. Standard Financial Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987).

Thus, while the cases applying the federal constitutional and/or common law right of access often speak of the right attaching "at the time documents are filed with the court," *Mokhiber*, 537 A.2d at 1112; *accord, e.g., Leucadia*, 998 F.2d at 161-62, that is judicial shorthand for the document leaving the possession of a private party and coming into the possession of a branch of government, at which point they become public records because "the public at large pays for the courts and therefore has an interest in what goes on at all stages." *Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) (per Posner, C.J.); *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) ("What happens in the halls of government is presumptively public business.").

Consequently, the federal constitutional and common law rights of access attach to substantive documents once received by court staff – *i.e.*, "lodged with the court," *Mokhiber*, 537 A.2d at 1111; *accord, e.g., Rocky Mt. Bank*, 428 Fed. Appx. at 692 – even if they are never formally filed or are subsequently withdrawn. *In re Continental Ill. Secur. Litig.*, 732 F.2d at 1310-11 ("immaterial" that party withdrew substantive motion in support of which document at issue had been submitted to the court); *In re Peregrine Sys.*, 311 B.R. 679, 688 (D. Del. 2004) (recognizing that the First Circuit has held "that documents not even part of the court file were accessible under the right of access doctrine because 'they were duly submitted to the court' and were 'relevant and material to the matters sub judice'") (quoting *FTC*, 830 F.2d at 410).

That the "federal and the state Constitutions provide broad access rights to judicial hearings and records" has been equally recognized by courts in this state. *Copley Press, Inc. v. Superior Court*, 6 Cal. App. 4th 106, 111 (1992) (quoted with approval on this point in *NBC Subsidiary*, 20 Cal. 4th at 1208 n.25) (citations to the First Amendment and Article I, § 2(a) of the California Constitution omitted).

In *NBC Subsidiary*, the California Supreme Court explicitly held that California law governing access to civil court proceedings and substantive records must comply with First Amendment requirements. 20 Cal. 4th at 1216-17, 1208 n.25; *accord, e.g., Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4th 588, 596 (2007); *Burkle v. Burkle*, 135 Cal. App. 4th 1045, 1062 (2006); *see also* Rule of Court 2.550(c) ("Unless confidentiality is required by law, court records are presumed to be open.").

This "broad" federal constitutional right of access "encompasses a great volume and diversity of materials, including most of the contents of files in the courthouse," *Copley Press*, 6 Cal. App. 4th at 114, such as "the various documents ***filed in or received by the court***." *Id.* at 113 (emphasis added).

2. As Recognized By The California Supreme Court, The Federal Constitutional Right Requires That Access To Court Records Be "Immediate" And "Contemporaneous"

A critical component of the federal constitutional right of access is that, "[i]n light of the values which the presumption of access endeavors to promote, a necessary corollary ... is that once found to be appropriate, access should be immediate and contemporaneous." *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment"); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) ("It is irrelevant that some of these pretrial documents might only be under seal for ... 48 hours .... The effect of the order is a total restraint on the public's first amendment right of access even though the restraint is limited in time."); *Vasquez*, 2012 U.S. Dist. LEXIS 138444, *10 ("The First Amendment and common-law create a 'presumption of ***immediate*** public access.'") (quoting *Lugosch*, 435 F.3d at 126) (emphasis in original).

It necessarily follows, as the California Supreme Court has held, that delays in access are the functional equivalent of access denials and are thus unconstitutional unless the procedural and substantive requirements for sealing records have been satisfied. *NBC Subsidiary*, 20 Cal. 4th at 1219 n.42 (rejecting argument that "'[d]elaying media access ... is not a prior restraint warranting exacting First Amendment scrutiny'" because "temporarily seal[ing] the hearing transcripts ... preclud[es] access to information in the first instance" and thus is "subject to 'exacting First Amendment scrutiny'"); *id.* at 1220 n.43 (refusing to follow authority asserting that "'[c]ontemporaneity of access to written material does not significantly enhance' the public's ability to ensure proper functioning of the courts").

In sum, "the public's long-standing right [of access] cannot be absterged by the simple expedient of [treating] documents [as] lodged," rather than "filed," until staff determines they should be officially filed. *Rocky Mt. Bank*, 428 Fed. Appx. at 692. Court administrators have "not point[ed] to any authority for the proposition that lodging alone," or treating documents as lodged but not yet officially

filed, "is sufficient to overcome the public's right of access," *id.*, even for a relatively brief period of time. *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, *4-5, 10-11 (S.D. Tex. 2009) ("the 24 to 72 hour delay in access [to newly filed complaints]" – created by state court's clerk position that documents must be "verified for correct cause number, proper court, accurate title of document and proper category before they are made available to the public," as well as scanned and posted online – "is effectively an access denial and is, therefore unconstitutional").

Accordingly, redefining "filed" to allow staff to deny public and press access to documents received by the court until staff deem them ready to be "officially filed" would violate the federal constitutional right of access because administrators' denial of access during that period cannot satisfy the procedural and substantial standards for sealing (even temporarily) of court records set out in *NBC Subsidiary*, 20 Cal. 4th at 1216-18 and Rules of Court 2.550 and 2.551.

III. Treating "Filed" Electronic Court Records As Something Other Than Public Records Is Contrary To State Law Incorporating The Federal Constitutional Standard, And Would Be Unconstitutional For This Additional Reason

The First Amendment's mandate that a public right of access attaches to substantive records received by the court has been codified in California court rules and statutes. And although the statute that the proposed rule changes purport to implement does not speak directly to this issue, it evinces a clear legislative intent to treat electronically filed documents the same way by requiring that e-filed documents have the same legal status as paper records. Code of Civ. Proc. § 1010.6(b)(1).

Because the proposed rule changes conflict with "the Legislature's intent behind the statutory scheme that the rule was intended to implement," adopting the proposed rule changes would not only put the Rules of Court in conflict with federal constitutional requirements but also with the California Constitution, which only allows the Judicial Council to "'adopt rules for court administration, practice and procedure ... [that are] not inconsistent with statute.'" *California Court Reporters Ass'n v. Judicial Council*, 39 Cal. App. 4th 15, 21-22, 25-26 (1995) (quoting Cal. Const., Art. VI, § 6(d)).

A. California Law On Court Records Follows The Federal Constitutional Standard

California statutory law defines a "[c]ourt record" to include "[a]ll filed papers and documents in the case folder" and "all filed papers and documents that would have been in the case folder if one had been created." Gov't Code § 68151(a)(1). This definition was enacted in 1994, two years after the Court of Appeal's decision in *Copley Press* and is consistent with the "broad" definition of "[c]ourt records" in that decision, which held that "most of the contents of files in the courthouse" – such as "the various documents filed in or received by the court" – are "public records available to the public in general including news reporters." 6 Cal. App. 4th at 111, 113-14 (internal quotation omitted).

Any doubt that the statutory definition of a "court record," to which the right of access attaches, was intended to apply to pleadings received by the court was dispelled in 2001. After *NBC Subsidiary* held

that state laws concerning access to civil court proceedings and records must meet federal constitutional standards, 20 Cal. 4th at 1197, 1216, the Judicial Council amended the Rules of Court to bring them into compliance with "the First Amendment right of access." Cal. R. Ct 2.550, Advisory Comm. Comment. These rules provide that "court records are presumed to be open," Cal. R. Ct. 2.550(c), and define a court "'record' [to] means all or a portion of any document, paper, exhibit, transcript, or other thing ***filed or lodged*** with the court." Cal. R. Ct 2.550(b)(1) (emph. added).[6]

Even before the most recent amendments to Code of Civil Procedure § 1010.6 brought about by AB 2073, that section incorporated these requirements by specifying, *inter alia*, that "[a] document that is filed electronically shall have the same legal effect as an original paper document." Code of Civ. Proc. § 1010.6(b)(1). That provision remains unaffected by the current amendments.

B. The Proposed Changes Are Inconsistent With Legislative Treatment Of Court Records

The proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7), to the extent they are used to justify delaying access after a court record becomes "officially filed," would be "'inconsistent with statute'" – and thus would violate Article VI, § 6(d) of the California Constitution as well as the First Amendment – "because they cannot be squared with the existing legislative scheme requiring" that, with certain exceptions not applicable here, the public and press have a right of access to court records, in paper or electronic form, once filed or received by the court. *California Court Reporters Ass'n*, 39 Cal. App. 4th at 33 (following, *e.g.*, *People v. Hall*, 8 Cal. 4th 950, 953 (1994)).

The division of electronic records into those that have been "filed" and those that have been "officially filed," if used to delay access until after a document is "officially filed," is inconsistent with Government Code § 68151(a) because it, in essence, takes an "unduly restrictive" view of what constitutes a court record. *People v. Dubon*, 90 Cal. App. 4th 944, 954 (2001) (rejecting interpretation of "record" in Penal Code § 1016.5 inconsistent with definition of "court record" in § 68151(a) and *Copley Press*, 6 Cal. App. 4th at 113). Indeed, if Rules 2.550(b) & (c) are consistent with the definition of "court record" in § 68151(a), and clearly they are, the proposed rule changes necessarily are not.

Combined, Government Code § 68151(a) and Rules 2.550(b)-(c) – and the decisions in *NBC Subsidiary* and *Copley Press* they incorporate – leave no doubt that a substantive document received by a court from a party in a case becomes a "court record" to which the press and public have a right of access. There is also no doubt the proposed rule changes would give documents filed electronically a different legal effect until they cross an ill-defined administrative threshold and become "officially filed" documents. This squarely conflicts with the legislative mandate that electronically filed documents "shall have the same legal effect as an original paper document," Code of Civ. Proc. § 1010.6(b)(1),

---

[6] Although a conflict between existing and new Rules of Court may not violate Article VI, § 6(d) of the California Constitution, the "Judicial Council's own" actions can help "support" a court's determination of the legislative intent underlying the statutory scheme to which the proposed rule changes must be compared to determine if they pass constitutional muster. *California Court Reporters Ass'n*, 39 Cal. App. 4th at 30.

and thus would fail to pass constitutional muster. *California Court Reporters Ass'n*, 39 Cal. App. 4th at 22 ("the Judicial Council may not adopt rules that are inconsistent with governing statutes").

The proposed changes also far exceed the scope of the Legislative mandate to the Judicial Council to adopt "uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state." *Id.*, § 1010.6(f). Nothing in AB 2073 directs the Judicial Council to create a new category of documents that are "officially filed," nor does it suggest that the Legislature intended the Judicial Council to adopt rules to allow administrators to decline requests by the public or press to see newly filed documents until after administrative tasks associated with newly filed documents have been completed.

Since the legislative history shows the Legislature enacted AB 2073 with the intent of ***facilitating*** public access to newly filed court records, to instead use that legislation as a hook to ***undermine*** the public's right to access court records by providing a justification for court administrators to delay public access to e-filed records until some unspecified time after "processing and review" is "inconsistent with the statute" because "'its effect would have violated the legislative intent behind,'" and directly contravene an important purpose of, the amendments to "'the statute.'" *California Court Reporters Ass'n*, 39 Cal. App. 4th at 24 (quoting *In re Robin M.*, 21 Cal. 3d 337, 346 (1978)).

IV. The Proposed "Officially Filed" Rules Provisions Should Either Be Removed Or Revised To Make Clear That They May Not Be Used To Delay Access

Other than as an administrative device to delay public access to court records, the concept of an "officially filed" document appears meaningless. A document need not be "officially filed" in order to satisfy statutory or court-imposed deadlines and need not be "officially filed" to have the "same legal effect as a document in paper form." *See* Code of Civ. Proc. § 1010.6(b)(1); Rule 2.252(f)(1) & (2) (proposed to be renumbered as Rule 2.252(c)(1) & (2)).

The Invitation to Comment states that the proposed changes to the definition of "electronic filing" are meant "[t]o distinguish this definition from other meanings of 'filing,'" but it does not say what those "other meanings of 'filing'" might be. Invitation to Comment, No. W13-05 at 16. It also provides as an example that "when it is used to specify the effective date of a filing, it is the time of transmission, not of processing or the completion of processing, that is determinative," but it does not explain what the time of "the completion of processing" determines. *Id.* at 17. Cryptically, the Invitation notes that the proposed language "is also useful in distinguishing the act of filing from the process required in order for a document to become an official record, which is significant for other purposes," but it does not say what those "other purposes" are. *Id.*

If the proposed change to the definition of "electronic filing" is, in fact, intended to serve a legitimate purpose and not intended to impact public access to court records, then that purpose should be clearly identified in the proposed rules, and the rules should make clear that "officially filed" status is not intended to be a precursor to access. Among other things, there should be express language stating

that any changes to the rules do not affect Rule 2.254(c), which states that "[e]xcept as provided in rules 2.250-2.259 and 2.500-2.506, an electronically filed document is a public document at the time it is filed unless it is sealed under rule 2.551(b) or made confidential by law."

If however, the intent of the proposed rule changes is to allow court administrators to delay access until after "processing and review," such a position should be taken in a manner that is open and obvious rather than through a semantic sleight of hand in e-filing rules.

V. Rushing To Adopt Uniform E-Filing Rules Undermines The Legislative Intent To Start With A Pilot Program And Is Ill-Advised, Especially In Light Of The Judiciary's Recent History With CCMS

Finally, the adoption of statewide mandatory e-filing rules is premature.

In considering the Assembly Bill that led to the amendments to Civil Code § 1010.6, the Assembly Committee on the Judiciary noted that "a number of significant issues" – including public access to court records – "must be resolved before moving from a voluntary approach to a mandatory approach." Assem. Comm. on Judiciary, Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 1-2 (April 23, 2012). The Committee proposed permitting "one trial court to pilot mandatory e-filing, and direct[ing] the Judicial Council to study the pilot and then timely develop a uniform statewide rule that all trial courts could choose to adopt." *Id.* This is the route the Legislature chose to follow.

Amended Code of Civil Procedure § 1010.6 authorized Orange County Superior to operate a pilot program for mandatory e-filing from January 1, 2013 to July 1, 2014, and ordered the Judicial Council "to conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation." Code of Civil Proc. § 1010.6(d)(2). The legislation requires the Judicial Council to then "adopt uniform rules to permit the mandatory electronic filing and service of documents" – rules which are to be "informed by" the evaluation of the pilot program. § 1010.6(f).

The proposed rules are at odds with the Legislature's mandate and intent and thus "'unlawful[y] conflict with the statutory authorization'" for e-filing "contained in the governing statute." *California Court Reporters Ass'n*, 39 Cal. App. 4th at 25 (quoting *Cox v. Superior Court*, 19 Cal. App. 4th 1046, 1050-51 (1993)). Instead of first allowing the Orange County pilot program to operate long enough for its effects – intended and unintended – to reveal themselves, and only then using the results of the evaluation of that program to prepare uniform mandatory e-filing rules, the process has been reversed. The mandatory e-filing rules were prepared and circulated ***before the Orange County mandatory e-filing pilot project even began.*** This timing renders the statutorily required evaluation of Orange County's e-filing pilot program utterly meaningless.

In addition to being contrary to what the Legislature ordered, this timing is a recipe for disaster. The people of California are still reeling from the hundreds of millions of dollars spent on the now-scuttled CCMS. A pilot program for compulsory e-filing is essential to ensure that past mistakes

associated with CCMS are not repeated.[7] While mandatory e-filing may ultimately be a good thing for California litigants and courts, we respectfully suggest that rushing to a new solution is not good public policy.

VI. Conclusion

While the "officially filed" language in the proposed rule changes appears technical and harmless, its potential significance must not be overlooked. Rights fundamental to the democratic process – like the right to know what goes on in the courts – are meaningless if they can be disregarded when they become inconvenient. California has the opportunity to build e-filing systems that improve efficiency and transparency. But, as history has taught us, rushing forward without taking the time to assess how these systems will actually work for all concerned is quite likely to result in a system that is worse rather than better.

The Press Groups thus respectfully urge the Judicial Council to strike the "officially filed" language in the proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7), or, if there is a purpose for this language that is unrelated to access, to amend the proposed rules to identify that purpose and make clear that "official filling" is not a precondition to public and press access.

In addition, the Press Groups respectfully submit that the Judicial Council should postpone the adoption of mandatory e-filing rules until the Orange County pilot program can be properly tested and evaluated, including an assessment of its impact on public and press access.

---

[7] The courts that were the early adopters of CCMS – including Orange County – were among the worst in terms of access delays, primarily because CCMS involved a cumbersome, labor-intensive intake process that put access after processing – a practice that the "officially filed" language in the proposed rules appears designed to institutionalize in the post-CCMS era. After that court implemented mandatory e-filing for certain categories of cases, e-filed documents were not typically available until a day or two ***after*** their paper-based counterparts were accessible. Orange County's pilot expanded e-filing program – which requires that all documents filed in limited, unlimited and complex civil actions be e-filed unless the Court rules otherwise – has been in effect since January 1, 2013, and in the first few weeks of the pilot program, the delays in access that accompanied its earlier e-filing program for specific case types have not been resolved and appear largely unchanged. As noted above, Orange County has refused to implement the electronic queue solution for immediate access to e-filed documents despite its widespread use by the federal courts and despite the fact there are no technological barriers to doing so. San Diego, also an early adopter of CCMS, has similarly failed to provide an electronic queue to enable access to new documents as they are received by the court, despite requests that it do so.

Sacramento County Superior Court – also an early CCMS adopter – also provides an example of the delays in access that would result if processing were a precondition to access. In that court, a presiding judge's standing order requires filing parties to submit an extra public access copy of case-initiating civil documents, which are placed in a public access bin in the clerk's office for review by the public and press prior to processing. However, based on the court's web site, processing regularly takes more than 30 days and sometimes stretches beyond 40 days.

The Press Groups greatly appreciate the consideration of their views on the proposed rules by the Judicial Council and the Court Technology and Civil and Small Claims Advisory Committees. Should you have any questions or wish to discuss any of these issues further, please do not hesitate to contact our offices.

Respectfully submitted,

BRYAN CAVE LLP
Rachel Matteo-Boehm
Roger Myers
Katherine Keating

By: _____
Rachel Matteo-Boehm
On behalf of California Newspaper Publishers Association,
First Amendment Coalition, Californians Aware and Courthouse News Service

cc: California Newspaper Publishers Association
First Amendment Coalition
Californians Aware
Courthouse News Service

Exhibit A

Holme Roberts & Owen LLP
Attorneys at Law

SAN FRANCISCO
BOULDER
COLORADO SPRINGS
DENVER
DUBLIN
LONDON
LOS ANGELES
MUNICH
PHOENIX
SALT LAKE CITY

VIA HAND DELIVERY AND E-MAIL

September 30, 2010

Ms. Camilla Kieliger
Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Comments on Trial Court Records Manual (Item SP10-02)

Dear Ms. Kieliger:

On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (collectively, the "Press Groups"), we are pleased to make this submission in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual (the "Manual").

The Press Groups have a particular interest in the aspects of trial court record creation and maintenance that affect the media's ability to access court records in a timely manner and therefore focus their comments on the court record creation process (Section 4.1), e-filing (Section 4.4), press access to court records (proposed new section within Chapter 10), and case numbering systems (Sections 4.2 and 4.3).

I. About the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service

The California Newspaper Publishers Association is a nonprofit trade association that represents the mutual interests of the state's newspapers, from the smallest weekly to the largest metropolitan daily. Its 850 daily, weekly, and student newspaper members depend on quick and complete access to court records to inform the public about criminal and civil cases and the judicial system.

The First Amendment Coalition is an award-winning, nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. It serves the public, public servants, and the media in all its forms. It is committed to the principle that government is accountable to the people, and strives through education, public advocacy, litigation, and other efforts to prevent unnecessary government secrecy and to resist censorship of all kinds.

