



JUDICIAL COUNCIL OF CALIFORNIA

TECHNOLOGY COMMITTEE

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JUDICIAL COUNCIL TECHNOLOGY COMMITTEE

OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

Date: August 20, 2015
Time: 10:00 a.m. – 12:00 p.m.
Location: Sequoia Room, Judicial Council Conference Center, 455 Golden Gate Avenue, San Francisco, CA 94102-3688
Public Call-In Number 1-877-820-7831; Passcode: 3511860

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the July 21, 2015 meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Public Comment

Members of the public requesting to speak during the public comment portion of the meeting must place the speaker's name, the name of the organization that the speaker represents if any, and the agenda item that the public comment will address, on the public comment sign-up sheet. The sign-up sheet will be available at the meeting location at least 15 minutes prior to the meeting start time. The Chair will establish speaking limits at the beginning of the public comment session. While the advisory body welcomes and encourages public comment, time may not permit all persons requesting to speak to be heard at this meeting.

Written Comment

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to jctc@jud.ca.gov or mailed or delivered to 455 Golden Gate

Avenue, San Francisco, CA 94102-3688, attention: Jessica Craven, c/o Conference Support Services Unit. Only written comments received by 10:00 a.m. on Wednesday, August 19, 2015 will be provided to advisory body members prior to the start of the meeting.

III. AGENDA ITEMS

DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1 – 10)

Item 1

Chair Report

Provide update on activities of or news from the Judicial Council, advisory bodies, courts, and/or other justice partners.

Presenter: Hon. James E. Herman, Chair, Judicial Council Technology Committee

Item 2

Update on V3 Case Management System Budget Change Proposal (BCP)

Update on the activities around the funding of the V3 Case Management System.

Presenters: Hon. James E. Herman and Mr. Richard Feldstein

Item 3

E-Service: California Rules of Court, rules 2.251 and 8.71 (Action Required)

Review public comments and final proposal to amend rules 2.251 and 8.71 to authorize electronic service on consenting courts.

Presenters: Ms. Heather Anderson, Supervising Attorney, Legal Services; and Ms. Tara Lundstrom, Attorney, Legal Services

Item 4

Phase I of the Rules Modernization Project: California Rules of Court, titles 2, 3, 4, 5, 7, and 8 (Action Required)

Review public comments and final proposal to make technical, non-substantive amendments to the rules in titles 2, 3, 4, 5, 7, and 8.

Presenters: Ms. Tara Lundstrom, Attorney, Legal Services; and Ms. Katherine Sher, Attorney, Legal Services

Item 5

Public Access to Electronic Court Records in the Appellate Courts (Action Required)

Review public comments and final proposal to introduce new rules to address public access to electronic court records in the appellate courts.

Presenters: Ms. Heather Anderson, Supervising Attorney, Legal Services; and Ms. Katherine Sher, Attorney, Legal Services

Item 6

E-Signature Standards and Guidelines: Update to the Trial Court Records Manual (Action Required)

Review electronic signature standards and guidelines that would be circulated for comment to the trial courts. The standards and guidelines would be included in the *Trial Court Records Manual*.

Presenter: Ms. Tara Lundstrom, Attorney, Legal Services

Item 7

Update on contract for California Court Technology Center

Update on the contract for the California Court Technology Center.

Presenter: Mr. Mark W. Dusman, Chief Information Officer and Director, Information Technology

Item 8

Update on California Law Enforcement Telecommunications System (CLETS) and California Court Protective Order Registry (CCPOR)

Update on CLETS and CCPOR in relation to operations and budget impacts.

Presenter: Ms. Renea Stewart, Senior Manager, Information Technology

Item 9

Update on work of Information Technology

Update on the current and upcoming work and activities of the Information Technology office including the office's budget.

Presenter: Mr. Mark W. Dusman, Chief Information Officer and Director, Information Technology

Item 10

Update/Report on Court Technology Advisory Committee (CTAC)

An update on CTAC will be provided; this will include the activities of the workstreams.

Presenter: Hon. Terence L. Bruiniers, Chair, Court Technology Advisory Committee

IV. ADJOURNMENT

Adjourn



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TECHNOLOGY COMMITTEE

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JUDICIAL COUNCIL TECHNOLOGY COMMITTEE

MINUTES OF OPEN MEETING

July 21, 2015 4:00 p.m. - 5:00 p.m.

Advisory Body Members Present: Hon. James E. Herman, Chair; Hon. David De Alba, Vice-Chair; Hon. Ming Chin; Vice-Chair; Hon. Daniel J. Buckley; Hon. Ming W. Chin; Hon. Emilie H. Elias; Hon. Gary Nadler; Mr. Mark Bonino; and Mr. Richard D. Feldstein

Others Present: Mr. Curt Soderlund; Mr. Zlatko Theodorovic; Ms. Lucy Fogarty; Ms. Renea Stewart; Ms. Jessica Craven; Ms. Kathy Fink; Mr. David Koon; Mr. Patrick O'Donnell; and Ms. Tara Lundstrom

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order, took roll call, and advised that no public comments were received.

Approval of Minutes

The members unanimously approved the minutes of the June 25, 2015 Judicial Council Technology Committee meeting.

DISCUSSION AND ACTION ITEMS

Item 1

Chair Report (No Action Required)

Update: Hon. James E. Herman, Chair of the Judicial Council Technology Committee (JCTC), welcomed and thanked everyone for attending. Judge Herman reviewed the agenda for the meeting, as well as provided updates on recent meetings in which he or other members represented the JCTC or reported on the JCTC activities.

Item 2

California Rule of Court (CRC) 10.16 and 10.53

Update: The committee reviewed the comments and the final proposal to amend rules 10.16 and 10.53 to implement the recommendations in the Judicial Council-approved Court Technology Governance and Strategic Plan. The proposal would transition the name of the Court Technology Advisory Committee to the "Information Technology Advisory Committee." It would also update the roles and responsibilities of both the advisory committee and the Judicial Council Technology Committee. A discussion followed.

Action: The committee voted to approve the final proposal and to forward the report to the Executive and Planning Committee and the Rules and Projects Committee for their approvals prior to going the Judicial Council for its August 2015 meeting.

Item 3

California Rule of Court (CRC) 4.220 and forms TR-500-INFO, TR-505, and TR-510

Update: The committee reviewed the comments and the final proposal to amend rule 4.220 (authorizing remote video proceedings in traffic cases) and revise corresponding forms. The proposal would (1) convert rule 4.220 to a standing rule of court, and (2) make changes to the rule and forms TR-500-INFO, TR-505, and TR-510 to implement new rule 4.105 (addressing the deposit of bail in traffic cases). A discussion followed.

Action: The committee voted to approve the final proposal and to forward the report to the Executive and Planning Committee and the Rules and Projects Committee for their approvals prior to going the Judicial Council for its August 2015 meeting.

Item 4

Update on V3 Case Management System Budget Change Proposal (BCP)

Update: Hon. James E. Herman and Mr. Rick Feldstein provided an update on the work being done to assist the hosted V3 courts including an upcoming meeting with the courts to discuss the path forward for the BCP for case management system replacement. A discussion followed.

Item 5

Update on Technology Budget Change Proposals (BCPs)

Update: Mr. Curt Soderlund and Mr. Zlatko Theodorovic provided an update on the proposed BCP concepts. The security BCP that was submitted last year will be resubmitted following Council approval. Other BCPs that were being considered will not be submitted as they are following a different track including the data exchanges with the criminal justice system and the document management system for the Court of Appeal. A discussion followed.

Item 6

Update on Governance

Update: Hon. David De Alba, Vice-Chair, provided an update on technology governance including the new Information Technology Advisory Committee and the workstreams.

A D J O U R N M E N T

There being no further business, the meeting was adjourned.

The background features a large, faint, circular seal of the Judicial Council of Pennsylvania. The seal contains a central figure holding a scale and a sword, surrounded by various symbols of justice and law. The text "JUDICIAL COUNCIL OF PENNSYLVANIA" is visible around the perimeter of the seal, and the year "1926" is at the bottom.

Judicial Council Technology Committee Open Meeting

August 20, 2015

Call to Order and Roll Call

- Welcome
- Open Meeting Script
- Approve minutes

*Hon. James E. Herman, Chair, Judicial Council Technology
Committee*



JUDICIAL COUNCIL
OF CALIFORNIA

Chair Report

Hon. James E. Herman



JUDICIAL COUNCIL
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Update: V3 Case Management System Budget Change Proposal (BCP)

Hon. James E. Herman and Mr. Richard D. Feldstein



JUDICIAL COUNCIL
OF CALIFORNIA

Action: E-Service: California Rules of Court, rules 2.251 and 8.71

*Ms. Heather Anderson, Supervising Attorney, Legal Services;
and Ms. Tara Lundstrom, Attorney, Legal Services*



JUDICIAL COUNCIL
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Action: Phase I of the Rules Modernization Project: California Rules of Court, titles 2, 3, 4, 5, 7, and 8

Ms. Tara Lundstrom; and Ms. Katherine Sher, Attorney, Legal Services



JUDICIAL COUNCIL
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Action: Public Access to Electronic Court Records in the Appellate Courts

Ms. Heather Anderson; and Ms. Katherine Sher



JUDICIAL COUNCIL
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Action: E-Signature Standards and Guidelines: Update to the Trial Court Records Manual

Ms. Tara Lundstrom



JUDICIAL COUNCIL
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Update: Contract for California Court Technology Center

*Mr. Mark W. Dusman, Chief Information Officer and Director,
Information Technology*



JUDICIAL COUNCIL
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Update: California Law Enforcement Telecommunications System (CLETS) and California Court Protective Order Registry (CCPOR)

Ms. Renea Stewart, Senior Manager, Information Technology



JUDICIAL COUNCIL
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Update: Information Technology

*Mr. Mark W. Dusman, Chief Information Officer and Director,
Information Technology*



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JC Approved IMF Program Budget Elimination

Program funding is eliminated for FY 2015-2016:

- CLETS Services/Integration (-\$433,400)
- Justice Partner Outreach / e-Services (-\$200,700)
- Testing Tools – Enterprise Test Management Suite (-\$624,300)



TCBAC Proposed Additional IMF Program Budget Reductions

Programs that are recommended by TCBAC to JC for one-time allocation reductions for FY 2015-2016:

- California Courts Technology Center (-\$1,952,231)
- Enterprise Policy/Planning (Statewide Development) (-\$2,388,360)



TCBAC Proposed IMF Additional Program Budget Increases

Programs that are recommended by TCBAC to JC for allocation increases in FY 2015-2016:

- California Courts Protective Order Registry (CCPOR) \$145,600
- Telecommunications Support \$5,500,000 approved BCP funding added to base funding of \$10,650,000

Total Telecommunications (Lan/Wan) budget for FY 2015/2016 = \$16,150,000



IMF/TCTF Programs With Potential Additional Reductions

Programs that could have their allocation reduced further in FY 2015-2016 if the IMF ending fund balance is project to be below \$300,000:

- Civil, Small Claims, Probate and Mental Health (V3) CMS (potential 10% reduction or -\$565,800)
- Interim Case Management Systems (potential 10% reduction or -\$124,700)



Budget Comparison of IT's FY 2014-2015 vs. 2015-2016 IMF/TCTF Funded Programs

IT Program	Fund	2014-15 Judicial Council Allocation	Recommended 2015-16 Allocation	Variance
CLETS Services/Integration	IMF	\$ 433,400	\$ -	\$ (433,400)
Justice Partner Outreach / e-Services	IMF	\$ 200,700	\$ -	\$ (200,700)
Testing Tools - Enterprise Test Management Suite	IMF	\$ 624,300	\$ -	\$ (624,300)
Telecommunications Support (includes BCP for FY 15/16)	IMF	\$ 11,705,000	\$ 16,159,000	\$ 4,454,000
Data Integration	IMF	\$ 3,903,600	\$ 3,849,600	\$ (54,000)
Civil, Small Claims, Probate and Mental Health (V3) CMS	TCTF/ IMF	\$ 5,658,137	\$ 5,658,100	\$ (37)
Enterprise Policy/Planning (Statewide Development)	IMF	\$ 5,268,500	\$ 2,832,140	\$ (2,436,360)
California Courts Technology Center (CCTC)	IMF	\$ 10,487,200	\$ 8,534,970	\$ (1,952,230)
Uniform Civil Fees	IMF	\$ 343,000	\$ 366,000	\$ 23,000
Jury Management System	IMF	\$ -	\$ 465,000	\$ 465,000
Adobe LiveCycle Readers Service Extension	IMF	\$ 133,700	\$ 141,000	\$ 7,300
CCPOR (ROM)	IMF	\$ 585,600	\$ 861,200	\$ 275,600
Interim Case Management	IMF	\$ 1,246,800	\$ 1,246,800	\$ -
Totals		\$ 40,589,937	\$ 40,113,810	\$ (476,127)



Update/Report on Court Technology Advisory Committee (CTAC)

*Hon. Terence L. Bruiniers, Chair, Court Technology Advisory
Committee*



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Adjourn

All



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MEMORANDUM

Date	Action Requested
August 6, 2015	Please review for August 20 meeting
To	Deadline
Judicial Council Technology Committee	August 20, 2015
From	Contact
Court Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Jessica Craven 818-558-3103 phone jessica.craven@jud.ca.gov
Subject	
Rules proposal to amend rules 2.251 and 8.71 (e-service)	

Background

This spring, the Court Technology Advisory Committee (CTAC) and the Appellate Advisory Committee (AAC) recommended circulating for public comment a rules proposal that would amend rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. The rules proposal was circulated for public comment during the spring rules cycle, with the comment period ending on June 17, 2015. During its August 4 meeting AAC reviewed the public comments and recommended that the rules proposal be submitted to the Judicial Council for consideration at its October 27 meeting. CTAC will review the proposal during its meeting on August 18, 2015. Staff will report orally on the CTAC meeting at the Judicial Council Technology Committee's meeting on August 20, 2015.

Nine comments were received in response to the Invitation to Comment. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents

electronically on the courts. Four specific modifications were proposed by the commentators; each is addressed in the draft report and the comment chart containing responses recommended by CTAC and AAC.

Recommendation

CTAC and AAC recommend that:

1. The Judicial Council add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. The Judicial Council make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

A draft report to the Judicial Council is attached.

Attachment

- Draft report to the Judicial Council with attachments (proposed amendments to rules 2.251 and 8.71 and comment chart with proposed responses from CTAC and AAC)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title

Electronic Service: Authorization of
Electronic Service on Trial and Appellate
Courts

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251 and
8.71

Date of Report
August 6, 2015

Recommended by

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Contact

Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov
Tara Lundstrom, 415-865-7650
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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the rules regarding whether electronic service is authorized not only by, but also on, a court. This rules proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016, amend rules 2.251 and 8.71 of the California Rules of Court to:

1. Add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. Make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

Amended rules 2.251 and 8.71 are attached at pages 7–9.

Previous Council Action

The Judicial Council sponsored Senate Bill 367 in 1999. (Stats. 1999, ch. 514.) This legislation enacted Code of Civil Procedure section 1010.6, which authorizes the electronic filing and service of documents in the trial courts. It also directed the council to adopt uniform rules, consistent with the statute, for electronic filing and service. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for electronic filing and service. Relevant to this proposal, the rules provided that a trial court may electronically serve any notice, order, judgment, or other document prepared by the court in the same manner that parties may serve documents by electronic service.

The Judicial Council later co-sponsored SB 1274 (Stats. 2010, ch. 156), which amended Code of Civil Procedure section 1010.6 to recognize electronic service by a court of any notice, order, judgment, or other document. Although the bill introduced other substantive changes to the statute, this specific amendment placed the existing language in the rules into the statute for clarity.

The Judicial Council adopted rules, effective July 1, 2010, authorizing the Second District Court of Appeal to conduct a pilot project to test the use of electronic filing and service. Mirroring the provisions in the statute and trial court rules, these rules recognize electronic service by a court of any notice, order, opinion, or other document issued by the court. The scope of these appellate rules was extended, effective January 1, 2012, to all Courts of Appeal and to the California Supreme Court.

Rationale for Recommendation

Several California Rules of Court require that certain documents be served on the superior court. For example, rule 8.212(c)(1) requires that one copy of each brief in a civil appeal be served on the superior court clerk for delivery to the trial judge. Similar language also appears in rule 8.360 (briefs in felony appeals), rule 8.412 (briefs in juvenile appeals), and rule 8.630 (briefs in capital appeals). Rules 8.500 and 8.508, governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the court of appeal.

There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents “by any method permitted by the Code of Civil Procedure.” Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define “electronic service” as service of a document “*on a party or other person*” (italics added); they do not expressly provide for service on a court.

Arguably, the term “other person” in these provisions could be interpreted to encompass courts. Rule 1.6(14) offers some support for this interpretation because it defines the term “person” as including “a corporation *or other legal entity* as well as a natural person.” (Italics added.)

Nevertheless, Code of Civil Procedure section 1010.6 and rules 2.251 and 8.71 specifically address electronic service *by* a court without mentioning service *on* a court. This absence could be interpreted as indicating that the rules now only contemplate service by a court and do not contemplate service on a court.

This proposal would eliminate the ambiguity in the rules by expressly authorizing electronic service on a trial and appellate court with that court’s consent. Electronic service may benefit the courts by improving efficiency because the clerk could forward the electronic copies to the trial judge by e-mail. It would also be more efficient for the parties in many cases.

Electronic service authorized on consenting courts

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order.¹ The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court’s consent unless such service is provided for by law or court order.

Subparagraphs (A) and (B) of rules 2.251(j)(2) and 8.71(g)(2) would specify how a court indicates its agreement to accept electronic service. Subparagraph (A) is modeled on 2.251(b)(1)(A) and 8.71(a)(2)(A), which provide that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. New 2.251(j)(2)(A) and 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all the parties. Subparagraph (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating so.

¹ This rules proposal would relocate subdivision (c)(2) to new subdivision (a)(4), but would not amend its content.

Nonsubstantive amendments to rule 8.71

Additional amendments to rule 8.71(a) and (c) have been proposed. These nonsubstantive amendments make this rule more consistent with the language of trial court rule 2.251 and consolidate provisions relating to the authorization for electronic service in the appellate courts. The amendments would clarify that a document may be electronically served on a party or other person if electronic service is provided for by law or court order or if the party or person consents to this service. The amendments would also move the provision regarding service on a nonparty from subdivision (c) to subdivision (a).

Comments

This rules proposal was circulated for public comment, with the comment period ending on June 17, 2015. Nine comments were received in response. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts. Each of four specific modifications proposed by the commentators is discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended adding a new subpart (C) to rule 2.25(g)(3) that would provide as follows:

The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.

The Information Technology Advisory Committee (ITAC) declined to pursue the Civil Unit Managers' recommendation to amend subdivision (g) of rule 2.251. Rule 2.251(g) applies to all documents served by electronic notification and places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. Under rule 2.251(g)(3), the party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would effect a substantive rule change that is beyond the scope of this proposal and would require additional public comment.

In addition, ITAC declines to pursue this recommendation because the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

Second, Ms. Debbie Mochizuki, Supervising Attorney at the Fifth District Court of Appeal, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. The Appellate Advisory Committee (AAC) is sensitive to Ms. Mochizuki's concern about disrupting the oral agreement described in her comment. Fortunately, the amendment to rule 8.71 would not appear to affect the validity of that oral agreement. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. AAC is sympathetic to the burden imposed on the appellate courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on appellate courts in adopting local rules of court, the AAC determined that it was outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption of such rules. Nevertheless, the committee may consider a proposal to lessen the burden on appellate courts in future rules cycles.

Third, the San Diego Bar Association recommended using the term "consent" in lieu of "accept" and "agrees to accept" in proposed new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71. The language in proposed new subdivisions mirrors subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71. Rules 2.251(b)(1) and 8.71(a)(2), which govern the consent by parties to electronic service, use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to clean up the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the superior courts within their district that accept electronic service and the e-mail addresses where

those courts accept electronic service. This recommendation was not pursued as it is outside the scope of this rules proposal.

Alternatives Considered

The committees considered not recommending any amendments to the rules. The rules may be interpreted to allow for electronic service on a court. The committees did not elect this alternative, however, because the rules are ambiguous and it may not be clear to all parties that courts can accept electronic service. The amendments to the rule would also clarify how a party may consent to electronic service.

Implementation Requirements, Costs, and Operational Impacts

Under this proposed rule, implementation of electronic service on a court would generally be voluntary; each court would determine whether to consent to electronic service. For those courts that chose to implement such service, the rule would require the court either to adopt a local rule or to provide notice in individual cases. These courts would also have to establish and monitor an e-mail account to receive documents served by the parties on the court. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh these implementation costs. Potential efficiencies for the courts include being able to forward copies of briefs by e-mail to judges. The proposed amendment might also provide cost-savings for the parties because they would not have to pay the costs incurred by physical filing, including any copying, transportation, and mailing expenses.

Attachments

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 7–9
2. Comment chart, at pages 10–14

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Rule 2.251. Electronic service**

2
3 (a)–(i) * * *

4
5 (j) **Electronic service by or on court**

6
7 (1) The court may electronically serve any notice, order, judgment, or other
8 document issued by the court in the same manner that parties may serve
9 documents by electronic service.

10
11 (2) A document may be electronically served on a court if the court consents to
12 electronic service or electronic service is otherwise provided for by law or
13 court order. A court indicates that it agrees to accept electronic service by:

14
15 (A) Serving a notice on all parties that the court accepts electronic service.
16 The notice must include the electronic service address at which the
17 court agrees to accept service; or

18
19 (B) Adopting a local rule stating that the court accepts electronic service.
20 The rule must indicate where to obtain the electronic service address at
21 which the court agrees to accept service.

22
23 **Rule 8.71. Electronic service**

24
25 (a) **Consent to Authorization for electronic service**

26
27 (1) A document may be electronically served under these rules:

28
29 (A) If electronic service is provided for by law or court order; or

30
31 (B) ~~When a~~ If the recipient agrees to accept electronic services as provided
32 by these rules and the document may be is otherwise authorized to be
33 served by mail, express mail, overnight delivery, or fax transmission,
34 electronic service of the document is permitted when authorized by
35 these rules.

36
37 (2)–(3) * * *

38
39 (4) A document may be electronically served on a nonparty if the nonparty
40 consents to electronic service or electronic service is otherwise provided for
41 by law or court order.

42
43 (b) **Maintenance of electronic service lists**

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 When the court orders or permits electronic filing in a case, it must maintain and
2 make available electronically to the parties an electronic service list that contains
3 the parties' current electronic service addresses, as provided by the parties that have
4 filed electronically in the case.

5

6 **(c) Service by the parties**

7

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

11

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

15

16 **(d)–(f) * * ***

17

18 **(g) Electronic service by or on court**

19

20 (1) The court may electronically serve any notice, order, opinion, or other
21 document issued by the court in the same manner that parties may serve
22 documents by electronic service.

23

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

27

28 (A) Serving a notice on all parties that the court accepts electronic service.
29 The notice must include the electronic service address at which the
30 court agrees to accept service; or

31

32 (B) Adopting a local rule stating that the court accepts electronic service.
33 The rule must indicate where to obtain the electronic service address at
34 which the court agrees to accept service.

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	<p>The California Department of Child Support Services (DCSS) appreciates the opportunity to provide input, express our ideas, and experiences with respect to the proposal identified above.</p> <p>DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.</p>	DCSS’s support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	<p>1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2.</p> <p>2. Recommendation: Amend California Rules of Court 2.251(g)</p> <p>The Court agrees with the proposal. However, the Court respectfully requests that the Judicial Council consider amending California Rules of Court 2.251(g) in the following ways:</p> <p>a. Add letter (C) after 2.251(g)(3)(B): “(C) The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.”</p>	<p>The Civil Unit Managers’ support is noted.</p> <p>ITAC declines to pursue the recommendation to amend subdivision (g) of rule 2.251. This subdivision applies to all documents served by electronic notification. It places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. The party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink is a substantive change to the rule that is beyond the scope of this proposal and would require</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
			<p>3. Request for Specific Comments</p> <p>a. Does the proposal appropriately address the stated purpose? The Court believes that this proposal addresses the intended purpose. Amending the Rules of Court will clarify when and how the Court may be served in the specific examples mentioned in the proposal.</p> <p>b. Would the proposal provide cost savings? If the Court elects to allow electronic service, an email inbox will need to be established to enable review of incoming service to the court. While the process functionality will be established, this won't necessarily be a cost savings for some courts.</p>	<p>additional public comment. It may be considered by ITAC in the future.</p> <p>In addition, the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records, but the recommendation may be considered by ITAC in the future.</p> <p>The Civil Managers Unit's comments are noted. The proposed rule amendment leaves it in the court's discretion whether to accept electronic service of documents on the court. In making this decision, each court may consider whether the costs outweigh the benefits.</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
3.	Debbie Mochizuki, Supervising Attorney, Fifth Appellate District Court of Appeal	AM	<p>The proposed language of rule 8.71(g)(2) appears too restrictive in terms of how a court may indicate that it agrees to accept electronic service. For example, our appellate court has implemented mandatory e-filing. To maximize efficiencies to be gained with e-filing in the appellate court, our court reached out to the CEOs of the superior courts in our district and secured their oral agreement to accept electronic service of our orders and opinions. Neither of the options in rule 8.71(g)(2) as proposed take our approach into account.</p> <p>As the court of appeal is not a party, serving the notice described in rule 8.71(g)(2)(A) would not work for us. Also, the adoption of a local rule of court appears an unnecessary and time consuming requirement given that the superior court is simply giving its consent to receiving electronic service and it is NOT mandating electronic service. A local rule of court is ordinarily used to notice an additional requirement that a local court will impose over and above the state rules of court. It seems a court should be able to announce its willingness to accept electronic service in whatever manner it deems fit provided it includes the electronic service address at which it agrees to accept service.</p>	<p>AAC notes Ms. Mochizuki’s concerns, but concludes that this rules proposal would not impact the type of agreement identified in her comment. The scope of the proposed rule amendment is narrow in that it only applies to service on a court. Because rule 8.267(a) only requires that the Court of Appeal clerk <i>send</i> the court’s orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g) would not apply. The oral agreement described in the comment would remain valid regardless of whether the council adopts this rules proposal.</p> <p>AAC is sympathetic to the burden imposed on courts in adopting local rules of court. Rule 1.6(9) defines “local rule” as “every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court.” A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a “Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports” and that a “local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed.” While acknowledging the burden imposed on courts in adopting local rules of court, the committees conclude that it is outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
				of such rules.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comments provided.	The Orange County Bar Association’s support is noted.
5.	San Diego Bar Association Appellate Practice Session by Victoria E. Fuller, Chair	AM	<p>We agree with the Appellate Advisory Committee’s conclusion that there is some ambiguity as to whether the current rules authorize electronic service on a court. We also agree that the proposed revisions attempt to remove that ambiguity by expressly stating that electronic service on consenting courts is allowed under Rules 2.251 and 8.71. Express codification reduces doubt, removes uncertainty, and is a good thing.</p> <p>But we suggest a slight linguistic revision to maintain consistency within the proposed change. If the intention of the proposed change is to make it clear that electronic service on “consenting” courts is permitted, then the proposed changes should incorporate that expressly throughout. The current proposal uses language that varies between “consent,” “indicates that it agrees” and “accept,” which may lead to confusion among some practitioners.</p> <p>We therefore suggest the following revisions to proposed Rules 2.251(j)(2) and 8.71(g)(2), which address the manner in which a court consents to electronic service:</p>	<p>The San Diego Bar Association’s comments are noted.</p> <p>The language proposed for new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71 mirrors the language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71, which govern consent by parties to electronic service. Rules 2.251(b)(1) and 8.71(a)(2) use the term “consent” and the phrase “agrees to accept” interchangeably. ITAC and AAC decline to pursue the bar association’s recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to clean up the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
			<p>(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees [consents] to accept service by:</p> <p>(A) Serving notice on all parties that the court accepts [consents to] electronic service. The notice must include the electronic service address at which the court agrees to [will] accept service; or</p> <p>(B) Adopting a local rule stating that the court accepts [consents to] electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to [will] accept service.</p>	
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	<p>The Committee supports this proposal, with a recommendation for implementation.</p> <p>In response to the specific requests for comments, the Committee believes that electronic service on the courts would unquestionably save time and costs for litigants in terms of printing and mailing service copies of briefs and other filings. The cost savings could be especially meaningful for the State, in aggregate, in criminal appeals handled by appointed attorneys, in which the State currently reimburses the attorneys for printing and mailing costs for service copies.</p>	The Committee on Appellate Court’s (CAC) support is noted.