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com
560 Mission Street, 25th Floor San Francisco, California 94105-2994 *tel* 415.268.2000 *fax* 415.268.1999

Californians Aware is a nonprofit organization established to help journalists and others keep Californians aware of what they need to know to hold government and other powerful institutions accountable for their actions. Its mission is to support and defend open government, an enquiring press, and a citizenry free to exchange facts and opinions on public issues.

Courthouse News Service ("Courthouse News") is a legal news service for lawyers and the news media that focuses on civil lawsuits, from the initial filing on through to appellate rulings. Other news outlets increasingly look to Courthouse News to provide them with information about newsworthy civil filings, which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *San Jose Mercury News*, the *Houston Chronicle*, *The Dallas Morning News*, *The Boston Globe*, the *Detroit Free Press*, *The Atlanta-Journal Constitution*, and *Forbes*.

Courthouse News covers the major civil courthouse in ***every*** county in California on a regular basis, as well as in major cities across the nation. This extensive on-the-ground experience has given Courthouse News a first-hand look at how a court's intake procedures can affect media access to newly filed documents.

II. General Comments

As an initial matter, the Press Groups applaud the recognition in the Manual that providing a "complete, accurate, and ***accessible*** court record, created and ***available in a timely manner***" is a "basic role[]" of the judiciary. Manual at 3 (emphasis added).

This recognition is, of course, consistent with the First Amendment right of access to court documents, which has been repeatedly recognized by the Ninth Circuit. *See Oregonian Pub. Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1465 (9th Cir. 1990); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983). Courts have also emphasized that access to court records must be timely. *See, e.g., Associated Press*, 705 F.2d at 1147 (even short delays constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time, and are unconstitutional unless the strict test for denying access has been satisfied"); *accord, e.g., Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("[i]n light of values which the presumption of access endeavors to promote, a necessary

corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous"); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment").

This timely access is critical because of the unique role the court record plays in providing a window into the processes of an open government. Or, as one judge put it, "In order to maintain a working democracy, it is essential that the people, the final arbiters of all rights, have knowledge of the operations of their government, including the courts." *Phoenix Newspapers v. Superior Court*, 418 P.2d 594, 600 (Ariz. 1966) (Bernstein, V.C.J., concurring).

Because few members of the public can observe the court's activities directly, they learn what transpires in courthouses "chiefly through the print and electronic media," which function as "surrogates for the public" in the context of access to judicial records and information. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). Indeed, the vital nature of judicial activity has traditionally caused news reporters to cover the courts regularly and closely, often tracking the day's developments from a press room in the courthouse itself. This courthouse beat typically involved the journalist's end-of-day checking of designated media bins that contained the day's newly filed civil complaints.[1]

---

[1] As case-initiating documents, complaints have a special significance among judicial records that underscores the importance of prompt disclosure. As one federal district court recently explained:

> [A] complaint ... is the root, the foundation, the basis by which a suit arises and must be disposed of. [A]long with a summons, it is the means by which a plaintiff invokes the authority of the court, a public body, to dispose of his or her dispute with a defendant. ... It *provides* the causes of action. ... It *establishes* the merits of a case, or the lack thereof. ... [W]hen a plaintiff invokes the Court's authority by filing a complaint, the public has a right to know who is invoking it, and toward what purpose, and in what manner.

In re NVIDIA Corp., 2008 WL 1859067, at *3 (N.D. Cal. 2008); *accord In re Eastman Kodak Co.*, 2010 WL 2490982, *2 (S.D.N.Y. 2010) ("a complaint ... is a pleading essential to the

Increasingly, however, the pressures on the modern court to operate like a moneymaking business entity seem to obscure the court's fundamental character as a public institution. Over the last twenty years in California, the ability of reporters to monitor the court's business has been restricted in moves – big and small – by individual courts that limit where journalists can go, when they can be there, and what they can see. In particular, while same-day access to newly filed court records used to be the norm, courts increasingly delay media access to new filings, often refusing to allow the press to see them until after any number of intake and other administrative procedures have been completed.

The "newsworthiness of a particular story is often fleeting," *Grove Fresh*, 24 F.3d at 897, and given the vast amount of information competing for its attention, it is only while new court actions are still "current news that the public's attention can be commanded." *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 250 (7th Cir. 1975). Thus, a court record that cannot be accessed on the day it is filed has a far lower chance of being reported on, which means a far lower chance of coming to the attention of interested members of the public. Given the extent to which the public depends on the press for information about what happens in the courts, the result can only be a less informed citizenry.

This Manual presents an excellent opportunity to repair the long-term deterioration of press access to California's courts and clearly state that the court record is the public record, which must be kept open and accessible to the press in a prompt and complete manner.

III. Court Record Creation Processes (Section 4.1)

As a practical matter, delays in access to civil trial court records often stem from a court's administrative intake procedures, although this need not be the case. Traditionally, courts put each day's new filings into a designated press box that reporters

---

Court's adjudication of the matter as well as the public's interest in monitoring the federal courts"); *Vassiliades v. Israely*, 714 F. Supp. 604, 606 (D. Conn. 1989) (denying request to seal complaint: "The filing of the complaint is likely to be the first occasion that the public could become aware of the dispute").

could review at the end of the day. Increasingly, however, courts are interposing various administrative tasks between the filing of a document and its being made available to the press. For example, court staff may insist that they must first scan, docket, put in folders, verify, accept, or perform any number of other clerical processes before new filings will be made available for review, which almost always results in delays.

Ironically, given the speed with which information moves across the Internet, these delays come at the very moment in history when timely access is at a premium. *See, e.g.*, Jeff Jarvis, There is no hot news. All news is hot news, BuzzMachine (June 28, 2010), http://www.buzzmachine.com/2010/06/28/there-is-no-hot-news-all-news-is-hot-news/ ("Hot news is ridiculously obsolete. What's hot today? As Tom Glocer, head of Thomson Reuters, said, his news is most valuable for 'milliseconds.'"); David Carr, Newsweek's Journalism of Fourth and Long, N.Y. Times, Week in Review, May 24, 2009, at 1 (present news environment is "a time when current events are produced and digested on a cycle that is measured with an egg timer, not a calendar"); Eric Klinenberg, News Production in a Digital Age, 597 Annals Am. Acad. Pol. & Soc. Sci. 48, 54 (2005) ("The advent of twenty-four-hour television news and the rapid emergence of instant Internet news sites have eliminated the temporal borders in the news day, creating an informational environment in which there is always breaking news to produce, consume, and – for reporters and their subjects – react against."). Even delays of 24 hours are therefore unacceptable, and access to newly filed documents in California trial courts is often delayed much longer.

Fortunately, these delays can be easily avoided simply by returning to (or maintaining) intake procedures that ensure the press has an opportunity to review newly filed civil actions at the end of the day on which they are filed, regardless of whether the various administrative tasks associated with intake have been completed.

A. Elements of Intake Procedures that Promote Access

The critical element of intake procedures that result in same-day access is the opportunity for interested news reporters to see new filings promptly after they are submitted to the court, instead of making reporters wait until docketing or other administrative intake procedures have been completed. This is often accomplished either by placing the day's newly filed documents in a press box that can be accessed during a pre-arranged window of time at the end of the day, or by promptly scanning

newly filed documents and making them immediately available through terminals at the courthouse, irrespective of whether the documents will later be made available for remote viewing over the Internet.

This fundamental principle is the same for courts that implement e-filing. Contrary to the popular assumption that speedy access to court records automatically flows from e-filing, the Press Groups' experience is that the implementation of e-filing often brings ***delays*** in access to newly filed civil actions because courts have chosen to make e-filed documents available only after various administrative tasks have been completed (*e.g.*, manually checking the filing, making it available for electronic review, etc.).[2] E-filing courts have typically surmounted these access problems in one of two ways:

1. Providing reporters with access to an electronic in-box on computer terminals at the courthouse through which records can be viewed as soon as they cross the electronic equivalent of the intake counter at the clerk's office, regardless of what administrative processing might remain to be done and/or whether the document has been made available for remote electronic viewing on a public web site. Variations of the electronic in-box have been successfully implemented in the United States District Courts for the Western District of Pennsylvania, the Northern District of Georgia, the District of New Jersey, the District of Minnesota, the Western District of Kentucky, and the Eastern District of Missouri. The Northern District of Illinois also used a similar in-box solution until recently, when it began making new civil complaints immediately available on PACER.

2. Printing out copies of e-filed cases (either as a standard practice or promptly upon a reporter's request), regardless of any processing tasks that may remain.

---

[2] A good example of the access delays that often accompany e-filing can be found in the King County Superior Court in Seattle, Washington. Traditionally, reporters who visited the court regularly had same-day access to paper filings behind the court's intake counter. After the court instituted e-filing, however, Courthouse News found that it could not access documents filed after about noon until the following day. Similarly, at the Eighth Judicial District Court in Las Vegas, Nevada, which switched to mandatory e-filing in early 2010, Courthouse News' reporter cannot see new complaints until they are at least a day old, and the delays are often longer.

> Courts that have implemented this kind of system include the Travis County District Court in Austin, Texas, the San Francisco Division of the United States District Court for the Northern District of California, the United States District Courts for the Western and Eastern Districts of Texas, the Northern and Southern Districts of Ohio, the Eastern District of Wisconsin, and the District of Minnesota.

While the Manual need not dictate a particular method of giving the press timely access to newly filed court records, the Press Groups respectfully urge that the basic requirement that intake procedures ensure same-day access to newly filed civil complaints be included in the Manual.

B. The Legal Basis for Building Immediate Access Into Intake Procedures

As courts develop and implement intake procedures, it is important to keep in mind that the right of access to court records attaches as soon as the record is submitted to the court and is not contingent on the completion of any particular administrative task. *See, e.g.*, Rule of Court 2.550(b)(1) (public has right of access to any document that has been "filed ***or lodged*** with the court") (emph. added). California's Rules of Court thus recognize that the public character of complaints and other documents submitted to the court comes not from the court's taking any particular action with respect to the document, but from a person's invoking the power of the judiciary by submitting it to the court. Courts have agreed that the right of access springs into being the moment a person "undertake[s] to utilize the judicial process." *Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986). The fact that a litigant has requested judicial relief is an event that is properly open to public scrutiny. "By ***submitting*** pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny." *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (quotation omitted; emph. added).

Since the right of public access attaches at the moment a complaint or other document is submitted to the court, it is not appropriate to delay access on the ground that a particular record has not yet been fully processed, made available for electronic viewing, etc. This issue was the subject of recent litigation between Courthouse News and the elected clerk in Harris County, Texas. In that case, which Courthouse News reluctantly filed after repeated negotiation attempts failed to lead to a resolution, the clerk had begun requiring

reporters to wait for new civil complaints to be processed and posted on the clerk's web site before they could be reviewed, which delayed their availability by several court days. In a preliminary injunction order that issued in July 2009, the United States District Court for the Southern District of Texas found that a 24- to 72-hour delay in access was "effectively an access denial and is, therefore, unconstitutional." The court also observed that:

> There is an important First Amendment interest in providing timely access to new case-initiating documents. Defendants attempt to argue that providing Plaintiff with same-day access interferes with their important objective of "getting online and not in line." The Court acknowledges that Defendant's goal is also in the public interest. However, as Plaintiff argues, same-day access and online access are not mutually exclusive. Defendants may provide Plaintiff with same-day access to newly-filed petitions while working in furtherance of their goal to make documents available online.

Courthouse News Service v. Jackson, et al., 2009 U.S. Dist. LEXIS 62300, at *10-11, 14 (S.D. Tex. July 20, 2009).

By the same token, courts may not justify delays in access by tying access to the "filing" of a document and defining "filing" to mean not only that a document has been submitted to the court but also that certain administrative processes have been completed. Any technical definition of "filing" that results in the court's having possession of a document submitted in the context of the court's adjudicatory powers but that is categorically excluded from public access (even if only for a relatively short time) is antithetical to principles of access firmly established in California law and guaranteed by the First Amendment. *See, e.g., Associated Press*, 705 F.2d at 1147; *Grove Fresh Distribs.*, 24 F.3d at 897; *Globe Newspaper Co.*, 868 F.2d at 507.

Again, whatever procedures for court record creation procedures are outlined or advocated in future versions of the Manual, the Press Groups urge the Judicial Council to use the Manual as an opportunity to educate court administrators about their obligation to ensure same-day access to newly filed civil actions by creating a mechanism for media access very early in the intake process.

IV. E-Filing (Section 4.4)

Section 4.4 of the Manual is devoted to a fairly high-level discussion of the advantages and disadvantages of e-filing. Courthouse News has witnessed first-hand the implementation of numerous e-filing programs in courts throughout the country, and based on this experience the Press Groups suggest the inclusion of two primary observations in this overview. First, as noted, e-filing does not automatically improve access to court records and can actually delay access to court records unless specific procedures are adopted to protect against access delays. Second, e-filing programs operated by vendors can have serious disadvantages for courts and sometimes create discriminatory access problems of constitutional dimension.

A. Access to E-Filed Court Records

The Manual lists the following as an advantage of e-filing:

> Greater efficiency from the instantaneous, simultaneous access to filed court documents for participants in the case, judges, and court staff, and members of the public (to publicly available court documents) wherever participants may be located throughout the world.

Manual at 14.

In reality, however, e-filing programs rarely, if ever, result in "instantaneous" access to e-filed records. In fact, courts often provide more timely access to records filed on paper than to e-filed documents, presumably because decades of working with the press have led courts to adopt appropriate procedures for media access to records filed in paper form. As discussed above, timely access to e-filed documents generally requires that the court either make an electronic in-box available to the press (where reporters can see newly filed documents directly after transmission to the court and before whatever administrative processing might be done before the record can be viewed in the publicly accessible area) or maintain paper copies of e-filed documents for review at the courthouse.

Accordingly, the Press Groups propose that the statement noted above be removed from the Manual and that a statement like the following be included within Section 4.4: "In

implementing an e-filing system, courts must consider the effect the system will have on public access to court records and ensure that no system is implemented that would delay access to a document beyond the day of filing."

B. Risks of Vendor-Controlled E-Filing Systems

There are a number of serious risks that are often implicated by a vendor-controlled e-filing system, including the potential for discriminatory press access to the public court record. As Courthouse News has discussed these risks in detail in its comments to the San Francisco Superior Court e-filing rule proposed earlier this year, the Press Groups will not repeat these observations but instead have attached those comments as ***Exhibit A*** to this letter. These risks seem appropriate for inclusion in any discussion of the advantages and disadvantages of e-filing.

V. Press Access to Court Records (Proposed Section 10.x)

The Press Groups note that Chapter 10, "Public Access to Court Records," is devoted chiefly to outlining the records that may be excluded from public access and urge the Judicial Council to consider more expansive treatment of the positive aspects of public access. The Press Groups respectfully contend that access for a subsection of the public – the press – deserves particular attention and suggest that a new section be added to Chapter 10 with the heading "Press Access to Court Records."

This section would emphasize the importance of providing the press with same-day access to court records and contain suggestions on appropriate procedures courts might implement to ensure same-day press access to newly filed civil actions. These might include implementing a press box containing each day's complaints, allowing members of the press to remain in the clerk's office or other intake area after it has been otherwise closed to the public, preserving existing press rooms, and including press rooms in new courthouse building plans.

While ensuring access to the public at large is important, the press performs a unique function in keeping the rest of the public informed, and this function merits particular consideration as courts develop procedures for court records. The press' constitutional role in our society – reporting on the activities of public institutions – has been

recognized in many court decisions and was recently described by the New Jersey Supreme Court in these words:

> Because it is impossible for the citizenry to monitor all of the operations of our system of justice, we rely upon the press for vital information about such matters. Members of the public simply cannot attend every single court case and cannot oversee every single paper filing, although clearly entitled to do so. Thus, it is critical for the press to be able to report fairly and accurately on every aspect of the administration of justice ....

Salzano v. N. Jersey Media Group Inc., 993 A.2d 778, 790-91 (N.J. 2010). "What our citizens need to know to carry out their role in a democracy is what, in fact, has been filed in court and how the judicial system responds to it." *Id.* at 791. The U.S. Supreme Court has described the media as "surrogates for the public," and has noted in the context of courtroom proceedings that although "media representatives enjoy the same rights of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard." *Richmond Newspapers*, 448 U.S. at 573.

For the same reason, it is appropriate to provide news reporters who visit a court every day with special procedures for obtaining same-day access to new filings, and to obtain copies of newsworthy new filings, so that those reporters may in turn disseminate information about those filings to interested persons. In other words, giving the press effective and timely access to court records is the best way of ensuring that interested members of the public are informed of what transpires in the courts.

Moreover, as a practical matter, unlike news reporters, the general public visiting the clerk's office does not have a general, daily interest in reviewing the court's new business – *i.e.*, reviewing the filings from a particular day. Instead, members of the public usually have a specific interest in one particular case, which may or may not have been recently filed. Similarly, the general public does not normally have the need or urgency of access a media outlet would have in timely reporting the news.

VI. Case Numbering Systems (Sections 4.2 and 4.3)

A court's case numbering system can have a surprisingly significant impact on court record access for members of the press who regularly review new complaints. The key to an effective system is separate numeric sequencing for limited and unlimited cases (*i.e.*, the numeric portion of case identifiers is assigned in a continuous sequence for unlimited cases and in a separate continuous sequence for limited cases). This is important because limited cases will very rarely be of public interest and are generally not systematically reviewed by the media. Separate sequencing for limited and unlimited cases means that reporters can use the case numbers to guide their review of new filings. For example, if the last unlimited filing of a day is Case No. XYZ1234, the reporter can begin the next day's review with Case No. XYZ1235. Perhaps more importantly, a gap in the sequence indicates an unlimited case that the reporter has not reviewed – perhaps because it involved emergency relief that delayed its availability to the press – so that he or she can be sure to review the case when it is available.

When limited and unlimited cases are interspersed in the same numeric sequence, the risk of newsworthy cases being overlooked increases dramatically, as the significant unlimited cases become lost like needles in a haystack of cases formerly heard in municipal courts.[3] The separate sequencing is thus a simple but effective way to separate the newsworthy cases from those that are likely to be of less interest, which ultimately improves the public's understanding of what is being filed in the courts. In addition, without separate sequencing, reporters cannot monitor a continuous sequence to ensure that they have reviewed all newly filed case-initiating documents.

---

[3] Or, to draw on an iconic film image, requiring a reporter to look through all of the new limited cases in order to find the newsworthy unlimited cases reminds us of the last scene of the 1981 movie *Raiders of the Lost Ark*: Having located the Lost Ark of the Covenant in a secret chamber buried under centuries of sand and single-handedly fought off the Nazis who are also after it, Indiana Jones returns home to deliver the Ark to the U.S. Government. But despite our hero's pleas that the Ark's powers be researched, we see the Ark boxed up in a wooden crate and hauled into a massive storage facility, where it will be buried once again amid thousands of identical wooden crates.

To the extent the CCMS numbering system does not include separate numeric sequencing for unlimited and limited civil cases, it will seriously inhibit rather than promote the ability of the press to monitor civil court litigation on behalf of the public. The Press Groups therefore respectfully request that separate numeric sequencing for civil limited and unlimited cases be incorporated into the CCMS case numbering system and that, in the meantime, the Manual encourage individual courts to adopt such separate sequencing.

VII. Conclusion

The California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News support the Judicial Council's efforts to provide trial courts with a practical guide both to their legal obligations and to best practices for administering court records and appreciate the opportunity to share their knowledge and experience in the hopes of improving access to court records in California's trial courts. Should you have any questions or wish to discuss any of these issues further, please do not hesitate to contact our offices.