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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

	Commentator	Position	Comment	Committee Response
			In terms of implementation, the Committee recommends encouraging both superior courts and the Courts of Appeal to include information about electronic service on their websites. It would be particularly helpful for litigants to have the Court of Appeal websites in each District keep a current list of the superior courts in that District that accept electronic service, along with the individual email address for those courts, to indicate where documents should be served.	ITAC and AAC decline to pursue the CAC's recommendation because it is beyond the scope of this rules proposal. However, the committees may consider this recommendation in the future.
7.	Superior Court of Los Angeles County	A	No specific comments provided.	The superior court's support is noted.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost savings? Cost savings to the court of appeal on paper costs and minimal time savings for trial court appeals staff who would email the trial judge versus the current process of forwarding a hard copy.	The superior court's comments are noted.
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS agrees that implementation of electronic service on a court needs to remain voluntary. The proposed language concerning a court's consent to electronic service provides additional clarity for the court. The proposed process for implementation of electronic service appears to be a very simple approach. The JRS concluded that this proposal will not lead to any significant implementation costs.	The subcommittee's support is noted.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
August 6, 2015	Please review for your August 20 meeting
To	Deadline
Judicial Council Technology Committee	August 20, 2015
From	Contact
Court Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Jessica Craven 818-558-3103 phone jessica.craven@jud.ca.gov
Subject	
Phase I of the Rules Modernization Project	

Background

This year, the Court Technology Advisory Committee (CTAC) is carrying out phase I of the Rules Modernization Project, in collaboration with the five other advisory committees. This endeavor consists of proposing technical, non-substantive changes to the California Rules of Court to facilitate electronic filing, electronic service, and modern business practices.

Proposed amendments to titles 2, 3, 4, 5, 7, and 8 were circulated for public comment this spring, with the public comment period ending on June 17, 2015. Eleven commentators submitted comments in response to the Invitation to Comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

During its August 18 meeting, CTAC will review the comments and decide whether to recommend that the Judicial Council consider the proposed amendments to titles 2, 3, 4, 5, 7, and 8 at its October 27 meeting. Staff will report orally at the Judicial Council Technology Committee's August 20 meeting on the CTAC meeting. The proposed amendments have already

been recommended by the Civil and Small Claims Advisory Committee (CSCAC), the Traffic Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Appellate Advisory Committee (AAC).

Attached for JCTC's review is a draft report to the Judicial Council that includes the proposed amendments to titles 2, 3, 4, 5, 7, and 8 and a comment chart (with responses recommended by the CSCAC and AAC).

Recommendation

CTAC and the five other advisory committees recommend that the Judicial Council:

1. Amend titles 2, 3, 4, 5, 7, and 8 (Cal. Rules of Court, rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 7.802, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.803, 8.804, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018); and
2. Adopt new rules 2.10, 7.802, and 8.11.

Attachment

- Draft report to the Judicial Council with attachments (proposed amendments to titles 2, 3, 4, 5, 7, and 8 and comment chart with responses recommended by CSCAC and AAC)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018); and adopt rules 2.10, 7.802, and 8.11
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service	
Rules, Forms, Standards, or Statutes Affected	Recommended by
Amend titles 2, 3, 4, 5, 7, and 8 (Cal. Rules of Court, rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 7.802, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.803, 8.804, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890,	Information Technology Advisory Committee Hon. Terence L. Bruiniers, Chair
	Agenda Item Type Action Required
	Effective Date January 1, 2016
	Date of Report August 6, 2015
	Contact Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court for the purpose of modernizing the rules. This proposal would consist of minor, non-substantive amendments to the rules in order to facilitate electronic filing, electronic service, and modern business practices. The Civil and Small Claims Advisory Committee, the Traffic Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Appellate Advisory Committee also recommend the amendments to the rules in their respective subject matter areas.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2016

1. Amend titles 2, 3, 4, 5, 7, and 8 (Cal. Rules of Court, rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 7.802, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.803, 8.804, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018); and
2. Adopt rules 2.10, 7.802, and 8.11.

The text of the new and amended rules is attached at pages 12–98.

Previous Council Action

Over the past twenty years, the Judicial Council has regularly taken action to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320).

In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first on a project pilot basis in the Second District Court of Appeal in 2010 and then to all appellate courts in 2012.

Rationale for Recommendation

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC has coordinated with five other advisory committees with relevant subject matter expertise.

The Rules Modernization Project is being carried out in two phases. This rules proposal marks the culmination of phase I: an initial round of technical rule amendments to address language in the rules that is incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. Next year, ITAC and the other advisory committees will undertake phase II, which will involve a more in-depth examination of any statutes and rules that may hinder e-business practices.

This proposal makes various technical amendments to the rules in titles 2, 3, 4, 5, 7, and 8.

Amendments to title 2

The amendments to title 2 will:¹

- Define “papers” as including not only papers in a tangible or physical form, but also in an electronic form (see amended rule 2.3(2));
- Add a new rule defining the scope of the trial court rules to include documents filed both on paper and electronically (see new rule 2.10);
- Amend language to clarify when certain form and formatting rules apply to electronic documents (see amended rules 2.103, 2.104, 2.105, 2.106, 2.107, 2.108(4), 2.111(3), 2.113, 2.114, 2.115, and 2.117), electronic forms (see amended rules 2.133 and 2.134(a)–(c), 2.150), and jury instructions filed electronically (see amended rule 2.1055(b)(4));
- Extend the application of the general rules on forms in chapter 2 to forms filed electronically (see amended rule 2.130);
- Amend the definition of “record” to apply to records filed or lodged electronically (see amended rule 2.550(b)(1));
- Amend the rule for filing records under seal to recognize that records and notices may be transmitted electronically and kept by the court in electronic form (see amended rule 2.551);²

¹ These amendments have been recommended by ITAC and the Civil and Small Claims Advisory Committee (CSCAC).

- Amend the rule for filing confidential name change records under seal to recognize that petitions may be transmitted electronically (see amended rule 2.577(d) and (f));
- Amend the rules governing motions to withdraw stipulations to court-appointed temporary judges to allow the moving party to provide copies of the motion to the presiding and temporary judge by electronic means (see amended rules 2.816(e)(3) and 2.831(f)); and
- Allow electronic service on the Attorney General of copies of a judgment and notice of judgment declaring a state statute or regulation unconstitutional (see amended rule 2.1100).

Amendments to title 3

The amendments to title 3 will:³

- Insert an electronic service exception to the duties associated with maintaining and updating the list of parties and their addresses (see amended rule 3.254(a) and (b));
- Amend language in the rules to recognize electronic filing and service (see amended rules 3.524(a)(2), 3.544(a), 3.670(h)(1)(B), 3.815(b)(2)–(3), 3.823(d), 3.827(b), 3.1010(b)(1), 3.1109(a), 3.1300(a), 3.1302(a), 3.1320(c), 3.1326, 3.1327(a) and (c), 3.1330, 3.1340(b), 3.1346, 3.1347(a) and (c), 3.1350(e), 3.1351(a) and (c), 3.1700(a)(1) and (b)(1), 3.1900, and 3.2107(a)–(b));
- Establish that the times prescribed in the rule governing evidence at arbitration hearings are increased by two days where service is accomplished by electronic means (see amended rule 3.823(d));
- Require that appointed referees provide their e-mail addresses (see amended rule 3.931(b));
- Correct a cross-reference to the appellate court rules (see amended rule 3.1109(c));
- Clarify when certain formatting rules apply to motion papers filed electronically (see amended rules 3.1110(e) and 3.1113(i)(1)–(2) and (m));
- Require that ex parte applications state the e-mail addresses of attorneys or parties (see amended rule 3.1202(a));
- Recognize that rules 2.253(b)(7) and 2.259(c) apply to motion papers that are required to be filed electronically (see amended rule 3.1300(e));
- Require that any materials lodged electronically specify an electronic address to which they may be returned and allow the clerk to return them by electronic means (see amended rule 3.1302(b));
- Require the clerk to post electronically a general schedule for law and motion hearings (see amended rule 3.1304(a));

² The amendments to rule 2.551 on filing sealed records in the trial courts, unlike most of the other rule amendments, are not solely technical and non-substantive. However, they are closely based on the recent amendments to rule 8.46 that changed the appellate rule on sealed records to reflect modern business practices.

³ These amendments have been recommended by ITAC and CSCAC.

- Authorize a court to require that a party submitting written objections provide the proposed order accompanying the objections in electronic form (see amended rule 3.1354(c)); and
- Recognize that the court may electronically sign written judgments (see amended rule 3.1590(l)).

Amendment to title 4

The amendment to title 4 will:⁴

- Allow courts to e-mail copies of countywide bail and penalty schedules to the Judicial Council (see amended rule 4.102).

Amendments to title 5

The amendments to title 5 will:⁵

- Delete references to the back side of a summons (see amended rules 5.50(b) and (c)(1)–(2) and 5.91);
- Allow court employees to notify parties of deficiencies in their paperwork by any means approved by the court (see amended rule 5.83(d)(5));
- Replace references to “videotapes” (see amended rules 5.215(d)(5) and 5.242(k)(4)(G)); and
- Add a definition for “software” (see amended rule 5.275(g).)

Amendment to title 7

The amendment to title 7 will:⁶

- Clarify that Code of Civil Procedure section 1010.6 and rules 2.250–2.261 apply in contested probate proceedings (see new rule 7.802).

Amendments to title 8

The amendments to title 8 will:⁷

- Add definitions of “attach or attachment,” “copy or copies,” “cover,” and “written or writing” to clarify their application to electronically filed documents (see amended rules 8.10 and 8.803);
- Add new rule 8.11 and amend rule 8.800(b) to clarify that the rules are intended to apply to documents filed and served electronically;

⁴ This amendment has been recommended by ITAC and the Traffic Advisory Committee.

⁵ These amendments have been recommended by ITAC and the Family and Juvenile Law Advisory Committee.

⁶ This new rule has been recommended by ITAC and the Probate and Mental Health Advisory Committee.

⁷ These amendments have been recommended by ITAC and the Appellate Advisory Committee (AAC).

- Replace references to “mail” with “send” throughout;
- Replace references to “file-stamped” with “filed-endorsed” throughout;
- Clarify that requirements for numbers of copies of documents and for the colors of covers of documents apply only to documents filed on paper (see amended rules 8.40 and 8.44);
- Add language requiring that all confidential or sealed documents that are transmitted electronically must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g));
- Clarify which requirements about form apply to electronically filed records, briefs, supporting documents, or petitions (see amended rules 8.144, 8.204, 8.486, 8.504, 8.610, 8.824, 8.838, 8.883, 8.928, and 8.931);
- Replace references to “type,” “typeface,” “type style,” and “type size” with “font” “font style” and “font size” (see amended rules 8.204, 8.883, and 8.928 and the amended advisory committee comment to rule 8.204);
- Expand advisory committee comments to note that the recoverable costs to notarize, serve, mail, and file documents are intended to include fees charged by electronic service providers for filing or service (see amended comments to rules 8.278 and 8.891);
- Clarify when requirements for multiple copies to be filed or served only apply to paper documents (see amended rules 8.44, 8.144(c), 8.346(c), 8.380(c), 8.385(b), 8.386(b), 8.495(a), 8.540(b), 8.548(d), 8.630(g), 8.843(d), 8.870(d), 8.921(d), and 8.1018(c));
- Correct a typographical error (see amended rule 8.474(b));
- Clarify that the record and exhibits need only be returned to a lower court if they were transmitted in paper form (see amended rules 8.224, 8.512(a), 8.843(e), 8.870(e), 8.890(b), 8.921(e) and 8.1018(d));
- Clarify that signatures on electronically filed documents must comply with rule 8.77 (see amended rule 8.804 and amended rule 8.882(b)); and
- Amend two advisory committee comments to add provisions that the clerk’s transcripts may be in electronic form (see comments to rules 8.122 and 8.832).

Comments, Alternatives Considered, and Policy Implications

Eleven commentators submitted comments in response to the Invitation to Comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

Comments

The advisory committees’ responses to all comments received during the comment period are provided in the attached comment chart. In addition, specific responses to certain comments, including the response submitted after the comment period, are addressed further below.

Electronic form and formatting rules. This rules proposal clarifies that many of the form and formatting rules apply only to documents filed on paper, and not filed electronically. Three commentators—the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology

Subcommittee, and the State Bar’s Committee on Appellate Courts—submitted comments urging that electronic form and formatting rules be adopted in the near future. The TCPJAC/CEAC Joint Rules and Joint Technology Subcommittees specifically recommended future amendments to require bookmarking exhibits and attachments submitted with electronic documents.

The Superior Court of San Diego County submitted a comment in response to the proposed amendment to rule 3.1110(f), which would limit the requirement that parties tab their motions papers to those filed physically in paper form. The court objected to the amendment unless the council were to add similar language requiring bookmarking or its equivalent for all electronically filed documents. The court explained that it refers to rule 3.1110(f) in requiring litigants to bookmark their electronically filed motions since bookmarking is the electronic equivalent to tabbing. Bookmarking allows the court to easily locate documents and exhibits filed with motions. The court also proposed language for amending rule 3.1110(f) that would expressly authorize the bookmarking of electronic documents.

Electronic form and formatting rules, including any rules governing the bookmarking of electronic documents, will be considered during phase II of the Rules Modernization Project. Meanwhile, in response to the concerns raised by the Superior Court of San Diego County, this rules proposal will not amend rule 3.1110(f), so that the court may continue to rely on that rule in requiring that parties bookmark electronic documents.

Typewriters. The State Bar’s Committee on Administrative Justice (CAJ) submitted comments regarding the proposed amendment to rules 2.3(3), 2.104, and 2.150. CAJ opposed removing references to “typewritten,” “typewriting,” and “typewriter” from these rules.⁸ It explained that typewriters “provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors.” In response to CAJ’s concerns, this rules proposal leaves the references to “typewritten,” “typewriting,” and “typewriter” in these rules.

E-mail addresses. Rule 2.111(1) provides that the top of the first page of papers should list an “e-mail address (if available),” among other identifying information. The Civil Unit Managers of the Superior Court of Orange County submitted comments recommending that the phrase “e-mail address (if available)” be replaced with “e-mail address (if available and/or required if submitted electronically).” The managers explained that their proposal would allow the court to capture accurate data for electronic service because it would require all electronic filers to provide the court with their e-mail addresses. The managers further explained that the rules do not require placing the e-mail address on documents and there is no mechanism for placing e-mail addresses on documents.

⁸ Retaining these references also makes the amendments to the trial court rules consistent with the appellate rules: prior to circulating the Invitation to Comment, ITAC and AAC decided against removing these references in the appellate rules because indigent and incarcerated litigants may only have access to typewriters.

Under rule 2.111(1), an e-mail address may be provided on the first page of papers, if available, as a convenience to the court and parties. However, this e-mail address is not necessarily the electronic service address; the electronic service address might instead be registered with an Electronic Filing Service Provider. As provided in the rule, an attorney or litigant may list his or her work or personal e-mail address on the first page of a paper without consenting to receive electronic service at that address. (See Cal. Rules of Court, rule 2.111(1) [“The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law”].)

A party consents to permissive electronic service by filing form EFS-005, *Consent to Electronic Service and Notice of Electronic Service Address*, which requires that the party specify his or her electronic service address.⁹ This form captures the electronic service address only where electronic service is permissive. In addition, rule 2.256(a)(4) requires parties to provide “one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept electronic service.” Since courts already have the ability to require parties to provide their electronic service addresses, this rules proposal does not amend rule 2.111(1).

Filing records under seal. This rules proposal amends rules 2.551 (governing procedures for filing records under seal) and 2.577 (governing procedures for filing confidential name change records under seal). It states specific procedures for filing electronically transmitted records under seal by court order.

As circulated, the rules proposal would have amended rules 2.551(e)(1) and 2.577(f)(3) to require that, when a court grants an order sealing a record, it must replace the cover sheet with a filed-endorsed copy of the court’s order. In addition, the rules proposal would have required the court, if the record was in electronic form, to place the record ordered sealed in a secure electronic file, clearly identified as sealed by court order on a specified date.

After the comment period closed, Mr. Alan Carlson—the Court Executive Officer of the Superior Court of Orange County—provided his response to these proposed amendments. He explained that removing the cover sheet and attaching the court’s order for records and petitions transmitted electronically is unworkable in his court’s electronic case and document management systems. Once these records and petitions have been electronically transmitted by the parties, the court cannot alter these documents; however, the court can change the level of access to these documents and can identify these documents as sealed by court order on a specific date. Mr. Carlson also explained that his document management system does not electronic documents in a secure electronic “file.”

This rules proposal incorporates Mr. Carlson’s recommendations into the amendments for rules 2.551(e)(1) and 2.577(f)(3).

⁹ Form EFS-005 is available at <http://www.courts.ca.gov/documents/efs005.pdf>.

Rule 2.551(e)(1) is amended to provide as follows:

If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is in an electronic format, the clerk must file the court’s order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Rule 2.577(f)(3) is amended as follows:

For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the Confidential Cover Sheet that the matter is filed “CONDITIONALLY UNDER SEAL,” add a notation to that sheet prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and file the documents under seal. For petitions transmitted electronically, the clerk must file the court’s order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Electronic submission of documents after close of business. Four commentators submitted comments in response to the proposed amendment to rule 3.1300(e), which governs the filing and service of motion papers.¹⁰ Under this rules proposal, as circulated, subdivision (e) would have been amended as follows:

A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day.

Three commentators identified an error in the proposed language in that papers are initially “received,” not filed. Ms. Robin Brandes-Gibbs, an employee at the Superior Court of Orange County, proposed replacing the term “filed” with “received by the court.” This rules proposal incorporates Ms. Brandes-Gibb’s suggested language since it would correct the error and would track the language of rule 2.259(c).¹¹

¹⁰ Ms. Robin Brandes-Gibbs referenced subdivision (c) of rule 3.1300, but her comments appear directed toward subdivision (e).

¹¹ Rule 2.259(c) provides in full:

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

In response to the error, the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee proposed adding the phrase “if, after review by the clerk, it is accepted for filing” to the end of the proposed amendment. This rules proposal does not incorporate this recommendation since the subcommittee’s concern is already addressed by the cross-reference in rule 3.1300(e) to rule 2.259(c), which provides that electronically filed documents must “be processed and satisfy all other legal filing requirements to be filed as an official court record.”

In addition, Ms. Brandes-Gibbs questioned whether the proposed amendment to rule 3.1300(e), as well as rules 2.253(b)(7) and 2.259(c),¹² contradict Code of Civil Procedure section 1010.6(b)(3). Code of Civil Procedure section 1010.6(b)(3) does provide that “[a]ny 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.” It also defines “close of business” as meaning “5 p.m. or the time at which the court would not accept filing at the court’s filing counter, whichever is earlier.”

Code of Civil Procedure section 1010.6(b)(3) governs only *permissive* electronic filing. Subdivision (g) exempts superior courts from complying with subdivision (b)(3) where electronic filing is *mandatory*. Subdivision (f), in turn, instructs the Judicial Council to adopt uniform rules governing mandatory electronic filing that conform with the conditions in section 1010.6, including the exception in subdivision (g) to subdivision (b)(3). Thus, Code of Civil Procedure section 1010.6 provides an exception to the close-of-business rule where electronic filing is mandatory.

The amendment to rule 3.1300(e) tracks this legislative scheme. By its cross-reference to rule 2.259(c), which in turn references rule 2.253(b)(7), the proposed amendment to rule 3.1300(e) only applies to papers that are required to be filed electronically. Even though the amendment to rule 3.1300(e) is authorized under Code of Civil Procedure section 1010.6, this proposal includes additional language to clarify that the amendment only applies to mandatory filing. In response to Ms. Brandes-Gibbs’ comments, rule 3.1300(e) will be amended to provide:

A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. Under rules 2.253(b)(7) and 2.259(c), a court may provide by local rule that a paper that is required to be filed

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.

¹² Rule 2.253(b)(7) addresses mandatory electronic filing and is cross-referenced in rule 2.259(c). It recognizes that courts may provide by local rule that electronically filed documents received before midnight will be deemed to have been filed by that court day.

electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.

In its comments to the proposed amendment to rule 3.1300(e), the Superior Court of Sacramento County recommended against authorizing inconsistencies throughout the State. Currently, the Code of Civil Procedure and trial court rules allow for electronic filing deadlines to vary depending on whether electronic filing is permissive or mandatory and depending on the court's local rules. Addressing the court's concern about inconsistencies is beyond the scope of the present rules proposal because it would require a substantive amendment to the rules and possibly to the Code of Civil Procedure. The advisory committees may address the court's concern during phase II of the Rules Modernization Project.

Use of an electronic record on appeal. CAJ expressed concern about the impact of the proposed amendments to rules 8.122, 8.144, 8.336, and 8.838, on indigent appellate litigants, particularly incarcerated appellants and others who do not have access to computers. The proposed amendments to these rules would have expressly allowed all or part of the record on appeal to be in electronic form where authorized by local rule of the appellate court or division. In addition, the proposed amendments to rule 8.832, not specifically mentioned by CAJ, would have added language to the rule's Advisory Committee Comment parallel to the language proposed for the comment to rule 8.122, but applying to appeals to an appellate division of a superior court.

Recognizing that the exceptions for self-represented litigants in the electronic filing and service rules do not apply to the form of the record on appeal, the proposed amendments to 8.122, 8.144, 8.832, and 8.838—which would have expressly allowed use of an electronic record on appeal—have been withdrawn from this rules proposal for further consideration in phase II of the Rules Modernization Project. Other amendments to rules 8.144 and 8.838, as well as the amendment to rule 8.336, remain part of this rules proposal. These amendments clarify application of the rules where the clerk's or reporter's transcript is in electronic form.

At least one of the courts of appeal is currently receiving the clerk's transcripts in electronic form from one of the superior courts within the district. This practice, already in effect under the existing rules of court, should be able to continue unchanged while further consideration is given to how best to address this issue in the rules of court.

Alternatives

As an alternative to making technical changes at this time, ITAC considered deferring action and proposing a single rules proposal that would have included both substantive and technical changes to the rules at a later date. One benefit of this approach would have been increasing the project's overall efficiency by reviewing and ultimately implementing all changes at the same time. By dividing the work into technical and substantive phases, however, the council will modernize the rules, to the extent possible, on a more responsive timeline for those courts that are already implementing electronic filing and service and adopting modern business practices.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal does not introduce substantive changes to the rules, it is not expected to incur any new costs or require implementation. To the extent that the proposal clarifies existing law, it will facilitate electronic filing and service in the trial and appellate courts and provide cost-efficiencies.

Only minimal costs are associated with amending the rules.

Attachments and Links

1. Cal. Rules of Court, amendments to title 2, at pages 12–21
2. Cal. Rules of Court, amendments to title 3, at pages 22–35
3. Cal. Rules of Court, amendments to title 4, at page 36
4. Cal. Rules of Court, amendments to title 5, at pages 37–40
5. Cal. Rules of Court, amendments to title 7, at pages 41
6. Cal. Rules of Court, amendments to title 8, at pages 42–97
7. Comment chart, at pages 98–107

Rules 2.3, 2.10, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.108, 2.111, 2.113, 2.114, 2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, and 2.1100, of the California Rules of Court are amended, and rule 2.10 is adopted, effective January 1, 2016, to read:

Title 2. Trial Court Rules

Rule 2.3. Definitions

As used in the Trial Court Rules, unless the context or subject matter otherwise requires:

- (1) “Court” means the superior court;
- (2) “Papers” includes all documents, except exhibits and copies of exhibits, that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions. and Unless the context clearly provides otherwise, “papers” need not be in a tangible or physical form but may be in an electronic form.
- (3) “Written,” “writing,” “typewritten,” and “typewriting” include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor.

Rule 2.10. Scope of rules [Reserved]

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 2.102. One-sided paper

When papers are not filed electronically, On papers, only one side of each page may be used.

Rule 2.103. Size, quality, and color, and size of paper

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight,8½ by 11 inches.

Rule 2.104. Printing; type font size

All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in type a font not smaller than 12 points.

1 **Rule 2.105. Type Font style**

2
3 The ~~typeface~~ font must be essentially equivalent to Courier, Times New Roman, or Arial.

4
5 **Rule 2.106. Font color of print**

6
7 The font color ~~of print~~ must be black or blue-black.

8
9 **Rule 2.107. Margins**

10
11 The left margin of each page must be at least one inch from the left edge ~~of the paper~~ and
12 the right margin at least 1/2 inch from the right edge ~~of the paper~~.

13
14 **Rule 2.108. Spacing and numbering of lines**

15
16 The spacing and numbering of lines on a page must be as follows:

17
18 (1)-(3) * * *

19
20 (4) Line numbers must be placed at the left margin and separated from the text ~~of the~~
21 ~~paper~~ by a vertical column of space at least 1/5 inch wide or a single or double
22 vertical line. Each line number must be aligned with a line of type, or the line
23 numbers must be evenly spaced vertically on the page. Line numbers must be
24 consecutively numbered, beginning with the number 1 on each page. There must be
25 at least three line numbers for every vertical inch on the page.

26
27 **Rule 2.111. Format of first page**

28
29 The first page of each paper must be in the following form:

30
31 (1)-(2) * * *

32
33 (3) On line 8, at or below 3 1/3 inches from the top of the ~~paper~~ page, the title of the
34 court.

35
36 (4)-(11) * * *

37
38 **Rule 2.113. Binding**

39
40 Each paper not filed electronically must consist entirely of original pages without riders
41 and must be firmly bound together at the top.

1 **Rule 2.114. Exhibits**

2
3 Exhibits submitted with papers not filed electronically may be fastened to pages of the
4 specified size and, when prepared by a machine copying process, must be equal to
5 ~~typewritten~~ computer processed materials in legibility and permanency of image.
6

7 **Rule 2.115. Hole punching**

8
9 When papers are not filed electronically, each paper presented for filing must contain two
10 prepunched normal-sized holes, centered 2½ inches apart and 5/8 inch from the top of the
11 paper.
12

13 **Rule 2.117. Conformed copies of papers**

14
15 All copies of papers served must conform to the original papers filed, including the
16 numbering of lines, pagination, additions, deletions, and interlineations except that, with
17 the agreement of the other party, a party serving papers by non-electronic means may
18 serve that other party with papers printed on both sides of the page.
19

20 **Rule 2.130. Application**

21
22 The rules in this chapter apply to Judicial Council forms, local court forms, and all other
23 official forms to be filed in the trial courts. The rules apply to forms filed both in paper
24 form and electronically, unless otherwise specified.
25

26 **Rule 2.133. Hole punching**

27
28 All forms not filed electronically must contain two prepunched normal-sized holes,
29 centered 2½ inches apart and 5/8 inch from the top of the form.
30

31 **Rule 2.134. Forms longer than one page**

32
33 **(a) Single side may be used**

34
35 If a form not filed electronically is longer than one page, the form may be printed
36 on sheets printed only on one side even if the original has two sides to a sheet.
37

38 **(b) Two-sided forms must be tumbled**

39
40 If a form not filed electronically is filed on a sheet printed on two sides, the reverse
41 side must be rotated 180 degrees (printed head to foot).
42

1 (c) **Multiple-page forms must be bound**

2
3 If a form not filed electronically is longer than one page, it must be firmly bound at
4 the top.
5

6 **Rule 2.150. Authorization for computer-generated or typewritten forms for proof**
7 **of service of summons and complaint**
8

9 (a) **Computer-generated or typewritten forms; conditions**

10
11 Notwithstanding the adoption of mandatory form *Proof of Service of Summons*
12 (form POS-010), a form for proof of service of a summons and complaint prepared
13 entirely by word processor, typewriter, or similar process may be used for proof of
14 service in any applicable action or proceeding if the following conditions are met:
15

16 (1)–(4) * * *

17
18 (5) The text of form POS-010 must be copied in the same order as it appears on
19 ~~the printed~~ form POS-010 using the same item numbers. A declaration of
20 diligence may be attached to the proof of service or inserted as item 5b(5).
21

22 (6) Areas marked “For Court Use” must be copied in the same general locations
23 and occupy approximately the same amount of space as on ~~the printed~~ form
24 POS-010.
25

26 (7)–(8) * * *

27
28 (9) Material that would have been ~~typed~~ entered onto ~~the printed~~ form POS-010
29 must be ~~typed~~ entered with each line indented 3 inches from the left margin.
30

31 (b) * * *

32
33 **Advisory Committee Comment**
34

35 This rule is intended to permit process servers and others to prepare their own shortened versions
36 of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant
37 to show the method of service used.
38

39 **Rule 2.550. Sealed records**

40
41 (a) * * *
42
43

1 (b) **Definitions**

2
3 As used in this chapter:

4
5 (1) “Record.” Unless the context indicates otherwise, “record” means all or a
6 portion of any document, paper, exhibit, transcript, or other thing filed or
7 lodged with the court, by electronic means or otherwise.