Sincerely,

Rachel Matteo-Boehm

Encl.

cc: Tom Newton, California Newspaper Publishers Association
Peter Scheer, First Amendment Coalition
Terry Francke, Californians Aware
Bill Girdner, Courthouse News Service

Exhibits to this letter

available upon request

Exhibit B

Courthouse News Service

PRESS ACCESS TO COURTS AROUND THE NATION

NATIONWIDE SURVEY

Courts around the country have developed a variety of procedures to provide members of the press with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed. In many courts, members of the press see new complaints either as soon as they cross the intake counter (or, in e-filing courts, its electronic equivalent) or shortly after initial intake tasks but prior to full processing. Likewise, many courts make new complaints available to members of the press at the courthouse in a bin or via a press queue on a public access computer at the courthouse itself regardless of whether the complaint or petition has been made available for remote electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in state and federal courts throughout the nation. Procedures at state and local courts are described in the first half of this survey, and procedures at federal courts are described in the second half of this survey.

STATE AND LOCAL COURTS

Albuquerque, NM

Second District Court (Bernalillo County)

- ***Mandatory E-Filing****
  The vast majority of new complaints are available for press viewing on the same day they are filed through public access terminals located at the courthouse. The terminals can also be used to print and pay for copies of complaints. Complaints filed in the First and Thirteenth district courts, which encompass courts in four

* In general in this survey, "Mandatory E-Filing" indicates that this method of filing is mandatory for attorneys only. Many, if not most, courts permit pro se litigants to file their pleadings by hand at the clerk's office.

other New Mexico counties, including Santa Fe, are also available for review on the Albuquerque courthouse's public access terminals on the same day they are filed. These procedures have resulted in same-day press access to the vast majority of new civil complaints filed in these courts.

Atlanta, GA

Fulton County Superior Court

- ***Paper-Filing Only***

  New complaints are scanned by court staff at intake and made available for viewing at computer terminals at the courthouse, most within minutes of filing. As a result of these procedures, members of the press have same-day access to virtually all newly filed civil complaints.

Fulton County State Court

- ***Mandatory E-Filing for Certain Case Types***

  Paper-filed complaints are placed in baskets shortly after they have been filed, and before they have been assigned case numbers, and can be accessed and reviewed by members of the press on a same-day basis. E-filed complaints are emailed to reporters on a daily basis for immediate review and then subsequently made available for viewing at the courthouse through public access terminals. These procedures provide members of the press with access to the vast majority of newly filed civil complaints on the same day they are filed.

Austin, TX

Travis County District Court

- ***Mandatory E-Filing***

  Members of the press are given a printout of case numbers of new civil petitions filed earlier in the day upon arriving at the courthouse, which they use to search for and view electronic versions of new civil petitions using a public access terminal located at the courthouse. If, for some reason, a new petition is not available electronically on the public access terminals, reporters simply ask the court to make the case available either by printing out a copy or pushing the electronic version to the public terminals upon request. Once the reporter is finished searching for and reviewing the initial list of new petitions, an updated list is provided later in the day, which shows case numbers for petitions that have been filed since the first list was printed. Petitions filed

after 5:00 p.m. are made available the following day. These procedures have resulted in same-day press access to nearly all petitions filed during the court's business hours.

Bakersfield, CA

Kern County Superior Court

- ***Paper-Filing Only***

  Previously, members of the press had experienced long delays in access to newly filed civil complaints at the Kern County Superior Court. After the delays were brought to the attention of the presiding judge, the clerk's office adopted new procedures whereby reporters review new complaints in a secure "media room" located behind the clerk's counter that is reserved for members of the press. At around 3:00 p.m. each day, a designated court staff member will deliver a stack of all new civil unlimited jurisdiction complaints that have been filed so far that day to members of the press, or if a staff member is not available to deliver the complaints, reporters can retrieve them from the clerk's desk where they are collected. After reviewing the complaints, reporters return the initial stack to the clerk's desk, and are then given another stack of complaints that have been filed and placed on the clerk's desk in the meantime, including complaints that were deposited into the court's drop box during the day. Reporters return the second stack of complaints to the clerk's desk before the clerk's staff leaves the court at 5:00 p.m. Reporters are permitted to stay at the court until 5:00 p.m., although the court closes to the public at 4:00 p.m. As a result of these new procedures, on the vast majority of court days, the press has access to 100% of new complaints on the same day they are filed.

Beaumont, TX

Jefferson County District Court

- ***Paper-Filing Only***

  Members of the press are allowed behind the counter to access the stack of newly filed petitions on the same day they are filed, after the case number has been assigned but before any further processing of the cases takes place. These procedures have resulted in same-day access to the vast majority of new civil petitions filed with this court.

Bronx, NY

Bronx Supreme Court

- ***Optional E-Filing***

  In the Bronx Supreme Court, new civil complaints can be filed electronically or in paper over the counter. Paper-filed complaints are immediately scanned into electronic form, and both e-filed and scanned documents are posted to the court's website on the same day they are filed. There is no charge to search for case information or view the full text of new civil complaints online. Computer terminals are also set up at the courthouse for free same-day viewing via the same public website. These procedures have resulted in same-day press access to virtually all new civil complaints filed with the court.

Chicago, IL

Cook County Circuit Court

- ***Optional E-Filing, Though Rarely Used***

  Reporters from several news organizations review new complaints on a daily basis. The first news reporter to arrive at the courthouse goes behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. Reporters can stay as late as they like to review the new complaints, which have been assigned a case number but have not been processed. Through these procedures, members of the press are able to see the vast majority of new complaints on the same day they are filed.

Cleveland, OH

Cuyahoga County Court of Common Pleas

- ***Paper-Filing Only***

  Members of the press have who visit the court on a daily basis have behind-the-counter access to new complaints on the same day they are filed. Court officials provide reporters with desk space where they may set up a laptop and review new complaints, which have been assigned a case number but have not been processed. These procedures have resulted in same-day access to nearly 100% of new civil complaints filed with the court.

Dallas, TX

Dallas County District Court

- ***Limited E-Filing***

  The court provides members of the press with work space behind the counter, where they may review new petitions filed in paper form, even if they have not been processed. E-filed petitions can be viewed in the clerk's office, although not all e-filed petitions are posted online on a same-day basis. In that case, the clerk's staff provides news reporters with paper printouts of those e-filed petitions on the same day of filing.

Detroit, MI

Wayne County Circuit Court

- ***E-Filing Required for Most Case Types***

  Virtually all e-filed complaints are made available for press review on the same day they are filed via public access terminals located in the basement of the courthouse. New actions are accepted immediately. Once news reporters are finished reviewing new e-filed complaints, they are permitted behind the counter to review the stack of new paper-filed complaints, which have been assigned case numbers but have not been processed. These procedures have resulted in same-day access to more than 90% of new civil complaints filed with the court.

Fresno, CA

Fresno County Superior Court

- ***Paper-Filing Only***

  The press had experienced substantial delays in access up until early 2012 at the Fresno County Superior Court. After the matter was brought to the attention of the presiding judge, the clerk's office instituted a policy saying newly filed unlimited jurisdiction actions would be made available for review by the press on the day they are filed. With the implementation of that policy, members of the press may review complaints from a press box where new civil complaints are placed on the same day of filing in a secure viewing room located in the clerk's office. Although the clerk's office closes to the public at 4:00 p.m., reporters can stay until 4:45 p.m. and review newly filed actions. Ten at a time, the new actions are handed by a clerk through a window located next to the viewing

room. This procedure has resulted in nearly perfect same-day press access to newly filed civil unlimited jurisdiction complaints.

Fort Worth, TX

Tarrant County District Court

- ***Paper-Filing Only***

  Most petitions appear on the court's online system the day they are filed. If any petition that was filed during court business hours is not available online the day it is filed, reporters may arrange with the clerk's staff for the petition to be immediately scanned and posted to the online access system. The end result is same-day access to almost 100% of all petitions filed with the court.

Houston, TX

Harris County Civil District Courts

- ***E-Filing Required for Certain Case Types***

  The Harris County court provided same-day press access for many years by permitting reporters to go behind the intake counters and review newly filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's website before they could be reviewed, which delayed their availability by a day or more. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office, Courthouse News reluctantly filed suit. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, finding that "the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional." *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, *11 (S.D. Tex. 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's website on the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in February 2010, 2010 U.S. Dist. LEXIS 74571, *6-7 (S.D. Tex. 2010), the clerk's office was required not only to continue to provide same-day access to new civil petitions, but to pay more than $250,000 to Courthouse News to compensate it for the attorney's fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's website. Those petitions can

be viewed, and printouts can be made, free of charge by the press and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. These procedures have resulted in same-day access to 100% of newly filed civil petitions. Details about this program can be found on the Harris County District Clerk's website, at http://www.hcdistrictclerk.com/Edocs/Public/search.aspx.

Indianapolis, IN

Marion County Circuit Court & Marion County Superior Court

- ***E-Filing Permitted for Certain Case Types***

  The Marion County Circuit Court has a strong tradition of press access. News reporters, from the *Indianapolis Star* and Courthouse News, are given stacks of the new complaints filed earlier that same day after the complaints have been assigned case numbers but prior to docketing, which is done by the judges' clerks. The reporters can review those complaints at tables in the public viewing area from 4:00 to 4:30 p.m. They also have access to file cabinets in the docketing section where new cases are kept immediately after docketing. Marion County's tradition of press access to new matters has resulted in same-day press access to the vast majority of newly filed complaints.

Las Vegas, NV

Eighth Judicial District Court

- ***Mandatory E-Filing***

  Prior to the court's transition in February 2010 to mandatory e-filing, which uses Tyler Technology's Odyssey software, reporters saw the majority of new civil complaints on a same-day basis. Following that switch, however, the court no longer provided paper copies of complaints, and instead required members of the press to review new complaints at a computer terminal in the clerk's office. However, this system resulted in complaints not being available for viewing until the day after they were filed, primarily because the court required new complaints to be "accepted" by the clerk's office before they appeared on the computer terminals, and only after the terminals had been updated to reflect the new filings. After these delays were brought to the attention of the court, the court adopted a new system: an

electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), members of the press are now seeing virtually all newly e-filed complaints on a same-day basis.

Little Rock, AR

Pulaski County District Court

- ***Optional E-Filing***

  Both paper and e-filed complaints are made available for electronic review through the court's case management system, which is accessible for free both at public access terminals at the courthouse or remotely through the web. New complaints are posted to the court's computer system shortly after they are filed, thereby providing same-day access to virtually all complaints filed with the court.

Los Angeles, CA

Los Angeles Superior Court - Downtown Branch (Stanley Mosk Courthouse)

- ***Paper-Filing Only***

  In the biggest court in the nation, court staff upload the full text of newly filed complaints to the court's computer system after initial intake tasks, which include scanning and assigning a case number, but before the complaints have been processed. Reporters can then review the vast majority of new actions that are filed on a particular day at public access terminals located at the courthouse or on additional terminals located in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public may view cases close at 4:30 p.m., but the press room remains open later, and even the latest filed complaints of the day are available and can be reviewed by about 7:00 p.m. More than 100 new civil unlimited jurisdiction cases are filed each day, and the press is able to review all or nearly all of the day's newly filed actions at the end of the day on which they are filed. The system was developed and maintained with the repeated intercession of the court's presiding judge.

Los Angeles Superior Court – Santa Monica Branch

- ***Paper-Filing Only***

  After the matter of substantial delays in press access to new civil complaints was brought to the attention of the presiding judge, a system for review of the day's new actions was put in place by the clerk's office. Face pages of each day's newly filed civil complaints are made available for review by members of the press at 3:30 p.m. on the same day the complaints are filed. Reporters then request copies of those complaints that they wish to see in their entirety. Complete versions of late-filed complaints are made available at 4:30 p.m., when the filing room closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Reporters can then request copies of any of those late-filed complaints, and they are generally provided right away. These access procedures have resulted in same-day access to virtually all new civil complaints filed with the court.

Louisville, KY

Jefferson County Circuit Court

- ***Paper-Filing Only***

  Members of the press may request the complete versions of newsworthy complaints filed during the court's business hours after reviewing either the face pages of newly filed complaints on paper or basic docket information on public access terminals located at the court. These procedures have resulted in same-day press access to virtually all new civil complaints filed during the court's hours of operation.

Manhattan, NY

New York County Supreme Court

- ***Mandatory E-Filing for Commercial, Contract and Tort Cases***

  Both paper-filed and e-filed complaints are made available to reporters on the same day they are filed. E-filed complaints are posted online to a public court website by the end of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically both online and via an internal computer system on terminals set up throughout the courthouse. Through these procedures, members of the press have same-day access to virtually all new civil complaints.

Martinez, CA

Contra Costa County Superior Court

- ***Paper-Filing for Case-Initiating Documents***

  After delays in access were brought to the attention of the presiding judge and the court's head clerk, the clerk implemented a set of procedures for same-day press access to new civil unlimited actions. The court closes its doors to the public at 1:00 p.m. each day. However, those still in line at that time are allowed to remain in the clerk's office to complete their filings, and the clerk's staff continue their work at the court until at least 5:00 p.m. The clerk's staff lets reporters into the clerk's office at around 3:45 p.m. each day, and then gives them a stack of the day's newly filed civil unlimited jurisdiction complaints, which have not been fully processed, at around 4:00 p.m. Reporters are permitted to remain in the clerk's office until 4:45 p.m. to review new complaints. The result of these new procedures is that the press has access to the vast majority of newly filed unlimited jurisdiction complaints at the end of the day on which they are filed.

Miami, FL

Miami-Dade County Circuit Court

- ***Paper-Filing Only***

  Most new civil complaints are filed over the counter at the main courthouse in Miami-Dade County. As new cases are filed, they are assigned a case number and quickly reviewed for sensitive information. (Note: this review is conducted in compliance with a Florida law that affirmatively mandates clerks to conduct such review. In contrast, most other states do not have such laws.) If no personal identification information is found in the document (which is the case for the vast majority of new civil complaints), non-foreclosure cases are separated out and placed into a bin for same-day press review. For the small percentage of complaints where personal identification information is found, the complaint is immediately routed to the redaction desk and then placed into the non-foreclosure bin by the end of the day. Reporters are permitted to review the new civil complaints behind the counter. These procedures are designed to provide same-day access to nearly all new civil complaints.

Milwaukee, WI

Milwaukee County Court

- ***Optional E-Filing***

  Members of the press have access to nearly 100% of new complaints on the same day of filing. Reporters are permitted to go behind the counter to review the stack of new paper-filed complaints before they are docketed. In order to ensure that reporters have the chance to review all new e-filed complaints on a same-day basis, the clerks place a one-page docket sheet from each e-filed complaint to the stack of paper complaints, also on the day of filing. If the reporter needs to review the full e-filed complaint, the clerks will print out a copy

Modesto, CA

Stanislaus County Superior Court

- ***Paper-Filing Only***

  The court clerk recently adopted procedures designed to provide members of the press with same-day access to newly filed complaints. Per the presiding judge's August 1, 2012 standing order, "all civil litigants filing case initiating pleadings in unlimited civil matters, including complaints, cross-complaints, petitions and applications, shall provide one additional complete paper copy of the pleading to the filing clerk at the time of filing." Per the court's directive that the extra copies be "placed by the filing clerk in the Court's Public Access Bin on the day of filing," the clerk's staff immediately places the extra copy in a designated bin located in the court's lobby. Under these newly adopted procedures, reporters review newly filed cases located in this bin on the same day they are filed, and can also request copies of new complaints that have not yet been placed in the bin from the intake clerks toward the end of the day. Court staff is directed to remove and discard public access copies located in the bin two weeks after filing. These procedures are intended to provide members of the press with same-day access to the vast majority of new civil complaints on the day they are filed.

Nashville, TN

Davidson County Chancery Court

- ***Paper-Filing Only***

  News reporters may review an intake log of the day's new complaints on a public computer terminal at the courthouse, from which they can compile a list of complaints they would like to review. The court staff will then retrieve the requested complaints, which have been assigned case numbers but have not been processed. Reporters may also request to see any new complaints that have not yet been added to the intake log by asking an intake clerk for any such complaints. As a result, nearly 100% of newly filed complaints are available for review at the courthouse by members of the press on the same day of filing. In addition to this free, same-day access at the courthouse itself, news organizations may pay a nominal quarterly fee for the convenience of remote online access, where approximately 90% of new civil complaints are posted each day.

Davidson County Circuit Court

- ***Paper-Filing Only***

  New civil complaints are scanned throughout the day and are made available for review for free at the courthouse on public computer terminals, or for a nominal monthly fee through a government website. As a result of these procedures, 90% of new complaints are available for review on the same day they are filed.

Oakland, CA

Alameda County Superior Court

- ***Paper-Filing Only***

  The court makes newly filed complaints available for viewing on its website on a same-day basis without charge. Members of the press who visit the court each day are permitted to use a workstation equipped with a computer that is located behind the intake counter to review new complaints that have been posted to the court's website by the clerk's staff. If the day's docket shows any new complaints that have not yet been posted to the website, but which the reporter would like to review, the clerk's staff will post those new actions promptly upon request. The system has resulted in near-perfect press access to the day's newly filed actions by the end of the day they are filed

Oklahoma City, OK

Oklahoma County Court

- ***Paper-Filing Only***

  Intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped and indexed, but have not been fully processed. A member of the clerk's staff then provides the petitions to members of the press upon request. Reporters are instructed to sign the back of each petition to indicate that they have seen them all. After reviewing this first stack of complaints, reporters may request to see those complaints that have been date stamped, indexed and placed in the basket after 3:15 p.m. Through these procedures, members of the press are able to see the vast majority of newly filed complaints on the same day they are filed.

Omaha, NE

Douglas County District Court

- ***Optional E-Filing***

  New complaints, which may be filed electronically or in paper form, are immediately indexed and docket information is added to a statewide computer database that is updated hourly. Members of the press may review docket information for relevant cases on courthouse computer terminals and download images of new civil complaints as they become available. Complaints filed electronically before 4:00 p.m., as well as all paper documents filed up to the time the court closes at 4:30 p.m., are available on the same day they are filed. Members of the press may access docket information and the full text of new complaints for free at the courthouse or remotely online via the statewide Justice website for a fee. These procedures have resulted in same-day access to the vast majority of new civil complaints filed with in the Douglas County District Court.

Philadelphia, PA

Philadelphia County Court of Common Please

- ***Optional E-Filing***

  Civil complaints are made available for review by members of the public and press on the court's website, which may be accessed through public access terminals located at the courthouse. This system has resulted in same-day access to more than 95% of new civil complaints filed in this court.

Phoenix, AZ

Maricopa County Superior Court

- ***Paper-Filing Only***

  Members of the press previously experienced delays at this court, but after bringing these delays to the court's attention, the clerk implemented procedures to ensure same-day access to civil complaints filed at its downtown location. Under those procedures, court staff scan and upload for electronic viewing all complaints filed up to 5:00 p.m., which are then made available on a designated press computer located in the Customer Service Center for news reporters to review. The press computer is available for use by members of the press until 5:30 p.m., a half-hour after the Customer Service Center closes to the public. Complaints are typically made available to reporters prior to full processing. These procedures have resulted in near-perfect same-day access to newly filed civil complaints.

Pittsburgh, PA

Allegheny County Court of Common Pleas

- ***Optional E-Filing***

  More than 90% of the day's new civil complaints – whether e-filed or hand-filed – may be viewed by members of the press for no charge via the court's website, which may be accessed remotely by using a username and password provided to reporters by court staff.

Portland, OR

Multnomah County Court

- ***Paper-Filing Only***

  Following the assignment of case numbers (which occurs as soon as cases cross the counter) but prior to full processing, newly filed civil complaints are made available to members of the press. Early in the afternoon each day, the clerk's staff hands a stack of the day's new civil complaints to reporters, who are permitted to review the complaints at a cubicle located behind the counter. A half-hour before the court closes at 5:00 p.m., the clerk's staff hands another stack of complaints to reporters consisting of those complaints that have been filed in the interim. Any new complaints filed between 4:30 and 5:00 p.m. are made available for review to members of the press the next court day. These procedures have resulted in same-day access to the vast majority of complaints filed with the court. The court is currently preparing to transition to mandatory e-filing and will be using software designed by Tyler Technologies. Court administrators have asked the press for input on how to provide reporters with timely access to e-filed complaints.

St. Louis, MO

St. Louis City Circuit Court

- ***Paper-Filing Only***

  Reporters can get a stack of new complaints filed on the day of their visit from the clerk's staff at one of the intake windows at the clerk's office. Members of the press can review the complaints either at a table near the window or at the counter next to the intake window. Reporters are able to view nearly all new filed complaints on a same-day basis using these procedures.

Salt Lake City, UT

Salt Lake County District Court

- ***Optional E-Filing***

  At Salt Lake County's 3rd Judicial District Court, the main state court in Salt Lake City, members of the press are able to access and review almost every newly filed civil complaint on the same day of filing through public access terminals located at the courthouse. Documents filed by hand are scanned in by the clerks, while e-filed documents flow onto the court's public access system

shortly after they are filed and after only minimal processing. Reporters who wish to review newly filed complaints may use courthouse computer terminals for free to access docket information and full electronic text of civil complaints via Courts Information System, or CORIS, an internal file-viewing system. If the full text of any complaint, whether scanned or e-filed, is not yet available on CORIS, court clerks will provide news reporters with a paper copy of the complaint.

San Francisco, CA

San Francisco County Superior Court

- ***E-Filing Authorized for Asbestos Cases***

  News reporters are allowed behind the counter into the stacks to review new complaints after providing a driver's license and filling out a temporary name tag. The number of new complaints reviewed per day varies, but often exceeds 50. Per its written policy, the clerk's office holds all new complaints in a press box on the same day of filing, and makes those complaints available for review by members of the press "whether or not the cases have been entered into the computer," i.e., processed. The press box is available in the records department each day between 3:00 and 4:30 p.m., or can be requested at any point during the day by any member of the press. Complaints that are filed after 3:00 p.m. and have not been added to the press box are retrieved by the clerk's staff upon request. The result is that 90% or more of the day's new unlimited complaints can be reviewed by the press by the end of the day they are filed.

San Jose, CA

Santa Clara County Superior Court

- ***Paper-Filing Only***

  In 2010, the Santa Clara Superior Court clerk adopted a set of procedures designed to provide the press with same-day access to the vast majority of newly filed civil complaints. Under these procedures, new civil unlimited complaints are placed in a press bin so that they may be accessed by news reporters after receipt by the court of the filing fee, the assignment of a case number, and the assignment of a first status conference, but before any further processing. Complaints that are filed over the counter by 3:30 p.m., as well as civil unlimited jurisdiction complaints that are in the drop box by 4:00 p.m., are made available to reporters via the press bin on the same day they are filed. Unlimited jurisdiction

complaints that are filed over the counter between 3:30 and 4:00 p.m., when the clerk's office closes, are designated as a staff priority, and the court works to make them available for review on the same day as filed. Members of the press are permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases.

San Mateo, CA

Santa Mateo County Superior Court

- ***Paper-Filing Only***

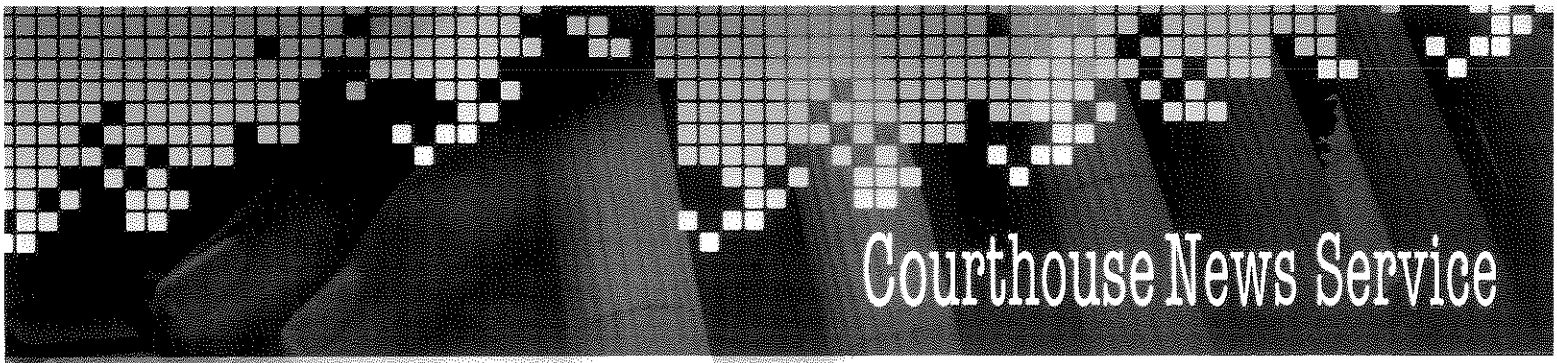
  After the issue of delays was brought to the attention of the clerk and the presiding judge, the court devised a solution for same-day access that was implemented by the clerk on December 3, 2012. Under the new procedures, all unlimited jurisdiction complaints that are filed before 3:30 p.m. each day are scanned and posted to the court's website by 6:00 p.m. that same day. The complaints may be accessed, reviewed and downloaded by any member of the public for free through the court's website. The court has designated a contact person to ensure that paper-filed complaints are being posted online on a same-day basis. The result has been near-perfect press access to new unlimited civil complaints by 6:00 p.m. of the day on which they are filed.

Seattle, WA

King County Superior Court

- ***Mandatory E-Filing***

  Newly e-filed complaints are not posted online until a certain amount of processing has been completed, but reporters may view complaints before they are posted online and before processing through the electronic equivalent of an in-box that is available at the clerk's office. Reporters are provided with a docket report of newly filed complaints two times per day – once at 11:00 a.m. and again at 3:00 p.m. The morning list includes all cases that have been filed from 3:00 p.m. on the previous day through 11:00 a.m. on the current day, while the afternoon list includes new cases that have been filed from 11:00 a.m. to 3:00 p.m. that day. Reporters review each list to find newsworthy cases, then search for and view new complaints on a computer terminal at the courthouse, even before processing has been completed. This system has resulted in same-day access to the vast majority of newly filed complaints by members of the press.



U.S. DISTRICT COURTS

While e-filing is often seen as both uniform and omnipresent in federal courts, it is anything but that. A large number of federal courts have no e-filing at all for case-initiating documents, requiring that they be filed in paper; others require paper plus a diskette for the initial pleadings; and yet others allow either e-filing or paper-filing for the first filing in a case. Furthermore, within e-filing rules, there are host of variations court by court. Some courts have set up a master shell number system where lawyers file docket information and a PDF of the complaint itself into a common, online shell case number. Many of those shell case numbers work as a press queue because they are open to the press for review. In another variation, the court assigns a temporary case number to new actions, accessible to the press upon filing. Another set of federal courts provide an automatic, permanent case number upon filing. Most of those courts send the newly filed cases immediately, without processing or review by a court clerk, into public access terminals where they can be reviewed by the press. In a variation of this method, some courts make judicial assignments automatically with the case number assignment while others assign a judge only after an intake clerk has reviewed the filing. Yet another federal court assigns a number automatically but only posts e-filed complaints online after the judge's clerk has approved the filing; however, the court also provides immediate press access to these complaints at the courthouse. Some courts ask lawyers to first email the docket information to the clerk's office, wait for its approval by a clerk, and only then e-file a PDF of the complaint into the case opened by the clerk's office, which is sometimes done promptly, sometimes not. And a handful of courts describing themselves as "e-filing courts" only accept complaints by email and docket them in the traditional manner. E-filing has evolved on the federal side in a manner, and with rules, that fit the individual courts, not unlike local rules for paper filings. Within that evolution, there is an evident continuation of the tradition of same-day access to new matters for the press corps.

Albany
(N.D. New York)

- ***Mandatory E-Filing***

  Members of the press review newly filed complaints as they are received in the clerk's office, prior to the assignment of case numbers and prior to any form of processing by a court clerk. That review is accomplished through the use of a shell case number code provided to the press. The code allows members of the press to see an electronic press queue of new filings, which includes the filings themselves, on public computer terminals at the courthouse. As with all federal courts, there is no charge to use the terminals at

the courthouse. Except for prisoner and pauper petitions, these procedures result in near-perfect same-day access to newly filed civil complaints.

Atlanta
(N.D. Georgia)

- ***Optional E-Filing***

Before e-filing, the intake clerk put copies of new complaints into a wooden box for review by the press corps, before those cases were docketed. The system resulted in excellent, same-day press access. With the move to optional e-filing, the Court scans new paper-filed actions into a computerized press box before they are docketed. Those complaints are reviewed by the press corps on a computer terminal in the clerk's office. E-filed complaints are reviewed by reporters prior to a clerk's review through a shell case number code typed into a press queue. Through its press access procedures, past and present, the Northern District of Georgia has kept a strong tradition of press access, providing access to roughly 95% of the new actions on the same day that they are filed.

Austin
(W.D. Texas)

- ***Mandatory E-Filing***

When cases were filed in paper, members of the press corps reviewed newly filed complaints by first reviewing docketed cases through scans and then asking a clerk at the intake counter for complaints that were not yet docketed, which represented the majority of the day's cases. Copies of the undocketed complaints were often placed on the intake counter in anticipation of the late afternoon check by journalists. Subsequent to mandatory e-filing, new civil complaints are automatically assigned a case number and flow directly onto a public terminal in the clerk's office that is ahead of and separate from PACER. Apart from prisoner and pauper petitions, the press has 100% same day access to the new complaints on the great portion of court days. As a reporter put it, a lawyer-filed case is not seen on the day of filing only "once in a blue moon."

Beaumont
(E.D. Texas)

- ***Mandatory E-Filing***

In the days of paper, two intake clerks logged newly filed actions into a red log book. At the end of the day, members of the press would review those complaints that had already been docketed and scanned on free public access terminals nearby and then check the red log book for any cases that had not yet been docketed. The clerks would hand the original undocketed complaints over the counter for review at a table in the middle of the room, a few steps from the intake counter. With the move to e-filing, the red log book is still kept for non-attorney filings, and reporters continue to check the book and request undocketed paper-filed complaints before going to the free terminals in the clerk's office, where e-filed complaints appear as soon as they are filed, without processing of any kind by a court clerk. The result is same-day access to 95-100% of the newly filed complaints.

Birmingham
(N.D. Alabama)

- ***Optional E-Filing***

The Northern District of Alabama has also kept a tradition of excellent press access as the court has transitioned to optional e-filing. In the Northern District, where cases are filed in paper and electronically, the intake clerk puts copies of paper-filed complaints and print-outs of e-filed complaints into an old wooden box, referred to by the staff as the "media box." A worn label is affixed to the box that says: "NEW COMPLAINTS REVIEWING ONLY." The box is placed just outside the glass windows of the intake counter. The new cases are docketed after copies are placed in the media box. In one of the myriad local variations on federal e-filing, the e-filed cases do not go online until they have been assigned a judge and that judge's clerk has reviewed and okayed the filing. Through the media box, the Northern District of Alabama has kept in place its longstanding tradition of giving the press same-day access to new actions.

Brooklyn
(E.D. New York)

- ***Optional E-Filing***

Parties are required to file "press copies" of new complaints, which are placed in a press box and made available to reporters

throughout the day, thereby allowing them same-day access to 90% or more of new civil complaints filed at the federal courthouse in Brooklyn, even if the new filings have not been docketed. In turn, e-filed actions are reviewed on public terminals at the courthouse. The court's system for press review has resulted in excellent same-day access.

Charleston
(D. South Carolina)

- ***Mandatory E-Filing***

  New civil complaints can be reviewed by the press corps as they are received – prior to the assignment of a case number – via free terminals at the courthouse. Reporters use a shell case number code to see an electronic press queue of new filings. As a result, the court provides same-day access to nearly all new civil complaints.

Chicago
(N.D. Illinois)

- ***Mandatory E-Filing***

  Before e-filing, members of the press reviewed newly filed paper complaints by going behind the counter and retrieving them from wire baskets, where they had been placed immediately after they crossed the counter. The location of the review was later changed to the records section, behind a gate next to the records clerk. But the cases were still placed in a wire basket and were still reviewed on the day of filing by a host of press entities, including the Associated Press, City News Service, the *Chicago Sun* and the *Chicago Tribune*. As the court moved to e-filing, the clerk established a press queue that accomplished the same purpose as the wire baskets – same-day access to the newly filed actions. The final evolution in the e-filing system allows newly filed complaints to flow directly onto terminals at the courthouse and online without stopping for a clerk's OK. Members of the press may view new complaints without charge through public access terminals at the courthouse. The result is same-day access to 95% or more of the newly filed actions. The Northern District of Illinois has continued a very strong tradition of press access on the day of filing from the past through the present.

Cleveland
(N.D. Ohio)

- ***Optional E-Filing***

When cases were filed in paper, clerks put newly-filed actions in a wooden press box on the counter near the intake clerks for reporters to review. With optional e-filing, new actions can be reviewed via public computer terminals located at the courthouse on the same day those complaints are filed. In another local variation on federal e-filing, the court does not put some of the new actions, such as ERISA complaints, online but does print out copies at the courthouse. Through these procedures, past and present, the Northern District of Ohio has provided the press with same-day access to 90-95% of the new civil actions.

Dallas
(N.D. Texas)

- ***Optional E-Filing***

Roughly half of the new cases continue to be filed in paper form in the Northern District of Texas. Both before e-filing and after, the court has followed a tradition of excellent same-day access for the press. Members of the press corps review the day's new complaints regardless of whether they have been docketed or not. Reporters review new actions that have been scanned and uploaded into the court's case management system through free terminals at the courthouse. They also review new complaints that have been scanned but not docketed through a bar code and case number, also on the terminals. Finally, complaints that have neither been scanned nor docketed are reviewed in paper form in their case folders. E-filed complaints flow directly onto the court's computer terminals without stopping for a clerk's review. The result of these procedures is same-day access to roughly 100% of the new civil complaints filed in the Northern District of Texas.

Denver
(D. Colorado)

- ***Mandatory E-Filing***

The Court assigns cases numbers automatically and those complaints flow into public view immediately, without processing or checking by a court clerk. Thereby members of the press have nearly perfect same-day access to new civil complaints filed in the District of Colorado.

Detroit
(E.D. Michigan)

- ***Mandatory E-Filing***

When complaints were filed in paper form, members of the press had same-day access to the day's newly filed complaints through a wooden media box located on the main counter in the filing room. Reporters checked out the box and reviewed the new cases at a table a few steps away. With the introduction of e-filing, new complaints are automatically assigned a case number and the complaints flow directly onto the court's public computer terminals and online, weekends and after hours, without a clerk's OK. Through these procedures, the Eastern District of Michigan has fostered a tradition of excellent same-day access, resulting in same-day access to 90-95% of the newly filed actions.

Houston
(S.D. Texas)

- ***Mandatory E-Filing***

Prior to e-filing, members of the press walked to the end of a long intake counter and asked for the press bin, a plastic box similar to those used by the U.S. Post Office to hold bulk mail. The press bin contained the new filings from that day. With the advent of e-filing, new cases are automatically given a case number and the complaints flow into the terminals at the courthouse and online, without a clerk's intervention. Through these changing procedures, the Southern District of Texas has consistently maintained a strong tradition of press access resulting in same-day review by the press corps of nearly all new civil complaints.

Indianapolis
(S.D. Indiana)

- ***Optional E-Filing***

The majority of new complaints are filed in paper form in the Southern District of Indiana. The press reviews the new actions by asking at each of three intake windows if there are new complaints that have not been scanned and docketed, which are then provided for review at a long counter. In addition to the undocketed complaints, those that have been scanned and docketed are posted to a public terminal in the clerk's office. Through these procedures, the Southern District of Indiana has maintained a tradition of press corps review of newly filed actions on the day of filing.

Los Angeles
(C.D. California – Los Angeles Division)

- ***Paper-Filing for Case-Initiating Documents***

  At the end of the court day, the day's new complaints are brought by a court staffer from the intake area and placed in pass-through boxes in a small room adjacent to the docketing department. Credentialed news reporters who cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they need to look over the new cases, putting the complaints back in the pass-through boxes when their work is done. The cases in the boxes include cases that will be transferred to the Central District's other divisions. Through these procedures, which have been in place for decades, 90-95% of the newly filed complaints are available for review by members of the press on the same day they are filed.

Louisville
(W.D. Kentucky)

- ***Mandatory E-Filing***

  News reporters are able to review newly filed complaints as they come into the clerk's office, prior to docketing. Reporters use a shell case number code to access an electronic press queue of new filings, which is available for free at public computer terminals at the courthouse. These procedures have resulted in same-day access to the vast majority of new civil complaints filed with the court.

Manhattan
(S.D. New York)

- ***Paper-Filing for Case-Initiating Documents***

  New civil complaints are held at the filing window in a steel pass-through lock box. Members of the press can review the contents of the steel box at specific times during the day. The staff keeps a check-out book that members of the press are required to sign in order to review the actions. Through this system, which has been in place for decades, the Southern District has long maintained a strong tradition of press access, resulting in same-day review of virtually every new civil complaint filed in the Manhattan Division.

Milwaukee
(E.D. Wisconsin)

- ***Mandatory E-Filing***

The court provides the press with a handwritten intake log on a clipboard. Journalists pick up the intake log upon arriving in the clerk's office and ask for paper-filed cases of interest held in folders next to the intake clerk, which are passed to journalists for review at one of two round tables in the intake area, a couple of steps from the counter. If a case is filed late in the day, the intake clerk will pass it to the journalist for review without a folder. E-filed cases flow directly, without stopping for a clerk's review, onto two free terminals in the clerk's office. The Eastern District of Wisconsin thus has kept a tradition of excellent press access that results in same-day access to about 95% of the day's newly filed actions.

Minneapolis/St. Paul
(D. Minnesota)

- ***Optional E-Filing***

When all cases were filed in paper form, reporters first reviewed an intake log in the clerk's office and then reviewed scanned complaints on computer terminals. For those complaints that had not yet been scanned, reporters asked a clerk at the end of the intake counter for the most recent cases, which the clerk would photocopy and provide to reporters. The result was complete same-day access to new civil complaints. Subsequent to optional e-filing, reporters review an intake log of new cases on an internal computer system available only at the courthouse. Paper-filed complaints are scanned into that same system before they are docketed. E-filed cases go directly into the same internal system as they are filed. Those policies in the District of Minnesota have resulted in same-day access to virtually all new civil complaints filed with the court.

Newark
(D. New Jersey)

- ***Mandatory E-Filing***

When cases were filed in paper, reporters covering the court asked for new complaints at the intake counter and reviewed them in a small, open room immediately adjacent to the intake counter. At that point, the new cases had not been given a case number, as the clerk followed an unusual procedure of assigning numbers after

intake at the time a new case was docketed, after which another clerk reviewed that docketing as well as the contents of the case-initiating pleadings. After the switch to e-filing, the court set up an electronic press queue through which members of the press are able to review the flow of newly filed civil complaints as they are received by the clerk's office, prior to being assigned a permanent case number. With both paper and electronic filing, the District of New Jersey has followed a tradition of same-day press access that has resulted in press review of all newly filed actions on the day of filing.

New Orleans
(E.D. Louisiana)

- ***Mandatory E-Filing***

When cases were filed in paper form, members of the press would go down the line of division heads – docketing clerks for each courtroom – who worked in large cubicles set up in a row that opened towards the entrance to the docketing area. The individual clerks either left the new complaints on their cubicle's individual counter or handed them to reporters upon request. In addition, reporters would ask the intake clerk in an adjacent room for any new cases that had not yet been sent over to the docketing area, and would be provided with those new actions. With the move to e-filing, the court automatically assigns a case number and posts the new actions on public terminals at the courthouse at the time of filing. There is no processing checking by court clerks before posting to the terminals. A common local variation on federal e-filing is that judge assignments are made only after a clerk's review. In the past, with paper filing, and in the present, with e-filing, the Eastern District of Louisiana has preserved a tradition of press access that results in same day review by the press corps of roughly 95%, of the new actions.