8
9 (2)–(3) * * *

10
11 (c)–(e) * * *

12
13 **Rule 2.551. Procedures for filing records under seal**

14
15 (a) * * *

16
17 (b) **Motion or application to seal a record**

18
19 (1) * * *

20
21 (2) *Service of motion or application*

22
23 A copy of the motion or application must be served on all parties that have
24 appeared in the case. Unless the court orders otherwise, any party that already
25 ~~possesses copies of~~ has access to the records to be placed under seal must be
26 served with a complete, unredacted version of all papers as well as a redacted
27 version. Other parties must be served with only the public redacted version.
28 If a party’s attorney but not the party has access to the record, only the
29 party’s attorney may be served with the complete, unredacted version.

30
31 (3) *Procedure for party not intending to file motion or application*

32
33 (A) * * *

34
35 (B) If the party that produced the documents and was served with the notice
36 under (A)(iii) fails to file a motion or an application to seal the records
37 within 10 days or to obtain a court order extending the time to file such
38 a motion or an application, the clerk must promptly remove all the
39 documents in (A)(i) from the envelope, ~~or~~ container, or secure
40 electronic file where they are located and place them in the public file.
41 If the party files a motion or an application to seal within 10 days or
42 such later time as the court has ordered, these documents are to remain

1 conditionally under seal until the court rules on the motion or
2 application and thereafter are to be filed as ordered by the court.

3
4 (4) * * *

5
6 (5) *Redacted and unredacted versions*

7
8 If necessary to prevent disclosure, any motion or application, any opposition,
9 and any supporting documents must be filed in a public redacted version and
10 lodged in a complete, unredacted version conditionally under seal. The cover
11 of the redacted version must identify it as “Public—Redacts materials from
12 conditionally sealed record.” The cover of the unredacted version must
13 identify it as “May Not Be Examined Without Court Order—Contains
14 material from conditionally sealed record.”

15
16 (6) *Return of lodged record*

17
18 If the court denies the motion or application to seal, the clerk must return the
19 lodged record to the submitting party and must not place it in the case file
20 unless that party notifies the clerk in writing ~~within 10 days after the order~~
21 ~~denying the motion or application~~ that the record is to be filed. Unless
22 otherwise ordered by the court, the submitting party must notify the clerk
23 within 10 days after the order denying the motion or application.

24
25 (c) * * *

26
27 (d) **Procedure for lodging of records**

28
29 (1) A record that may be filed under seal must be transmitted to the court in a
30 secure manner that preserves the confidentiality of the records to be lodged.
31 If the record is transmitted in paper form, it must be put in an envelope or
32 other appropriate container, sealed in the envelope or container, and lodged
33 with the court.

34
35 (2) The materials to be lodged under seal must be clearly identified as
36 “CONDITIONALLY UNDER SEAL.” If the materials are transmitted in
37 paper form, the envelope or container lodged with the court must be labeled
38 “CONDITIONALLY UNDER SEAL.”

39
40 (3) The party submitting the lodged record must affix to the electronic
41 transmission, the envelope or the container a cover sheet that:

42
43 (A)–(B) * * *

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(4) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is in an electronic format, the clerk must file the court’s order, store the record ordered sealed in a secure electronic manner, and clearly identify the record as sealed by court order on a specified date.

(2) The order must state whether—in addition to the sealed records ~~in the envelope or container~~—the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) * * *

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed ~~records or papers~~.

(f)–(g) * * *

(h) Motion, application, or petition to unseal records

(1)–(2) * * *

(3) If the court proposes to order a record unsealed on its own motion, the court must ~~mail~~ give notice to the parties stating the reason for unsealing the record therefor. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is provided ~~mailed or within such time as the court specifies~~, and any other party may file a response within 5 days after the filing of an opposition.

(4) * * *

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court’s order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or

1 both. If, in addition to the records in the envelope, ~~or~~ container, or secure
2 electronic file, the court has previously ordered the sealing order, the register of
3 actions, or any other court records relating to the case to be sealed, the
4 unsealing order must state whether these additional records are unsealed.

5
6 **Rule 2.577. Procedures for filing confidential name change records under seal**

7
8 (a)–(c) * * *

9
10 (d) **Procedure for lodging of petition for name change**

11
12 (1) The records that may be filed under seal must be lodged with the court. If
13 they are transmitted on paper, they must be placed in a sealed envelope. If
14 they are transmitted electronically, they must be transmitted to the court in a
15 secure manner that preserves the confidentiality of the documents to be
16 lodged.

17
18 (2) If the petitioner is transmitting the petition on paper, the petitioner must
19 complete and affix to the envelope a completed *Confidential Cover Sheet—*
20 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
21 *Home)* (form NC-400) and in the space under the title and case number mark
22 it “CONDITIONALLY UNDER SEAL.” If the petitioner is transmitting
23 electronically, the first page of the electronic transmission must be a
24 completed *Confidential Cover Sheet—Name Change Proceeding Under*
25 *Address Confidentiality Program (Safe at Home)* (form NC-400) with the
26 space under the title and case number marked “CONDITIONALLY UNDER
27 SEAL.”

28
29 (3) On receipt of a petition lodged under this rule, the clerk must endorse the
30 ~~affixed~~ cover sheet with the date of its receipt and must retain but not file the
31 record unless the court orders it filed.

32
33 (4) * * *

34
35 (e) * * *

36
37 (f) **Order**

38
39 (1)–(2) * * *

40
41 (3) For petitions transmitted in paper form, if the court grants an order sealing a
42 record, the clerk must strike out the notation required by (d)(2) on the
43 *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY

1 UNDER SEAL,” and add a notation to that sheet prominently stating
2 “SEALED BY ORDER OF THE COURT ON (DATE),” and file the
3 documents under seal. For petitions transmitted electronically, the clerk must
4 file the court’s order, store the record ordered sealed in a secure electronic
5 manner, and clearly identify the record as sealed by court order on a specified
6 date.

7
8 (4)–(5) * * *

9
10 (g)–(h) * * *

11
12 **Rule 2.816. Stipulation to court-appointed temporary judge**

13
14 (a)–(d) * * *

15
16 (e) **Application or motion to withdraw stipulation**

17
18 An application or motion to withdraw a stipulation for the appointment of a
19 temporary judge must be supported by a declaration of facts establishing good
20 cause for permitting the party to withdraw the stipulation. In addition:

21
22 (1)–(2) * * *

23
24 (3) The application or motion must be served and filed, and the moving party
25 must ~~mail or deliver~~ provide a copy to the presiding judge.

26
27 (4) * * *

28
29 **Rule 2.831. Temporary judge—stipulation, order, oath, assignment, disclosure, and**
30 **disqualification**

31
32 (a)–(e) * * *

33
34 (f) **Motion to withdraw stipulation**

35
36 A motion to withdraw a stipulation for the appointment of a temporary judge must
37 be supported by a declaration of facts establishing good cause for permitting the
38 party to withdraw the stipulation, and must be heard by the presiding judge or a
39 judge designated by the presiding judge. A declaration that a ruling is based on
40 error of fact or law does not establish good cause for withdrawing a stipulation.
41 Notice of the motion must be served and filed, and the moving party must ~~mail or~~
42 ~~deliver~~ provide a copy to the temporary judge. If the motion to withdraw the
43 stipulation is based on grounds for the disqualification of the temporary judge first

1 learned or arising after the temporary judge has made one or more rulings, but
2 before the temporary judge has completed judicial action in the proceeding, the
3 provisions of rule 2.816(e)(4) apply. If a motion to withdraw a stipulation is
4 granted, the presiding judge must assign the case for hearing or trial as promptly as
5 possible.

6
7 **Rule 2.1055. Proposed jury instructions**

8
9 (a) * * *

10
11 (b) **Form and format of proposed instructions**

12
13 (1)–(3) * * *

14
15 (4) Each set of proposed jury instructions filed on paper must be bound loosely.

16
17 (c)–(e) * * *

18
19 **Rule 2.1100. Notice when statute or regulation declared unconstitutional**

20
21 Within 10 days after a court has entered judgment in a contested action or special
22 proceeding in which the court has declared unconstitutional a state statute or regulation,
23 the prevailing party, or as otherwise ordered by the court, must ~~mail~~ serve a copy of the
24 judgment and a notice of entry of judgment ~~to~~ on the Attorney General and file a proof of
25 service with the court.

Rules 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, and 3.2107, of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Title 3. Civil Rules**

2
3 **Rule 3.254. List of parties**

4
5 **(a) Duties of first-named plaintiff or petitioner**

6
7 Except as provided under rule 2.251 for electronic service, if more than two parties
8 have appeared in a case and are represented by different counsel, the plaintiff or
9 petitioner named first in the complaint or petition must:

10
11 (1)–(2) * * *

12
13 **(b) Duties of each party**

14
15 Except as provided under rule 2.251 for electronic service, each party must:

16
17 (1)–(3) * * *

18
19 **Rule 3.524. Order assigning coordination motion judge**

20
21 **(a) Contents of order**

22
23 An order by the Chair of the Judicial Council assigning a coordination motion
24 judge to determine whether coordination is appropriate, or authorizing the presiding
25 judge of a court to assign the matter to judicial officers of the court to make the
26 determination in the same manner as assignments are made in other civil cases,
27 must include the following:

28
29 (1) The special title and number assigned to the coordination proceeding; and

30
31 (2) The court's address or electronic service address for submitting all
32 subsequent documents to be considered by the coordination motion judge.

33
34 **(b) * * ***

35
36 **Rule 3.544. Add-on cases**

37
38 **(a) Request to coordinate add-on case**

39
40 A request to coordinate an add-on case must comply with the requirements of rules
41 3.520 through 3.523, except that the request must be submitted to the coordination

1 trial judge under Code of Civil Procedure section 404.4, with proof of ~~mailing~~
2 service of one copy ~~to~~ on the Chair of the Judicial Council and proof of service as
3 required by rule 3.510.
4

5 (b)–(d) * * *

6
7 **Rule 3.670. Telephone appearance**
8

9 (a)–(g) * * *

10
11 **(h) Notice by party**
12

13 (1) Except as provided in (6), a party choosing to appear by telephone at a
14 hearing, conference, or proceeding, other than on an ex parte application,
15 under this rule must either:
16

17 (A) Place the phrase “Telephone Appearance” below the title of the
18 moving, opposing, or reply papers; or
19

20 (B) At least two court days before the appearance, notify the court and all
21 other parties of the party’s intent to appear by telephone. If the notice is
22 oral, it must be given either in person or by telephone. If the notice is in
23 writing, it must be given by filing a “Notice of Intent to Appear by
24 Telephone” with the court at least two court days before the appearance
25 and by serving the notice at the same time on all other parties by
26 personal delivery, fax transmission, express mail, ~~e-mail~~ electronic
27 service if such service is required by local rule or court order or agreed
28 to by the parties, or other means reasonably calculated to ensure
29 delivery to the parties no later than the close of the next business day.
30

31 (2)–(6) * * *

32
33 (i)–(q) * * *

34
35 **Rule 3.815. Selection of the arbitrator**
36

37 (a) * * *

38
39 **(b) Selection absent stipulation or local procedures**
40

41 If the arbitrator has not been selected by stipulation and the court has not adopted
42 local rules or procedures for the selection of the arbitrator as permitted under (c),
43 the arbitrator will be selected as follows:

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(1) * * *

(2) The administrator must select at random a number of names equal to the number of sides, plus one, and ~~mail~~ send the list of randomly selected names to counsel for the parties.

(3) Each side has 10 days from the date of ~~mailing~~ on which the list was sent to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4)–(5) * * *

(c)–(f) * * *

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, “delivery” of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased by two days. If service is by mail, the times prescribed in this rule ~~for delivery of documents, notices, and demands~~ are increased by five days.

Rule 3.827. Entry of award as judgment

(a) * * *

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must ~~mail~~ serve notice of entry of judgment ~~to~~ on all parties who have appeared in the case and must execute a certificate of ~~mailing~~ service and place it in the court’s file in the case.

(c) * * *

1 **Rule 3.931. Open proceedings, notice of proceedings, and order for hearing site**

2
3 (a) * * *

4
5 (b) **Notice regarding proceedings before referee**

6
7 (1) In each case in which he or she is appointed, a referee must file a statement
8 that provides the name, telephone number, e-mail address, and mailing
9 address of a person who may be contacted to obtain information about the
10 date, time, location, and general nature of all hearings scheduled in matters
11 pending before the referee that would be open to the public if held before a
12 judge. This statement must be filed at the same time as the referee's
13 certification under rule 3.904(a) or 3.924(a). If there is any change in this
14 contact information, the referee must promptly file a revised statement with
15 the court.

16
17 (2) In addition to providing the information required under (1), the statement
18 filed by a referee may also provide the address of a publicly accessible ~~Web~~
19 site website at which the referee will maintain a current calendar setting forth
20 the date, time, location, and general nature of any hearings scheduled in the
21 matter that would be open to the public if held before a judge.

22
23 (3) * * *

24
25 (c) * * *

26
27 **Rule 3.1010. Oral depositions by telephone, videoconference, or other remote**
28 **electronic means**

29
30 (a) * * *

31
32 (b) **Appearing and participating in depositions**

33
34 Any party may appear and participate in an oral deposition by telephone,
35 videoconference, or other remote electronic means, provided:

36
37 (1) Written notice of such appearance is served by personal delivery, e-mail, or
38 fax at least three court days before the deposition;

39
40 (2) The party so appearing makes all arrangements and pays all expenses
41 incurred for the appearance.
42

1 (c)–(e) * * *

2
3 **Rule 3.1109. Notice of determination of submitted matters**

4
5 **(a) Notice by clerk**

6
7 When the court rules on a motion or makes an order or renders a judgment in a
8 matter it has taken under submission, the clerk must immediately notify the parties
9 of the ruling, order, or judgment. The notification, which must specifically identify
10 the matter ruled on, may be given by servicing electronically or mailing the parties a
11 copy of the ruling, order, or judgment, and it constitutes service of notice only if
12 the clerk is required to give notice under Code of Civil Procedure section 664.5.

13
14 **(b)** * * *

15
16 **(c) Time not extended by failure of clerk to give notice**

17
18 The failure of the clerk to give the notice required by this rule does not extend the
19 time provided by law for performing any act except as provided in rules 8.104(a) or
20 ~~8.824~~ 8.822(a).

21
22 **Rule 3.1110. General format**

23
24 **(a)–(d)** * * *

25
26 **(e) Binding**

27
28 For motions filed on paper, all pages of each document and exhibit must be
29 attached together at the top by a method that permits pages to be easily turned and
30 the entire content of each page to be read.

31
32 **(f)–(g)** * * *

33
34 **Rule 3.1113. Memorandum**

35
36 **(a)–(h)** * * *

37
38 **(i) Copies of authorities**

39
40 (1) A judge may require that if any authority other than California cases, statutes,
41 constitutional provisions, or state or local rules is cited, a copy of the
42 authority must be lodged with the papers that cite the authority and tabbed or
43 separated as required by rule 3.1110(f).

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(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged and tabbed or separated as required by rule 3.1110(f).

(3) * * *

(j)-(l) * * *

(m) Proposed orders or judgments

If a proposed order or judgment is submitted, it must be lodged and served with the moving papers but must not be attached to them. The requirements for proposed orders, including the requirements for submitting proposed orders by electronic means, are stated in rule 3.1312.

Rule 3.1202. Contents of application

(a) Identification of attorney or party

An ex parte application must state the name, address, e-mail address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, e-mail address, and telephone number of the party if known to the applicant.

(b)-(c) * * *

Rule 3.1300. Time for filing and service of motion papers

(a) In general

Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service.

(b)-(d) * * *

(e) Computation of time

1 A paper submitted before the close of the clerk’s office to the public on the day the
2 paper is due is deemed timely filed. Under rules 2.235(b)(7) and rule 2.259(c), a
3 court may provide by local rule that a paper that is required to be filed
4 electronically and that is received electronically by the court before midnight on a
5 court day is deemed filed on that court day.
6

7 **Rule 3.1302. Place and manner of filing**
8

9 **(a) Papers filed in clerk’s office**

10
11 Unless otherwise provided by local rule or specified in a court’s protocol for
12 electronic filing, all papers relating to a law and motion proceeding must be filed in
13 the clerk’s office.
14

15 **(b) Requirements for lodged material**

16
17 Material lodged physically with the clerk must be accompanied by an addressed
18 envelope with sufficient postage for mailing the material. Material lodged
19 electronically must clearly specify the electronic address to which the materials
20 may be returned. After determination of the matter, the clerk may mail or send the
21 material back to the party lodging it.
22

23 **Rule 3.1304. Time of hearing**
24

25 **(a) General schedule**

26
27 The clerk must post electronically and at the courthouse a general schedule
28 showing the days and departments for holding each type of law and motion
29 hearing.
30

31 **(b)–(d) * * ***
32

33 **Rule 3.1320. Demurrers**
34

35 **(a)–(b) * * ***
36

37 **(c) Notice of hearing**
38

39 A party filing a demurrer must serve and file therewith a notice of hearing that must
40 specify a hearing date in accordance with the provisions of Code of Civil Procedure
41 section 1005 and, if service is by electronic means, in accordance with the
42 requirements of Code of Civil Procedure section 1010.6(a)(4) and rule 2.251(h)(2).
43

1 (d)–(j) * * *

2
3 **Rule 3.1326. Motions for change of venue**

4
5 Following denial of a motion to transfer under Code of Civil Procedure section 396b,
6 unless otherwise ordered, 30 calendar days are deemed granted defendant to move to
7 strike, demur, or otherwise plead if the defendant has not previously filed a response. If a
8 motion to transfer is granted, 30 calendar days are deemed granted from the date the
9 receiving court ~~mails~~ sends notice of receipt of the case and its new case number.

10
11 **Rule 3.1327. Motions to quash or to stay action in summary proceeding involving**
12 **possession of real property**

13
14 (a) **Notice**

15
16 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
17 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
18 motion to quash service of summons on the ground of lack of jurisdiction or to stay
19 or dismiss the action on the ground of inconvenient forum must be given in
20 compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1167.4.

21
22 (b) * * *

23
24 (c) **Written opposition in advance of hearing**

25
26 If a party seeks to have a written opposition considered in advance of the hearing,
27 the written opposition must be filed and served on or before the court day before
28 the hearing. Service must be by personal delivery, electronic service, ~~fax~~ ~~facsimile~~
29 transmission, express mail, or other means consistent with Code of Civil Procedure
30 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
31 delivery to the other party or parties no later than the close of business on the court
32 day before the hearing. The court, in its discretion, may consider written opposition
33 filed later.

34
35 **Rule 3.1330. Motion concerning arbitration**

36
37 A petition to compel arbitration or to stay proceedings pursuant to Code of Civil
38 Procedure sections 1281.2 and 1281.4 must state, in addition to other required
39 allegations, the provisions of the written agreement and the paragraph that provides for
40 arbitration. The provisions must be stated verbatim or a copy must be physically or
41 electronically attached to the petition and incorporated by reference.

1 **Rule 3.1340. Motion for discretionary dismissal after two years for delay in**
2 **prosecution**

3
4 (a) * * *

5
6 (b) **Notice of court's intention to dismiss**

7
8 If the court intends to dismiss an action on its own motion, the clerk must set a
9 hearing on the dismissal and ~~mail~~ send notice to all parties at least 20 days before
10 the hearing date.

11
12 (c) * * * *

13
14 **Rule 3.1346. Service of motion papers on nonparty deponent**

15
16 A written notice and all moving papers supporting a motion to compel an answer to a
17 deposition question or to compel production of a document or tangible thing from a
18 nonparty deponent must be personally served on the nonparty deponent unless the
19 nonparty deponent agrees to accept service by mail or electronic service at an address or
20 electronic service address specified on the deposition record.

21
22 **Rule 3.1347. Discovery motions in summary proceeding involving possession of real**
23 **property**

24
25 (a) **Notice**

26
27 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
28 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
29 discovery motion must be given in compliance with Code of Civil Procedure
30 sections 1010.6 or 1013 and 1170.8.

31
32 (b) * * *

33
34 (c) **Written opposition in advance of hearing**

35
36 If a party seeks to have a written opposition considered in advance of the hearing,
37 the written opposition must be served and filed on or before the court day before
38 the hearing. Service must be by personal delivery, electronic service, ~~fax~~ ~~facsimile~~
39 transmission, express mail, or other means consistent with Code of Civil Procedure
40 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
41 delivery to the other party or parties no later than the close of business on the court
42 day before the hearing. The court, in its discretion, may consider written opposition
43 filed later.

1
2 **Rule 3.1350. Motion for summary judgment or summary adjudication**

3
4 (a)–(d) * * *

5
6 (e) **Documents in opposition to motion**

7
8 Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the
9 opposition to a motion must consist of the following separate documents,
10 ~~separately stapled and~~ titled as shown:

11
12 (1)–(4) * * *

13
14 (f)–(i) * * *

15
16 **Rule 3.1351. Motions for summary judgment in summary proceeding involving**
17 **possession of real property**

18
19 (a) **Notice**

20
21 In an unlawful detainer action or other action brought under chapter 4 of title 3 of
22 part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a
23 motion for summary judgment must be given in compliance with Code of Civil
24 Procedure sections 1010.6 or 1013 and 1170.7.

25
26 (b) * * *

27
28 (c) **Written opposition in advance of hearing**

29
30 If a party seeks to have a written opposition considered in advance of the hearing,
31 the written opposition must be filed and served on or before the court day before
32 the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~
33 transmission, express mail, or other means consistent with Code of Civil Procedure
34 sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure
35 delivery to the other party or parties no later than the close of business on the court
36 day before the hearing. The court, in its discretion, may consider written opposition
37 filed later.

38
39 **Rule 3.1354. Written objections to evidence**

40
41 (a)–(b) * * *

1 (c) **Proposed order**

2
3 A party submitting written objections to evidence must submit with the objections a
4 proposed order. The proposed order must include places for the court to indicate
5 whether it has sustained or overruled each objection. It must also include a place
6 for the signature of the judge. The court may require that the proposed order be
7 provided in electronic form. The proposed order must be in one of the following
8 two formats:
9

10 *(First Format):*

11 **Objections to Jackson Declaration**

12
13 **Objection Number 1**

14
15 “Johnson told me that no widgets were ever received.” (Jackson declaration, page 3, lines
16 7–8.)

17
18 **Grounds for Objection 1:** Hearsay (Evid. Code, § 1200); lack of personal knowledge
19 (Evid. Code, § 702(a)).
20

Court’s Ruling on Objection 1:	Sustained: _____ Overruled: _____
---------------------------------------	--------------------------------------

21
22 **Objection Number 2**

23
24 “A lot of people find widgets to be very useful.” (Jackson declaration, page 17, line 5.)
25

26 **Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).
27

Court’s Ruling on Objection 2:	Sustained: _____ Overruled: _____
---------------------------------------	--------------------------------------

28
29 *(Second Format):*

30
31 **Objections to Jackson Declaration**

Material Objected to:	Grounds for Objection:	Ruling on the Objection
1. Jackson declaration, page 3, lines 7–	Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, §	Sustained: _____ Overruled: _____

8: "Johnson told me that no widgets were ever received."	702(a)).	
2. Jackson declaration, page 17, line 5: "A lot of people find widgets to be very useful."	Irrelevant (Evid. Code, §§ 210, 350–351).	Sustained: _____ Overruled: _____
Date:	_____	_____
		Judge

1
2 **Rule 3.1590. Announcement of tentative decision, statement of decision, and**
3 **judgment**

4
5 (a)–(k) * * *

6
7 (l) **Signature and filing of judgment**

8
9 If a written judgment is required, the court must sign and file the judgment within
10 50 days after the announcement or service of the tentative decision, whichever is
11 later, or, if a hearing was held under (k), within 10 days after the hearing. An
12 electronic signature by the court is as effective as an original signature. The
13 judgment constitutes the decision on which judgment is to be entered under Code
14 of Civil Procedure section 664.

15
16 (m)–(n) ***

17
18 **Rule 3.1700. Prejudgment costs**

19
20 (a) **Claiming costs**

21
22 (1) *Trial costs*

23
24 A prevailing party who claims costs must serve and file a memorandum of
25 costs within 15 days after the date of ~~mailing~~ service of the notice of entry of
26 judgment or dismissal by the clerk under Code of Civil Procedure section
27 664.5 or the date of service of written notice of entry of judgment or
28 dismissal, or within 180 days after entry of judgment, whichever is first. The
29 memorandum of costs must be verified by a statement of the party, attorney,

1 or agent that to the best of his or her knowledge the items of cost are correct
2 and were necessarily incurred in the case.

3
4 (2) * * *

5
6 **(b) Contesting costs**

7
8 (1) *Striking and taxing costs*

9
10 Any notice of motion to strike or to tax costs must be served and filed 15
11 days after service of the cost memorandum. If the cost memorandum was
12 served by mail, the period is extended as provided in Code of Civil Procedure
13 section 1013. If the cost memorandum was served electronically, the period is
14 extended as provided in Code of Civil Procedure section 1010.6(a)(4).

15
16 (2)–(4) * * *

17
18 **Rule 3.1900. Notice of renewal of judgment**

19
20 A copy of the application for renewal of judgment must be physically or electronically
21 attached to the notice of renewal of judgment required by Code of Civil Procedure
22 section 683.160.

23
24 **Rule 3.2107. Request for court order**

25
26 **(a) Request before trial**

27
28 If a party files a written request for a court order before the hearing on the claim,
29 the requesting party must mail, ~~or~~ personally deliver, or if agreed on by the parties
30 electronically serve a copy to all other parties in the case. The other parties must be
31 given an opportunity to answer or respond to the request before or at the hearing.
32 This subdivision does not apply to a request to postpone the hearing date if the
33 plaintiff's claim has not been served.

34
35 **(b) Request after trial**

36
37 If a party files a written request for a court order after notice of entry of judgment,
38 the clerk must ~~mail~~ send a copy of the request to all other parties in the action. A
39 party has 10 calendar days from the date on which the clerk ~~mailed~~ sent the request
40 to file a response before the court makes an order. The court may schedule a
41 hearing on the request, except that if the request is to vacate the judgment for lack
42 of appearance by the plaintiff, the court must hold a hearing. The court may give

1 notice of any scheduled hearing with notice of the request, but the hearing must be
2 scheduled at least 11 calendar days after the clerk has ~~mailed~~ sent the request.

DRAFT

Title 4. Criminal Rules

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail or e-mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

- (1)–(2) * * *

Rules 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534 and 5.906 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 5. Family and Juvenile Rules

Rule 5.50. Papers issued by the court

(a) * * *

(b) **Automatic temporary family law restraining order in summons; handling by clerk**

Under Family Code section 233, in proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a summons that includes automatic temporary (standard) restraining orders ~~on the reverse side of the summons.~~

(1)–(2) * * *

(c) **Individual restraining order**

(1) On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders in (b) ~~included on the back of~~ in the family law summons under Family Code section 233.

(2) Individual restraining orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.83. Family centered case resolution

(a)–(c) * * *

(d) **Family centered case resolution conferences**

(1)–(4) * * *

(5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, ~~or~~ in writing, or by other means approved by the court, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

1 (e)–(g) * * *

2
3 **Rule 5.91. Individual restraining order**

4
5 On a party’s request for order and as provided in the Family Code, a court may issue any
6 individual restraining order that appears to be reasonable or necessary, including those
7 automatic temporary restraining orders included ~~on the back of~~ in the family law
8 summons. Individual orders supersede the standard family law restraining orders ~~on the~~
9 ~~back of~~ in the Family Law and Uniform Parentage Act summonses.

10
11 **Rule 5.215. Domestic violence protocol for Family Court Services**

12
13 (a)–(c) * * *

14
15 **(d) Family Court Services: Description and duties**

16
17 (1)–(4) * * *

18
19 (5) *Providing information*

20
21 Family Court Services staff must provide information to families accessing
22 their services about the effects of domestic violence on adults and children.
23 Family Court Services programs, including but not limited to orientation
24 programs, must provide information and materials that describe Family Court
25 Services policy and procedures with respect to domestic violence. ~~Where~~
26 Whenever possible, the videotapes provided information delivered in video
27 or audiovisual format should be closed-captioned.

28
29 (6)–(8) * * *

30
31 (e)–(j) * * *

32
33 **Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to**
34 **represent a child in family law proceedings**

35
36 (a)–(j) * * *

37
38 **(k) Other considerations**

39
40 Counsel is not required to assume the responsibilities of a social worker, probation
41 officer, child custody evaluator, or mediator and is not expected to provide
42 nonlegal services to the child. Subject to the terms of the court’s order of
43 appointment, counsel for a child may take the following actions to implement his or
44 her statutory duties in representing a child in a family law proceeding:

45
46 (1)–(3) * * *

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(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child’s interest, which may include:

(A)–(F) * * *

(G) Reviewing relevant photographs, video or audiotapes recordings, and other evidence;

(H)–(L) * * *

(5) * * *

Rule 5.275. Standards for computer software to assist in determining support

(a)–(f) * * *

(g) Definitions

As used in this rule chapter:

(1) “Software” refers to any program or digital application used to calculate the appropriate amount of child or spousal support.

~~(1)~~(2) “Default settings” refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (1) the user is permitted to change the settings back to the default without reinstalling the software, (2) the computer screen prominently indicates whether the software is set to the default settings, and (3) any printout from the software prominently indicates whether the software is set to the default settings.

~~(2)~~(3) “Contains” means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

(h)–(j) * * *

Rule 5.534. General provisions—all proceedings

(a)–(m) * * *

(n) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

1 (1)–(5) * * *

2
3 (6) When form JV-290 or a caregiver letter is filed, the court clerk must provide
4 the social worker, all unrepresented parties and all attorneys with a copy of
5 the completed form or letter immediately upon receipt. The clerk also must
6 complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The
7 clerk may use any technology designed to speed the distribution process,
8 including drop boxes in the courthouse, e-mail ~~or~~, fax, or other electronic
9 transmission, as defined in rule 2.250, to distribute the JV-290 form or letter
10 and proof of service form.

11
12 (o)–(p) * * *

13
14 **Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction**
15 **(§§ 224.1(b), 303, 388(e))**

16
17 (a)–(b) * * *

18
19 (c) **Filing the request**

20
21 (1) * * *

22
23 (2) For the convenience of the nonminor, the form JV-466 and, if the nonminor
24 wishes to keep his or her contact information confidential, the *Confidential*
25 *Information—Request to Return to Juvenile Court Jurisdiction and Foster*
26 *Care* (form JV-468) may be:

27
28 (A) Filed with the juvenile court that maintained general jurisdiction; or

29
30 (B) Submitted to the juvenile court in the county in which the nonminor
31 currently resides, after which:

32
33 (i) The court clerk must record the date and time received on the
34 face of the originals submitted and provide a copy of the originals
35 marked as received to the nonminor at no cost to ~~the~~ him or her.

36
37 (ii)–(v) * * *

38
39 (C) * * *

40
41 (3)–(5) * * *

42
43 (d)–(i) * * *

Rule 7.802 of the California Rules of Court is adopted, effective January 1, 2016, to read:

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Title 7. Probate Rules

Chapter 17. Contested Hearings and Trials

Rule 7.802. Electronic filing and service in contested probate proceedings

The provisions of Code of Civil Procedure 1010.6 and rules 2.250–2.261 of the California Rules of Court concerning filing and service by electronic means apply to contested proceedings under the Probate Code and the Probate Rules to the same extent as they apply to other contested civil proceedings in each superior court in this state.

DRAFT

Rules 8.10, 8.40, 8.42, 8.44, 8.45, 8.46, 8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.122, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384, 8.385, 8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.803, 8.804, 8.806, 8.814, 8.821, 8.822, 8.823, 8.824, 8.832, 8.833, 8.834, 8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881, 8.882, 8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926, 8.927, 8.928, 8.931, and 8.1018 of the California Rules of Court are amended, and rule 8.11 is adopted, effective January 1, 2016, to read:

Title 8. Appellate Rules

Rule 8.10. Definitions and use of terms

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

(1)–(7) * * *

(8) The words “attach” or “attachment” may refer to either physical attachment or electronic attachment, as appropriate.

(9) The words “copy” or “copies” may refer to electronic copies, as appropriate.

(10) The word “cover” includes the cover page of a document filed electronically.

(11) “Written” and “writing” include electronically created written materials, whether or not those materials are printed on paper.

Rule 8.11. Scope of rules

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 8.40. Form of filed documents

(a) * * *

(b) Cover color

(1) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant’s opening brief or appendix	green
Respondent’s brief or appendix	yellow
Appellant’s reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray
Answer to amicus curiae brief	blue

1	Petition for rehearing	orange
2	Answer to petition for rehearing	blue
3	Petition for original writ	red
4	Answer (or opposition) to petition for original writ	red
5	Reply to answer (or opposition) to petition for original writ	red
6	Petition for transfer of appellate division case to Court	white
7	of Appeal	
8	Answer to petition for transfer of appellate division case	blue
9	to Court of Appeal	
10	Petition for review	white
11	Answer to petition for review	blue
12	Reply to answer to petition for review	white
13	Opening brief on the merits	white
14	Answer brief on the merits	blue
15	Reply brief on the merits	white

16
17
18 (2) In appeals under rule 8.216, the cover of a combined respondent’s brief and
19 appellant’s opening brief filed in paper form must be yellow, and the cover of a
20 combined reply brief and respondent’s brief filed in paper form must be tan.

21
22 (3) * * *

23
24 (c) * * *

25
26 **Rule 8.42. Requirements for signatures of multiple parties on filed documents**

27
28 When a document to be filed, in paper form, such as a stipulation, requires the signatures of
29 multiple parties, the original signature of at least one party must appear on the document filed in
30 the reviewing court; the other signatures may be in the form of copies of the signed signature
31 page of the document. Electronically filed documents must comply with the relevant provisions
32 of rule 8.77.

33
34 **~~Advisory Committee Comment~~**

35
36 ~~Please note that rule 8.77 establishes different requirements for documents that are electronically filed.~~

37
38 **Rule 8.44. Number of copies of filed documents**

39
40 ~~Except as these rules provide otherwise, the number of copies of every brief, petition, motion,~~
41 ~~application, or other document that must be filed in a reviewing court is as follows:~~

42
43 (a) **Documents filed in the Supreme Court**

44
45 Except as these rules provide otherwise, the number of copies of every brief, petition,
46 motion, application, or other document that must be filed in the Supreme Court and that is
47 filed in paper form is as follows:

1
2 (1)–(6) * * *

3
4 **(b) Documents filed in a Court of Appeal**

5
6 Except as these rules provide otherwise, the number of copies of every brief, petition,
7 motion, application, or other document that must be filed in a Court of Appeal and that is
8 filed in paper form is as follows:

9
10 (1)–(7) * * *

11
12 **(c) Electronic copies**

13
14 A court that permits electronic filing will specify any requirements regarding
15 electronically filed documents in the electronic filing requirements published pursuant to
16 rule 8.74. In addition, a court may provide by local rule for the submission of an electronic
17 copy of a document that is not electronically filed either in addition to the copies of a
18 document required to be filed under (a) or (b) or as a substitute for one or more of these
19 copies. The local rule must specify the format of the electronic copy and provide for an
20 exception if it would cause undue hardship for a party to submit an electronic copy.

21
22 **Rule 8.45. General provisions**

23
24 **(a)** * * *

25
26 **(b) Definitions**

27
28 As used in this article:

29
30 (1) “Record” means all or part of a document, paper, exhibit, transcript, or other thing
31 filed or lodged with the court by electronic means or otherwise.

32
33 (2)–(7) * * *

34
35 **(c) Format of sealed and confidential records**

36
37 (1) Unless otherwise provided by law or court order, sealed or confidential records that
38 are part of the record on appeal or the supporting documents or other records
39 accompanying a motion, petition for a writ of habeas corpus, other writ petition, or
40 other filing in the reviewing court must be kept separate from the rest of a clerk’s or
41 reporter’s transcript, appendix, supporting documents, or other records sent to the
42 reviewing court and in a secure manner that preserves their confidentiality.

43
44 (A)–(D) * * *

45
46 (2) * * *

1
2 (3) Records relating to a request for funds under Penal Code section 987.9 or other
3 proceedings the occurrence of which is not to be disclosed under the court order or
4 applicable law must not be bound together with, or electronically transmitted as a
5 single document with, other sealed or confidential records and must not be listed in
6 the index required under (1)(D) or the alphabetical or chronological indexes to a
7 clerk’s or reporter’s transcript, appendix, supporting documents to a petition, or other
8 records sent to the reviewing court.
9

10 (d) * * *

11
12 **Rule 8.46. Sealed records**

13
14 (a)–(c) * * *

15
16 (d) **Record not filed in the trial court; motion or application to file under seal**

17
18 (1)–(2) * * *

19
20 (3) To lodge a record, the party must transmit the record to the court in a secure manner
21 that preserves the confidentiality of the record to be lodged. The record must be
22 transmitted separate from the rest of a clerk’s or reporter’s transcript, appendix,
23 supporting documents, or other records sent to the reviewing court with a cover sheet
24 that complies with rule 8.40(c) and labels the contents as “CONDITIONALLY
25 UNDER SEAL.” If the record is in paper format, it must be placed in a sealed
26 envelope or other appropriate sealed container.
27

28 (4)–(9) * * *

29
30 (e) **Unsealing a record in the reviewing court**

31
32 (1)–(2) * * *

33
34 (3) If the reviewing court proposes to order a record unsealed on its own motion, the
35 court must send mail notice to the parties. Unless otherwise ordered by the court, any
36 party may serve and file an opposition within 10 days after the notice is sent mailed,
37 and any other party may serve and file a response within 5 days after an opposition is
38 filed.
39

40 (4)–(7) * * *

41
42 (f) * * *

43
44 **Rule 8.47. Confidential records**
45

1 (a) * * *

2
3 (b) **Records of *Marsden* hearings and other in-camera proceedings**

4
5 (1)–(2) * * *

6
7 (3) A defendant may serve and file a motion or application in the reviewing court
8 requesting permission to file under seal a brief, petition, or other filing that raises a
9 *Marsden* issue or an issue related to another in-camera hearing covered by this
10 subdivision and requesting an order maintaining the confidentiality of the relevant
11 material from the reporter’s transcript of or documents filed or lodged in connection
12 with the in-camera hearing.

13
14 (A)–(B) * * *

15
16 (C) At the time the motion or application is filed, the defendant must:

17
18 (i) * * *

19
20 (ii) Lodge an unredacted version of the brief, petition, or other filing that he
21 or she is requesting be filed under seal. The filing must be transmitted in
22 a secure manner that preserves the confidentiality of the filing being
23 lodged. If this version is in paper format, it must be placed in a sealed
24 envelope or other appropriate sealed container. The cover of the
25 unredacted version of the document, and if applicable the envelope or
26 other container, must identify it as “May Not Be Examined Without
27 Court Order—Contains material from conditionally sealed record.”

28
29 (D) * * *

30
31 (c) **Other confidential records**

32
33 Except as otherwise provided by law or order of the reviewing court:

34
35 (1) * * *

36
37 (2) To maintain the confidentiality of material contained in a confidential record, if it is
38 necessary to disclose such material in a filing in the reviewing court, a party may
39 serve and file a motion or application in the reviewing court requesting permission
40 for the filing to be under seal.

41
42 (A)–(B) * * *

43
44 (C) At the time the motion or application is filed, the party must:

45
46 (i) * * *

- 1
2 (ii) Lodge an unredacted version of the brief, petition, or other filing that he
3 or she is requesting be filed under seal. The filing must be transmitted in
4 a secure manner that preserves the confidentiality of the filing being
5 lodged. If this version is in paper format, it must be placed in a sealed
6 envelope or other appropriate sealed container. The cover of the
7 unredacted version of the document, and if applicable the envelope or
8 other container, must identify it as “May Not Be Examined Without
9 Court Order—Contains material from conditionally sealed record.”
10 Material from a confidential record disclosed in this version must be
11 identified and accompanied by a citation to the statute, rule of court,
12 case, or other authority establishing that the record is required by law to
13 be closed to inspection in the reviewing court.
14

15 (D) * * *

16
17 **Rule 8.50. Applications**

18
19 (a)–(b) * * *

20
21 (e) **Envelopes**

22
23 ~~An application to a Court of Appeal must be accompanied by addressed, postage prepaid~~
24 ~~envelopes for the clerk’s use in mailing copies of the order on the application to all parties.~~

25
26 ~~(d)~~(c) **Disposition** * * *

27
28 **Rule 8.100. Filing the appeal**

29
30 (a) * * *

31
32 (b) **Fee and deposit**

- 33
34 (1) Unless otherwise provided by law, the notice of appeal must be accompanied by the
35 \$775 filing fee under Government Code sections 68926 and 68926.1(b), an
36 application for a waiver of court fees and costs on appeal under rule 8.26, or an order
37 granting such an application. The fee ~~should~~ may be paid by check or money order
38 payable to “Clerk, Court of Appeal”; if the fee is paid in cash, the clerk must give a
39 receipt. The fee may also be paid by any method permitted by the court pursuant to
40 rules 2.258 and 8.78.
41

42 (2)–(3) * * *

43
44 (c)–(d) * * *

1 (e) **Superior court clerk’s duties**

2
3 (1) The superior court clerk must promptly ~~mail~~ send a notification of the filing of the
4 notice of appeal to the attorney of record for each party, to any unrepresented party,
5 and to the reviewing court clerk.

6
7 (2) The notification must show the date it was ~~mailed~~ sent and must state the number
8 and title of the case and the date the notice of appeal was filed. If the information is
9 available, the notification must include:

10
11 (A) The name, address, telephone number, e-mail address, and California State Bar
12 number of each attorney of record in the case;

13
14 (B) * * *

15
16 (C) The name, address, ~~and~~ telephone number and e-mail address of any
17 unrepresented party.

18
19 (3) * * *

20
21 (4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
22 clerk’s duty despite the death of the party or the discharge, disqualification,
23 suspension, disbarment, or death of the attorney.

24
25 (5)–(6) * * *

26
27 (f) * * *

28
29 (g) **Civil case information statement**

30
31 (1) Within 15 days after the superior court clerk ~~mails~~ sends the notification of the filing
32 of the notice of appeal required by (e)(1), the appellant must serve and file in the
33 reviewing court a completed *Civil Case Information Statement* (form APP-004),
34 attaching a copy of the judgment or appealed order that shows the date it was
35 entered.

36
37 (2) If the appellant fails to timely file a case information statement under (1), the
38 reviewing court clerk must notify the appellant by mail in writing that the appellant
39 must file the statement within 15 days after the clerk’s notice is ~~mailed~~ sent and that
40 if the appellant fails to comply, the court may either impose monetary sanctions or
41 dismiss the appeal. If the appellant fails to file the statement as specified in the
42 notice, the court may impose the sanctions specified in the notice.

43
44 **Advisory Committee Comment**

45
46 **Subdivision (a).** * * *

1 **Subdivision (b).** * * *

2
3 **Subdivision (c)(2).** * * *

4
5 **Subdivision (e).** Under subdivision (e)(2), a notification of the filing of a notice of appeal must show the
6 date that the clerk ~~mailed~~ sent the document. This provision is intended to establish the date when the 20-
7 day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

8
9 Subdivision (e)(1) requires the clerk to ~~mail~~ send a notification of the filing of the notice of appeal to the
10 appellant’s attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows
11 the appellant’s attorney or the appellant to track the running of the 20-day extension of time to file a
12 cross-appeal under rule 8.108(e).

13
14 **Rule 8.104. Time to appeal**

15
16 **(a) Normal time**

17
18 (1) Unless a statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must
19 be filed on or before the earliest of:

20
21 (A) 60 days after the superior court clerk serves on the party filing the notice of
22 appeal a document entitled “Notice of Entry” of judgment or a filed-
23 ~~stamped~~ endorsed copy of the judgment, showing the date either was served;

24
25 (B) 60 days after the party filing the notice of appeal serves or is served by a party
26 with a document entitled “Notice of Entry” of judgment or a filed-
27 ~~stamped~~ endorsed copy of the judgment, accompanied by proof of service; or

28
29 (C) * * *

30
31 (2) * * *

32
33 (3) If the parties stipulated in the trial court under Code of Civil Procedure section
34 1019.5 to waive notice of the court order being appealed, the time to appeal under
35 (1)(C) applies unless the court or a party serves notice of entry of judgment or a
36 filed-~~stamped~~ endorsed copy of the judgment to start the time period under (1)(A) or
37 (B).

38
39 **(b)–(e)** * * *

40
41 **Rule 8.108. Extending the time to appeal**

42
43 **(a)–(e)** * * *

44
45 **(f) Public entity actions under Government Code section 962, 984, or 985**

1 If a public entity defendant serves and files a valid request for a mandatory settlement
2 conference on methods of satisfying a judgment under Government Code section 962, an
3 election to pay a judgment in periodic payments under Government Code section 984 and
4 rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government
5 Code section 985, the time to appeal from the judgment is extended for all parties until the
6 earliest of:

- 7
- 8 (1) 90 days after the superior court clerk serves the party filing the notice of appeal with
9 a document entitled “Notice of Entry” of judgment, or a filed-~~stamped~~endorsed copy
10 of the judgment, showing the date either was served;
- 11
- 12 (2) 90 days after the party filing the notice of appeal serves or is served by a party with a
13 document entitled “Notice of Entry” of judgment or a filed-~~stamped~~endorsed copy of
14 the judgment, accompanied by proof of service; or
- 15
- 16 (3) * * *

17

18 **(g)–(h)** * * *

19

20 **Rule 8.112. Petition for writ of supersedeas**

21

22 **(a) Petition**

23

24 (1)–(3) * * *

25

26 (4) If the record has not been filed in the reviewing court:

27

28 (A)–(B) * * *

29

30 (C) The documents listed in (B) must comply with the following requirements:

- 31
- 32 (i) If filed in paper form, they must be bound together at the end of the
33 petition or in separate volumes not exceeding 300 pages each. The pages
34 must be consecutively numbered;
- 35
- 36 (ii) If filed in paper form, they must be index-tabbed by number or letter,
37 and
- 38
- 39 (iii) They must begin with a table of contents listing each document by its
40 title and its index-~~tab~~ number or letter.

41

42 (5) * * *

43

44 **(b)–(d)** * * *

1 **Rule 8.123. Record of administrative proceedings**

2
3 (a)–(b) * * *

4
5 (c) **Transmittal to the reviewing court**

6
7 Except as provided in (d), if any administrative record is designated by a party, the
8 superior court clerk must transmit the original administrative record, or electronic
9 administrative record, with any clerk’s or reporter’s transcript sent to the reviewing court
10 under rule 8.150. If the appellant has elected under rule 8.121 to use neither a clerk’s
11 transcript nor a reporter’s transcript, the superior court clerk must transmit any
12 administrative record designated by a party to the reviewing court no later than 45 days
13 after the respondent files a designation under (b)(2) or the time for filing it expires,
14 whichever first occurs.

15
16 (d)–(e) * * *

17
18 **Rule 8.124. Appendixes**

19
20 (a)–(b) * * *

21
22 (c) **Document or exhibit held by other party**

23
24 If a party preparing an appendix wants it to contain a copy of a document or an exhibit in
25 the possession of another party:

26
27 (1)–(2) * * *

28
29 (3) If the party possessing the document or exhibit sends it to the requesting party non-
30 electronically, that party must copy and return it to the possessing party within 10
31 days after receiving it.

32
33 (4) * * *

34
35 (5) On request, the reviewing court may return a document or an exhibit to the party that
36 sent it non-electronically. When the remittitur issues, the reviewing court must return
37 all documents or exhibits to the party that sent them, if they were sent non-
38 electronically.

39
40 (d) **Form of appendix**

41
42 (1) An appendix must comply with the requirements of rule 8.144(~~ab~~)–(~~ed~~) for a clerk’s
43 transcript.

44
45 (2) * * *

1 (3) An appendix must not be bound or transmitted electronically as one document with a
2 brief.

3
4 (e)–(g) * * *

5
6 **Rule 8.128. Superior court file instead of clerk’s transcript**

7
8 (a) * * *

9
10 (b) **Cost estimate; preparation of file; transmittal**

11
12 (1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must
13 send mail the appellant an estimate of the cost to prepare the file, including the cost
14 of sending the index under (3). The appellant must deposit the cost or file an
15 application for, or an order granting, a waiver of the cost within 10 days after the
16 clerk sends mails the estimate.

17
18 (2)–(4) * * *

19
20 **Rule 8.130. Reporter’s transcript**

21
22 (a) * * *

23
24 (b) **Deposit or substitute for cost of transcript**

25
26 (1) * * *

27
28 (2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails
29 sends the notice under (d)(1) the reporter may file with the clerk and send mail to the
30 designating party an estimate of the transcript’s total cost at the statutory rate,
31 showing the additional deposit required. The party must deposit the additional sum
32 within 10 days after the reporter mails sends the estimate.

33
34 (3) * * *

35
36 (c) * * *

37
38 (d) **Superior court clerk’s duties**

39
40 (1) * * *

41
42 (2) The clerk must promptly mail send the reporter notice of the designation and of the
43 deposit or substitute and notice to prepare the transcript, showing the date the notice
44 was sent mailed to the reporter, when the court receives:

45
46 (A)–(C) * * *

1
2 (3) If the appellant does not present the deposit under (b)(1) or a substitute under (b)(3)
3 with its notice of designation or does not present an additional deposit required under
4 (b)(2):

5
6 (A) The clerk must promptly notify the appellant in writing ~~by mail~~ that, within 15
7 days after the notice is sent ~~mailed~~, the appellant must take one of the
8 following actions or the court may dismiss the appeal:

9
10 (i)–(v) * * *

11
12 (B) * * *

13
14 (4)–(5) * * *

15
16 (e) * * *

17
18 **(f) Filing the transcript; copies; payment**

19
20 (1) Within 30 days after notice is ~~mailed~~ sent under (d)(2), the reporter must prepare and
21 certify an original of the transcript and file it in superior court. The reporter must
22 also file one copy of the original transcript, or more than one copy if multiple
23 appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only
24 the reviewing court can extend the time to prepare the reporter’s transcript (see rule
25 8.60).

26
27 (2)–(4) * * *

28
29 (g) * * *

30
31 **(h) Agreed or settled statement when proceedings cannot be transcribed**

32
33 (1) If any portion of the designated proceedings cannot be transcribed, the superior court
34 clerk must so notify the designating party in writing ~~by mail~~; the notice must show
35 the date it was sent ~~mailed~~. The party may then substitute an agreed or settled
36 statement for that portion of the designated proceedings by complying with either
37 (A) or (B):

38
39 (A) Within 10 days after the notice is sent ~~mailed~~, the party may file in superior
40 court, under rule 8.134, an agreed statement or a stipulation that the parties are
41 attempting to agree on a statement. If the party files a stipulation, within 30
42 days thereafter the party must file the agreed statement, move to use a settled
43 statement under rule 8.137, or proceed without such a statement; or

44
45 (B) Within 10 days after the notice is sent ~~mailed~~, the party may move in superior
46 court to use a settled statement. If the court grants the motion, the statement

1 must be served, filed, and settled as rule 8.137 provides, but the order granting
2 the motion must fix the times for doing so.

3
4 (2)–(3) * * *

5
6 **Advisory Committee Comment**

7
8 **Subdivision (a).** * * *

9
10 **Subdivision (b).** * * *

11
12 **Subdivision (c).** * * *

13
14 **Subdivision (d).** Under subdivision (d)(2), the clerk’s notice to the reporter must show the date on which
15 the clerk sent ~~mailed~~ the notice. This provision is intended to establish the date when the period for
16 preparing the reporter’s transcript under subdivision (f)(1) begins to run.

17
18 **Subdivision (e).** * * *

19
20 **Subdivision (f).** * * *

21
22
23 **Rule 8.137. Settled statement**

24
25 **(a) Motion to use settled statement**

26
27 (1)–(2) * * *

28
29 (3) If the court denies the motion, the appellant must file a new notice designating the
30 record on appeal under rule 8.121 within 10 days after the superior court clerk sends
31 ~~mails~~, or a party serves, the order of denial.

32
33 **(b) Time to file; contents of statement**

34
35 (1) Within 30 days after the superior court clerk sends ~~mails~~, or a party serves, an order
36 granting a motion to use a settled statement, the appellant must serve and file in
37 superior court a condensed narrative of the oral proceedings that the appellant
38 believes necessary for the appeal. Subject to the court’s approval in settling the
39 statement, the appellant may present some or all of the evidence by question and
40 answer.

41
42 (2)–(5) * * *

43
44 **(c)** * * *

45
46 **Rule 8.140. Failure to procure the record**

47

1 (a) **Notice of default**

2
3 Except as otherwise provided by these rules, if a party fails to timely do an act required to
4 procure the record, the superior court clerk must promptly notify the party in writing by
5 ~~mail~~ that it must do the act specified in the notice within 15 days after the notice is sent
6 ~~mailed~~, and that if it fails to comply, the reviewing court may impose one of the following
7 sanctions:

8
9 (1)–(2) * * *

10
11 (b)–(c) * * *

12
13 **Rule 8.144. Form of the record**

14
15 (a) **Paper and format**

16
17 (1) In the clerk’s and reporter’s transcripts:

18
19 (A) All documents filed must have a page size of 8½ by 11 inches. If filed in paper
20 form, the paper must be white or unbleached, 8½ by 11 inches, and of at least
21 20-pound weight;

22
23 (B)–(D) * * *

24
25 (E) The margin must be at least 1¼ inches from the left edge ~~on the bound side of~~
26 ~~the page.~~

27
28 ~~(2)~~(3) If filed in paper form, in the clerk’s transcript only one side of the paper may be
29 used; in the reporter’s transcript both sides may be used, but the margins must then
30 be 1¼ inches on each edge.

31
32 ~~(3)~~(4) In the reporter’s transcript the lines on each page must be consecutively numbered,
33 and must be double-spaced or one-and-a-half-spaced; double-spaced means three
34 lines to a vertical inch.

35
36 ~~(4)~~(5) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47 relating to
37 sealed and confidential records.

38
39 (b) **Indexes**

40
41 Except as provided in rule 8.45, at the beginning of the first volume of each:

42
43 (1) The clerk’s transcript must contain alphabetical and chronological indexes listing
44 each document and the volume, where applicable, and page where it first appears;
45

1 (2) The reporter’s transcript must contain alphabetical and chronological indexes listing
2 the volume, where applicable, and page where each witness’s direct, cross, and any
3 other examination, begins; and
4

5 (3) The reporter’s transcript must contain an index listing the volume, where applicable,
6 and page where any exhibit is marked for identification and where it is admitted or
7 refused. The index must identify each exhibit by number or letter and a brief
8 description of the exhibit.
9

10 **(c) Binding and cover**

11
12 (1) If filed in paper form, clerk’s and reporter’s transcripts must be bound on the left
13 margin in volumes of no more than 300 sheets.
14

15 (2)–(3) * * *

16
17 **(d)–(f) * * ***

18 **Advisory Committee Comment**

19
20 **Subdivisions (a) and (b).** Subdivisions (a)(45) and (b)(4) refer to special requirements concerning sealed
21 and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special
22 requirements regarding references to sealed and confidential records in the alphabetical and chronological
23 indexes to clerk’s and reporter’s transcripts.
24

25 **Rule 8.147. Record in multiple or later appeals in same case**

26
27 **(a) * * ***

28
29 **(b) Later appeal**

30
31 In an appeal in which the parties are using either a clerk’s transcript under rule 8.122 or a
32 reporter’s transcript under rule 8.130:
33

34 (1) A party wanting to incorporate by reference all or parts of a record in a prior appeal
35 in the same case must specify those parts in its designation of the record.
36

37 (A) The prior appeal must be identified by its case name and number. If only part
38 of a record is being incorporated by reference, that part must be identified by
39 citation to the volume, where applicable, and page numbers of the record
40 where it appears and either the title of the document or documents or the date
41 of the oral proceedings to be incorporated. The parts of any record
42 incorporated by reference must be identified in a separate section at the end of
43 the designation of the record.
44

45 (B)–(C) * * *

46
47 (2) * * *

1
2 **Rule 8.150. Filing the record**

3
4 (a) * * *

5
6 (b) **Reviewing court clerk's duties**

7
8 On receiving the record, the reviewing court clerk must promptly file the original and send
9 ~~mail~~ notice of the filing date to the parties.

10
11 **Rule 8.204. Contents and form of briefs**

12
13 (a) * * *

14
15 (b) **Form**

16
17 (1) A brief may be reproduced by any process that produces a clear, black image of
18 letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed
19 in paper form, the paper must be white or unbleached, ~~8 1/2 by 11 inches,~~ and of at
20 least 20-pound weight.

21
22 (2) Any conventional font typeface may be used. The font typeface may be either
23 proportionally spaced or monospaced.

24
25 (3) The font type style must be roman; but for emphasis, italics or boldface may be used
26 or the text may be underscored. Case names must be italicized or underscored.
27 Headings may be in uppercase letters.

28
29 (4) Except as provided in (11), the font type size, including footnotes, must not be
30 smaller than 13-point, and both sides of the paper may be used.

31
32 (5)–(7) * * *

33
34 (8) If filed in paper form, the brief must be bound on the left margin. If the brief is
35 stapled, the bound edge and staples must be covered with tape.