Philadelphia
(E.D. Pennsylvania)

- ***Paper-Filing for Case-Initiating Documents***

The Eastern District has traditionally provided excellent and extremely timely public access to all new filings. For decades, new complaints have been placed in a wooden box by the intake clerk after assigning a case number, a practice that continues today. The press corps reviews the new cases from that box. Docketing clerks periodically take the new complaints from the box, docket

them promptly and place them in folders on the intake counter near the wooden intake box. As a result, the press corps has near-perfect same-day access, seeing 95% if not more of the new cases on the day they are filed. Complaints filed in the Court's Allentown division are scanned, printed and also placed in folders on the counter in the Philadelphia courthouse. The court applies the same procedures to all newly filed court records, including subsequent filings and rulings, such that nearly all documents filed in the court can be immediately reviewed by the press.

Pittsburgh
(W.D. Pennsylvania)

- ***Optional E-Filing***

The court provides news reporters with an "MC" case number code, which allows members of the press to view the new complaints in an electronic queue waiting to be okayed and assigned a permanent case number and judge. The press corps reviews the MC-coded civil complaints using free terminals at the courthouse. This system has resulted in same-day access to the vast majority of new civil complaints.

Portland
(D. Oregon)

- ***Mandatory E-Filing***

The District of Oregon is another federal court that has a strong tradition of press access. When cases were filed in paper form, the clerks would hand newly filed actions to journalists for review at a desk within eyeshot of the clerks. This system gave the press access to 90% or more of the court's new complaints on the day of filing. During optional e-filing, the court established en electronic in-box at the courthouse where PDF files of the new cases were posted before docketing. With mandatory e-filing, complaints are given a case number automatically and flow immediately onto free terminals at the courthouse. As a result, through procedures past and present, the District of Oregon has consistently provided the press with same-day access to nearly all of the day's new complaints.

Sacramento
(E.D. California)

- ***Mandatory E-Filing***

  Prior to e-filing, the clerk allowed reporters to review the new complaints at a desk behind the counter, a system that resulted in complete same-day access. Subsequent to e-filing, complaints receive a provisional case number when they are filed, allowing the press to review them as they come into the court. Those provisional numbers are replaced by permanent case numbers once the docketing is okayed by a clerk. The result is that both historically and today the press has been given same-day access to 90-95% of the new actions filed in the Eastern District of California.

St. Louis
(E.D. Missouri)

- ***Mandatory E-Filing***

  Prior to e-filing, the clerk's staff placed new complaints in a wooden box on the intake counter. Subsequent to e-filing, the clerk set up a computer terminal marked with a sign that said "media terminal," used regularly by the *St. Louis Post-Dispatch*, for example, that gave access to the e-filing intake queue used by the clerk's staff. In the final iteration of federal e-filing, the designated media terminal is not necessary because the e-filed cases are automatically assigned a case number upon filing and flow immediately onto public terminals. Over time, the court has through various means – first the wooden box, then the media terminal, and now the automatic posting – followed a strong tradition of open access for members of the press corps, resulting in same-day review of near 100% of the new actions.

San Diego
(S.D. California)

- ***Mandatory E-Filing***

  When cases were filed in paper form, reporters reviewed that day's newly filed complaints in a wooden tray provided by a records clerk, before the complaints were docketed. With e-filing, reporters see virtually all newly filed complaints at the courthouse without charge by the end of the day of filing, in either printout or electronic form. The result is that both then and now, the Southern District provides same-day access to near 100% of the day's new complaints on the day of filing.

San Francisco
(N.D. California)

- ***Paper-Filing for Case-Initiating Documents Only***

  Members of the press review new complaints before they are docketed. Intake clerks enter new cases into an intake log and assign case numbers as the new cases cross the counter. Reporters review the new cases immediately afterwards. Journalists are provided with a copy of the intake log and have access to "transfer boxes" that contain new actions being sent to different divisions of the court. Reporters can stay until 4:30 to review late-filed cases, after the clerk's office closes at 4:00. This tradition of press access has been followed for decades and has resulted in 100%, same-day access to new civil complaints the majority of the time.

San Jose
(N.D. California)

- ***Paper-Filing for Case-Initiating Documents***

  The court prepares an electronic intake log and assigns a cases number as the new cases cross the counter. Journalists can see the new case immediately afterwards, before docketing. As they do in the San Francisco division, reporters see the vast majority of individual complaints from the intake clerk and the rest from the docketing clerks. The court also provides same-day access to cases being sent from San Jose to other divisions through the mail clerk.

Scranton
(M.D. Pennsylvania)

- ***Optional E-Filing***

  Members of the press are permitted to review new civil complaints on the same day they are filed by using a shell case number with an "MC" code that flows directly into terminals at the courthouse, functioning as an electronic press queue. Newly filed civil complaints appear in the press queue before they have been assigned a case number or have been looked over by a clerk. These procedures have resulted in same-day access to the vast majority of newly filed civil complaints filed in the Middle District.

Seattle
(W.D. Washington)

- ***Mandatory E-Filing***

  Prior to e-filing, members of the press went directly to the intake window and asked for the day's newly filed complaints, which were handed across the counter by the intake clerk. Reporters reviewed them at a counter in the same room. Subsequent to e-filing, members of the press review newly e-filed cases using free terminals at the courthouse where the cases show up as soon as they are filed, without delay caused by a clerk's review. Then and now, the Western District of Washington has followed a tradition of press access, resulting in daily review of 95% or more of the new cases on the day of filing.

Washington, D.C.
(D. Columbia)

- ***Mandatory E-Filing***

  Prior to e-filing, the intake clerks kept a wooden box on a small table within reach just behind the counter, where copies of newly filed complaints were put. Members of the press corps would review the cases and take notes from public chairs in the clerk's office, within view of the intake staff. The result was complete same-day access to roughly 95% of the day's new filings. Subsequent to mandatory e-filing, which was undertaken after discussions with members of the media, newly e-filed complaints are immediately posted to public access terminals at the courthouse upon submission of the complaint by the filing attorney and before any processing has taken place. The federal court in the nation's capital has followed a tradition of press access, before and after e-filing, resulting in same-day access to nearly all new actions.

Wilmington
(D. Delaware)

- ***Optional E-Filing***

  Prior to e-filing, reporters reviewed new actions by asking for new complaints at the intake counter in the clerk's office. The new actions could be reviewed at a table in the intake area. The result was excellent, same-day access. Under optional e-filing, the same procedures are followed for paper-filed cases. If an additional new case is filed in paper form while a reporter is reviewing the new cases, a clerk will hand that new complaint to the reporter. E-filed complaints are reviewed on terminals at the courthouse, through an

electronic queue that uses a shell case number code. Both before and after transitioning to optional e-filing, the District of Delaware has provided the press with roughly 100% same-day access to newly filed actions.

Exhibit C

Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

Title
Court Administration: *Trial Court Records Manual*

Submitted by
William C. Vickrey,
Administrative Director of the Courts

Agenda Item Type
Information Only

Date of Report
November 9, 2010

Contact
Patrick O'Donnell, 415-865-7665
patrick.o'donnell@jud.ca.gov

Marlene Hagman-Smith, 415-865-7617
marlene.smith@jud.ca.gov

Executive Summary

This report introduces the *Trial Court Records Manual*, the initial version of a manual that provides guidance and assistance to the courts in managing court records and modernizing those records. The manual is an important resource containing references to statutes, rules, industry standards, and best practices relating to records management. It implements Assembly Bill 1926 (Evans) and California Rules of Court, rule 10.854. The initial version of the manual (Version 1.0) is effective January 1, 2011.[1]

Previous Judicial Council Action

The promulgation of the *Trial Court Records Manual* is the final step in a long-term project to modernize trial court records. Under the leadership of the Court Executives Advisory Committee, measures to modernize trial court records have been under way for a number of

[1] A copy of the *Trial Court Records Manual* (Version 1.0) is attached at pages 76–153. It will be distributed electronically to the courts and made available online before January 1, 2011.

years. In 2009, the Judicial Council approved sponsoring legislation to modernize court records.[2] That legislation contained in Assembly Bill 1926 was enacted and signed by the Governor in August 2010 and become effective January 1, 2011.[3]

To implement the legislation, the Court Executives Advisory Committee and the Court Technology Advisory Committee recommended that the Judicial Council adopt a rule requiring the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute to the trial courts a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records. The rule proposal was adopted by the Judicial Council on October 29, 2010. The rules on court records management, including rule 10.854 that provides for the establishment of a trial court records manual, will be effective on January 1, 2011.[4]

The final step in this project is the promulgation of the *Trial Court Records Manual.* The manual is intended to assist the trial courts and the public to have complete, accurate, efficient, and accessible court records. Like the legislation and the rule, the manual will be effective on January 1, 2011.

About the Trial Courts Records Manual

The purpose of the *Trial Court Records Manual* is twofold. First, it contains the statutory and rule requirements with which all trial courts must be in compliance to meet minimum standards to execute their important responsibilities pertaining to managing paper and electronic court records.

Second, the *Trial Court Records Manual* is intended to be a resource guide for court administrators and records staff to help them develop records management programs that best serve their local courts. The initial version of the manual includes a wide-ranging, though not exhaustive, list of topics that all courts are encouraged to address to ensure that they have comprehensive and effective local records management programs.

In addition to providing a resource that will contain all of the relevant statutes, rules, requirements, industry standards and many best practices for court records management, the *Trial Court Records Manual* will include a retention and destruction table for court records that is organized in a readable format and includes hyperlinks to the underlying authority for record retention in most case types.

The manual does *not require* any trial court to use new technologies or modify current practices. However, the next stage of court records management in California involves the transition from paper records to records that are created and exist only in electronic form. Some information in

---

[2] See the Judicial Council report at *www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf.*

[3] The text of the bill may be viewed at *www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1901-1950/ab_1926_bill_20100823_chaptered.pdf*

[4] See the Judicial Council report at *www.courtinfo.ca.gov/jc/documents/reports/20101029itema32.pdf.*

the future will only exist in electronic form, and may consist only of data in fields of a case management system and not a form that is readily converted to paper. A comprehensive records management system must contemplate and enable the shift from paper to electronic records. The legislation, rules, and manual will facilitate that shift as it becomes feasible for the courts to implement it.

The manual will be periodically updated to reflect changes in technology that affect the creation, maintenance, and retention of court records. Except for technical changes or corrections or minor substantive changes unlikely to create controversy, proposed changes in the manual will be made available for comment from the trial courts before the manual is updated or changed. Under new rule 10.854(c) of the California Rules of Court, courts must be notified of any changes in standards or guidelines, including all those relating to the permanent retention of records.

Courts will benefit significantly from having a reference manual that highlights proven technologies and offers sample policies and procedures that can help them meet the challenges of effectively managing a huge volume of court records.

Comments and Responses

The first draft of the manual was prepared by the Working Group on Records Management of the Court Executives Advisory Committee.[5] Before the manual was circulated for public comment, it was circulated to all trial court executives. The Court Executives Advisory Committee and the Court Technology Advisory Committee jointly reviewed the initial draft of the manual and recommended that it be circulated for public comment. The final version of the manual with this report was then approved by the Administrative Director of the Courts.

The *Trial Court Records Manual* was circulated for approximately two months in August and September 2010.[6] Eighteen comments were received on the draft. The commentators included nine superior courts, the California Judges Association, several media organizations, a television news producer, the editor of a news service, an accountant, and the State Bar's Committee on Administration of Justice. A chart summarizing the public comments and responses is attached.[7]

Technical or Stylistic Comments

The public comments fall into several categories. First, a number of the comments were of an essentially *technical or stylistic* nature. (for example, comments 6 and 8) Many of these technical

---

[5] The working group was chaired by Kim Turner, Court Executive Officer of the Superior Court of Marin County. Its members included court executive and technology officers from superior courts in various counties including Monterey, Napa, Orange, Los Angeles and Santa Barbara, and an assistant clerk/administrator from the Court of Appeal, Fourth Appellate District.

[6] The invitation to comment on the manual is available at www.courtinfo.ca.gov/invitationstocomment/documents/sp10-02.pdf

[7] The chart of comments is attached at pages 6–74. The Court Executives Advisory Committee reviewed all public comments and recommends the responses presented in the chart.

and stylistic changes suggested by the commentators were well-founded. The manual has been modified to reflect those comments.

Comments for future versions

Second, some commentators made suggestions for materials to be added in future versions of the manual or recommended that current sections be developed further. (for example, comment 14.) When the manual was being drafted and prepared for circulation, it was recognized that the initial version of the manual would not be able to fully and comprehensively cover all topics relating to court records. So the invitation to comment expressly invited comments on certain topics on which it is anticipated that more information will need to be provided in the future. The comments received on these matters were very helpful. They will be considered when *future versions* of the manual are being developed.[8]

Third, a number of commentators used the comment process to make suggestions for changes to the law on court records and other matters. These suggestions are *beyond the scope* of the manual. The manual presents key information about the current law relating to trial court records and recommendations about best practices. The information in the manual is intended to assist the courts and the public in understanding how records are to be treated under existing law. The manual, however, is not the place for introducing changes in the law or for discussing and resolving such changes.[9] Commentators specific suggestions for changes in the law on court records will be referred by staff to the appropriate Judicial Council advisory committees for consideration.

Legislative Updates to the Manual

In addition to the changes made in response to the comments, some recent changes in the law on court records that will become effective by January 1, 2011 have been included in the manual.

For instance, Senate Bill 1149, effective January 1, 2011, changes the law regarding access to records in unlawful detainer cases involving foreclosures of residential property. The relevant statutory changes in SB 1149 have been included in the part of section 10.3.1 of the manual that deals with confidential civil records and in Appendix 1, Chart of Records Confidential by Statute or Rule.[10]

---

[8] The working group particularly recognizes the importance of providing more guidance in future versions of the manual regarding the creation and maintenance of records in electronic form. (See comment 14.) Providing more guidance on this subject will be a priority in developing subsequent versions of the manual.

[9] This is not to say that many of the issues raised by the commentators are not important or that they should not be considered in another context. Commentators have raised a number of issues that warrant further discussion—such as whether the media should have special access to documents before they have been processed and filed by the court (comment 1) or whether court records that are remotely accessible should be provided to the public free of charge or for a nominal fee (comment 17). The point here is that the records manual is not the place to consider and resolve these controversial matters.

[10] The Office of Governmental Affairs also brought to the working group's attention Assembly Bill 2767, the civil omnibus bill, which clarifies that people allowed access to Uniform Parentage Act (UPA) files for inspection

The manual has also been updated to include a reference to newly adopted rule 1.51. This rule, effective January 1, 2011, clarifies that Judicial Council information forms used for submitting information to law enforcement through the California Law Enforcement Telecommunications System (CLETS) are confidential. The rule also specifies who may have access to the information on the forms and prescribes for how long the courts must retain the forms before they are destroyed.

In the future, it is anticipated that there will be additional legislation and rule changes relating to court records that will require the regular updating of the manual.

Implementation Requirements, Costs, and Operational Impacts

The purpose of the manual is to assist the courts in managing trial court records. As indicated above, the manual does *not require* any trial courts to use new technologies or modify current practices. The manual provides a comprehensive source of references to the law relating to court records, whether in paper or electronic form. For courts seeking to modernize their records management practices, the manual provides very useful and important guidance. The manual will need to be updated periodically to reflect changes in the law and technology.

Relevant Strategic Plan Goals and Operational Plan Objectives

The manual furthers the goal of modernization of management and administration (Goal III). It also advances the goal of providing branch wide infrastructure for service excellence (Goal VI) (see Objective 4, Desired Outcomes b (new statutes and rules of court to support increased electronic archiving of court records).

Attachments

1. Attachment A: Chart of the public comments and responses at pages 6–74.

1. Attachment B: Cal. Rules of Court, rules 10.850 and 10.854 at page 75.

3. Attachment C: *Trial Court Records Manual* (Version 1.0) at pages 76–153.

---

purposes may also copy those files. The bill amends Family Code section 7643. The manual does not currently contain a section on the copying of court records; however, if a future version of the manual includes a section on the copying of records, the new provision in section 7643 on copying UPA files should be included in that section.

Attachment A

SP10-02
Court Administration: Trial Courts Record Manual
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Response
1.	Californians Aware, California Newspaper Publishers Association, Courthouse News Service and First Amendment Coalition San Francisco By Rachel Matteo-Boehm Holme Roberts & Owen LLP	NI	On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (collectively, the "Press Groups"), we are pleased to make this submission in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual (the "Manual"). The Press Groups have a particular interest in the aspects of trial court record creation and maintenance that affect the media's ability to access court records in a timely manner and therefore focus their comments on the court record creation process (Section 4.1), e-filing (Section 4.4), press access to court records (proposed new section within Chapter 10), and case numbering systems (Sections 4.2 and 4.3). **[The remainder of the Press Group's comments, including the full text of its thirteen page letter and a thirteen page appendix, are attached at the end of this comment chart.]**	The extensive comments provided by the Press Groups are appreciated. Access to public records by the public and the role that the press plays in making information about the courts available to the public are important. As the comentators note, the manual expressly recognizes the importance of creating and maintaining complete, accurate, and accessible court records. (Section 1.2, Purpose of Records Manual.) As indicated at the beginning of the Press Groups' comments, the commentators' particular interest is in the aspects of trial record creation and maintenance that affect the ability of the media to access court records in a timely manner. The commentators' focus is on sections of the manual that are planned for subsequent versions of the manual (section 4.1 on records creation) or will be expanded in the future (section 4.4 on e-filing). The comments also suggest creating a new section on press access to public records. Finally, the comments include some specific comments on case numbering systems (sections 4.2 and 4.3). The Court Records Creation process (section 4.10) is not yet included in the current version of the manual. The Press Groups'

	Commentator	Position	Comment	Response
				comments will therefore be considered in preparing the section. In addition, there is currently no special section on press access to records. Including such a section will be considered in the future. Although it is premature to address most of the Press Group's comments, a few general observations may be appropriate at this time. Basically, the manual is intended to provide guidance to the courts on the current law on records management and the best practices that courts have developed to apply the law. Thus, the manual provides users with the statutes and rules relating to court records, including those that relate to access to records. On the other hand, the manual is not intended to be a means for changing the law or for resolving controversial legal issues. **Access to Court Records** The Press Groups' comments devote substantial attention to issues relating to access to court records. While some of these comments summarize existing law, the comments also advance a legal argument that members of the media are entitled not only to the same filed documents as the public under the law, but also to special access to pre-filed documents. The commentators argue that documents that have been received, but not yet processed for filing, should be made available to them immediately or on the same day that they are received, even before the documents have been processed.