36
37 (9) * * *

38
39 (10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b), ~~and,~~
40 ~~in~~ In addition to providing the cover information required by rule 8.40(c), the cover
41 must state:

42
43 (A)–(D) * * *

44
45 (11) * * *

1 (c)–(e) * * *

2
3 **Advisory Committee Comment**
4

5 **Subdivision (b).** The first sentence of subdivision (b)(1) confirms that any method of reproduction is
6 acceptable provided it results in a clear black image of letter quality. The provision is derived from
7 subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).
8

9 Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *font typeface*, *font type style*, and
10 *font type-size* (see also subd. (b)(11)(C)). ~~The first two terms are defined in *The Chicago Manual of Style*~~
11 ~~(15th ed., 2003) p. 839. Note that computer programs often refer to typeface as “font.”~~
12

13 Subdivision (b)(2) allows the use of any conventional *font typeface*—e.g., Times New Roman, Courier,
14 Arial, Helvetica, etc.—and permits the *font typeface* to be either proportionally spaced or monospaced.
15

16 Subdivision (b)(3) requires the *font type style* to be roman, but permits the use of italics, boldface, or
17 underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions
18 are derived from FRAP 32(a)(6).
19

20 Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision
21 also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief
22 writer.
23

24 See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation
25 form of the *California Style Manual* (4th ed., 2000).
26

27 **Subdivision (c).** * * *

28
29 **Subdivision (d).** * * *

30
31 **Subdivision (e).** * * *

32
33 **Rule 8.208. Certificate of Interested Entities or Persons**
34

35 (a)–(c) * * *

36
37 **(d) Serving and filing a certificate**
38

39 (1)–(2) * * *

40
41 (3) If a party fails to file a certificate as required under (1), the clerk must notify the
42 party in writing ~~by mail~~ that the party must file the certificate within 15 days after
43 the clerk’s notice is sent ~~mailed~~ and that if the party fails to comply, the court may
44 impose one of the following sanctions:
45

46 (A)–(B) * * *

47
48 (4) * * *

1
2 (e)–(f) * * *

3
4 **Rule 8.212. Service and filing of briefs * * ***

5
6 **Advisory Committee Comment**

7
8 **Subdivision (a).** * * *

9
10 **Subdivision (b).** Extensions of briefing time are limited by statute in some cases. For example, under
11 Public Resources Code section 21167.6(h) in cases under section 21167, extensions are limited to one 30-
12 day extension for the opening brief and one 30-day extension for “preparation of responding brief.”

13
14 Under rule 8.42, the original signature of only one party is required on the stipulation filed with the court;
15 the signatures of the other parties may be in the form of copies of the signed signature page of the
16 document. Signatures on electronically filed documents are subject to the requirements of rule 8.77.

17
18 Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must
19 proceed by application under rule 8.50 rather than by motion under rule 8.54.

20
21 **Subdivision (c).** * * *

22
23 **Rule 8.220. Failure to file a brief**

24
25 **(a) Notice to file**

26
27 If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the
28 reviewing court clerk must promptly notify the party in writing by mail that the brief must
29 be filed within 15 days after the notice is sent mailed and that if the party fails to comply,
30 the court may impose one of the following sanctions:

31
32 (1)–(2) * * *

33
34 **(b)–(d)** * * *

35
36 **Rule 8.224. Transmitting exhibits**

37
38 **(a)** * * *

39
40 **(b) Transmittal**

41
42 Unless the reviewing court orders otherwise, within 20 days after the first notice under (a)
43 is filed:

44
45 (1) The superior court clerk must put any designated exhibits in the clerk’s possession
46 into numerical or alphabetical order and send them to the reviewing court ~~with two~~
47 copies of a list of the exhibits sent. The superior court clerk must also send a list of

1 the exhibits sent. If the exhibits are not transmitted electronically, the superior court
2 clerk must send two copies of the list. If the reviewing court clerk finds the list
3 correct, the clerk must sign and return ~~one~~ a copy to the superior court clerk.
4

- 5 (2) Any party in possession of designated exhibits returned by the superior court must
6 put them into numerical or alphabetical order and send them to the reviewing court
7 ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the
8 exhibits sent. If the exhibits are not transmitted electronically, the party must send
9 two copies of the list. If the reviewing court clerk finds the list correct, the clerk must
10 sign and return ~~one~~ a copy to the party.
11

12 (c) * * *

13
14 **(d) Request and return by reviewing court**
15

16 At any time the reviewing court may direct the superior court or a party to send it an
17 exhibit. On request, the reviewing court may return an exhibit to the superior court or to
18 the party that sent it. When the remittitur issues, the reviewing court must return all
19 exhibits not transmitted electronically to the superior court or to the party that sent them.

20 **Rule 8.248. Prehearing conference**
21

22 (a)–(c) * * *

23
24 **(d) Time to file brief**
25

26 The time to file a party’s brief under rule 8.212(a) is tolled from the date the Court of
27 Appeal sends mails notice of the conference until the date it sends mails notice that the
28 conference is concluded.
29

30 **Advisory Committee Comment**
31

32 **Subdivision (a).** * * *
33

34 **Subdivision (d).** If a prehearing conference is ordered before the due date of the appellant’s opening
35 brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the
36 briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day
37 briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party
38 will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original
39 briefing period, unless the period is otherwise extended.
40

41 Under subdivision (d) the tolling period continues “until the date [the Court of Appeal] sends mails notice
42 that the conference is *concluded*” (italics added). This provision is intended to accommodate the
43 possibility that the conference may not conclude on the date it begins.
44

45 Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of
46 Appeal clerk to send mail the parties a notice that the conference is concluded. This provision is intended
47 to facilitate the calculation of the new briefing due dates.
48

1 **Rule 8.252. Judicial notice; findings and evidence on appeal**

2
3 (a)–(b) * * *

4
5 (c) **Evidence on appeal**

6
7 (1)–(2) * * *

8
9 (3) For documentary evidence, a party may offer the original, a certified copy, ~~or~~ a
10 photocopy, or, in a case in which electronic filing is permitted, an electronic copy.
11 The court may admit the document in evidence without a hearing.
12

13 **Rule 8.264. Filing, finality, and modification of decision**

14
15 (a)–(c) * * *

16
17 (d) **Consent to increase or decrease in amount of judgment**

18
19 If a Court of Appeal decision conditions the affirmance of a money judgment on a party's
20 consent to an increase or decrease in the amount, the judgment is reversed unless, before
21 the decision is final under (b), the party serves and files ~~two copies~~ a copy of a consent in
22 the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the
23 consent. The clerk must send one filed-~~stamped~~endorsed copy of the consent to the
24 superior court with the remittitur.
25

26 **Rule 8.272. Remittitur**

27
28 (a) * * *

29
30 (b) **Clerk's duties**

31
32 (1) If a Court of Appeal decision is not reviewed by the Supreme Court:

33
34 (A) * * *

35
36 (B) The clerk must send the lower court or tribunal the Court of Appeal remittitur
37 and a filed-~~stamped~~endorsed copy of the opinion or order.
38

39 (2) After Supreme Court review of a Court of Appeal decision:

40
41 (A) * * *

42
43 (B) The clerk must send the lower court or tribunal the Court of Appeal remittitur,
44 a copy of the Supreme Court remittitur, and a filed-~~stamped~~endorsed copy of
45 the Supreme Court opinion or order.
46

1 (c)–(d) * * *

2
3 **Rule 8.278. Costs on appeal**

4
5 (a)–(d) * * *

6
7 **Advisory Committee Comment**

8
9 This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493
10 for provisions addressing costs in writ proceedings.

11
12 **Subdivision (c).** * * *

13
14 **Subdivision (d).** Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the
15 clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a
16 party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

17
18 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the record, briefs,
19 and other papers,” is intended to include fees charged by electronic filing service providers for electronic
20 filing and service of documents.

21
22 “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow
23 the funds that are deposited minus any interest earned by the borrower on those funds while they are on
24 deposit.

25
26 **Rule 8.304. Filing the appeal; certificate of probable cause**

27
28 (a)–(b) * * *

29
30 (c) **Notification of the appeal**

31
32 (1) When a notice of appeal is filed, the superior court clerk must promptly send mail a
33 notification of the filing to the attorney of record for each party, to any unrepresented
34 defendant, to the reviewing court clerk, to each court reporter, and to any primary
35 reporter or reporting supervisor. If the defendant also files a statement under (b)(1),
36 the clerk must not send mail the notification unless the superior court files a
37 certificate under (b)(2).

38
39 (2) The notification must show the date it was sent mailed, the number and title of the
40 case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If
41 the information is available, the notification must also include:

42
43 (A) The name, address, telephone number, e-mail address, and California State Bar
44 number of each attorney of record in the case;

45
46 (B) * * *

1 (C) The name, address, ~~and~~ telephone number and e-mail address of any
2 unrepresented defendant.

3
4 (3)–(4) * * *

5
6 (5) The sending mailing of a notification under (1) is a sufficient performance of the
7 clerk’s duty despite the discharge, disqualification, suspension, disbarment, or death
8 of the attorney.

9
10 (6) * * *

11
12 **Rule 8.308. Time to appeal**

13
14 (a) * * *

15
16 (b) **Cross-appeal**

17
18 If the defendant or the People timely appeals from a judgment or appealable order, the time
19 for any other party to appeal from the same judgment or order is either the time specified
20 in (a) or 30 days after the superior court clerk sends mails notification of the first appeal,
21 whichever is later.

22
23 (c)–(d) * * *

24
25 **Rule 8.336. Preparing, certifying, and sending the record**

26
27 (a)–(c) * * *

28
29 (d) **Reporter’s transcript**

30
31 (1)–(3) * * *

32
33 (4) Any portion of the transcript transcribed during trial must not be retyped unless
34 necessary to correct errors, but must be repaginated and combined ~~bound~~ with any
35 portion of the transcript not previously transcribed. Any additional copies needed
36 must not be retyped but, if the transcript is in paper form, must be prepared by
37 photocopying or an equivalent process.

38
39 (5) * * *

40
41 (e)–(h) * * *

42
43 **Rule 8.344. Agreed statement**

44
45 If the parties present the appeal on an agreed statement, they must comply with the relevant
46 provisions of rule 8.134, but the appellant must file an original and, if the statement is filed in

1 paper form, three copies of the statement in superior court within 25 days after filing the notice
2 of appeal.

3
4 **Rule 8.346. Settled statement**

5
6 (a)–(b) * * *

7
8 (c) **Serving and filing the settled statement**

9
10 The applicant must prepare, serve, and file in superior court an original and, if the
11 statement is filed in paper form, three copies of the settled statement.

12
13 **Rule 8.360. Briefs by parties and amici curiae**

14
15 (a)–(b) * * *

16
17 (c) **Time to file**

18
19 (1)–(4) * * *

20
21 (5) If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the
22 reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief
23 must be filed within 30 days after the notice is sent mailed, and that failure to comply
24 may result in one of the following sanctions:

25
26 (A)–(B) * * *

27
28 (6) * * *

29
30 (d)–(f) * * *

31
32 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an**
33 **attorney**

34
35 (a)–(b) * * *

36
37 (c) **Number of copies**

38
39 In the Court of Appeal, the petitioner must file the original of the petition under (a) and
40 one set of any supporting documents. In the Supreme Court the petitioner must file an
41 original and, if the petition is filed in paper form, 10 copies of the petition and an original
42 and, if the document is filed in paper form, 2 copies of any supporting document
43 accompanying the petition unless the court orders otherwise.

44
45 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

1 (a) **Form and content of petition and memorandum**

2
3 (1)–(2) * * *

4
5 (3) The petition and any memorandum must support any reference to a matter in the
6 supporting documents by a citation to its index number or letter ~~tab~~ and page.

7
8 (b)–(d) * * *

9
10 **Rule 8.385. Proceedings after the petition is filed**

11
12 (a) * * *

13
14 (b) **Informal response**

15
16 (1) * * *

17
18 (2) The response must be served and filed within 15 days or as the court specifies. If the
19 petitioner is not represented by counsel in the habeas corpus proceeding, one copy of
20 the informal response and any supporting documents must be served on the
21 petitioner. If the petitioner is represented by counsel in the habeas corpus
22 proceeding, ~~two copies~~ the response must be served on the petitioner's counsel. If the
23 response is served in paper form, two copies must be served on the petitioner's
24 counsel. If the petitioner is represented by court-appointed counsel other than the
25 State Public Defender's Office or Habeas Corpus Resource Center, one copy must
26 also be served on the applicable appellate project.

27
28 (3) * * *

29
30 (c)–(f) * * *

31
32 **Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court**

33
34 (a) * * *

35
36 (b) **Serving and filing return**

37
38 (1)–(2) * * *

39
40 (3) ~~Two copies of the~~ The return and any supporting documents must be served on the
41 petitioner's counsel, and if the return is served in paper form, two copies must be
42 served on the petitioner's counsel. If the petitioner is represented for the habeas
43 corpus proceeding by court-appointed counsel other than the State Public Defender's
44 Office or Habeas Corpus Resource Center, one copy must be served on the
45 applicable appellate project.

1 (c) **Form and content of return**

2
3 (1) * * *

4
5 (2) Rule 8.486(c)(1) and (2) govern the form of any supporting documents
6 accompanying the return. The return must support any reference to a matter in the
7 supporting documents by a citation to its index ~~tab~~ number or letter and page.

8
9 (3) * * *

10
11 (d)–(g) * * *

12
13 **Rule 8.405. Filing the appeal**

14
15 (a) * * *

16
17 (b) **Superior court clerk’s duties**

18
19 (1) When a notice of appeal is filed, the superior court clerk must immediately:

20
21 (A) ~~Mail~~ Send a notification of the filing to:

22
23 (i)–(vi) * * *

24
25 (B) * * *

26
27 (2) The notification must show the name of the appellant, the date it was ~~mailed~~ sent, the
28 number and title of the case, and the date the notice of appeal was filed. If the
29 information is available, the notification must also include:

30
31 (A) The name, address, telephone number, e-mail address, and California State Bar
32 number of each attorney of record in the case;

33
34 (B) * * *

35
36 (C) The name, address, ~~and~~ telephone number and e-mail address of any
37 unrepresented party.

38
39 (3)–(4) * * *

40
41 (5) The sending ~~mailing~~ of a notification is a sufficient performance of the clerk’s duty
42 despite the discharge, disqualification, suspension, disbarment, or death of the
43 attorney.

44
45 (6) * * *

46
47 **Advisory Committee Comment**

1
2 **Subdivision (a).** *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may
3 be used to file the notice of appeal required under this rule. This form is available at any courthouse or
4 county law library or online at www.courtinfo.ca.gov/forms ~~www.courts.ca.gov/forms~~.

5
6 **Rule 8.406. Time to appeal**

7
8 (a) * * *

9
10 (b) **Cross-appeal**

11
12 If an appellant timely appeals from a judgment or appealable order, the time for any other
13 party to appeal from the same judgment or order is either the time specified in (a) or 20
14 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is
15 later.

16
17 (c)–(d) * * *

18
19 **Rule 8.411. Abandoning the appeal**

20
21 (a)–(b) * * *

22
23 (c) **Clerk’s duties**

24
25 (1) If the abandonment is filed in the superior court, the clerk must immediately send
26 ~~mail~~ a notification of the abandonment to:

27
28 (A)–(C) * * *

29
30 (2) If the abandonment is filed in the reviewing court and the reviewing court orders the
31 appeal dismissed, the clerk must immediately send ~~mail~~ a notification of the order of
32 dismissal to every party.

33
34 **Rule 8.412. Briefs by parties and amici curiae**

35
36 (a)–(c) * * *

37
38 (d) **Failure to file a brief**

39
40 (1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant’s
41 opening brief or a respondent’s brief, the reviewing court clerk must promptly notify
42 the party’s counsel or the party, if not represented, in writing ~~by mail~~ that the brief
43 must be filed within 30 days after the notice is sent ~~mailed~~ and that failure to comply
44 may result in one of the following sanctions:

45
46 (A)–(B) * * *

1 (2)–(3) * * *

2
3 (e) * * *

4
5 **Rule 8.474. Procedures and data**

6
7 (a) * * *

8
9 (b) **Data**

10
11 The clerks of the superior courts and the reviewing courts must ~~the~~ provide the data
12 required to assist the Judicial Council in evaluating the effectiveness of the rules governing
13 appeals and writs in juvenile cases.

14
15 **Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of**
16 **conservatee**

17
18 (a)–(b) * * *

19
20 (c) **Superior court clerk’s duties**

21
22 After entering the judgment, the clerk must immediately:

23
24 (1) * * *

25
26 (2) Send Mail certified copies of the judgment to the Court of Appeal and the Attorney
27 General.

28
29 (d)–(f) * * *

30
31 (g) **Confidential material**

32
33 (1) * * *

34
35 (2) Material under (1) must be sent to the reviewing court in a secure manner that
36 preserves its confidentiality. If the material is in paper format, it must be sent to the
37 reviewing court in a sealed envelope marked “CONFIDENTIAL—MAY NOT BE
38 EXAMINED WITHOUT A COURT ORDER.”

39
40 (h)–(i) * * *

41
42 **Rule 8.486. Petitions**

43
44 (a)–(b) * * *

1 (c) **Form of supporting documents**

2
3 (1) Documents submitted under (b) must comply with the following requirements:

4
5 (A) If submitted in paper form, they must be bound together at the end of the
6 petition or in separate volumes not exceeding 300 pages each. The pages must
7 be consecutively numbered.

8
9 (B) If submitted in paper form, they must be index-tabbed by number or letter.

10
11 (C) They must begin with a table of contents listing each document by its title and
12 its index-~~tab~~ number or letter. If a document has attachments, the table of
13 contents must give the title of each attachment and a brief description of its
14 contents.

15
16 (2) The clerk must file any supporting documents not complying with (1), but the court
17 may notify the petitioner that it may strike or summarily deny the petition if the
18 documents are not brought into compliance within a stated reasonable time of not
19 less than 5 days.

20
21 (3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the
22 Supreme Court. Rule 8.44(b) governs the number of supporting documents to be
23 filed in the Court of Appeal.

24
25 (d)–(e) * * *

26
27 **Rule 8.488. Certificate of Interested Entities or Persons**

28
29 (a)–(c) * * *

30
31 (d) **Failure to file a certificate**

32
33 (1) If a party fails to file a certificate as required under (b) and (c), the clerk must notify
34 the party in writing ~~by mail~~ that the party must file the certificate within 10 days
35 after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court
36 may impose one of the following sanctions:

37
38 (A)–(B) * * *

39
40 (2) * * *

41
42 **Rule 8.495. Review of Workers' Compensation Appeals Board cases**

43
44 (a) **Petition**

45
46 (1)–(2) * * *

1
2 (3) The petition must be accompanied by proof of service of ~~two copies~~ a copy of the
3 petition on the Secretary of the Workers' Compensation Appeals Board in San
4 Francisco, or two copies if the petition is served in paper form, and one copy on each
5 party who appeared in the action and whose interest is adverse to the petitioner.
6 Service on the board's local district office is not required.
7

8 (b) * * *

9
10 (c) **Certificate of Interested Entities or Persons**

11
12 (1)–(2) * * *

13
14 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
15 the party in writing ~~by mail~~ that the party must file the certificate within 10 days
16 after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of
17 the following sanctions:
18

19 (A)–(B) * * *

20
21 (4) * * *

22
23 **Rule 8.496. Review of Public Utilities Commission cases**

24
25 (a)–(b) * * *

26
27 (c) **Certificate of Interested Entities or Persons**

28
29 (1)–(2) * * *

30
31 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
32 the party ~~by mail~~ in writing that the party must file the certificate within 10 days
33 after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of
34 the following sanctions:
35

36 (A)–(B) * * *

37
38 (4) * * *

39
40 **Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment**
41 **Relations Board cases**

42
43 (a)–(c) * * *

44
45 (d) **Certificate of Interested Entities or Persons**
46

1 (1)–(2) * * *

2
3 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
4 the party ~~by mail~~ in writing that the party must file the certificate within 10 days
5 after the clerk’s notice is ~~mailed~~ sent and that failure to comply will result in one of
6 the following sanctions:

7
8 (A)–(B) * * *

9
10 (4) * * *

11
12 **Rule 8.504. Form and contents of petition, answer, and reply**

13
14 (a) * * *

15
16 (b) **Contents of a petition**

17
18 (1)–(3) * * *

19
20 (4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion
21 showing its filing date and a copy of any order modifying the opinion or directing its
22 publication must be bound at the back of the original petition and each copy filed in
23 the Supreme Court or, if the petition is not filed in paper form, attached.

24
25 (5) If the petition seeks review of a Court of Appeal order, a copy of the order showing
26 the date it was entered must be bound at the back of the original petition and each
27 copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

28
29 (6)–(7) * * *

30
31 (c)–(e) * * *

32
33 **Rule 8.512. Ordering review**

34
35 (a) **Transmittal of record**

36
37 On receiving a copy of a petition for review or on request of the Supreme Court, whichever
38 is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court.
39 If the petition is denied, the Supreme Court clerk must promptly return the record to the
40 Court of Appeal if the record was transmitted in paper form.

41
42 (b)–(d) * * *

43
44 **Rule 8.540. Remittitur**

1 (a) * * *

2
3 (b) **Clerk's duties**

4
5 (1) * * *

6
7 (2) After review of a Court of Appeal decision, the Supreme Court clerk must address
8 the remittitur to the Court of Appeal and send that court ~~two copies~~ a copy of the
9 remittitur and ~~two~~ a filed-stamped-endorsed ~~copies~~ copy of the Supreme Court
10 opinion or order. The clerk must send two copies of any document sent in paper
11 form.

12
13 (3) After a decision in an appeal from a judgment of death or in a cause transferred to
14 the court under rule 8.552, the clerk must send the remittitur and a filed-
15 stamped-endorsed copy of the Supreme Court opinion or order to the lower court or
16 tribunal.

17
18 (4) * * *

19
20 (c) * * *

21
22 **Rule 8.548. Decision on request of a court of another jurisdiction**

23
24 (a)-(c) * * *

25
26 (d) **Serving and filing the request**

27
28 The requesting court clerk must file an original, and if the request is filed in paper form, 10
29 copies, of the request in the Supreme Court with a certificate of service on the parties.

30
31 (e) * * *

32
33 (f) **Proceedings in the Supreme Court**

34
35 (1)-(5) * * *

36
37 (6) After filing the opinion, the clerk must promptly send filed-stamped-endorsed copies
38 to the requesting court and the parties and must notify that court and the parties when
39 the decision is final.

40
41 (7) * * *

42
43 **Rule 8.610. Contents and form of the record**

44
45 (a)-(b) * * *

1 (c) **Juror-identifying information**

2
3 Any document in the record containing juror-identifying information must be edited in
4 compliance with rule 8.332. Unedited copies of all such documents and a copy of the table
5 required by the rule, under seal and bound together if filed in paper form, must be included
6 in the record sent to the Supreme Court.
7

8 (d) * * *

9
10 **Rule 8.616. Preparing the trial record**

11
12 (a) * * *

13
14 (b) **Reporter's duties**

15
16 (1) * * *

17
18 (2) Any portion of the transcript transcribed during trial must not be retyped unless
19 necessary to correct errors, but must be repaginated and ~~bound~~ combined with any
20 portion of the transcript not previously transcribed. Any additional copies needed
21 must not be retyped but, if the transcript is in paper form, must be prepared by
22 photocopying or an equivalent process.
23

24 (3) * * *

25
26 (c)–(d) * * *

27
28 **Rule 8.630. Briefs by parties and amicus curiae**

29
30 (a)–(f) * * *

31
32 (g) **Service**

33
34 (1) * * *

35
36 (2) The Attorney General must serve two paper copies or one electronic copy of the
37 respondent's brief on each defendant's appellate counsel and, for each defendant
38 sentenced to death, one copy on the California Appellate Project in San Francisco.
39

40 (3) * * *

41
42 (h) * * *

43
44 **Rule 8.702. Appeals**

45

1 (a) * * *

2
3 (b) **Notice of appeal**

4
5 (1) *Time to appeal*

6
7 The notice of appeal must be served and filed on or before the earlier of:

8
9 (A) Five court days after the superior court clerk serves on the party filing the
10 notice of appeal a document entitled “Notice of Entry” of judgment or a filed-
11 ~~stamped~~endorsed copy of the judgment, showing the date either was served; or

12
13 (B) Five court days after the party filing the notice of appeal serves or is served by
14 a party with a document entitled “Notice of Entry” of judgment or a filed-
15 ~~stamped~~endorsed copy of the judgment, accompanied by proof of service.

16
17 (2) * * *

18
19 (c)–(g) * * *

20
21 **Rule 8.703. Writ proceedings**

22
23 (a) * * *

24
25 (b) **Petition**

26
27 (1) *Time for filing petition*

28
29 A petition for a writ challenging a superior court judgment or order governed by the
30 rules in this chapter must be served and filed on or before the earliest of:

31
32 (A) Thirty days after the superior court clerk serves on the party filing the petition
33 a document entitled “Notice of Entry” of judgment or order, or a filed-
34 ~~stamped~~endorsed copy of the judgment or order, showing the date either was
35 served; or

36
37 (B) Thirty days after the party filing the petition serves or is served by a party with
38 a document entitled “Notice of Entry” of judgment or order, or a filed-
39 ~~stamped~~endorsed copy of the judgment or order, accompanied by proof of
40 service.

41
42 (2) * * *

43
44 **Rule 8.800. Application of division and scope of rules**

1 **(a) Application**

2
3 The rules in this division apply to:

4
5 (1)–(2) * * *

6
7 **(b) Scope of rules**

8
9 The rules in this division apply to documents filed and served electronically as well as in paper
10 form, unless otherwise provided.

11
12 **Rule 8.804 8.803. Definitions**

13
14 As used in this division, unless the context or subject matter otherwise requires:

15
16 (1)–(22) * * *

17
18 (23) The words “attach” or “attachment” may refer to either physical attachment or electronic
19 attachment, as appropriate.

20
21 (24) The words “copy” or “copies” may refer to electronic copies, as appropriate.

22
23 (25) The word “cover” includes the cover page of a document filed electronically.

24
25 (26) “Written” and “writing” include electronically created written materials, whether or not
26 those materials are printed on paper.

27
28 **Rule 8.804. Requirements for signatures on documents**

29
30 Except as otherwise provided, or required by order of the court, signatures on electronically filed
31 documents must comply with the requirements of rule 8.77.

32
33 **Rule 8.806. Applications**

34
35 **(a)–(b) * * ***

36
37 **(c) Envelopes**

38
39 If any party or parties in the case are served in paper form, an application must be
40 accompanied by addressed, postage-prepaid envelopes for the clerk’s use in mailing copies
41 of the order on the application to ~~at~~ those parties.

42
43 **(d) * * ***

44
45 **Rule 8.814. Substituting parties; substituting or withdrawing attorneys**

1 (a)–(b) * * *

2
3 (c) **Withdrawing attorney**

4
5 (1) * * *

6
7 (2) The proof of service need not include the address of the party represented. But if the
8 court grants the motion, the withdrawing attorney must promptly provide the court
9 and the opposing party with the party’s current or last known address, e-mail
10 address, and telephone number.

11
12 (3) * * *

13
14 **Rule 8.821. Notice of appeal**

15
16 (a)–(c) * * *

17
18 (d) **Notification of the appeal**

19
20 (1) When the notice of appeal is filed, the trial court clerk must promptly mail send a
21 notification of the filing of the notice of appeal to the attorney of record for each
22 party and to any unrepresented party. The clerk must also mail send or deliver this
23 notification to the appellate division clerk.

24
25 (2) The notification must show the date it was mailed sent and must state the number
26 and title of the case and the date the notice of appeal was filed.

27
28 (3) * * *

29
30 (4) The mailing sending of a notification under (1) is a sufficient performance of the
31 clerk’s duty despite the death of the party or the discharge, disqualification,
32 suspension, disbarment, or death of the attorney.

33
34 (5) * * *

35
36 (e) * * *

37
38 **Rule 8.822. Time to appeal**

39
40 (a) **Normal time**

41
42 (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on
43 or before the earliest of:
44

- 1 (A) 30 days after the trial court clerk serves the party filing the notice of appeal a
2 document entitled “Notice of Entry” of judgment or a filed-~~stamped~~endorsed
3 copy of the judgment, showing the date it was served;
4
5 (B) 30 days after the party filing the notice of appeal serves or is served by a party
6 with a document entitled “Notice of Entry” of judgment or a filed-
7 ~~stamped~~endorsed copy of the judgment, accompanied by proof of service; or
8
9 (C) * * *
- 10
11 (2) * * *
12
13 (3) If the parties stipulated in the trial court under Code of Civil Procedure section
14 1019.5 to waive notice of the court order being appealed, the time to appeal under
15 (1)(C) applies unless the court or a party serves notice of entry of judgment or a
16 filed-~~stamped~~endorsed copy of the judgment to start the time period under (1)(A) or
17 (B).
18

19 (b)–(d) * * *

20
21 **Rule 8.823. Extending the time to appeal**
22

23 (a)–(e) * * *

24
25 (f) **Public entity actions under Government Code section 962, 984, or 985**
26

27 If a public entity defendant serves and files a valid request for a mandatory settlement
28 conference on methods of satisfying a judgment under Government Code section 962, an
29 election to pay a judgment in periodic payments under Government Code section 984 and
30 rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government
31 Code section 985, the time to appeal from the judgment is extended for all parties until the
32 earliest of:
33

- 34 (1) 60 days after the superior court clerk serves the party filing the notice of appeal with
35 a document entitled “Notice of Entry” of judgment or a filed-~~stamped~~endorsed copy
36 of the judgment, showing the date either was served;
37
38 (2) 60 days after the party filing the notice of appeal serves or is served by a party with a
39 document entitled “Notice of Entry” of judgment or a filed-~~stamped~~endorsed copy of
40 the judgment, accompanied by proof of service; or
41
42 (3) * * *
43

1 (g)–(h) * * *

2
3 **Rule 8.824. Writ of supersedeas**

4
5 **(a) Petition**

6
7 (1)–(3) * * *

8
9 (4) If the record has not been filed in the reviewing court:

10
11 (A)–(B) * * *

12
13 (C) The documents listed in (B) must comply with the following requirements:

- 14
15 (i) If filed in paper form, they must be bound together at the end of the
16 petition or in separate volumes not exceeding 300 pages each. The pages
17 must be consecutively numbered;
- 18
19 (ii) If filed in paper form, they must be index-tabbed by number or letter;
20 and
- 21
22 (iii) They must begin with a table of contents listing each document by its
23 title and its index-tab number or letter.