	Commentator	Position	Comment	Response
				This argument for a change in the manner in which court records are made accessible poses many significant practical and legal issues. First, the trial courts have been facing major fiscal challenges for several years. The lack of resources has sometimes made it very difficult or impossible to process all documents that are submitted to the court so that they are filed on the same day that they are received. While the courts would certainly like to process all documents submitted expeditiously, their fiscal constraints do not always make this possible. Second, the circumstances of courts vary widely. Some still use entirely paper records, some scan in part or all of their records electronically, and some are beginning to receive and process documents through e-filing. Depending on individual courts' circumstances, including staffing, equipment, technology and other factors, courts have different capacities and abilities to process documents submitted for filing. There is no "one size fits all" method for processing documents received by the trial courts in California. Third, the manual provides information regarding the basic law on access to court records. (See sections 2.2 and 10.1) "Court records" are generally defined as consisting of documents that have been *filed* with the court. (See Government Code, § 68151(a).) This definition has been used in the manual Furthermore, it is a reasonable interpretation of the laws on access to court records to mean that the laws on access apply to court records

	Commentator	Position	Comment	Response
				that have been *filed*. Indeed, some of the Press Groups' own analysis and case citations support this interpretation. However, at other times, their comments seem to argue for special media access to pre-filed documents. The issue of whether the media should have special access to pre-filed documents before they have been properly filed and made available to the public is not one that it is appropriate to attempt to resolve in the context of developing the present court records manual. The purpose of the manual, as indicated above, it is to provide a statement of current law; it is not meant to be a vehicle for changing the law. Given all the substantial practical and legal issues involved, it would not be appropriate for the manual to mandate any particular times or methods for providing access to the media to court records. Particular media organizations are welcome to discuss with particular courts the best means to ensure timely and effective access to court records. **E-Filing** The section of the manual on e-filing will be expanded in the future to provide additional information. It will take into account the Press Groups' comments. However, the committee disagreed with the commentators' pessimistic evaluation of e-filing. It believes that e-filing not only can assist in making, but has been making possible greater and more expeditious access to court records for the public. It would be contrary to improving public access to hold back on the progress

	Commentator	Position	Comment	Response
				that courts are making by introducing e-filing. Courts that are able to make e-filing possible should be encouraged to do so. The factors listed in section 4.1.1 should be helpful for the courts in assessing the advantages and disadvantages of e-filing. **Case Numbering Systems** Regarding the Press Groups' specific comments on the sections of the manual on courts records numbering system (section 4.2 and 4.3), the committee disagreed with the comments. Case numbering systems exist for the purpose of identifying and organizing filed cases. The numbering schemes already in place in the trial courts reflect local practices, case management system design and limitations, and the manner in which the courts organize their work. When all trial courts are deployed on the California Case Management System, there will be a uniform numbering scheme that will be adopted by all trial courts. Until that time, it is unlikely that courts will see the necessity to change their current practices, particularly because most of them are longstanding, in the area of case numbering systems.
2.	California Judges Association San Francisco, CA Jordan Posamentier, Esq., Legislative Counsel	NI	This letter responds to the Judicial Council's request for public comment on the draft Trial Court Records Manual ("the Manual"). The Manual is a good "first step" in providing a reference guide for the new statutory and rule requirements contained in the recently chaptered AB 1926. The California Judges Association approves of the Manual with the	The committee notes the California Judges Association's general approval of the manual as a "good first step."

	Commentator	Position	Comment	Response
			following comments and suggestions. It would be helpful if the Manual focused more on mandatory requirements for court recordkeeping management programs. To avoid confusion, it should include prefatory language explaining that, except as required by statute and court rules, the Manual contains recommendations that do not constitute directives or mandates to trial courts. Rather, the Manual seeks to explain current best practices in trial court records management.	The committee disagreed with this particular suggestion. It believes that the focus of the manual is balanced and appropriate. The committee decided to develop the manual as a resource guide and single reference source to help trial courts ensure that they are 1) meeting legal requirements, and 2) benefitting from initiatives that other courts have developed that are considered best industry practices. The committee also prefaced their intentions on page 1 of the manual to assist users to distinguish between mandatory requirements and optional features of court records management programs, by placing a light bulb icon before sections containing optional ideas, policies and programs, and best industry practices. Sections not preceded by this icon contain mandatory requirements. Sections containing mandatory requirements contain links to the relevant statutes or rules.
			CJA believes the Manual would provide greater utility if the body of it was restricted to explaining mandatory requirements, with either an appendix or separate sections devoted to optional recommendations and less critical information. For example, there is minimal need to provide information about the various court records that every court likely already possesses. (See e.g., Section 5 (record classification).) Similarly, small courts benefit little from information addressing the transition from the current paper record system to an electronic record system.	The committee disagreed with this comment for the reasons noted above. The language in section 5 (Record Classification) was deliberately included in order to implement the goal of using the manual to broaden the conventional definition of records management to encompass the complete life cycle of court documents from initial filing and, classification to final storage and destruction.

	Commentator	Position	Comment	Response
			Small courts probably do not have a "records manager," nor is there any realistic expectation of funding such a position. They would have limited success in attempting to transition on their own, and implementing on a piecemeal basis could be counterproductive. (For small courts, implementation probably should be initiated only after the entire system is designed – especially true if it is to interface in the future with CCMS – and with the assistance of a hands-on expert.) The mandatory requirements, in contrast, apply statewide to courts of all sizes.	The committee agreed that some courts may not benefit today from information addressing the transition from paper to electronic records storage. This first version of the manual was drafted with the current records management environment in mind, but it is contemplated that subsequent versions will reflect emerging records technologies as they are implemented in the trial courts. Initiatives are underway to using technology for document imaging for small courts as well as larger ones.
			Comment to 4.4 E-filing (electronic format filing protocols) Rule 4.4 outlines the advantages and disadvantages of courts converting to a paperless records system, including filings by the public.	**Comment to 4.4 E-filing (electronic format filing protocols)**
			However, the Manual does not explain what type of software will be used or accepted by the court: e.g. MS Word 7 or some generic format. Also, how soon do the filers need to upgrade their software to be able to file court documents? Clarification of this would be important to court records managers and litigants.	The committee agreed with this comment. It plans to address these issues in future versions of the Trial Court Records Manual.
			Comment to 5.1 (standard record classifications) Rule 5.1 classifies cases according to category and type.	**Comment to 5.1 (standard record classifications)**
			Misdemeanors and infractions are all grouped together. It would seem that there should be an additional class of cases limited to traffic cases, as they comprise a large part of the caseload and should	The committee disagreed with this suggestion. The manual references the same case categories and definitions to complement those found in the Judicial

	Commentator	Position	Comment	Response
			be handled separate and distinct from misdemeanors and other infractions. **Comment to 7.5 (death penalty exhibits)** Rule. 7.5 discusses how long to retain exhibits in death penalty cases. A definition of "execution of sentence" should be identified. Death penalty cases can return to courts several times over long spans of time, and sometimes with new evidence (e.g., due to forensic improvements) introduced that dates back several decades. **Comment to 11.4.1 Records Retention and Destruction Schedule under Government Code Sections 68152 and 68153** Rule 11.4.1 charts retention periods based on case types. While Government Code Section 68152 authorizes the court to destroy domestic violence and harassment case records 60 days after expiration of the temporary protective or temporary restraining order, this is not necessarily the best practice. Individuals subject to the order might move to a new jurisdiction, which has no record of their past activity. A better practice might be to preserve these cases up to 3 years after the expiration of the order so that the new jurisdiction can refer to them if needed.	Branch Statistical Information System (JBSIS). **Comment to 7.5 (death penalty exhibits)** The committee agreed that there is limited guidance for death penalty exhibits for cases that span long periods of time. This topic will be addressed in future versions of the manual. **Comment to 11.4.1 Records Retention and Destruction Schedule under Government Code Sections 68152 and 68153** The committee disagreed with this suggestion, in part. Section 11.4.1 is a restatement of what is contained in Government Code section 68152. This section of the manual simply states the law. So as not to confuse users of the Trial Court Records Manual, this section is not intended to include best practices. However, the committee will consider whether there is another section in the TCRM in which this best practice might be included in the future. Over time, with the deployment of California Courts Protective Order Registry (CCPOR), many courts will have their domestic violence and harassment case data in a central repository, which will alleviate some cross-

	Commentator	Position	Comment	Response
			Conclusion The Manual will serve as an outstanding resource for mandatory requirements. We look forward to seeing the final version.	jurisdictional concerns. **Conclusion** The committee appreciates the CJA's recognition of the usefulness of the manual.
3.	Eugene M. Frank, CPA, MBA Records Retention, Audit and Control Specialist Winnetka, CA	NI	I'm a records retention, audit and control specialist. My area of interest is the preservation, retention, and maintenance of court records and the controls established over the destruction of court records. My specific interest is in the controls established over the records retention and destruction processes. It is my understanding that the main purposes of AB 1926 are to authorize, permit and promote the creation and maintenance of court records in electronic form to enable reduction in court administrative and storage costs, under standards and guidelines established by the Judicial Council. Furthermore, it is my understanding that AB 1926 does not change the substance of California Government Code Sections 68150-68153, Chapter 1.4. Management of Trial Court Records, other than to permit use of electronic records and conversion of non-electronic records into electronic form. Code Sections 68150-68153 are the codes governing the preservation, maintenance, retention and destruction of court records. The proposed rules would require that the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, prepare, maintain, and distribute a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records. Such standards and guidelines for the	

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

	Commentator	Position	Comment	Response
			creation, maintenance, and retention of trial court records will be contained in the "Trial Court Records Manual" and must be consistent with Government Code, Sections 68150-68153. This letter is in response to the request for public comments. The major purpose of court records management, including the creation, preservation, retention and destruction of records is to preserve and protect the appellate rights of defendants in accordance with their due process rights under the Sixth and Fourteenth Amendments to the United States Constitution. Our judicial process is based on an adversarial process that assumes equality of representation between the prosecution and defense and by that process truth and justice is served. That might be true for defendants with wealth to afford first-rate representation that offsets the infinite resources of the prosecution and can thwart judicial error. But it definitely is not true for defendants with modest or no financial means. The appellate process enables them to have a second and independent review of the trial proceedings. Accordingly, retention and availability of courts records is of extreme importance. The retention and destruction processes are of extreme importance. The manual I read belies their importance. That is why the statement on page 5, first paragraph of the manual, "...archiving and destruction is just the last, and perhaps least important step in the records management process" is repugnant, callous and uncaring for the due process rights of individuals. In felony cases, years after a trial	Providing a record on appeal is certainly one very important purpose of records management. There are also other purposes (see, for example, comment 5 below on the importance of court records to the public in a democracy.) The committee agreed that the statement in the draft manual was not appropriate. The manual is not intended in any way to demean the importance of safeguards pertaining to the

	Commentator	Position	Comment	Response
			conviction, evidence might come to light that important testimony used to convict was false. Ability to retrieve the perjured testimony would become important to appeal and reverse conviction. But, what if the court records were destroyed? No, no, retention and control over the destruction of court records is of the utmost importance, not the least important in the records management process. Code Section 68151(a) defines "court record" as consisting of the following: (1) All filed papers and documents in the case folder. (2) Administrative records filed in an action or proceeding, depositions, exhibits, transcripts… (3) Other records listed under subdivision (j) of Section 68152.	archiving and destruction of court records. This section of the manual has been revised.
			Other records includes ((j)(7) court reporter notes, and (j)(8) electronic recordings made as the official record of the oral proceedings. Both of equal importance. Retention period of 75 years in non-capital felony cases includes which court records? That is not specified. I presume they include those mentioned in Code 68151(a)(1) and (a)(2). But, then I ask you, what if the court reporter notes (j)(7) or (j)(8) electronic recordings made as the official record have not been transcribed? Transcripts are retained for 75 years but other records (j)(7) or (j)(8) from which a transcript is made are retained for only ten years. Are such untranscribed "Other records" of less importance than if there was a transcript. They contain the same important trial proceedings, just in different forms. The State of Louisiana has it right. Court reporter	This comment appears to go beyond the scope of the manual. The manual is intended to provide information and guidance to the courts regarding the current law, including the law regarding records retention, preservation, and destruction. (See section 11.) This comment, however, suggests changes in the law regarding records retention, preservation, and destruction.

	Commentator	Position	Comment	Response
			notes are retained until a full transcript is made or until the retention period for a transcript has been reached. The manual needs to better clarify the retention guidelines. <u>The destruction process is probably the most important process in the records management cycle.</u>	
			Code Sections 68152 and 68153 require that five (5) conditions must be met before court records can be destroyed and two (2) conditions after destruction. Remember court records include those noted in Code Section 68151(a)(1), (a)(2) and (a)(3). Subsection 68151(a)(3) being "Other records identified in Code Section 68152(j). The manual fails to address this or clarify these definitions.	The manual provides direct links to each of the statutes referred to in this comment.
			The five conditions required by Code Sections 68152 and 68153 are as follows: 1. The applicable retention time has expired. (Code Section 68152) 2. After (there must be) final disposition of the case (defined in Code Section 68151). (Code Section 68152) 3. Notice of destruction (intention) has been given. (Code Section 68152) 4. There is no request and order for transfer of the records. (Code Section 68152) 5. Upon the order of the presiding judge of the court (required by Code Section 68153). Where are these conditions stated in the manual? They should be clearly stated as requirements that must be met before court records may be destroyed. The manual should contain an example of a sign-off sheet requiring a signature or initial by each condition that each condition has been met. The document should be dated with supervisory	The committee agreed with this comment. The manual has been revised to include these five conditions in section 11.

	Commentator	Position	Comment	Response
			approval. Code Section 68153 requires two conditions, after the destruction of records. 1. Notation of the date of destruction shall be made. 2. A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court. Where are these conditions stated in the manual? If they are, I missed it. Question: Why isn't a corroborating witness of the destruction required with a sign-off that all conditions have been met, such as discussed above? That's how important the destruction process is and should be. To do otherwise, allows the courts to bend the rules with no oversight and no accountability! And, don't tell me that adherence to the destruction process is based on trust! Trust is not a control. Trust does not assure accountability! Trust does not ensure processes are followed! If allowed, courts will short-cut processes, particularly record retention and destruction processes. With no control, no oversight, court employees can violate destruction processes with impunity. For all these reasons, I find the manual inadequate, poorly written and more confusing than clarifying! Finally, I strongly suggest eliminating Code Section 69955(e) regarding destruction of court reporter notes or emasculate it. It is archaic and without any oversight or control measures. It requires no accountability in the destruction of court records, no notice, no documentation of the destruction and no	The committee agreed that these two conditions in Government Code section 68153 should be referenced in the manual. This question suggests there should be a change in existing law, which is beyond the scope of the manual. This suggestion for the repeal of a code section is beyond the scope of the manual, which is intended to provide information for the courts about existing law. The suggestion for possible legislation should be addressed by staff to an appropriate Judicial Council

	Commentator	Position	Comment	Response
			reporting of record destruction. It is bad record management at its worst! And, since 1994, Code Sections 68150-68153 have superseded it. Eliminate it!!	advisory committee for consideration.
4.	Bill Girdner Editor Courthouse New Service Pasadena, CA	NI	I write in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual. I make these comments in my personal capacity as the founder and editor of a news service I started 20 years ago in Pasadena called Courthouse News Service. Courthouse News is submitting a separate set of comments, made in its organizational capacity and through its attorneys. I submit these comments in my personal capacity so that I may convey my personal observations, as a longtime journalist covering California's courts, on the Trial Court Records Manual as it relates to the press. I have worked as the editor of Courthouse News Service for the last 20 years, and worked as a journalist covering legal stories primarily for the Los Angeles Daily Journal, the Boston Globe and the New York Times for the preceding ten years. In that time, I have observed the many changes that have taken place in the ability of journalists to review the court's work and publish stories that fairly represent the great variety, difficulty, gravity and humor of the human events and conflicts that wind up in the trial courts for resolution. The first paragraph of Section 1.2 of The California Trial Court Records Manual, on the purpose of records management, is one that I emphatically	The committee agreed with the commentator that maintaining court records is not only a fundamental role of courts, but is also a fundamental principle of our democracy. Regarding the access issues raised below, there are existing procedures for access to court records in the trial courts. Courts are willing to work with the media on access issues. And legal recourse is available to the press if appropriate access to court records is denied. However, addressing all of these access issues is beyond the scope of this manual.

	Commentator	Position	Comment	Response
			agree with – that keeping the court record is a "fundamental role" of the courts. I would go further. The record is a fundamental element of our democracy. It provides a window into the working of an open government and shows how decisions are made in a government that is, in the words memorized by high school students around our nation, "of the people, by the people and for the people." The court record is not only a history of the court's work but it is also a dynamic thing that changes and grows every day (except weekends, for the most part) and tells of controversies and decisions that are part of the fabric, the weave of our democracy. I say all this because that fundamental importance of the activity of the courts is what has caused newspapers to cover the courts, keep track of what is going in them and staff press rooms in courthouses around the state and over the years. Traditionally, part of a journalist's courthouse beat was to cover precisely what the Judicial Council is describing as fundamental, the record. Journalists cover the record by checking what can best be described as a set of catch basins for documents, the new filings for that day, the subsequent filings for that day and the judgments or rulings. Over the last twenty years in California, the ability of journalists to check those catch basins has been squeezed in moves big and small by individual courts, limiting where journalists can go and the times they can check and what they can see. That drip-by-drip erosion of access includes kicking	

	Commentator	Position	Comment	Response
			journalists out from behind the counter, taking away grace periods at the end of the day that allow review of late matters, requiring that journalists review electronic images of paper-filed cases, then limiting the number of screens, requiring that journalists stand in long lines to see the record, limiting the number of documents they can see and then requiring that they go to the end of the line, charging search fees, attempting to close press rooms early, not including press rooms in new court buildings, and, most importantly, interposing processes that take a day or days, such as jacketing, docketing and scanning, before a journalist can see the record. The impediments to access have been compounded in a series of big courts in California by the adoption of a complex and time-consuming case management system that delays access even more, thus gutting the record's news value. The ongoing set of conflicts between the press and court administrators over access can be compared to a long-running battle where the administrators make incursions into press access and where the press fights back successfully in some cases but loses in more, with the overall outcome that press access in California's trial courts has deteriorated substantially. The result that I have observed is fewer news stories involving the trial courts, less information coming out of those courts to the public, less access not only to the documents but also to the judges and officials of the court, and a greatly more insular and less responsive bureaucracy within California's courts. The trend in the relationship between courts and the public and the press is symbolized by the architecture of more recent court construction in	

	Commentator	Position	Comment	Response
			which the areas where court personnel interface with the public consist of floor-to-ceiling walls with a thick glass dividers through which members of the public talk to their employees, as compared to the open counters that exemplify earlier court construction where public employees spoke face-to-face with members of the public, with lawyers and with journalists, across the counter. The courts are becoming fortresses. The drafting of the California Trial Courts Manual is an opportunity to reverse the long term degradation of press access to California's courts and make a clear statement that the record of the courts is indeed the public record and must be kept open and accessible to the press in a prompt and thorough manner.	
5.	KFMB News 8 San Diego By David Gotfredson News Producer San Diego, CA	AM	As a member of the media, I would like to comment on the availability of public court records which frequently are treated as confidential but, in fact, are open judicial records. As the Judicial Council transitions to electronic filing of court records, I feel strongly that procedures need to be established to give the public access to these two specific categories of records: **1. Search Warrants.** Under California law, a search warrant becomes a public record 10 days after it is executed. Some warrants get sealed by the judge, but most do not. Likewise, the search warrant log book is a public record, which is open to inspection. I would like to see some sort of electronic access to both the search warrant log and executed search warrants. The federal Pacer system currently has	The commentators' suggestions are not entirely clear. On the one hand, the California Rules of Court already require trial courts to provide reasonable access to all electronic records, except those sealed by court order or made confidential by law, to the extent it is feasible to do so. On the other hand, the rules provide for restrictions on *remote* public access to certain types of records, including criminal and juvenile records. (See Cal. Rules of Court, rule 2.503(a) and (c).) These restrictions were established for reasons of public policy. The records manual is intended only to state existing law. It is not intended as a means for changing the law. If the commentator would like to propose specific changes to the laws on remote access to criminal or juvenile records, the suggestions should be addressed

	Commentator	Position	Comment	Response
			such a system in place. So, for example, when a search warrant is requested by law enforcement, the number could be entered into an online database. If the warrant is sealed, the word SEALED could be placed by the warrant number. After the warrant is executed, the address of execution could be entered into the index of the database. Simply click on that executed address link and the public could view the search warrant. Of course, if the warrant is returned un-served, the warrant would not be viewable. This sort of online search warrant database would not only allow public access to search warrants, but also offer a searchable address index of the executed warrants. **2. Juvenile Records.** As the draft California Trial Court Records Manual states: "There is also an exception to this rule of confidentiality for certain records in cases brought under Welfare and Institutions Code section 602, in which the minor is charged with one or more specified violent offenses. (Welf. & Inst. Code § 676.) In such cases, the charging petition, the minutes, and the jurisdictional and dispositional orders are available for public inspection (Welf. & Inst. Code, § 676, subd. (d))..." Would it be possible to track juvenile cases that meet the criteria above, and once the juvenile petition is sustained, make the specific public documents available online? Currently, obtaining juvenile records for such cases is virtually impossible, and for a member of the media, usually requires hiring an attorney and filing a motion. This, for juvenile records that are presumed to be public by law.	to the appropriate Judicial Council advisory committees.

	Commentator	Position	Comment	Response
			Please consider implementing an online system for granting public access to these juvenile records.	
6.	San Diego County District Attorney By Bonnie M. Dumanis District Attorney San Diego, CA	NI	As a District Attorney of San Diego County I have reviewed and considered the *Trial Court Records Manual* with particular interest in the sections addressing criminal law. I offer the following observations and comments. ***Section 1.2 (page 3):*** The Judicial Council may wish to incorporate a phrase in the 4th paragraph to explain that "the public must be able to see all the information the court considered in making its decision," *except that which has been sealed or is subject to rules protecting the confidentiality of the information.* ***Section 7.3.3 (page 25):*** The Judicial Council may wish to consider that often times DNA evidence is obtained from evidence in this category and may thus be subject to Penal Code section 1417.9(a). ***Section 7.4.5 (page 27):*** The Judicial Council may wish to clarify the scope of the mandate that harmful material be returned to the court by state agents. Does this include the city and county prosecutorial and law enforcement agencies? If so, this section is of significant concern to the local law enforcement as we routinely maintain harmful material which has ongoing evidentiary value for retrials after appeal and other post conviction litigation. Post conviction litigation is especially prevalent in child molest cases due to the long sentences imposed for those crimes. If indeed the Judicial Council does wish to include these parties, the section does not clearly put them on notice since it only refers to the "state."	**Section 1.2 (page 3):** The committee agreed with this comment. The suggested language or language to that effect has been included in the manual. **Section 7.3.3 (page 25):** The committee agreed with this comment. Section 7.3.3 has been revised to include a reference to the retention requirements of Penal Code 1417.9(a). **Section 7.4.5 (page 27):** The language of Section 7.4.5 is taken from Penal Code § 1417.8, and makes no changes to the process described in that section. Section 7.4.5 is, therefore, a restatement of the current law. As such, the section does not make any substantive changes to the way courts are currently handling the harmful materials that are the subject of Penal Code § 1417.8.

	Commentator	Position	Comment	Response
			Section 10.2 (page 32): The Judicial Council may wish to consider adding language to this section indicating that notice of intent to post web documents must be given by the court 5 days prior to posting, requesting and opposing parties must be provided with an opportunity to be heard, and certain factors must be weighed by the court under section 2.503(e) prior to publication. This will avoid premature publication of documents which may violate Marsy's law or create prejudice to the parties.	**Section 10.2 (page 32):** The committee agreed with this comment. Section 10.2 has been revised to reference the notice requirements of California Rule of Court, rule 2.503(e)(3) as well as the factors the court must consider when making its determination. The second paragraph of Section 10.2 has been revised to read: "Under rule 2.503(e) of the California Rules of Court, the presiding judge or a designated judge may order the records of a high-profile criminal case to be posted on the court's Web site to enable faster and easier access to these records by the media and public. This rule specifies several factors that judges must consider before taking such action. Prior to posting, staff should, to the extent feasible, redact any confidential information contained in the court documents in accord with California Rule of Court, rule 2.503(e)(2). In addition, five (5) days notice must be provided to the parties and the public before the court makes a determination to provide electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's Web site. Once issued, a copy of the order must also be posted on the Web site."
			Section 10.3.1 (page 32-35): The Judicial Council may want to consider adding a section into this chart under the "Criminal Case Records" section	**Section 10.3.1 (page 32-35):** To clarify the section and aid the reader, the following sentence has been added to the end of the first

	Commentator	Position	Comment	Response
			identifying as confidential, records that have been sealed by the court. This language can mirror the language in 10.3.2. It is problematic not to include such an important section in the body of the paragraph that deals specifically with criminal law records. Another solution would be to move section 10.3.2 in front of 10.3.1 and add in a sentence that indicates it applies to all records regardless of their nature (family, civil, criminal etc…). The problem is really one of perception and location. It appears that you have listed all of the "confidential" material and there is no reference to documents protected by Evidence Code section 1040 *et seq.* which are generally among the most sensitive and deserving of protection. One must read through several categories, which do not relate to criminal law, before happening upon the protection for sealed documents.	paragraph of Section 10.3.1: "Sealed records, including those that fall under Evidence Code § 1040 *et seq.*, are discussed in Section 10.3.2, below."
			Section 10.3.1 (page 34): The Judicial Council may wish to include a sentence in section 2 regarding the exemption of judicially sealed search warrants from disclosure, which does extend until after the warrant is executed.	***Section 10.3.1 (page 34):*** Penal Code § 1534(a) provides that executed search warrants shall be open to the public: "Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record."
			Section 10.3.2 (page 44): The Judicial Council may wish to clarify what is meant by "Felony, except capital felony, with court records the initial complain through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court." This is extremely confusing and with the merger of municipal and superior courts, appears to be extraneous. One would hope that these important records including change of plea would not be destroyed within 5 year as they are priorable and	***Section 10.3.2 (page 44):*** The committee disagreed with this comment. The quoted language is not present in Section 10.3.2, but is present on page 44, in Section 11.4.1. Here, the language referenced in the comment is a direct quote from the statute, specifically, Government Code § 68152(e)(3). Hence, it should not be changed in the TCRM, but should accurately reflect the language of the statute as it currently does.

	Commentator	Position	Comment	Response
			should be treated differently than other felony cases. If this section has been misread, your consideration is requested in making the language more comprehensible. ***Section 10.3.2 (page 48):*** The Judicial Council may wish to expand the length of time that court report notes (transcripts) are retained, especially in life cases as the post conviction writ proceedings generally continue for upwards of 20 years after conviction. I sincerely appreciate this opportunity to comment on this important manual and commend you on the work you have done thus far.	***Section 10.3.2 (page 48):*** Changes in the retention period for specific documents would require an amendment to Government Code § 68152, and are thus beyond the scope of the TCRM.
7.	Michael D. Schwartz Special Assistant District Attorney Ventura County District Attorney Ventura, CA	N	Thank you for the opportunity to comment on the draft Trial Court Records Manual. My concern is with the minimum period of records retention listed in the chart on pages 42-44. Many misdemeanor and felony cases can be destroyed after only 5 or 10 years, and domestic violence restraining order may be destroyed 60 days after their expiration. These periods are too short given the frequent need for records beyond the time limits provided. For example, prior convictions may be alleged for enhancement purposes under Penal Code sections 666, 667, 667.5, etc. The documents needed to prove such priors would include the accusatory document (complaint, information or indictment), waiver of constitutional rights form, and minute orders. Prior convictions may be used in any criminal or civil cases to impeach the credibility of a witness, with the age of the conviction just one of several factors for the court to consider in terms of admissibility. Challenges to prior convictions by way of habeas corpus or petition for writ of error *coram nobis* may	This suggestion would require a change to existing law and is beyond the scope of the manual.

	Commentator	Position	Comment	Response
			be made years after the conviction, at which time the court files are needed for the court to address the validity of the conviction. In criminal and civil cases of domestic violence, documentation of prior restraining orders may be essential to establish an ongoing pattern and history of violence. I recognize that these periods are dictated by Government Code section 68152. I request that the Judicial Council either seek legislation to increase the time periods, or that the Trial Court Records Manual provide that the records be maintained electronically for a longer period, e.g., 20 years after the paper files are destroyed.	
8.	Superior Court of Marin County San Rafael, CA By Kim Turner, Court Operations Manager	NI	***Page 43*** – Paternity Change: under Special Case Type Characteristics. *Delete the entire definition and replace:* Fam. Code 7643, subd. (a) Records in Uniform Parentage Act proceedings, except the final judgment are not open to the public. Pursuant to Fam. Code Section 7643 (b) Parties to the action, attorneys of record or upon written consent as defined can inspect the court file. ***Page 43*** – Real Property other than Unlawful Detainer: under Minimum Retention Period. *Change to:* Retain permanently if the action affects title or an interest in real property, otherwise 10 years. ***Page 44*** – (new section) Dismissed Felony: There currently is not a code section that addresses felonies that are dismissed. CARM – Court Administration Reference Manual 2005 Edition Section 14.80 Records Management. FAQ 4.0 Felony Cases: Retention for dismissed felonies	***Page 43*** – Paternity: The committee agreed with this comment. This item has been revised to refer to both (a) and (b) of Family Code section 7643. ***Page 43*** –Real Property other than Unlawful Detainer: under Minimum Retention Period. The committee agreed with this comment and has revised the text. ***Page 44*** – (new section) Dismissed Felony: The committee agreed that a new section should be added on this subject. It has been added to the appendix.

	Commentator	Position	Comment	Response
			should be have a retention of 75 years; the same as a felony under 68152(e)(2). http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf.	
			Page 44 – (new section) There currently is not a code section that addresses felonies that are reduced to misdemeanors. CARM – Court Administration Reference Manual 2005 Edition Section 14.80 Records Management. FAQ 4.0 Felony Cases: Felonies reduced to misdemeanors should follow retention for applicable misdemeanor. http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf	***Page 44*** – (new section): The committee agreed that a new section should be added on this subject. It has been added to the appendix.
			Page 45 – Misd. Alleging a violation of the H&S 11357 (b-e)	***Page 45*** – Misd. Alleging a violation of the H&S 11357 (b-e):
			Need Clarification: The date of conviction or date of arrest if no conviction was confusing for some courts to determine when to calculate a destruction date.	The committee agreed that a new section should be added on this subject. It has been added to the appendix.
			Change under Special Case Type Characteristics: OCG opinion from Arturo Castro on 6/14/10 – not a formal response. Should get a formal opinion. Can forward email at your request.	
			Special Case Type Characteristics: *Add:* If all terms and conditions of probation have not been met and all fines have not been paid, the records should not be destroyed.	
			Page 49 – Judgments in msd., infractions, limited judgments… Change under: Special Case Type Characteristics: *Add:* Gov. Code Section 68152(k)(2)- retention of the court record to be extended: Upon application and order for renewal of the judgment to the	***Page 49*** – Judgments in msd., infractions, limited judgments. The committee agreed and made this change.

	Commentator	Position	Comment	Response
			extended time for enforcing the judgment. ***Page 50*** – 11.4.2 "other case types" Add new records type **Subpoenaed Records (EC 1560(d)).** Discussion: this could go under court records designated confidential as well (appendix I) as a cross-reference: *Add:* under Recommended Retention Period - Unless admitted as evidence or required as part of the record: • Original subpoenaed records should be returned to the custodian of records at the conclusion of trial/hearing • Copies of subpoenaed records should be destroyed at the conclusion of trial/hearing ***Page 53*** – Court Records Designated Confidential by Statute… Add new records type: Subpoenaed Records (EC 1560(d)) My suggestion is to add it under the heading "GENERAL" since subpoenaed records can be for any case type. *Add code section in second column:* Evidence Code Section 1560 (d). *Add specifics in third column:* Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or upon direction of the judge. ***Page 54*** – Under Civil Law: Missing item 11 - Change the numbering sequence in first column. ***Page 58*** –Under Criminal Law: Iitem 34 is blank. Change the numbering sequence in first column.	***Page 50*** – 11.4.2 "other case types:" The committee agreed with this comment and added this information. ***Page 53*** – Court Records Designated Confidential by Statute or Rule: The committee agreed with this comment and added this information. ***Page 54*** – Under Civil Law: The committee agreed with this comment and has fixed the chart. ***Page 58*** – Under Criminal Law:

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

	Commentator	Position	Comment	Response
				The committee agreed with this comment and has fixed the chart.
9.	Superior Court of Monterey County By Margaret Corioso, Operations Manager	A	**COMMENT 1:** Page 1, paragraph 2 states "the AOC, in collaboration with trial court presiding judges.....prepare, maintain and distribute a manual providing standards and guidelines, etc.". However, on page 2, paragraph 4 it states "the Judicial Council shall adopt rules to establish standards and guidelines for the creation, maintenance, reproduction, and preservation of trial court records." For consistency purposes, it is recommended that the language be consistent as to who developed and published the document. **COMMENT 2:** Page 4, Section 1.4: Our Court agrees and likes the information provided in this section. **COMMENT 3:** Page 6, Section 1.5 Key Definitions: Court Record: What is definition of "filed"? How do courts determine what documents are filed vs. received? **COMMENT 4:** Page 9, Section 3.1, first paragraph. Remove 'by staff' in the first sentence. **COMMENT 5:** Page 9, Section 3.2. For consistency spell out trial court executive officer in last sentence of this paragraph.	**COMMENT 1:** California Rules of Court, rules 10.850 and 10.854 were adopted by the Judicial Council as the constitutional body authorized to approve rules of court for trial court administration in California. The rules created the requirement to develop standards and guidelines for records management creation, maintenance and reproduction and authorized the Administrative Office of the Courts to collaborate with the trial courts to produce the records manual. The Judicial Council did not develop or publish the manual, but created the requirement to do so. **COMMENT 2:** The committee appreciates the support. **COMMENT 3:** The committee agreed that finding common definitions of "filed" and "received" is difficult. The committee may seek to clarify this issue in future versions of the manual. **COMMENT 4:** The committee agreed with this comment and made this change. **COMMENT 5:** The committee agreed with this comment and made this change.

	Commentator	Position	Comment	Response
10.	Superior Court of Placer County By Jake Chatters, Executive Officer	NI	Thank you for the opportunity to review the proposed records manual. The development of a consolidated source of information for court records management is a worthwhile undertaking and it's obvious that great care was taken in constructing this initial version. The Committees specifically requested comment on potential existing training materials that may support Judicial Branch education. Although not a court-specific training, the Court Clerk's Association has developed and provides records management training classes for court staff. Staff who recently attended these sessions returned with extensive materials and training directly relevant to the specific job duties of our court records staff. Areas covered include: what is an official court record, organizing records, retrieving records, type of media records may be stored on, retention periods, destruction requirements, sampling methods, and confidential and sealed records. The Committee may wish to contact the Court Clerk's Association to request a full copy of their materials. Thank you again for the opportunity to comment.	The committee thanks the commentator for this suggestion. It is contemplated that future versions of the manual could include guidance or information on effective training programs. The Court Clerk's Association resources will be considered for inclusion at future manual updates.
11.	Superior Court of Riverside County By Sherri R. Carter, Executive Officer	AM	1. I would eliminate all parts of the manual that are not specifically procedural. For example, I don't think background information is necessary in a manual; it could be included in a cover memo. Why do we need to cover how new versions will be handled or the purpose of the manual? I also wonder why we need explanations of information related to e-filing (page 12) since this is a Records Manual and electronic records storage is part of 6.1.2.	1. The committee did not agree that the manual should be so narrowed, particularly for this first version. The background and other explanatory materials are useful because they place the specific sections of the manual in a broader context of records management. Also, particularly in this first version of the manual, it is important for court personnel and others reading the manual to understand how this version will

	Commentator	Position	Comment	Response
				be expanded and updated over time.
			2. I would include various appendices at the end. Appendix 1 could be definitions, Appendix 2 could be the related CRC, Appendix 3 could be the court records designated confidential by statute or rule grid, Appendix 4 could be the schedule of records retention and destruction grid (both grids are very helpful and my favorite part, by the way!!).	2. The Appendix has already been used, as noted, for providing a list of court records designated as confidential. Some of the other matters mentioned in the comment could be placed in the Appendix, but appear to fit more readily into the chapters on the topics involved. When the committee considers additional topics to include in future versions of the manual, it will also consider various configurations and formats for future iterations, based on comments received from manual users.
			3. The procedural style used in Section 7 for Exhibits Management and Section 10.3 for Confidential and Sealed Records is more like a manual and I find it more helpful than the informational style in the earlier sections. You have done a wonderful job in developing the first Records Manual. Thank you very much for your hard work and effort. I hope my comments are helpful.	3. This comment will be considered in connection with the revisions to Version 1 and subsequent versions of the manual. The commentator's remarks and comments are appreciated.
12.	Superior Court of Sacramento County By Chris Stewart, Director, CCMS Program Office	NI	The Superior Court of California, County of Sacramento has reviewed the proposed Court Administration: Trial Court Records Manual (SP10-02) and has the following comment to submit: In response to the Draft Manual of the California Trial Court Records Manual (hereinafter "Draft Manual"), it is the position of the Sacramento Superior Court that while the Draft Manual provides	For the reasons explained in the Introduction to the manual (Section 1) and the response

	Commentator	Position	Comment	Response
			an excellent source for the existing rules and statutes that have already been promulgated by the Legislature relating to records management, the contents relating to electronic case files and data are cause for significant and paramount concern. The comments herein are not made in respect to the previously enacted rules and statutes, but rather to the implied mandate that all 58 California courts must move to employing electronic court records and use CCMS to manage those electronic court records. The Draft Manual does not contemplate or address the impact on the individual courts, the fiscal ramifications, or the magnitude and degree of change that each of the 58 courts would face if each were compelled to employ electronic case files and/or data. Additionally, the Draft Manual does not address how a court could mitigate the multitude of changes that would be necessitated. Many courts do not have the capacity, financial means, or desire to move towards electronic records. This new, proposed methodology would create huge and unprecedented changes in existing business processes for many courts. For some courts, such as Sacramento, technology is part of our daily operation and we can use technology to create efficiencies. But many smaller courts do not utilize technology and have streamlined their manual processes to the point that technology would actually create more work than it would save and actually cost more money than their current streamlined processes do. These types of issues have not been contemplated or addressed in the Draft Manual.	below, the committee thinks the commentator's concerns about the contents of the manual are misplaced. The comments are based on incorrect assumptions about the purpose and scope of the manual. The manual is intended to provide for all courts: 1) a statement of the current law relating to court records, and 2) useful guidelines and suggestions for best practices that may be used in the management of court records. The manual does not contain an "implied mandate." Although the manual recognizes that the next major stage of court records management involves a shift from paper to electronic records, and provides assistance and guidance to those courts making this shift, it does not mandate any particular timelines or steps that courts must pursue at this time. Those issues are beyond the scope of the manual. The court administrators who have prepared the manual are fully aware of and highly sensitive to the different fiscal and technical capacities of various local courts. The manual addresses these differences by articulating standards that apply to both to paper records and electronic records. The manual does not require any trial court to use new technologies or modify current practices. But for courts that are capable of and want to achieve the efficiencies that are available through technology, the manual provides assistance.