24
25 (5) * * *

26
27 **(b)–(d) * * ***

28
29 **Rule 8.833. Trial court file instead of clerk’s transcript**

30
31 **(a) * * ***

32
33 **(b) Cost estimate; preparation of file; transmittal**

34
35 (1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the
36 appellant elects to use a clerk’s transcript, the trial court clerk may ~~mail~~ send the
37 appellant a notice indicating that the appellate division for that court has elected by
38 local court rule to use the original trial court file instead of a clerk’s transcript and
39 providing the appellant with an estimate of the cost to prepare the file, including the
40 cost of sending the index under (4).

41
42 (2) Within 10 days after the clerk ~~mails~~ sends the estimate under (1), the appellant must
43 deposit the estimated cost with the clerk, unless otherwise provided by law or the
44 party submits an application for a waiver of the cost under rule 8.818 or an order
45 granting a waiver of this cost.

1 (3)–(5) * * *

2
3 **Rule 8.834. Reporter’s transcript**

4
5 **(a) Notice**

6
7 (1)–(3) * * *

8
9 (4) Except when a party deposits a certified transcript of all the designated proceedings
10 under (b)(2)(D) with the notice of designation, the clerk must promptly ~~mail~~ send a
11 copy of each notice to the reporter. The copy must show the date it was ~~mailed~~ sent.
12

13 **(b) Deposit or substitute for cost of transcript**

14
15 (1) Within 10 days after the clerk ~~mails~~ sends a notice under (a)(4), the reporter must file
16 the estimate with the clerk—or notify the clerk in writing of the date that he or she
17 notified the appellant directly—of the estimated cost of preparing the reporter’s
18 transcript at the statutory rate.
19

20 (2) * * *

21
22 (3) With its notice of designation, a party may serve and file a copy of its application to
23 the Court Reporters Board for payment or reimbursement from the Transcript
24 Reimbursement Fund under Business and Professions Code section 8030.2 et seq.
25

26 (A)–(C) * * *

27
28 (D) If the Court Reporters Board provisionally approves the application, the
29 reporter’s time to prepare the transcript under (d)(1) begins when the clerk
30 ~~mails~~ sends notice of the provisional approval under (4).
31

32 (4) * * *

33
34 **(c)–(e) * * ***

35
36 **(f) Notice when proceedings cannot be transcribed**

37
38 (1) If any portion of the designated proceedings were not reported or cannot be
39 transcribed, the trial court clerk must so notify the designating party ~~by mail~~ in
40 writing; the notice must:
41

42 (A) * * *

43
44 (B) Show the date it was ~~mailed~~ sent.
45

1 (2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the designating party must
2 file a new election notifying the court whether the party elects to proceed with or
3 without a record of the identified oral proceedings. If the party elects to proceed with
4 a record of these oral proceedings, the notice must specify which form of the record
5 listed in rule 8.830(a)(2) the party elects to use.

6
7 (A)–(C) * * *

8
9 (3) * * *

10
11 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

12
13 (a)–(c) * * *

14
15 (d) **Notice when proceedings were not officially electronically recorded or cannot be**
16 **transcribed**

17
18 (1) If the appellant elects under rule 8.831 to use a transcript prepared from an official
19 electronic recording or the recording itself, the trial court clerk must notify the
20 appellant ~~by mail~~ in writing if any portion of the designated proceedings was not
21 officially electronically recorded or cannot be transcribed. The notice must:

22
23 (A) * * *

24
25 (B) Show the date it was ~~mailed~~ sent.

26
27 (2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the appellant must file a new
28 election notifying the court whether the appellant elects to proceed with or without a
29 record of the oral proceedings that were not recorded or cannot be transcribed. If the
30 appellant elects to proceed with a record of these oral proceedings, the notice must
31 specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use.

32
33 (A)–(C) * * *

34
35 **Rule 8.838. Form of the record**

36
37 (a) * * *

38
39 (b) **Indexes**

40
41 At the beginning of the first volume of each:

42
43 (1) The clerk's transcript must contain alphabetical and chronological indexes listing
44 each document and the volume, where applicable, and page where it first appears;

1 (2) The reporter's transcript must contain alphabetical and chronological indexes listing
2 the volume, where applicable, and page where each witness's direct, cross, and any
3 other examination, begins; and
4

5 (3) The reporter's transcript must contain an index listing the volume, where applicable,
6 and page where any exhibit is marked for identification and where it is admitted or
7 refused.
8

9 **(c) Binding and cover**

10
11 (1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left
12 margin in volumes of no more than 300 sheets, except that transcripts may be bound
13 at the top if required by a local rule of the appellate division.
14

15 (2)–(3) * * *

16
17 **Rule 8.840. Completion and filing of the record**

18
19 **(a)** * * * *

20
21 **(b) Filing the record**

22
23 When the record is complete, the trial court clerk must promptly send the original to the
24 appellate division and send to the appellant and respondent copies of any certified
25 statement on appeal and any copies of transcripts or official electronic recordings that they
26 have purchased. The appellate division clerk must promptly file the original and ~~mail~~ send
27 notice of the filing date to the parties.
28

29 **Rule 8.842. Failure to procure the record**

30
31 **(a) Notice of default**

32
33 Except as otherwise provided by these rules, if a party fails to do any act required to
34 procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing
35 that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent
36 and that, if it fails to comply, the reviewing court may impose the following sanctions:
37

38 (1)–(2) * * *

39
40 **(b)** * * *

41
42 **Rule 8.843. Transmitting exhibits**

43
44 **(a)–(c)** * * *
45

1 **(d) Transmittal**

2
3 Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed
4 or after the appellate division directs that an exhibit be sent:

- 5
6 (1) The trial court clerk must put any designated exhibits in the clerk’s possession into
7 numerical or alphabetical order and send them to the appellate division ~~with two~~
8 ~~copies of a list of the exhibits sent.~~ The trial court clerk must also send a list of the
9 exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk
10 must send two copies of the list. If the appellate division clerk finds the list correct,
11 the clerk must sign and return ~~one~~ a copy to the trial court clerk.
12
13 (2) Any party in possession of designated exhibits returned by the trial court must put
14 them into numerical or alphabetical order and send them to the appellate division
15 ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the
16 exhibits sent. If the exhibits are not transmitted electronically, the party must send
17 two copies of the list. If the appellate division clerk finds the list correct, the clerk
18 must sign and return ~~one~~ a copy to the party.
19

20 **(e) Return by appellate division**

21
22 On request, the appellate division may return an exhibit to the trial court or to the party that
23 sent it. When the remittitur issues, the appellate division must return all exhibits not
24 transmitted electronically to the trial court or to the party that sent them.
25

26 **Rule 8.852. Notice of appeal**

27
28 **(a) * * ***

29
30 **(b) Notification of the appeal**

- 31
32 (1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a
33 notification of the filing to the attorney of record for each party and to any
34 unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to
35 the appellate division clerk.
36
37 (2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and
38 title of the case, the date the notice of appeal was filed, and whether the defendant
39 was represented by appointed counsel.
40
41 (3)–(4) * * *
42
43 (5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
44 clerk’s duty despite the discharge, disqualification, suspension, disbarment, or death
45 of the attorney.
46

1 (6) * * *

2
3 **Advisory Committee Comment**
4

5 *Notice of Appeal (Misdemeanor)* (form CR-132) may be used to file the notice of appeal required under
6 this rule. This form is available at any courthouse or county law library or online at
7 www.courtinfo.ca.gov/forms www.courts.ca.gov/forms.
8

9 **Subdivision (a).** The only orders that a defendant can appeal in a misdemeanor case are (1) orders
10 granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made
11 after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466)
12

13 **Rule 8.853. Time to appeal**

14 (a) * * *

15
16 (b) **Cross-appeal**
17

18
19 If the defendant or the People timely appeal from a judgment or appealable order, the time
20 for any other party to appeal from the same judgment or order is either the time specified
21 in (a) or 15 days after the trial court clerk ~~mails~~ sends notification of the first appeal,
22 whichever is later.
23

24 (c)–(d) * * *

25
26 **Rule 8.862. Preparation of clerk’s transcript**
27

28 (a)–(b) * * *

29 (c) **Probation officer’s reports**
30

31
32 A probation officer’s report included in the clerk’s transcript under rule 8.861(12)(D) must
33 appear in only the copies of the appellate record that are sent to the reviewing court, to
34 appellate counsel for the People, and to appellate counsel for the defendant who was the
35 subject of the report or to the defendant if he or she is self-represented. If the report is in
36 paper form, it must be placed in a sealed envelope. The reviewing court’s copy of the report,
37 and if applicable, the envelope, must be placed in a sealed envelope marked
38 “CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—
39 PROBATION OFFICER REPORT.”
40

41 (d)–(e) * * *

42
43 **Rule 8.864. Record of oral proceedings**
44

45 (a) **Appellant’s election**
46

1 The appellant must notify the trial court whether he or she elects to proceed with or
2 without a record of the oral proceedings in the trial court. If the appellant elects to proceed
3 with a record of the oral proceedings in the trial court, the notice must specify which form
4 of the record of the oral proceedings in the trial court the appellant elects to use:
5

6 (1) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from an
7 official electronic recording of the proceedings under rule 8.868(b). If the appellant
8 elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of
9 appellant's notice making this election and the notice of appeal to each court
10 reporter;
11

12 (2)–(3) * * *

13
14 **(b)–(c) * * ***

15
16 **Rule 8.866. Preparation of reporter's transcript**

17
18 **(a) When preparation begins**

19
20 (1) * * *

21
22 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the
23 appellant is the defendant and that the defendant was not represented by appointed
24 counsel at trial:

25
26 (A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule
27 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing
28 the reporter's transcript.

29
30 (B) The clerk must promptly notify the appellant and his or her counsel of the
31 estimated cost of preparing the reporter's transcript. The notification must
32 show the date it was ~~mailed~~ sent.

33
34 (C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the
35 appellant must do one of the following:

36
37 (i)–(vii) * * *

38
39 (D) If the trial court determines that the appellant is not indigent, within 10 days
40 after the date the clerk ~~mails~~ sends notice of this determination to the appellant,
41 the appellant must do one of the following:

42
43 (i)–(vi) * * *

44
45 (E) * * *

1 (b)–(e) * * *

2
3 (f) **Notice when proceedings were not reported or cannot be transcribed**

4
5 (1) If any portion of the oral proceedings to be included in the reporter’s transcript was
6 not reported or cannot be transcribed, the trial court clerk must so notify the parties
7 ~~by mail~~ in writing. The notice must:

8
9 (A) * * *

10
11 (B) Show the date it was ~~mailed~~ sent.

12
13 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
14 and file a notice with the court stating whether the appellant elects to proceed with or
15 without a record of the identified proceedings. When the party elects to proceed with
16 a record of these oral proceedings:

17
18 (A)–(B) * * *

19
20 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

21
22 (a)–(d) * * *

23
24 (e) **When preparation begins**

25
26 (1) * * *

27
28 (2) If the appellant is the defendant and the defendant was not represented by appointed
29 counsel at trial:

30
31 (A) Within 10 days after the date the defendant files the election under rule
32 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the
33 estimated cost of preparing the transcript or the copy of the recording. The
34 notification must show the date it was ~~mailed~~ sent.

35
36 (B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the
37 appellant must do one of the following:

38
39 (i)–(v) * * *

40
41 (C) If the trial court determines that the appellant is not indigent, within 10 days
42 after the date the clerk ~~mails~~ sends notice of this determination to the appellant,
43 the appellant must do one of the following:

44
45 (i)–(iv) * * *

1 (D) * * *

2
3 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
4 **transcribed**

5
6 (1) If any portion of the oral proceedings to be included in the transcript was not
7 officially electronically recorded under Government Code section 69957 or cannot
8 be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The
9 notice must:

10
11 (A) * * *

12
13 (B) Show the date it was ~~mailed~~ sent.

14
15 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
16 and file a notice with the court stating whether the appellant elects to proceed with or
17 without a record of the identified oral proceedings. When the party elects to proceed
18 with a record of these oral proceedings:

19
20 (A)–(B) * * *

21
22 **Rule 8.870. Exhibits**

23
24 **(a)–(c) * * ***

25
26 **(d) Transmittal**

27
28 Unless the appellate division orders otherwise, within 20 days after the first notice under
29 (b) is filed or after the appellate division directs that an exhibit be sent:

30
31 (1) The trial court clerk must put any designated exhibits in the clerk's possession into
32 numerical or alphabetical order and send them to the appellate division ~~with two~~
33 ~~copies of a list of the exhibits.~~ The trial court clerk must also send a list of the
34 exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk
35 must send two copies of the list. If the appellate division clerk finds the list correct,
36 the clerk must sign and return ~~one~~ a copy to the trial court clerk.

37
38 (2) Any party in possession of designated exhibits returned by the trial court must put
39 them into numerical or alphabetical order and send them to the appellate division
40 ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the
41 exhibits sent. If the exhibits are not transmitted electronically, the party must send
42 two copies of the list. If the appellate division clerk finds the list correct, the clerk
43 must sign and return ~~one~~ a copy to the party.

44
45 **(e) Return by appellate division**
46

1 On request, the appellate division may return an exhibit to the trial court or to the party that
2 sent it. When the remittitur issues, the appellate division must return all exhibits not
3 transmitted electronically to the trial court or to the party that sent them.

4
5 **Rule 8.872. Sending and filing the record in the appellate division**

6
7 (a)–(b) * * *

8
9 (c) **Filing the record**

10
11 On receipt, the appellate division clerk must promptly file the original record and ~~mail~~
12 send notice of the filing date to the parties.

13
14 **Rule 8.874. Failure to procure the record**

15
16 (a) **Notice of default**

17
18 If a party fails to do any act required to procure the record, the trial court clerk must
19 promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice
20 within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the appellate
21 division may impose the following sanctions:

22
23 (1)–(2) * * *

24
25 (b) * * *

26
27 **Rule 8.881. Notice of briefing schedule**

28
29 When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send a notice to
30 each appellate counsel or unrepresented party giving the dates the briefs are due.

31
32 **Rule 8.882. Briefs by parties and amici curiae**

33
34 (a) * * *

35
36 (b) **Extensions of time**

37
38 (1) Except as otherwise provided by statute, in a civil case, the parties may extend each
39 period under (a) by up to 30 days by filing one or more stipulations in the appellate
40 division before the brief is due. Stipulations must be signed by and served on all
41 parties. If the stipulation is filed in paper form, the original signature of at least one
42 party must appear on the stipulation filed in the appellate division; the signatures of
43 the other parties may be in the form of fax copies of the signed signature page of the
44 stipulation. If the stipulation is electronically filed, the signatures must comply with
45 the requirements of rule 8.77.
46

1 (2)–(4) * * *

2
3 **(c) Failure to file a brief**

4
5 (1) If a party in a civil appeal fails to timely file an appellant’s opening brief or a
6 respondent’s brief, the appellate division clerk must promptly notify the party ~~by~~
7 mail in writing that the brief must be filed within 15 days after the notice is ~~mailed~~
8 sent and that if the party fails to comply, the court may impose one of the following
9 sanctions:

10
11 (A)–(B) * * *

12
13 (2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the
14 appellate division clerk must promptly notify the appellant ~~by mail~~ in writing that the
15 brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the
16 appellant fails to comply, the court may impose one of the following sanctions:

17
18 (A)–(B) * * *

19
20 (3) If the respondent in a misdemeanor appeal fails to timely file a brief, the appellate
21 division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief
22 must be filed within 30 days after the notice is ~~mailed~~ sent and that if the respondent
23 fails to comply, the court may impose one of the following sanctions:

24
25 (A)–(B) * * *

26
27 (4) * * *

28
29 **(d)–(e) * * ***

30
31 **Rule 8.883. Contents and form of briefs**

32
33 **(a)–(b) * * ***

34
35 **(c) Form**

36
37 (1) A brief may be reproduced by any process that produces a clear, black image of
38 letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If
39 filed in paper form, the paper must be white or unbleached, 8 1/2 by 11 inches, and of
40 at least 20-pound weight. Both sides of the paper may be used if the brief is not
41 bound at the top.

42
43 (2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either
44 proportionally spaced or monospaced.
45

1 (3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used
2 or the text may be underscored. Case names must be italicized or underscored.
3 Headings may be in uppercase letters.
4

5 (4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be
6 smaller than 13-point.
7

8 (5)–(8) * * *

9
10 (9) If filed in paper form, the brief must be bound on the left margin, except that briefs
11 may be bound at the top if required by a local rule of the appellate division. If the
12 brief is stapled, the bound edge and staples must be covered with tape.
13

14 (10)–(11)

15
16 (d) * * *

17
18 **Rule 8.888. Finality and modification of decision**
19

20 (a)–(b) * * *

21
22 (c) **Consent to increase or decrease in amount of judgment**
23

24 If an appellate division decision conditions the affirmance of a money judgment on a
25 party's consent to an increase or decrease in the amount, the judgment is reversed unless,
26 before the decision is final under (a), the party serves and files ~~two copies~~ a copy of a
27 consent in the appellate division. If a consent is filed, the finality period runs from the
28 filing date of the consent. The clerk must send one ~~filed-stamped~~ endorsed copy of the
29 consent to the trial court with the remittitur.
30

31 **Rule 8.890. Remittitur**
32

33 (a) * * *

34
35 (b) **Clerk's duties**
36

37 (1) If an appellate division case is not transferred to the Court of Appeal under rule
38 8.1000 et seq., the appellate division clerk must:

39
40 (A) * * *

41
42 (B) Send the remittitur to the trial court with a ~~filed-stamped~~ endorsed copy of the
43 opinion or order; and

44
45 (C) Return to the trial court with the remittitur all original records, exhibits, and
46 documents sent non-electronically to the appellate division in connection with

1 the appeal, except any certification for transfer under rule 8.1005, the
2 transcripts or statement on appeal, briefs, and the notice of appeal.

3
4 (2) * * *

5
6 (c)–(d) * * *

7
8 **Rule 8.891. Costs and sanctions in civil appeals**

9
10 (a)–(e) * * *

11 **Advisory Committee Comment**

12
13
14 **Subdivision (d).** “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest expenses
15 incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds
16 while they are on deposit.

17
18 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the record, briefs,
19 and other papers,” is intended to include fees charged by electronic filing service providers for electronic
20 filing and service of documents.

21
22 **Rule 8.901. Notice of appeal**

23
24 (a) * * *

25
26 (b) **Notification of the appeal**

27
28 (1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a
29 notification of the filing to the attorney of record for each party and to any
30 unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to
31 the appellate division clerk.

32
33 (2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and
34 title of the case, and the date the notice of appeal was filed.

35
36 (3)–(4) * * *

37
38 (5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
39 clerk’s duty despite the discharge, disqualification, suspension, disbarment, or death
40 of the attorney.

41
42 (6) * * *

43
44 **Rule 8.902. Time to appeal**

45
46 (a) * * *

1 **(b) Cross-appeal**

2
3 If the defendant or the People timely appeals from a judgment or appealable order, the time
4 for any other party to appeal from the same judgment or order is either the time specified
5 in (a) or 30 days after the trial court clerk ~~mails~~ sends notification of the first appeal,
6 whichever is later.
7

8 **(c)–(d) * * ***
9

10 **Rule 8.911. Prosecuting attorney’s notice regarding the record**

11
12 If the prosecuting attorney does not want to receive a copy of the record on appeal, within 10
13 days after the notification of the appeal under rule 8.901(b) is ~~mailed~~ sent to the prosecuting
14 attorney, the prosecuting attorney must serve and file a notice indicating that he or she does not
15 want to receive the record.
16

17 **Rule 8.915. Record of oral proceedings**

18
19 **(a) Appellant’s election**

20
21 The appellant must notify the trial court whether he or she elects to proceed with or
22 without a record of the oral proceedings in the trial court. If the appellant elects to proceed
23 with a record of the oral proceedings in the trial court, the notice must specify which form
24 of the record of the oral proceedings in the trial court the appellant elects to use:
25

26 (1)–(2) * * *

27
28 (3) A reporter’s transcript under rules 8.918–8.920 or a transcript prepared from an
29 official electronic recording of the proceedings under rule 8.917(b). If the appellant
30 elects to use a reporter’s transcript, the clerk must promptly ~~mail~~ send a copy of
31 appellant’s notice making this election and the notice of appeal to each court
32 reporter.
33

34 **(b)–(c) * * ***
35

36 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

37
38 **(a)–(d) * * ***
39

40 **(e) When preparation begins**

41
42 (1) * * *

43
44 (2) If the appellant is the defendant:
45

1 (A) Within 10 days after the date the appellant files the election under rule
2 8.915(a), the clerk must notify the appellant and his or her counsel of the
3 estimated cost of preparing the transcript or the copy of the recording. The
4 notification must show the date it was ~~mailed~~ sent.

5
6 (B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the
7 appellant must do one of the following:

8
9 (i)–(v) * * *

10
11 (C) If the trial court determines that the appellant is not indigent, within 10 days
12 after the date the clerk ~~mailed~~ sends notice of this determination to the appellant,
13 the appellant must do one of the following:

14
15 (i)–(iv) * * *

16
17 (D) * * *

18
19 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
20 **transcribed**

21
22 (1) If any portion of the oral proceedings to be included in the transcript were not
23 officially electronically recorded under Government Code section 69957 or cannot
24 be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The
25 notice must:

26
27 (A) * * *

28
29 (B) Show the date it was ~~mailed~~ sent.

30
31 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
32 and file a notice with the court stating whether the appellant elects to proceed with or
33 without a record of the identified proceedings. When the party elects to proceed with
34 a record of these oral proceedings:

35
36 (A)–(B) * * *

37
38 **Rule 8.919. Preparation of reporter's transcript**

39
40 **(a) When preparation begins**

41
42 (1) * * *

43
44 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
45 appellant is the defendant:

- 1 (A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule
2 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing
3 the reporter's transcript; and
4
5 (B) The clerk must promptly notify the appellant and his or her counsel of the
6 estimated cost of preparing the reporter's transcript. The notification must
7 show the date it was ~~mailed~~ sent.
8
9 (C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the
10 appellant must do one of the following:
11
12 (i)–(vii) * * *
13
14 (D) If the trial court determines that the appellant is not indigent, within 10 days
15 after the date the clerk ~~mails~~ sends notice of this determination to the appellant,
16 the appellant must do one of the following:
17
18 (i)–(vi) * * *
19
20 (E) * * *

21
22 **(b)–(e) * * ***

23
24 **(f) Notice when proceedings cannot be transcribed**

- 25
26 (1) If any portion of the oral proceedings to be included in the reporter's transcript was
27 not reported or cannot be transcribed, the trial court clerk must so notify the parties
28 ~~by mail~~ in writing. The notice must:
29
30 (A) * * *
31
32 (B) Show the date it was ~~mailed~~ sent.
33
34 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
35 and file a notice with the court stating whether the appellant elects to proceed with or
36 without a record of the identified proceedings. When the party elects to proceed with
37 a record of these oral proceedings:
38
39 (A)–(B) * * *

40
41 **Rule 8.921. Exhibits**

42
43 **(a)–(c) * * ***

44
45 **(d) Transmittal**

1 Unless the appellate division orders otherwise, within 20 days after notice under (b) is filed
2 or after the appellate division directs that an exhibit be sent:
3

4 (1) The trial court clerk must put any designated exhibits in the clerk's possession into
5 numerical or alphabetical order and send them to the appellate division ~~with two~~
6 ~~copies of a list of the exhibits sent.~~ The trial court clerk must also send a list of the
7 exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk
8 must send two copies of the list. If the appellate division clerk finds the list correct,
9 the clerk must sign and return ~~one~~ a copy to the trial court clerk.

10
11 (2) Any party in possession of designated exhibits returned by the trial court must put
12 them into numerical or alphabetical order and send them to the appellate division
13 ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the
14 exhibits sent. If the exhibits are not transmitted electronically, the party must send
15 two copies of the list. If the appellate division clerk finds the list correct, the clerk
16 must sign and return ~~one~~ a copy to the party.
17

18 **(e) Return by appellate division**
19

20 On request, the appellate division may return an exhibit to the trial court or to the party that
21 sent it. When the remittitur issues, the appellate division must return all exhibits not
22 transmitted electronically to the trial court or to the party that sent them.
23

24 **Rule 8.922. Sending and filing the record in the appellate division**
25

26 **(a)–(b) * * ***
27

28 **(c) Filing the record**
29

30 On receipt, the appellate division clerk must promptly file the original record and ~~mail~~
31 send notice of the filing date to the parties.
32

33 **Rule 8.924. Failure to procure the record**
34

35 **(a) Notice of default**
36

37 If a party fails to do any act required to procure the record, the trial court clerk must
38 promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice
39 within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing
40 court may impose the following sanctions:
41

42 **(1)–(2) * * ***
43

1 (b) * * *

2
3 **Rule 8.926. Notice of briefing schedule**

4
5 When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send, to each
6 appellate counsel or unrepresented party, a notice giving the dates the briefs are due.
7

8 **Rule 8.927. Briefs**

9
10 (a) * * *

11
12 (b) **Failure to file a brief**

13
14 (1) If the appellant fails to timely file an opening brief, the appellate division clerk must
15 promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 20
16 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court
17 may dismiss the appeal.
18

19 (2) If the respondent fails to timely file a brief, the appellate division clerk must
20 promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within
21 20 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the
22 court will decide the appeal on the record, the appellant's opening brief, and any oral
23 argument by the appellant.
24

25 (3) * * *

26
27 (c) * * *

28
29 **Rule 8.928. Contents and form of briefs**

30
31 (a)–(b) * * *

32
33 (c) **Form**

34
35 (1) A brief may be reproduced by any process that produces a clear, black image of
36 letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If
37 filed in paper form, the paper must be white or unbleached, 8 1/2 by 11 inches, and of
38 at least 20-pound weight. Both sides of the paper may be used if the brief is not
39 bound at the top.
40

41 (2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either
42 proportionally spaced or monospaced.
43

44 (3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used
45 or the text may be underscored. Case names must be italicized or underscored.
46 Headings may be in uppercase letters.

1
2 (4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be
3 smaller than 13-point.

4
5 (5)–(8) * * *

6
7 (9) If filed in paper form, the brief must be bound on the left margin, except that briefs
8 may be bound at the top if required by a local rule of the appellate division. If the
9 brief is stapled, the bound edge and staples must be covered with tape.

10
11 (10)–(11) * * *

12
13 (d) * * *

14
15 **Rule 8.931. Petitions filed by persons not represented by an attorney**

16
17 (a)–(b) * * *

18
19 (c) **Form of supporting documents**

20
21 (1) Documents submitted under (b) must comply with the following requirements:

22
23 (A) If submitted in paper form, they must be bound together at the end of the
24 petition or in separate volumes not exceeding 300 pages each. The pages must
25 be consecutively numbered.

26
27 (B) If submitted in paper form, they must be index-tabbed by number or letter.

28
29 (C) They must begin with a table of contents listing each document by its title and
30 its ~~index-tab~~ number or letter. If a document has attachments, the table of
31 contents must give the title of each attachment and a brief description of its
32 contents.

33
34 (2) * * *

35
36 (3) Unless the court provides otherwise by local rule or order, only one set of ~~any~~
37 ~~separately bound~~ the supporting documents needs to be filed in support of a petition,
38 an answer, an opposition, or a reply.