	Commentator	Position	Comment	Response
			In addition, the role of the Administrative Office of the Courts (AOC) as to any court's effort and solution as to records management has not been addressed. Even with the implementation of CCMS, as mentioned in the Draft Manual, the impact and level of change that would be thrust upon the courts by a mandate requiring electronic case files may well be so significant and onerous that such would substantially outweigh any benefit of converting to electronic case files.	The commentator is correct that the manual does not attempt to address the specific issues that apply to small courts' decisions to adopt particular records management practices or the AOC's role in courts' efforts and solutions as to court records management. These and many other similar matters are beyond the scope of the manual.
			The sheer time devoted to crafting this Draft Manual should mandate the necessity of clearly understanding the impact these changes would create in the individual courts. To that end, Sacramento Superior Court recommends the following:	With respect to the superior court's three specific recommendations:
			• Create a working group comprised of court experts from small, medium, and large courts, appointed by the courts' Presiding Judges, to analyze the impact of moving courts to electronic records.	• The superior court's suggestion that a working group appointed by the Presiding Judges be formed to analyze the impact of moving to electronic records is beyond the scope of the manual and should be addressed by staff to the Trial Court Presiding Judges Advisory Committee. If any such initiative is undertaken, it would be appropriate also to have the Court Executives Advisory Committee involved.
			• Seek input from the CCMS Executive Committee that is to be formed as regards to CCMS and electronic records management to ensure that the guidelines within the Draft Manual are consistent with what CCMS can actually provide.	• In preparing the manual, efforts have been made to ensure the guidelines are consistent with the technology that is being developed in CCMS. Additional consultation with the CCMS Executive Committee is a good idea.
			• Direct the AOC to define, and cite authority that confers its role in, the management of electronic	• This suggestion is beyond the scope of the manual. If the superior court wants to raise

	Commentator	Position	Comment	Response
			records and determine if the AOC believes that it is going to provide a statewide technical solution to all of the courts. Thank you for providing us with an opportunity to review the proposed changes and submit comments.	such issues with the AOC, it should do so directly.
13.	Superior Court of San Diego County By Michael Roddy, Executive Officer	AM	**Page 19:** For the definition of juvenile delinquency cases, our court recommends language such as "A broad classification of cases filed against a minor for a violation of the law". **Page 36,** Family and Juvenile Court Records, Records that are confidential, Paragraph 1: There is no "therefor" contained in Welfare and Institutions Code section 827(a)(1)(P), but it has been included in the quote from this section. Also, the citation to "Welf. & Inst. Code § 676" is missing a comma. **Page 37, Paragraph 4:** This paragraph appears to contain an erroneous citation to statutory authority. Paragraph 3 refers to the confidentiality of a child custody evaluator's report and correctly cites to Family Code section 3025.5 and Family Code section 3111. Paragraph 4 specifically refers to the confidentiality of a recommendation as to custody of or visitation with a child submitted by a mediator and correctly cites to Family Code section 3025.5 but incorrectly cites to Family Code section 3111. A report by an evaluator and a recommendation by a mediator are two different documents. While both are made confidential pursuant to Family Code section 3025.5, the statutory authority for each is separate and distinct. Family Code section 3111	**Page 19:** The committee agreed with this comment. The definition of "Juvenile Delinquency Cases" shall be changed as suggested to "A broad classification of cases filed against a minor for a violation of the law." **Page 36:** The committee agreed with this comment. The extraneous "therefor" has been removed. In addition, the citations in this paragraph have been corrected. **Page 37, Paragraph 4:** The committee agreed with this comment. Paragraph 4 of this section has been revised as suggested, to replace the reference to Family Code § 3111 with a reference to Family Code § 3183.

	Commentator	Position	Comment	Response
			pertains only to child custody evaluator's reports while the statutory authority for recommendations by a mediator is Family Code section 3183. Therefore, the reference to Family Code section 3111 at the end of paragraph 4, on page 37, should be revised by deleting section 3111 and replacing it with section 3183.	
			Our court would also suggest that the manual include a new paragraph between paragraphs 4 and 5 stating as follows: "Written statements of issues and contentions by counsel appointed for child: These written statements must be kept in the confidential portion of the family law file and are only available to the court, the parties, their attorneys, federal or state law enforcement, judicial officers, court employees or family court facilitators for the county in which the action was file (or employee or agent of facilitator), counsel for the child and any other person, upon order of the court, for good cause. (Fam. Code, §§ 3025.5, 3151(b).)"	The committee agreed with this comment. The suggested paragraph has been added between current paragraphs 4 and 5.
			Page 38: The Probate confidential records list on pages 38 should be revised. Although it is not an exhaustive list, the list should include some of the frequently seen confidential documents as follows: 1. Form GC-312 is the Confidential Supplemental Information Form required by Probate Code section 1821, not the Confidential Screening Form noted in item #2 as both GC-314 and 312. In order to avoid confusion, the forms should be listed separately. 2. There are a few other reports that should be noted in item #3 in addition to the initial	**Page 38:** The committee agreed with the proposed changes 1-3. The suggested corrections and additions have been included in the appendix of the TCRM on confidential records.

	Commentator	Position	Comment	Response
			conservatorship investigation reports under Probate Code section 1826. These reports include review investigation reports under Probate Code section 1851(e) and limited conservatorship investigation reports under Probate Code section 1827.5. 3. Item #3 also addresses guardianship reports. That section needs to include the guardianship status report that is required annually per Probate Code section 1513.2 and California Rules of Court, rule 7.1003. 4. Finally, the section should include the confidential financial statement under Probate Code section 2620(c)(7) that requires accounting exhibits and attachments with personal information to be kept in a confidential envelope. This is often missed and can expose personal financial information to the public. **Page 58**: This page should be modified incorporating the changes recommended for page 38 so the reference lists match. **Page 46**: The summary of Welfare & Institutions Code section 827 is a bit simplistic. It does not clearly define who may view the file and does not mention that some of them may also receive copies of the file. Also, a Welfare & Institutions Code section 602 file may never be sealed or destroyed if the minor committed any of a number of specified offenses. (Welf. & Inst. Code, §§ 781, 826.) If the minor did not commit one of the specified offenses, the file "shall be destroyed by order of the court" when the person who is the subject of the file reaches the age of 38 years unless for good cause the court determines that the juvenile record shall be	**Page 58:** The changes have been incorporated into the appendix. **Page 46:** Welfare & Institutions Code section 827 is too long to include in its entirety in the TCRM's record retention schedule. Accordingly, the following sentence will be added to the "Special Case Type Characteristics" entry for the relevant categories: "Please refer to Welfare & Institution Code, section 827, for details regarding access to these records." The categories to be revised are: • (1) Dependent (Section 300 of the Welfare and Institutions Code)

	Commentator	Position	Comment	Response
			retained or unless the record is released to the person. (Welf. & Inst. Code, § 826.) The required destruction does not relate to whether the record was previously sealed.	• (2) Ward (Section 601 of the Welfare and Institutions Code)) • (3) Ward (Section 602 of the Welfare and Institutions Code)
14.	Superior Court of Santa Clara County By David H. Yamasaki, Executive Officer, and Robert Oyung, Chief Technology Officer	NI	On behalf of the Superior Court of California, County of Santa Clara, we respectfully submit our feedback to the proposed "Trial Court Records Manual". **General Feedback** The "Trial Court Records Manual" provides a comprehensive compilation of statutes and Rules of Court which govern trial court records management. It has the potential to be a useful reference as well as a repository for best practices and practical suggestions that can be leveraged and utilized across the trial courts. With the recognition that this is the first initial version of the document, we feel that it is successful in consolidating disparate existing material but falls short of providing practical suggestions that can be implemented. It is important to consider those suggestions below which can be incorporated prior to publication of Version 1 of the document. It is imperative that Version 2 of this document be published relatively quickly (within the next six months) and be updated and enhanced to include the key missing practical information described below which require more time to prepare.	**General Feedback** The committee appreciates the support expressed by the commentator. The committee agreed that there are sections of the manual that should be developed fairly soon and included in Version 2.

	Commentator	Position	Comment	Response
			Feedback on specific sections **1. Section 4.2: Number Schematic for Court Records** This section provides several suggestions for creating a case numbering system. However, since all courts already have long established case numbering systems which are tightly integrated into their operational processes and case management systems, the applicability, usefulness, and practicality of the suggestions is unlikely. **Recommendation:** Begin section 4.2 with an acknowledgement that all Courts already have a case numbering system in place. Mention that if any Courts are considering a change or enhancement to their numbering system, then the following section provides some suggested guidelines. Without this acknowledgement, the suggestions come across as disconnected from the existing court environment. **2. Section 4.4: Electronic Format Filing Protocols** Although this section is intended to discuss e-filing protocols and standards, the majority of the content covers the advantages and disadvantages of e-filing. Only at the end of the section, is there a link to the "NCSC Technology Standards" **Recommendation:** Change the heading on Section 4.4.1 "E-Filing Standards" to "E-Filing Overview". Add a heading Section 4.4.2 "E-Filing Standards" which precedes the link to the "NCSC Technology Standards". **3. Section 4.5 Court Record Location Tracking**	**Feedback on specific sections** **1. Section 4.2: Number Schematic for Court Records** The committee agreed with the proposed changes. Based on other comments, it might also be useful to note that any court considering changing their case numbering system should consider waiting or adopting the numbering system used in CCMS (which might be described more completely in the manual). **2. Section 4.4: Electronic Format Filing Protocols** The committee agreed with the proposed changes and made the recommended changes. **3. Section 4.5 Court Record Location**

	Commentator	Position	Comment	Response
			The section describing "RFID Technology" is technically incorrect. **Recommendation:** Please see Attachment A at the end of this document for suggested changes.	**Tracking** The committee agreed with the proposed changes and made the recommended changes.
			4. Section 6.1.2 Electronic Records One of the major benefits of the changes in the legislation for modernizing the management of court records that will become effective on January 1, 2011 is to replace antiquated records management practices and recommendations with ones that reflect the utilization of new technologies and methods. However Section 6.1.2 "Electronic Records", which should be the showcase of the "Trial Court Records Manual" only consists of a bulleted list of eight technology options for record storage. This falls extremely short of the potential value that this document could provide. **Recommendation:** Version 2.0 of the "Trial Court Records Manual" should include much more extensive materials in this section that cover topics such as the following: • Recommendations and best practices for electronic file back-up, storage, and preservation. • Recommendations for specific file formats that should be used for case files to ensure current and future compatibility within the trial courts and when exchanging data with justice partners. • Recommendations for technology monitoring	**4. Section 6.1.2 Electronic Records** The committee agreed that section 6.1.2 on electronic records needs to contain much more extensive materials in the next version of the manual. The committee agreed with these future topics of consideration for inclusion in subsequent versions of the manual.

	Commentator	Position	Comment	Response
			and refresh to ensure that existing electronic files will be retrievable and viewable in the future and that there is careful consideration regarding the continual migration from obsolete technology to current supported technology. The Superior Court of California, County of Santa Clara would be willing to work closely with the AOC and other trial courts in the creation of the recommendations for section 6.1.2.	The committee appreciates the offer of assistance and cooperation in developing section 6.1.2.
			5. Section 11.1.1 Court Records Sampling Program California Rules of Court 10.855 (f) (2) requires that the Courts preserve a "subjective sample" of court records but does not provide any guidance on how to select that sample. **Recommendation:** The "Trial Court Records Manual" should include some suggestions and best practices for how to identify and select the "subjective sample" of court records to comply with this requirement.	**5. Section 11.1.1 Court Records Sampling Program** The committee agreed with this comment. Section 11.1.1 will be revised to include additional information on sampling techniques, reporting requirements, notice requirements and the Records Management Clearinghouse located at the AOC. In addition, the committee plans to solicit public comments on suggested practices for identifying and selecting "subjective samples" of court records in connection with subsequent versions of the manual.
			6. Section 1, Introduction The last paragraph of the introduction states "...this icon will precede sections containing optional ideas, policies and programs..." Typically "policies" are not optional.	**6. Section 1, Introduction** The committee agreed with the proposed changes and made the recommended changes.

	Commentator	Position	Comment	Response
			Recommendation: Remove the word "policies" from that sentence. **Conclusion** We are pleased to see this first version of the "Trial Court Records Manual". It is currently a very good comprehensive consolidation of important records management statutes and Rules of Court. It has the potential to be a very important reference and strategy document if major sections that could not be included in Version 1.0 can be included in Version 2.0 in a timely manner. **Attachment A** Below are suggested changes for the "RFID Technology" overview in section 4.5.1 Paper Record Tracking. Deletions are in ~~strikethrough~~. Additions are in **bold and underlined**. **RFID Technology** Radio frequency identification device systems are a "high tech" and more expensive method for locating and tracking files. Like bar code technology, RFID tags are created and attached to file folders. RFID tags are ~~intelligent~~ **"active"** bar codes that can ~~talk to~~ **exchange information with** a networked system to track every file. RFID tracking solutions save time by providing ~~continuous~~, automatic tracking of files and other items as they move around the courthouse **and pass through an area where an RFID reader is present. Like a traditional barcode an RFID tag must be read. However an RFID tag does not need to be physically scanned. It can be detected and read as it passes by a reader which can be mounted on a wall and up to 25 feet away.** Staff members are relieved of the	The suggested changes have been made to the "RFID Technology" overview in the manual.

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

	Commentator	Position	Comment	Response
			responsibility to scan files as they are automatically monitored at all times by the technology, and their locations are typically updated in real time. Records staff can locate files at any time by checking the tracking database on line. This technology has been cost prohibitive in the past, but in recent years the cost has been coming down. ~~If~~ **In situations where it is** affordable, this technology ~~is ideal~~ **could be beneficial** for **small to** medium ~~and large~~ court systems ~~with multiple locations~~.	
15.	Superior Court of Siskiyou County By Larry Gobelman Executive Officer	NI	I wish to thank the Records Committee, CEAC, and COCE for their work on the Records Manual. In particular, I appreciate the change from prior drafts designating the sections that are "Standards" for mandatory compliance by trial courts, as contrasted with sections that are ideas, policies and programs, and best practices. I would recommend that the RM have a separate section for "Standards" to make it more usable for trial courts in complying with mandatory requirements and to thus lessen the possibility of overlooking a mandatory requirement. Ideally, I would prefer a manual that is strictly constructed to address only "standards and guidelines" per what appears to be the intent of CRC 10.854 rather than including extraneous materials for ideas and programs. However, should the Judicial Council not agree with this interpretation/recommendation, then, at a minimum, an index referencing the sections that are mandatory requirements or "standards" for the trial courts to be considered to be in compliance with CRC 10.850 is requested. Thank you for the opportunity to provide a response.	The committee disagreed with this comment. The committee decided to develop a resource guide and single reference manual to help trial courts ensure that they are 1) meeting legal requirements, and 2) benefitting from initiatives that other courts have developed that are considered best industry practices. The committee also prefaced their intentions on page 1 of the manual to assist users distinguish between mandatory requirements and optional features of court records management programs, by placing a light bulb icon before sections containing optional ideas, policies and programs and best industry practices. Sections not preceded by this icon contain mandatory requirements. Sections containing mandatory requirements contain links to the relevant statutes or rules.

	Commentator	Position	Comment	Response
16.	Superior Court of Ventura County By Cheryl Kanatzar, Deputy Executive Officer	A	No specific comment.	No specific response required.
17.	The State Bar of California, Committee on Administration of Justice San Francisco By Saul Bercovitch, Legislative Counsel	NI	The State Bar of California's Committee on Administration of Justice (CAJ) supports the drafted sections of the *Trial Court Records Manual* (TCRM) as a valuable compendium of standards and guidelines which will assist the courts and the public to have complete, accurate, and accessible court records. In response to the request for input on Fee and Fee Waiver Guidelines for Requested Records (Section 10.4) and the Court Record Creation Process (Section 4.1), CAJ believes that modernization of public records should not be attained at the expense of the public's accessibility to court records. CAJ recognizes there are costs involved in, and savings to be derived from, electronic filing and electronic access to court records and CAJ considers it essential that a policy promoting public access be foremost in the development of the guidelines and standards for court record creation and fee and fee waiver guidelines. For example, during development of these guidelines, CAJ recommends consideration of whether it is feasible to make electronic indices of court records accessible to the public remotely, free of charge, or for a nominal fee (where access to those records is not restricted by law). CAJ looks forward to having the opportunity to review any proposed substantive changes and additions to the TCRM, including a draft of version 2.0 of the TCRM.	17.

	Commentator	Position	Comment	Response
18.	Wei C. Wong	NI	Spending money for uniform California system is probably a better use of money. Eliminate all these local rules and county rules.	No specific response is required.

Pages 47-153 of the November 9, 2010 Report to the Judicial Council have been omitted for space and are available upon request.

Pages 47-74	Press Groups' Comments on Trial Court Records Manual (Item SP10-02)
Page 75	Cal. Rules of Court, rules 10.850 and 10.854
Pages 76 -153	Trial Court Records Manual (Version 1.0)

Rachel Matteo-Boehm
Direct: 415-268-1996
Fax: 415-430-4396
rachel.matteo-boehm@bryancave.com

February 13, 2013

VIA E-MAIL; CONFIRMATION VIA HAND DELIVERY

Camilla Kieliger
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Ave
San Francisco, CA 94102

Re: Joinder of Bay Area News Group and The Press Democrat Media Company in Press Groups' Comments on Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073 (Item W13-05)

Dear Ms. Kieliger:

Bay Area News Group and The Press Democrat Media Company write to join in the comments submitted on January 25, 2012 by California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (the "Press Groups") in response to the invitation for comments on "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073."

Although the official window for submitting comments closed on January 25, Bay Area News Group and The Press Democrat Media Company wish to alert the Judicial Council and its Court Technology and Civil and Small Claims Advisory Committees that they share the Press Groups' concerns about the potential impact of the proposed mandatory e-filing rules.

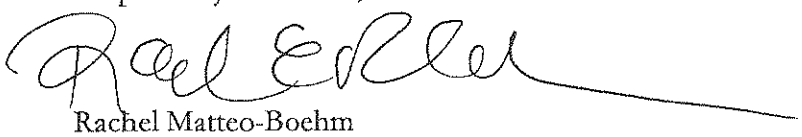
Bay Area News Group covers the Bay Area with an array of print and digital products, including The San Jose Mercury News, the Oakland Tribune, the Contra Costa Times, the Marin Independent Journal, San Mateo County Times, East County Times, San Ramon Valley Times, The Daily News, The Pacifica Tribune, and Santa Cruz Sentinel. Bay Area News Group is powered by MediaNews group, one of the largest newspaper companies in the United States, operating nearly 60 daily newspapers in 13 states with combined daily and Sunday circulation of approximately 2.6 million and 2.9 million, respectively.

The **Press Democrat Media Company** publishes The Press Democrat, whose readership of approximately 250,000 adults makes it the largest newspaper between San Francisco and the Oregon border, and web sites including PressDemocrat.com, Petaluma360.com, NorthBayBusinessJournal.com, and WatchSonomaCounty.com.

Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel (415) 268-2000
Fax (415) 268-1999
www.bryancave.com

Bay Area News Group and The Press Democrat Media Company join the Press Groups in urging the Judicial Council to eliminate the "officially filed" language in the proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7) and to postpone the adoption of mandatory e-filing rules until the pilot program in Orange County Superior Court has been evaluated, including its impact on access to newly filed court records.

Respectfully submitted,



Rachel Matteo-Boehm
On Behalf of Bay Area News Group and The Press Democrat Media Company

Los Angeles Times

202 West First Street
Los Angeles, CA 90012
213 237-3760
Fax: 213 237-3800
Pgr: 800 79-LATIMES
1388901@skytel.com
E-mail: karlene.goller@latimes.com

Karlene W. Goller
Vice President and
Deputy General Counsel

February 14, 2013

VIA OVERNIGHT MAIL

Camilla Kieliger
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Uniform Rules To Implement Assembly Bill 2073 (Item W-13-05)

Dear Ms. Kieliger:

Los Angeles Times Communications LLC, which publishes the Los Angeles Times, joins in the concerns raised by the California Newspaper Publishers Association and other media about the proposed changes to California Rule of Court 2.250(b)(7), and proposed Rule 2.253(b).

As discussed at length in the letter submitted by CNPA and others to the Judicial Council on January 25, 2013, the suggestion that the public's and press' ability to access judicial records can be delayed until a document is deemed to be "officially" filed is inconsistent with well-established constitutional principles. Consequently, The Times joins in the request that the Council eliminate the "officially filed" language from the proposed Rule changes.

Sincerely,

Karlene Goller

cc: Rachel Boehm