39
40 (d) * * *

41
42 **Rule 8.1018. Finality and remittitur**

43

1 (a)–(b) * * *

2
3 (c) **When the Court of Appeal issues a decision**

4
5 If the Court of Appeal issues a decision on a case it has ordered transferred from the
6 appellate division of the superior court, filing, finality, and modification of that decision
7 are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk
8 must address the remittitur to the appellate division and send that court ~~two copies~~ a copy
9 of the remittitur and ~~two file-stamped copies~~ a filed-endorsed copy of the Court of Appeal
10 opinion or order. If the remittitur and opinion are sent in paper format, two copies must be
11 sent. On receipt of the Court of Appeal remittitur, the appellate division clerk must
12 promptly issue a remittitur if there will be no further proceedings in that court.
13

14 (d) **Documents to be returned**

15
16 When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the
17 Court of Appeal clerk must return to the appellate division any part of the record sent non-
18 electronically to the Court of Appeal under rule 8.1007 and any exhibits that were sent
19 non-electronically.

SPR15-32**Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin**

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	AM	See comments on specific provisions below.	See responses to comments below.
2.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	A	DCSS supports modernizing and increasing efficiencies with our justice partners including the proposed technical amendments to address language in the rules that is incompatible with the current statutes and rules governing e-filing, e-service, and e-business processes in general. Overall, the proposed changes meet the business needs of DCSS. See comments on specific provisions below.	DCSS's support is noted.
3.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	Position on proposal: Agree with the proposed changes with the following recommendation noted below.	See responses to comments below.
4.	Law Office of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No specific comment.	No response required.
5.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	AM	CAJ supports this proposal in general, but has the following comments. See comments on specific provisions below.	CAJ's support is noted.
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	NI	See comments on specific provisions below.	See responses to comments below.

SPR15-32**Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin**

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
7.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	A	No specific comment.	No response required.
8.	Superior Court of Riverside County by Marita Ford	A	No specific comment.	No response required.
9.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	NI	See comments on specific provisions below.	See responses to comments below.
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	See comments on specific provisions below.	See responses to comments below.
11.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committees (CEAC), Joint Rules Subcommittee and Joint Technology Subcommittee	A	<p>The subcommittees agree that the proposed rule changes are necessary to begin facilitating an e-business environment in the trial courts.</p> <p>The subcommittees determined that the proposal will result in additional training, which requires the commitment of staff time and court resources.</p>	<p>The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee’s support is noted.</p> <p>The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee’s comment is noted. To the extent that this rules proposal, as circulated, recommends only technical, non-substantive changes to the rules, ITAC and CSCAC anticipate that training should not be too burdensome for the courts and would be otherwise necessary as courts modernize by adopting e-filing, e-service, and e-business practices already authorized by relevant statutes and rules.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>The subcommittees would like to note that it would be helpful if ITAC would, in the future, consider whether filing parties should be required to bookmark electronic exhibits or attachments submitted with electronic documents filed with the courts.</p> <p>See comments on specific provisions below.</p>	<p>The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee’s recommendation is noted. It will be considered next year during phase II of the Rules Modernization Project.</p>

Comments Applicable to Multiple Rules			
	Commentator	Comment	Committee Response
12.	<p>The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel</p>	<p>This proposal would replace references to “file-stamped” with “filed-endorsed” throughout the rules. CAJ recommends retaining the term “file-stamped.” The term “filed-endorsed” is unclear, and does not correspond to the way documents are actually file-stamped by clerks in various California courts, which do not appear to use the terminology “filed-endorsed.”</p>	<p>ITAC, CSCAC, and AAC note CAJ’s objection. However, they recommend retaining the proposal to change all references to “file-stamped” to “filed-endorsed” because the term “filed-endorsed” is used in relation to both paper and electronic documents and is generally understood and used by the courts, including those that have not converted to a paperless case management system.</p>
13.	<p>The State Bar of California Committee on Appellate Courts by John Derrick, Chair</p>	<p>The Committee notes that “electronic form” and “electronic format” are used in the appellate rules as well as other rules. The Committee believes that more experience by both litigants and the courts may be needed before those terms are defined, but recommends that consideration be given to defining those terms sooner rather than later.</p>	<p>ITAC and CSCAC note the CAC’s recommendation to define electronic form and formatting in the trial and appellate rules in the future. This recommendation will be considered next year during phase II of the Rules Modernization Project.</p>

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Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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Comments Applicable to Multiple Rules			
	Commentator	Comment	Committee Response
14.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	<p>Please note that many of the comments on SPR15-16 are “global”:</p> <ul style="list-style-type: none"> • Consistency with the use of singular v. plural – i.e., we prefer “party” to “parties” • Over use of the word “also” • Consistency when identifying JC forms – i.e., we prefer stating “form FL-xxx” v. “FL-xxx” • Use of old language “child visitation” or “visitation” v. new language “parenting time” <p>[*General comment made in response to three Invitations to Comment, including SPR15-32]</p>	ITAC and CSCAC decline to pursue the general suggestions regarding the use of the words “also” and “parties,” which appear to be directed beyond the rules covered in this proposal. The comments referring to Judicial Council forms and to the terms “visitation” and “parenting time” do not apply to SPR15-32.

Title Two—Trial Court Rules			
	Commentator	Comment	Committee Response
15.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	That said, DCSS would encourage the Judicial Council to review California Rules of Court, Rule 2.257 as part of its ongoing modernization effort. The current retention requirements of Rule 2.257 pose three problems, two of which may require statutory changes to California Code of Civil Procedure section 1010.6. First, the absence of directions regarding the amount of time original signatures must be retained encourages divergent practices. Second, the rule imposes burdens on individuals in excess of that imposed on the court since the court need not maintain originals indefinitely under Government Code section 68152. Third, the rule does not provide parties with the option to electronically store signed documents as the	<p>ITAC and CSAC decline to pursue DCSS’s recommendation; it is outside the scope of this rules proposal, as circulated, because it involves substantive, non-technical changes to the rules. It may be considered by the committees during phase II of the Rules Modernization Project.</p> <p>ITAC and CSCAC agree that changing the retention requirements in rule 2.257(a) may require amending Code of Civil Procedure section 1010.6(b)(2)(B), which requires maintaining “the printed form of the document bearing the original signatures” where any electronically filed</p>

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Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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Title Two—Trial Court Rules			
	Commentator	Comment	Committee Response
		court is permitted to do under Government Code section 68150.	documents are signed under penalty of perjury.
16.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	<p>Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page</p> <p>In addition to the proposed rule 2.111(3) change, the Court respectfully requests that the Judicial Council amend California Rule of Court 2.111(1) by deleting the words “if available” in the first sentence and replacing them with “if available and / or required if submitting electronically”. Thus, the sentence would read as follows:</p> <p>“In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address (if available and / or required if submitting electronically), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person.”</p> <p>The Court believes that this change would result in the Court’s ability to capture accurate data for eService because it would require every e-filer to provide the Court with its email address. Currently, there is no requirement to have email addresses placed on the document. Further, there is no mechanism to have email addresses placed on the document. Modifying the language in this rule falls in line with the Judicial Council’s objective of modernizing rules to facilitate e-business practices as well as e-filing.</p>	<p>Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page</p> <p>ITAC and CSCAC decline to pursue this recommendation. Under rule 2.111(1), an e-mail address may be provided on the first page, if available, as a convenience to the court and parties. However, this email address is not necessarily the electronic service address.</p> <p>Parties consent to permissive electronic service by filing form EFS-500, <i>Consent to Electronic Service and Notice of Electronic Service Address</i>, which requires that the party specify his or her electronic service address. In addition, rule 2.256(a)(4) requires parties to provide one or more electronic service addresses, in the manner specified by the court, at which the filer agrees to accept service. So courts already have the ability to require parties to provide their electronic service addresses.</p>

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Title Three—Civil Rules			
	Commentator	Comment	Committee Response
18.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	<p>The wording of the proposed modification to California Rule of Court, rule 3.1300(c) should track the language of rules 2.253(b)(7) and 2.259(c) to refer to the document as being “received by the court” instead of “filed.”</p> <p>In addition, do all three of these rules contradict the language of Code of Civil Procedure section 1010.6 subdivision (b)(3)? “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. “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.” (Id.) The statute does not authorize a local court rule to allow a later filing.</p>	<p>This rules proposal, as circulated, does not contemplate modifying subdivision (c) of rule 3.1300. However, ITAC and CSCAC agree that the proposed language in subdivision (e) of rule 3.1300 should be modified by replacing “filed” with “received by the court.”</p> <p>Code of Civil Procedure section 1010.6(b)(3) governs for cases involving <i>permissive</i> electronic filing. Under subdivisions (f) and (g) of section 1010.6, <i>mandatory</i> electronic filing rules are exempt from complying with subdivision (b)(3). ITAC and CSCAC recommend additional language to clarify that the proposed amendment to rule 3.1300(e) only applies to mandatory electronic filing.</p> <p>To address the concerns of Ms. Brandes-Gibbs, the proposed amendment to rule 3.1300(e) would be revised as follows:</p> <p>(e). “A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. <u>Under rules 2.253(b)(7) and 2.259(c), a court may provide by local rule that a paper that is required to be filed electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.</u>”</p>

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19.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	<p><u>Rule 3.1302</u></p> <p>As proposed, this rule would create an unnecessary procedure for a clerk to “return” a digital copy of lodged material. The rule should be edited to state: “Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. After determination of the matter, the clerk may mail the material back to the party lodging it. If the material was lodged electronically, the clerk may delete it.”</p> <p><u>Rule 3.1304</u></p> <p>CAJ recommends that this rule be edited to state: “The clerk must post both on the court’s website and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing.”</p>	<p><u>Rule 3.1302</u></p> <p>ITAC and CSCAC decline to pursue CAJ’s recommendation at this time. The group foresees that potential issues may arise by instructing clerks only to delete the materials. Having clerks return the materials would provide the parties with notice. The committees will give further consideration to this rule during phase II of the Rules Modernization Project.</p> <p><u>Rule 3.1304</u></p> <p>ITAC and CSCAC decline to pursue this recommendation because it would narrow the scope of the proposed rule amendment. By requiring courts to post the schedules “electronically,” the proposed amendment is intended to encompass posting the schedules not only on court websites, but also by other electronic means.</p>
20.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	<p>We would recommend not encouraging inconsistency throughout the State.</p> <p>[*Comment provided in response to proposed amendment to rule 3.1300(e): “A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. <u>Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day.</u>”]</p>	<p>ITAC and CSCAC decline to pursue this recommendation at this time because it falls outside of the scope of this rules proposal, as circulated. The proposed amendment to rule 3.1300(e) is a technical, non-substantive amendment that brings this rule into line with rule 2.259(c). The committees may consider the court’s suggestion during phase II of the Rules Modernization Project.</p>

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21.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	<p>Our court objects to the amendment that seeks to limit application of the tabbing requirement contained in California Rule of Court 3.1110 (f) to motions filed in paper unless a similar requirement can be added that would apply bookmarking, or something similar, to electronically filed documents. Our court utilizes that rule to require litigants to bookmark their e-file motions, which is the equivalent to tabbing, so that documents filed with a motion are able to be located easily. We have found without the ability to require bookmarking to locate documents and exhibits filed within a motion, attempting to navigate a 100+ page summary judgment filing or anything similar thereto can be almost impossible. We recommend language be added to subsection (f) of the rule that states: “For motions filed electronically, court’s may adopt, via there E-file procedures, a requirement that exhibits be bookmarked or similarly identified in place of physically tabbing the documents.”</p>	<p>ITAC and CSCAC note the court’s objection and agree that it is prudent to wait until phase II to amend rule 3.1110(f). Postponing this amendment for further consideration during phase II will allow the court to continue relying on this rule in requiring that parties bookmark electronic documents.</p> <p>The court’s specific recommendation for an electronic bookmarking rule will be considered next year during phase II of the Rules Modernization Project.</p>
22.	TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee	<p><u>Suggested modification</u> The subcommittees propose one amendment to the proposal. Given the extensive nature of the changes in this proposal, the subcommittee members solicited input from a number of court executive officers whose courts could be impacted by the proposed changes. This input is a contributing factor to the modification that is proposed here.</p> <p>The subcommittees recommend that the new provisions contained in Rule 3.1300(e) should read as follows (see highlighted text):</p> <p>(e) Computation of time</p>	<p><u>Suggested modification</u> ITAC and CSCAC agree that the proposed amendment to rule 3.1300(e) should be revised to clarify that electronically filed papers are initially “received,” not “filed.” As discussed above in response to Ms. Brandes-Gibbs comment, the proposed amendment has been changed to track the language in rule 2.259(c).</p> <p>ITAC and CSCAC decline the suggested language as unnecessary. The proposed amendment to rule 3.1300(e) cross-references rule 2.259(c), which provides in relevant part: “This provision concerns only the effective date of filing. Any document that is electronically filed must be processed and satisfy</p>

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		<p>A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. <u>Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day if, after review by the clerk, it is accepted for filing.</u></p>	<p>all other legal filing requirements to be filed as an official court record.”</p> <p>(e) Computation of time A paper submitted before the close of the clerk’s office to the public on the day the paper is due is deemed timely filed. <u>Under rules 2.253(b)(7) and 2.259(c), a court may provide by local rule that a paper that is required to be filed electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.”</u></p>
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Title Eight—Appellate Rules			
	Commentator	Comment	Committee Response
23	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	<p><u>Rules 8.122, 8.144 and 8.336, and 8.838</u></p> <p>CAJ urges consideration regarding the potential impact of these proposed changes on indigent appellate litigants, including, in particular, incarcerated appellants and individuals who do not have access to computers.</p>	<p>ITAC and AAC agree with CAJ regarding the importance of considering the potential impact on indigent litigants of authorizing use of a trial court record in electronic form. Where the appellate rules authorize the appellate courts to require parties to file or serve documents electronically, they include protections for self-represented litigants. (See Cal. Rules of Court, rule 8.73(a)(2)(A).) The committees agree that, where express authorization for the record to be in electronic form is included in the rules, consideration should be given to including include similar protections. The amendments expressly authorizing use of a record in electronic form have been withdrawn from this rules proposal. ITAC and</p>

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Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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Title Eight—Appellate Rules		
Commentator	Comment	Committee Response
		<p>AAC may consider amendments to these rules, including protections for self-represented litigants, during phase II of the Rules Modernization Project. While this process continues, those appellate courts that accept part or all of the record in electronic form will be able to continue their practices, as they have under the existing rules.</p> <p>However, ITAC and AAC do not propose modifying those parts of the proposed amendments to rules 8.144, 8.336, and 8.838 that clarify application of those rules to documents in electronic format.</p>

DRAFT



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date August 11, 2015	Action Requested Please review for your August 20 meeting
To Judicial Council Technology Committee	Deadline August 20, 2015
From Court Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Contact Jessica Craven 818-558-3103 phone jessica.craven@jud.ca.gov
Subject Access to Electronic Appellate Court Records	

Background

Earlier this year, on the recommendation of the Joint Appellate Technology Subcommittee (JATS), the Appellate Advisory Committee (AAC) and Court Technology Advisory Committee (CTAC) recommended circulating for comment new rules addressing public access to electronic appellate court records, proposed rules 8.80 to 8.85. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records, rules 2.500 to 2.507, with some changes recommended by JATS to reflect the practices and needs of the appellate courts. The proposal was circulated for public comment between April 17, 2015 and June 17, 2015.

Comments from seven organizations were received, many of them lengthy and detailed with suggestions for specific changes. One commentator agreed with the proposal, three agreed if modified, two disagreed, and one suggested modifications but did not indicate a position on the proposal.

During its August 18 meeting, CTAC will review the comments and decide whether to recommend that the Judicial Council consider the proposed new rules 8.80 to 8.85 at its October 27 meeting. Staff will report orally during the Judicial Council Technology Committee's August 20 meeting on the CTAC meeting. The proposed amendments have already been recommended the Appellate Advisory Committee (AAC).

Attached for JCTC's review is a draft report to the Judicial Council that includes the proposed new rules 8.80 to 8.85 and a comment chart (with responses recommended by the AAC).

Recommendation

CTAC and the AAC recommend that the Judicial Council adopt new rules 8.80 to 8.85.

Attachment

- Draft report to the Judicial Council with attachments (proposed new rules 8.80 to 8.85 and comment chart with responses recommended by the AAC)



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Appellate Procedure: Access to Electronic Appellate Court Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rules 8.80-8.85	January 1, 2016
Recommended by	Date of Report
Appellate Advisory Committee	August 11, 2015
Hon. Raymond J. Ikola, Chair	Contact
Information Technology Advisory Committee	Katherine Sher, 415-865-8031
Hon. Terence L. Bruiniers, Chair	katherine.sher@jud.ca.gov
	Heather Anderson, 415-865-7691
	heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee (AAC) and the Information Technology Advisory Committee (ITAC) recommend the adoption of new rules to address public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records. The new rules are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form while protecting privacy interests.

Recommendation

The AAC and ITAC recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 8.80 to:

- State the purpose of the rules in the article as providing the public with reasonable access to appellate court records maintained in electronic form while protecting privacy interests; and
 - State the benefits of public access to appellate court records maintained in electronic form; and
 - State that the rules of the article do not create new rights of access to records.
2. Adopt rule 8.81 to state the application and scope of the new rules, applying only to records of the Supreme Court and Courts of Appeal, and only to access by the public.
 3. Adopt rule 8.82 to define terms used in the new rules, including a definition of “court records” to reflect the types of records maintained by the Courts of Appeal.
 4. Adopt rule 8.83 to:
 - Provide that all electronic records must be made reasonably available to the public in some form; and
 - Provide that electronic access, both remote and at the courthouse, will be provided to certain records including dockets or registers of actions, calendars, opinions, certain Supreme Court records, and records in civil actions if maintained in electronic form; and
 - Provide that access to certain documents in electronic form will be at the courthouse only, including any reporter’s transcript for which the reporter is entitled to a fee and records in ten types of proceedings; and
 - In extraordinary cases, give appellate courts discretion to allow remote access to records that would not be otherwise be available remotely, with requirements for notice to be given to the parties and the public in advance and for certain information to be redacted from the records to be made available remotely; and
 - Limit electronic access to most electronic case records to be available only on a case-by-case basis, with bulk distribution allowed only of certain specified types of records;
 5. Adopt rule 8.84 to set certain limitations and conditions on electronic access to appellate court records, including requirements for the means of providing access and requirements for notice to persons accessing records.

6. Adopt rule 8.85 to state that a court may impose fees for the costs of providing copies of electronic records.

The text of the proposed rules is attached at pages ___-___.

Previous Council Action

The Judicial Council has not previously adopted rules relating to access to electronic appellate court records. However, the council adopted the predecessors to rules 2.500 to 2.506, the rules governing access to electronic trial court records, which served as the model for the proposed rules, effective July 1, 2002. The predecessor to rule 2.507, relating to electronic access to trial court calendars, indexes, and registers of actions, was added effective July 1, 2003. These trial court rules were amended and renumbered effective January 1, 2007. Some provisions have been added to these rules since that time, and other provisions have been amended.

Rationale for Recommendation

California Rules of Court, rules 2.500 to 2.507, address public access to electronic trial court records. These rules are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests. The rules address, among other things, what electronic trial court records can be made available remotely, what records may be made available only at the courthouse, what records can be made available in bulk, and what records can only be accessed on a case-by-case basis.

As more documents are electronically filed in the Courts of Appeal and Supreme Court and stored in electronic form, it is anticipated that questions will arise about public access to these electronic records. The committees are therefore recommending adoption of a set of rules to address public access to the electronic records of the Courts of Appeal and the Supreme Court. The proposed appellate rules are based on the trial court rules, but have some substantive differences based primarily on differences in the nature of the records maintained by trial and appellate courts and in existing public access to these records.

Criteria for remote access and bulk distribution

The proposed rules keep in place the basic scheme used in the trial court rules to determine which records must be made available remotely, where feasible, and which must be made available only at the courthouse; which records are to be made available only on a case-by-case basis; and which can be subject to bulk distribution.

As in the trial courts, electronic access to registers of actions, calendars, and indexes would be required to be provided both remotely and at the courthouse where feasible. In recognition of the current practices of the appellate courts, the proposed appellate court rule would also require remote and courthouse access to dockets, opinions, and specified Supreme Court records, as listed in proposed rule 8.83(b)(1). Bulk distribution of these records would be permitted under proposed rule 8.83(f).

The dividing line as to whether other types of electronic records would be made available remotely is drawn, as it is in the trial court rules, according to case type. In most civil cases, the appellate courts would be required, where feasible, to provide public access to electronic court records both remotely and at the courthouse under rule 8.83(b)(2). These records would only be available on a case-by-case basis, where the person requesting the record is able to identify the case by information such as the case number or a party's name.

In criminal cases, juvenile court cases, family law cases and other proceedings specified in proposed rule 8.83 (c)(2), remote access to case records (other than those listed in rule 8.83 (b)(1) such as calendars, dockets and indexes) would not be allowed. As with trial court electronic records, public access to these electronic appellate court records would be available at the courthouse only.

Under rule 8.83(d), however, a presiding justice or a justice assigned by a presiding justice would be given discretion to allow remote public access to records in a proceeding type listed under 8.83(c)(2) in a case of extraordinary public interest. In the trial court rule, the discretion to allow such access is limited to extraordinary criminal cases. The proposed appellate rule would give broader discretion to allow remote access in any of the types of proceedings listed in 8.83(c)(2).

Requirements for vendor contracts

In the trial court rules, rule 2.505 establishes requirements for any contract between a trial court and a vendor to provide public access to electronic records, including that the contract must provide that the court is the owner of the records and has the right to control their use. The proposed appellate rules do not contain a parallel provision. In developing the proposed appellate rules, ITAC and the AAC determined that it was not necessary to address issues relating to vendor contracts in the rules at this time. The current practice of the appellate courts is to provide access to electronic court records directly, through the courts.ca.gov website, rather than using vendors to create and maintain systems for access. Although it is possible that the appellate courts will begin to use vendors to provide public access when the use of electronic records becomes more common in those courts, it is likely that all of the appellate courts will use the same vendor and have the same contract. Thus it will be easier for the appellate courts to put in place appropriate controls on a vendor – as determined by the particular needs of the appellate courts – in the course of negotiating the single contract for those services.

Requirements for information to be included in and excluded from records made available remotely

The trial courts, under rule 2.507, are required to include certain information in calendars, indexes and registers of actions that are made electronically accessible to the public. Other information is required to be excluded from those records, including social security numbers, financial information, and victim and witness information. The proposed appellate rules do not contain a parallel provision. In developing the proposed appellate rules, ITAC and the AAC

found that the appellate courts, are already including the information required under rule 2.507 when dockets, registers of actions, and calendars are made available electronically. Some of the information required to be excluded from records under rule 2.507 – such as social security numbers – is excluded from the electronic records made available by the appellate courts. However, because the appellate courts make opinions available electronically, which by their nature may include certain kinds of information excluded under rule 2.507, such as information regarding the age or gender of parties, the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate both to provide information to the public and to protect privacy, ITAC and the AAC did not include in the proposed appellate court rules a rule similar to 2.507.

Comments, Alternatives Considered, and Policy Implications

External Comments

This proposal was circulated from April 17, 2015 to June 17, 2015 in the regular spring 2015 comment cycle. Comments from seven organizations were received, many of them lengthy and detailed with suggestions for specific changes. One commentator agreed with the proposal, three agreed if modified, two disagreed, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of all comments received (with one lengthy comment attached separately) and the committees' responses is attached at pages ___-___.

Definition of “court record”

The Second District Court of Appeal objected to the second sentence of the definition of “court record” in proposed rule 8.82 (1), which states that “The term does not include the personal notes or preliminary memoranda of justices, judges or other judicial branch personnel.” The Court commented that the sentence is unnecessary and could create confusion as to whether some notes and memoranda might be considered court records. This language in the proposed language is taken verbatim from trial court rule 2.502, and the committees have not heard of any difficulties in applying that rule in the trial courts. The committees therefore declined to revise the proposed rule as suggested, choosing to keep the appellate court rule consistent with the trial court rule.

Criteria for remote access

The State Bar of California's Committee on Appellate Courts (CAC) and the State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) questioned whether the distinctions made in the proposed rules as to which records will be available remotely, and which records only at the courthouse, make sense in terms of either privacy protection or supporting the public's right to access public court records. The CAC noted that the distinction between civil cases, in which records will generally be available remotely, and other types of cases including criminal, juvenile, and family law cases, is not an adequate way to distinguish when records are likely to contain sensitive information. Moreover, the line drawn between

remote access and courthouse access may place unfair burdens on residents of rural areas or others for whom it is difficult to get to a courthouse, while potentially allowing determined seekers to gain access to sensitive information. The SCDLS similarly asked for a more nuanced consideration of how to protect private information while maintaining public access to public records.

The committees declined to revise the proposed rules in response to these comments. The committees in their discussion of these comments noted that the proposed rules are based closely on the trial court rules regarding access to court records that have been in effect for many years. These initial proposed rules are intended to build on the experience of the trial courts. If changes are considered in the future as to what records should be available remotely, or as to restrictions on information available at the courthouse, the committee's view was that those changes should be simultaneously be considered for the trial and appellate rules

Remote access in extraordinary cases

Both the Orange County Bar Association (OCBA) and the Appellate Practice Section of the San Diego County Bar Association (SDCBA) commented on the scope of discretion given to appellate courts under proposed rule 8.83(d) to allow remote access to court records in extraordinary cases of case types where remote access would not generally be allowed. The intent of the committees in drafting the proposed rule was to give the appellate courts discretion to allow remote access in an extraordinary case of any type, where trial courts can do so only in extraordinary criminal cases. However, the word "criminal" was inadvertently left in the first sentence of proposed rule 8.83 (d) as circulated – although the Invitation to Comment was clear that the discretion was intended to extend to all case types.

OCBA accordingly commented that the title of proposed rule 8.83(d) should be "Remote electronic access allowed in extraordinary criminal cases" to reflect more accurately the language of the proposed rule. SDCBA commented that the rule should be revised to give discretion to allow remote access in certain other types of cases.

In response to these comments, the committees revised the rule to read as originally intended, and as summarized in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83(d) and correcting the reference in that sentence from "Notwithstanding (c)(2)(E)" to "Notwithstanding (c)(2)".

Inclusion or exclusion of specific information from electronic records

OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.507, which lists specific types of information that must be included in and excluded from those electronic records which are made available remotely and in bulk. In a similar vein, SCDLS suggested that the redactions required by rule 8.83(d) (2) when records are made available

remotely under the discretion granted in rule 8.83(d) should be applied whenever electronic court records are made available remotely.

The committees declined to make these changes to the rules, agreeing that the proposed rule as circulated is adequate given the current practices of the appellate courts in making information available remotely and that the proposed change is not needed. As discussed above, in developing the proposed appellate rules, the committees recognized, first, that the appellate courts currently include in those records made available remotely the types of information required to be included under rule 2.507. The committees further recognized that because of the types of case records made available remotely by appellate courts, the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate to provide information to the public and to protect privacy, the committees declined to make these suggested changes.

SDCBA suggested that the e-mail addresses of parties, victims, witnesses and court personnel be included in the information required to be redacted from records to be made available online in extraordinary cases. Based on this comment, the committees have revised proposed rule 8.83(d)(2) to change “addresses and phone numbers of parties, victims, witnesses and court personnel” to “addresses, e-mail addresses and phone numbers of parties, victims, witnesses and court personnel”.

Contracts with vendors

OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.505, which sets certain requirements for contracts with vendors for the provision of public access to electronic services. As discussed above, in developing the proposed appellate rules, the committees recognized that the needs of the appellate courts with regard to vendor contracts differ from those of the trial courts. The committees expressly decided not to include provisions similar to rule 2.505 in the proposed appellate court rules as they believed such provisions were not needed. The committees therefore declined to make this suggested change.

Several commentators also suggested additions to rule 8.85 to address concerns regarding the use of vendors to provide public access to electronic court records, the control such vendors might exercise over those records and the fees that might be charged for access. Courthouse News Service (CNS), in particular, submitted extensive comments regarding issues of vendor control over access to records and the fees that might be charged for such access. CNS suggested several provisions to be added to rule 8.85 to put in place limits on vendor control of records, requirements for free public access to newly filed records, and a requirement for a fee option to allow frequent users of court records to get information without incurring excessive fees. SCDLS similarly suggested adding language to 8.85 (b) requiring that any vendor fees promote equitable public access.

In response to these comments, rather than adding any of the suggested provisions, the committees revised proposed rule 8.85 to delete paragraph (b) entirely. As noted above, at the present time, appellate courts provide public access to any electronic court records directly, not using vendors. The committees concluded that the promulgation of rules regarding requirements for vendor agreements for the appellate courts is not necessary at this time.

Alternatives Considered

In addition to the alternatives considered as a result of the public comments, discussed above, in developing these rules the committees considered a variety of alternatives with respect to the scope and proposed language of the proposed rules. The committees considered where the rules for the appellate courts should differ from those of the trial courts, and the rules as proposed reflect the decisions made with regard to those alternatives. For example, the committees considered whether the rules should provide for remote access only to those types of electronic records that are remotely accessible under the trial court rules, but decided that the proposed rules should reflect and maintain the current remote access to additional court records.

The committees also considered not proposing these rules at all. However, the committees concluded that it would be helpful to the public and the courts to clarify the scope of public access to electronic appellate court records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because it mandates access to those electronic appellate court records that are already currently being made available electronically and, like the trial court rules, provides for further access only to the extent feasible. The proposed rules should provide guidance with respect to electronic access to appellate court records, which may reduce questions about such access for litigants and thus costs associated with inquiries about this access for both litigants and the courts.

Attachments and Links

1. Cal. Rules of Court, rules 8.80-8.85, at pages ___-___.
2. Chart of comments, at pages ___-___, including as an attachment the full comment of the Courthouse News Service.

Rules 8.80–8.85 of the California Rules of Court would be adopted, effective January 1, 2016, to read:

1 **Article 6. Public Access to Electronic Appellate Court Records**

2
3 **Rule 8.80. Statement of purpose**

4 **Rule 8.81. Application and scope**

5 **Rule 8.82. Definitions**

6 **Rule 8.83. Public access**

7 **Rule 8.84. Limitations and conditions**

8 **Rule 8.85. Fees for electronic access**

9
10
11 **Rule 8.80. Statement of purpose**

12
13 **(a) Intent**

14
15 The rules in this article are intended to provide the public with reasonable access to
16 appellate court records that are maintained in electronic form, while protecting privacy
17 interests.

18
19 **(b) Benefits of electronic access**

20
21 Improved technologies provide courts with many alternatives to the historical paper-based
22 record receipt and retention process, including the creation and use of court records
23 maintained in electronic form. Providing public access to appellate court records that are
24 maintained in electronic form may save the courts and the public time, money, and effort
25 and encourage courts to be more efficient in their operations. Improved access to appellate
26 court records may also foster in the public a more comprehensive understanding of the
27 appellate court system.

28
29 **(c) No creation of rights**

30
31 The rules in this article are not intended to give the public a right of access to any record
32 that they are not otherwise entitled to access. The rules do not create any right of access to
33 sealed or confidential records.

34
35 **Advisory Committee Comment**

36
37 The rules in this article acknowledge the benefits that electronic court records provide but attempt to limit
38 the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur
39 as a result of remote access to electronic court records. The proposed rules take into account the limited
40 resources currently available in the appellate courts. It is contemplated that the rules may be modified to
41 provide greater electronic access as the courts' technical capabilities improve and with the knowledge
42 gained from the experience of the courts in providing electronic access under these rules.

43
44 **Subdivision (c).** Rules 8.45–8.47 govern sealed and confidential records in the appellate courts.

1 **Rule 8.81. Application and scope**

2
3 **(a) Application**

4
5 The rules in this article apply only to records of the Supreme Court and Courts of Appeal.

6
7 **(b) Access by parties and attorneys**

8
9 The rules in this article apply only to access to court records by the public. They do not
10 limit access to court records by a party to an action or proceeding, by the attorney of a
11 party, or by other persons or entities that are entitled to access by statute or rule.

12
13
14 **Rule 8.82. Definitions**

15
16 As used in this article, the following definitions apply:

- 17
18 (1) “Court record” is any document, paper, exhibit, transcript, or other thing filed in an action
19 or proceeding; any order, judgment, or opinion of the court; and any court minutes, index,
20 register of actions, or docket. The term does not include the personal notes or preliminary
21 memoranda of justices, judges, or other judicial branch personnel.
- 22
23 (2) “Electronic record” is a court record that requires the use of an electronic device to access.
24 The term includes both a record that has been filed electronically and an electronic copy or
25 version of a record that was filed in paper form.
- 26
27 (3) “The public” means an individual, a group, or an entity, including print or electronic
28 media, or the representative of an individual, a group, or an entity.
- 29
30 (4) “Electronic access” means computer access to court records available to the public through
31 both public terminals at the courthouse and remotely, unless otherwise specified in the
32 rules in this article.
- 33
34 (5) Providing electronic access to electronic records “to the extent it is feasible to do so”
35 means that electronic access must be provided to the extent the court determines it has the
36 resources and technical capacity to do so.
- 37
38 (6) “Bulk distribution” means distribution of multiple electronic records that is not done on a
39 case-by-case basis.
- 40
41
42

1 **Rule 8.83. Public access**

2
3 **(a) General right of access**

4
5 All electronic records must be made reasonably available to the public in some form,
6 whether in electronic or in paper form, except sealed or confidential records.

7
8 **(b) Electronic access required to extent feasible**

9
10 (1) Electronic access, both remote and at the courthouse, will be provided to the
11 following court records, except sealed or confidential records, to the extent it is
12 feasible to do so:

13
14 (A) Dockets or registers of actions;

15
16 (B) Calendars;

17
18 (C) Opinions; and

19
20 (D) The following Supreme Court records:

21
22 i. Results from the most recent Supreme Court weekly conference;

23
24 ii. Party briefs in cases argued in the Supreme Court for at least the
25 preceding 3 years;

26
27 iii. Supreme Court minutes from at least the preceding 3 years.

28
29 (2) If a court maintains records in civil cases in addition to those listed in (1) in
30 electronic form, electronic access to these records, except those listed in (c), must be
31 provided both remotely and at the courthouse, to the extent it is feasible to do so.

32
33 **(c) Courthouse electronic access only**

34
35 If a court maintains the following records in electronic form, electronic access to these
36 records must be provided at the courthouse, to the extent it is feasible to do so, but remote
37 electronic access may not be provided to these records:

38
39 (1) Any reporter's transcript for which the reporter is entitled to receive a fee; and

40
41 (2) Records other than those listed in (b)(1) in the following proceedings:

42
43 (A) Proceedings under the Family Code, including proceedings for dissolution,
44 legal separation, and nullity of marriage; child and spousal support
45 proceedings; child custody proceedings; and domestic violence prevention
46 proceedings;

- 1
2 (B) Juvenile court proceedings;
3
4 (C) Guardianship or conservatorship proceedings;
5
6 (D) Mental health proceedings;
7
8 (E) Criminal proceedings;
9
10 (F) Civil harassment proceedings under Code of Civil Procedure section 527.6;
11
12 (G) Workplace violence prevention proceedings under Code of Civil Procedure
13 section 527.8;
14
15 (H) Private postsecondary school violence prevention proceedings under Code of
16 Civil Procedure section 527.85;
17
18 (I) Elder or dependent adult abuse prevention proceedings under Welfare and
19 Institutions Code section 15657.03; and
20
21 (J) Proceedings to compromise the claims of a minor or a person with a disability.
22

23 **(d) Remote electronic access allowed in extraordinary cases**

24
25 Notwithstanding (c)(2), the presiding justice of the court, or a justice assigned by the
26 presiding justice, may exercise discretion, subject to (d)(1), to permit remote electronic
27 access by the public to all or a portion of the public court records in an individual case if
28 (1) the number of requests for access to documents in the case is extraordinarily high and
29 (2) responding to those requests would significantly burden the operations of the court. An
30 individualized determination must be made in each case in which such remote electronic
31 access is provided.
32

33 (1) In exercising discretion under (d), the justice should consider the relevant factors,
34 such as:

35
36 (A) The privacy interests of parties, victims, witnesses, and court personnel, and
37 the ability of the court to redact sensitive personal information;

38
39 (B) The benefits to and burdens on the parties in allowing remote electronic
40 access; and

41
42 (C) The burdens on the court in responding to an extraordinarily high number of
43 requests for access to documents.

44
45 (2) The following information must be redacted from records to which the court allows
46 remote access under (d): driver's license numbers; dates of birth; social security

1 numbers; Criminal Identification and Information and National Crime Information
2 numbers; addresses, e-mail addresses and phone numbers of parties, victims,
3 witnesses, and court personnel; medical or psychiatric information; financial
4 information; account numbers; and other personal identifying information. The court
5 may order any party who files a document containing such information to provide
6 the court with both an original unredacted version of the document for filing in the
7 court file and a redacted version of the document for remote electronic access. No
8 juror names or other juror identifying information may be provided by remote
9 electronic access. Subdivision (d)(2) does not apply to any document in the original
10 court file; it applies only to documents that are made available by remote electronic
11 access.

12
13 (3) Five days' notice must be provided to the parties and the public before the court
14 makes a determination to provide remote electronic access under this rule. Notice to
15 the public may be accomplished by posting notice on the court's website. Any
16 person may file comments with the court for consideration, but no hearing is
17 required.

18
19 (4) The court's order permitting remote electronic access must specify which court
20 records will be available by remote electronic access and what categories of
21 information are to be redacted. The court is not required to make findings of fact.
22 The court's order must be posted on the court's website and a copy sent to the
23 Judicial Council.

24
25 **(e) Access only on a case-by-case basis**

26
27 With the exception of the records covered by (b)(1), electronic access to an electronic
28 record may be granted only when the record is identified by the number of the case, the
29 caption of the case, the name of a party, the name of the attorney, or the date of oral
30 argument, and only on a case-by-case basis.

31
32 **(f) Bulk distribution**

33
34 Bulk distribution may be provided only of the records covered by (b)(1).

35
36 **(g) Records that become inaccessible**

37
38 If an electronic record to which electronic access has been provided is made inaccessible to
39 the public by court order or by operation of law, the court is not required to take action
40 with respect to any copy of the record that was made by a member of the public before the
41 record became inaccessible.

42
43 **Advisory Committee Comment**

44
45 The rule allows a level of access by the public to all electronic records that is at least equivalent to the
46 access that is available for paper records and, for some types of records, is much greater. At the same
47 time, it seeks to protect legitimate privacy concerns.

1
2 **Subdivision (b).** Courts should encourage availability of electronic access to court records at public off-
3 site locations.
4

5 **Subdivision (c).** This subdivision excludes certain records (those other than the register, calendar,
6 opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and
7 family court matters) from remote electronic access. The committees recognized that while these case
8 records are public records and should remain available at the courthouse, either in paper or electronic
9 form, they often contain sensitive personal information. The court should not publish that information
10 over the Internet. However, the committees also recognized that the use of the Internet may be appropriate
11 in certain criminal cases of extraordinary public interest where information regarding a case will be
12 widely disseminated through the media. In such cases, posting of selected nonconfidential court records,
13 redacted where necessary to protect the privacy of the participants, may provide more timely and accurate
14 information regarding the court proceedings, and may relieve substantial burdens on court staff in
15 responding to individual requests for documents and information. Thus, under subdivision (e), if the
16 presiding justice makes individualized determinations in a specific case, certain records in criminal cases
17 may be made available over the Internet.
18

19 **Subdivisions (e) and (f).** These subdivisions limit electronic access to records (other than the register,
20 calendars, opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk
21 distribution of those records. These limitations are based on the qualitative difference between obtaining
22 information from a specific case file and obtaining bulk information that may be manipulated to compile
23 personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of
24 aggregate information may be exploited for commercial or other purposes unrelated to the operations of
25 the courts, at the expense of privacy rights of individuals.
26

27 Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases
28 to: Judicial Council Support, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA
29 94102-3688.
30

31 32 **Rule 8.84. Limitations and conditions** 33

34 **(a) Means of access** 35

36 Electronic access to records required under this article must be provided by means of a
37 network or software that is based on industry standards or is in the public domain.
38

39 **(b) Official record** 40

41 Unless electronically certified by the court, a court record available by electronic access is
42 not the official record of the court.
43

44 **(c) Conditions of use by persons accessing records** 45

46 Electronic access to court records may be conditioned on:
47

48 (1) The user's consent to access the records only as instructed; and
49

1 (2) The user's consent to monitoring of access to its records.

2
3 The court must give notice of these conditions, in any manner it deems appropriate. Access
4 may be denied to a member of the public for failure to comply with either of these
5 conditions of use.

6
7 **(d) Notices to persons accessing records**

8
9 The court must give notice of the following information to members of the public
10 accessing its records electronically, in any manner it deems appropriate:

11
12 (1) The identity of the court staff member to be contacted about the requirements for
13 accessing the court's records electronically.

14
15 (2) That copyright and other proprietary rights may apply to information in a case file,
16 absent an express grant of additional rights by the holder of the copyright or other
17 proprietary right. This notice must advise the public that:

18
19 (A) Use of such information in a case file is permissible only to the extent
20 permitted by law or court order; and

21
22 (B) Any use inconsistent with proprietary rights is prohibited.

23
24 (3) Whether electronic records are the official records of the court. The notice must
25 describe the procedure and any fee required for obtaining a certified copy of an
26 official record of the court.

27
28 (4) That any person who willfully destroys or alters any court record maintained in
29 electronic form is subject to the penalties imposed by Government Code section
30 6201.

31
32 **(e) Access policy**

33
34 A privacy policy must be posted on the California Courts public-access website to inform
35 members of the public accessing its electronic records of the information collected
36 regarding access transactions and the uses that may be made of the collected information.

37
38
39 **Rule 8.85. Fees for copies of electronic records**

40
41 The court may impose fees for the costs of providing copies of its electronic records, under
42 Government Code section 68928.

43
44

SPR15-03

Appellate Procedure: Access to Electronic Appellate Court Records (adopt rules 8.80 to 8.85)

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

	Commentator	Position	Comment	[Proposed] Committee Response
1.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	NI	<p>The Second Appellate District of the Court of Appeal has reviewed the materials, including the Invitations to Comment, forwarded to us by your message of April 20, 2015. The Second Appellate District has one comment on subdivision (1) of proposed rule 8.82.</p> <p>Subdivision (1) of proposed rule 8.82 provides:</p> <p>“Court record” is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. <i>The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.</i></p> <p>It is the view of the Second Appellate District that the second sentence of subdivision (1) of proposed rule 8.82, shown by italics, should be eliminated.</p> <p>The references to “personal notes” and “preliminary memoranda” in the second sentence suggest that some notes and some memoranda would be accessible. This would be undesirable in that draft opinions and comments on draft opinions obviously need to be protected from disclosure. Apart from this consideration, the second sentence should be eliminated since it serves no purpose. The first sentence of subdivision (1) of proposed rule 8.82 satisfactorily lists documents that should be and</p>	<p>The language of the sentence in question in proposed rule 8.82, subdivision (1), is taken directly from existing Rule 2.502, subdivision (1), pertaining to electronic access to trial court records, except that a references to “justices” has been added. This sentence is meant to clarify that these materials are not court records and therefore will not be subject to the rules regarding electronic access to court records. The language of rule 2.502 has not, to the committees’ knowledge, posed difficulties for the trial courts with regard to determining what materials are available for public access, nor have private notes or memoranda been made publicly accessible. Moreover, differences in wording between the rule applicable to the trial courts and the rule applicable to the appellate courts might inadvertently create difficulties for the trial courts by calling into question the interpretation of what materials are meant to be included in “court records.” The committees therefore recommend against making the language of the proposed rule for the appellate courts different from that of the existing rule for the trial courts.</p>

SPR15-03**Appellate Procedure: Access to Electronic Appellate Court Records** (adopt rules 8.80 to 8.85)

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

	Commentator	Position	Comment	[Proposed] Committee Response
			in fact are now accessible to the public. The second sentence is surplusage.	
2.	Courthouse News Service by Rachel E. Matteo-Boehm	AM	<p>See full comment, attached.</p> <p>The central points of the comment are summarized below in numbered paragraphs for reference in reading the responses given.</p> <p>1. Courthouse News Service (CNS) begins its comment by noting that that its experience is that electronic access is “best performed by the court itself” and that in its view, ideally, the rule would not allow for vendor controlled access. CNS asks that the proposed rules address the two main concerns raised by use of vendors: vendor control over the public court record and both the amount of, and the circumstance under which a fee may be charged.</p>	<p>1. As a preliminary matter, the committees note, in response to CNS’s general concerns regarding the use of vendor services for access to electronic records, that the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to provide access to electronic records directly, as they do for paper records. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time.</p> <p>In addition, the committees’ view is that it is important to move forward now with adopting the proposed rules. Adoption of the proposed rules is critically important to provide standards for allowing appropriate access to electronic appellate court records. Courthouse News Service (CNS) raises issues which should be considered and addressed as the appellate courts move forward in implementing procedures for electronic access. However, under rule 10.22, substantive changes to the Rules of Court need to be circulated for public comment before they may be recommended for adoption by the Judicial Council. Since these</p>

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

	Commentator	Position	Comment	[Proposed] Committee Response
			<p>2. With regard to the issue of vendor control over access to public records, CNS notes the issues that arise when a vendor providing e-filing and e-access services to a court is also a part of a larger organization that engages in news reporting – for example, LexisNexis. These organizations may be able to use their access to and control over court records to gain a competitive advantage over other news organizations, because they have earlier access to information and can get it at no cost. CNS gives examples of standards and contracts used</p>	<p>subjects were not addressed in the proposal that was circulated for comment, rules addressing these subjects cannot be recommended for adoption at this time. The committee’s view is that, consideration of the suggested changes should not hold up the adoption of the rules that were circulated. As the appellate courts, the public, CNS and other news services gain experience with the new rules and with new procedures for access to electronic appellate court records, the concerns raised by CNS can be considered in light of that experience, and the rules amended as needed. Indeed, the Information Technology Advisory Committee is leading a two-phase Rules Modernization Project, which in its second phase of substantive revision will offer an opportunity for comprehensive review of the rules governing access to electronic court records in both the trial courts and the appellate courts. The committees can consider CNS’s suggestions as part of that comprehensive review.</p> <p>2. The committees’ view is that because the appellate courts are not currently using vendors to provide public access to records, the proposed addition is not necessary at this time. For the same reason, the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule. As noted above, the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to continue to provide access to electronic records directly, rather than</p>

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

	Commentator	Position	Comment	[Proposed] Committee Response
			<p>by trial courts in California and by courts in other states to prevent e-filing and e-access vendors from using their position to gain such a competitive advantage, and proposes language that would prohibit a vendor from “reselling, recombining, reconfiguring, or retaining any copies of the court’s electronic records” except as called for by the agreement.</p> <p>3. With regard to the fee related issues, CNS asks for two specific additions to the proposed rule: First, a new rule 8.85 (b)(1) would require that courthouse access be available, upon filing, through public access terminals at the courthouse at no charge.</p> <p>4. Second, CNS proposes that rule 8.85(b)(2) be added to require that there be an option to allow frequent users of court records to access them without excessive cost.</p>	<p>through a vendor.</p> <p>3. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule.</p> <p>4. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule.</p>
3.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	AM	<p>1) The proposed rules do not appear to cover electronic records for small claims appeals & appeals of limited jurisdiction cases which are heard in the superior court [see Rule 8.81(a)]; those appeals are also not covered by the trial court rules found at Rules 2.500 - 2.507; those records must be addressed somewhere or a new set of rules adopted for them.</p> <p>(2) Rule 8.83 "Title" should be changed to "Remote electronic access allowed in extraordinary criminal cases" to match Rule</p>	<p>1) The committees appreciate this suggestion and intend to undertake consideration of rules to govern access to electronic records (as well as electronic filing) in the appellate divisions of superior courts.</p> <p>2) As noted in the Invitation to Comment, proposed rule 8.83(d) is intended to allow an appellate court discretion to provide remote access</p>

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			<p>2.503(e) and to more accurately describe that subsection.</p> <p>(3) Language should be added under a new Rule 8.83(h) that matches existing Rule 2.503(i) concerning a requirement that the Courts should encourage the availability of electronic access "at public off-site locations"; no reason exists for downplaying this encouragement for appellate courts while keeping it for trial courts.</p> <p>(4) The language from existing Rule 2.505 concerning "Contracts with Vendors" should be included somewhere in these appellate court rules as no valid reason can exist for excluding these requirements for appellate court vendors.</p>	<p>to additional court records not only in extraordinary criminal cases but in other extraordinary cases as well. However, the proposed rule was inadvertently circulated without striking the reference to "criminal" in the language borrowed from rule 2.503(e) to achieve this broader application. The committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d).</p> <p>3) The language of rule 2.503(i) encouraging public off-site access is incorporated into the Advisory Committee Comment on proposed rule 8.83.</p> <p>4) Please see the response to the comments of Court News Service above. The committees recommend that the proposed rules be adopted without adding a rule parallel to Rule 2.505. The committee note that public access to electronic appellate court records is currently provided through the courts and contracting with a vendor to provide this service in not contemplated at this time. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time. In addition, the committees recognized that the situation for the appellate courts contracting with vendors for records access services will differ from that of the trial courts.</p>

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			<p>(5) Similar language from existing Rule 2.507 for trial courts must be added as may be modified for appellate court actions since as proposed there is no language about the "intent" of these rules, the "minimum contents" for certain court records, and the "excludable information" not allowed to be accessible through those electronic records (protections for both the courts and the parties/participants are required).</p>	<p>While the fifty-eight trial courts might have many forms of contract and use many different vendors, all of the appellate courts will likely have the same contract with the same vendor, if a vendor is used, for access to records. Committee members noted that, in the event that a contract with a vendor is contemplated, the issues addressed in rule 2.505 for trial court contracts with vendors can be addressed in the appellate courts' negotiations with vendors.</p> <p>5) The committees recommend against adding a rule parallel to rule 2.507 to this proposal. The current practices of the appellate courts with regard to the electronic information now made available to the public are in line with the requirements of the proposed addition. The committees therefore did not find it necessary to add an appellate rule similar to rule 2.507.</p>
4.	San Diego County Bar Association, Appellate Practice Section by Victoria E. Fuller, Chair	AM	<p>The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a</p>	

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			<p>few issues for further consideration.</p> <p>Our section approves of the new rules specifically addressing public access to electronic appellate court records. We understand that these proposed new rules are based on the existing rules addressing public access to electronic trial court records. We offer two minor revisions and suggest two substantive changes to the proposed rules:</p> <ul style="list-style-type: none"> • The first and second sentences of proposed Rule 8.81 (b), should be revised to include the word "electronic" before the term "court records": • Under Rule 8.81(d)(2), the information to be redacted from records to which the court allows remote public access should include the Email addresses of parties, victims, witnesses, and court personnel. This appears to be just an oversight in the proposed rule. • Substantively, it appears Rule 8.83(d) does not provide a procedure for the court to exercise 	<p>The committees recommend against the suggested change to proposed rule 8.81(b). The language of the proposed rule as circulated is taken directly from rule 2.501(b). Moreover, in some places the proposed rules make reference to non-electronic court records.</p> <p>This appears to be a reference to proposed rule 8.83(d) (2). Again, the language of the proposed rule is taken directly from the parallel trial court rule, rule 2.503(e). Here, however, the committees agree that adding e-mail addresses to the list of information to be redacted is a sensible change. To address this concern, the committees have revised their proposal, in proposed rule 8.83(d) (2), to change “addresses and phone numbers of parties, victims, witnesses and court personnel” to “addresses, <u>e-mail addresses</u> and phone numbers of parties, victims, witnesses and court personnel”.</p> <p>As noted above in the response to the comment by the Orange County Bar Association, the proposed</p>

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			<p>its discretion. We suggest that the proposed rule include language stating that a motion may be presented. For example, the first sentence of Rule 8.83(d) could be revised to read (underscored language added): "Notwithstanding (c)(2)(E), by written motion or on the court's own motion, the presiding justice of the court ..."</p> <ul style="list-style-type: none"> Finally, Rule 8.83(d) should be revised to allow the presiding justice of the court, or a justice assigned by the presiding justice, to exercise discretion, subject to (e)(1), to permit remote electronic access by the public to all or a portion of the public court records in not only an individual criminal case under subdivision (c)(2)(E), but also in civil harassment proceedings, workplace violence prevention proceedings, and postsecondary school violence prevention proceedings addressed under (c)(2)(F), (G), and (H). The rationale for permitting remote access to criminal proceedings in high publicity cases applies with equal force to these quasi-criminal proceedings. In such an instance, the judicial officer should have the discretion, in a particular individual proceeding, to allow online public access. 	<p>rule was intended to give the appellate court discretion to allow remote access in any of the case types listed, but the limitation to criminal cases was inadvertently left in the language of the rule as circulated from the parallel trial court rule used as a model for this rule. As noted above in response to the comments of the Orange County Bar Association, committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d)</p>
5.	State Bar of California Committee on Appellate Courts by John Derrick, Chair	N	The Committee supports generally the principle of providing the public with "reasonable access" to appellate court records that are maintained in electronic form, but opposes the Rule's proposal to institute a bifurcated system wherein most	The committees appreciate the concerns raised by the Committee on Appellate Courts and are sensitive to the need to find an appropriate balance between the privacy rights of litigants and the public interest in making court records.

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			<p>civil records are made available remotely whereas records in other types of cases (notably criminal, juvenile, and family court matters) are limited to in-court access.</p> <p>The Committee believes that if the Court of Appeal or Supreme Court intends to make a judicial record publicly available, the California Rules of Court should not make certain types of records more difficult to access than others. Requiring the public to travel to a courthouse to access certain types of records threatens to impose a disproportionate burden on individuals in rural areas and those with the fewest financial resources. It also is a dubious strategy for protecting the privacy rights of litigants. While the rule makes it more tedious for the public to access a document in certain types of cases, it does nothing to actually prevent a motivated member of the public from accessing the underlying information.</p> <p>The Committee also notes that the rule’s distinction between civil cases on the one hand, and criminal, juvenile, and family court matters on the other hand appears extremely overbroad. Certain criminal, juvenile, and family court matters include the filing of documents with sensitive information, but others do not. Likewise, civil matters also may involve the filing of sensitive personal information. Despite imposing greater access restrictions on certain types of matters, the rule does not appear narrowly tailored to the public interest in</p>	<p>accessible. As the appellate courts move towards modernization of their systems to allow more widespread e-filing of documents it is critical that guidelines be in place regarding access to electronic appellate court records. In creating the proposed rules on this subject, the committees looked to the rules already in place for the trial courts regarding access to electronic court records. These rules have proved over many years to provide a workable framework for the courts. The proposed rules for the appellate courts seek to build on the success of the rules for access to electronic court records in the trial courts, allowing for possible later amendment based on the experience of the public and the appellate courts with the implementation of these proposed rules.</p> <p>Although a general dividing line between access to electronic records in civil cases and access to electronic records in the other types of proceedings listed in proposed rule 8.83(c)(2) may be an imperfect means of balancing these interests, the proposed adoption of these rules is based on a record of workability in the trial courts. The committees’ view is that if an alternate approach to establishing a dividing line is to be considered, it should be considered for both the trial and appellate rules at the same time. In the meantime, as noted in the responses above, the committees urge adoption of these rules to facilitate access to electronic access as the appellate courts modernize their records systems. Further changes can be made later, perhaps as part</p>

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			<p>protecting individual privacy. It bears noting that although a 2002 report drafted for the Conference of Chief Justices on public access to judicial records contemplated that certain records might be made electronically available at the courthouse but not online, it cautioned that such a restriction should be limited to discrete categories of information such as identifying information for victims in criminal or domestic abuse cases, photographs of involuntary nudity, and medical records. <i>See Nat'l Ctr. for State Courts, Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts</i> 39-44 (2002). The Committee encourages the drafters of the rule to consider a more tailored approach like that contemplated by the CCJ report and/or to explore further alternative methods identified in the CCJ report for protecting private information, such as remote access by subscription. <i>See id.</i> at 41-42.</p>	<p>of the ongoing Rules Modernization Project, to refine the distinctions made as to which records can be accessed remotely and which not.</p>
6.	<p>State Bar of California Standing Committee on the Delivery of Legal Services by Maria C. Livingston, Chair</p>	N	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>No. The proposal adds new rules on public access to appellate court records of the Supreme Court and Courts of Appeal. The rules attempt to balance providing the public with reasonable access to records, while also protecting privacy interests that may be compromised with unlimited remote access. Therefore, the rules distinguish between records that would be available remotely and at the courthouse, and</p>	

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			<p>records that would only be available at the courthouse.</p> <p>SCDLS recommends that the rules be redrafted with additional consideration and explanation of issues outlined in the additional specific comments below. Major issues include whether the rules adequately balance interests in publicly available court records and interests in the protection of personal and private information. In addition, some “line drawing” in the proposed rules, regarding the treatment of different categories of information, would benefit from additional clarification and explanation.</p> <p>Additional Specific Comments</p> <p>In general, SCDLS believes additional development may be needed to ensure that the rules more effectively attain the twin goals of providing for public access to court records and protecting individual privacy.</p> <p>In proposed rule 8.83(c) (courthouse access only), a large number of terms are not defined by reference to statute or otherwise, including “mental health proceedings.” The rule is thereby unclear. The lack of clarity may make it difficult for a court to follow, as well as for a litigant to predict how the records would be treated. For example, is a mental health disability discrimination case a “mental health proceeding”? The committee’s rationale for</p>	<p>With regard to the general concern as to whether the distinction made in the proposed rules as to which records will be made available remotely strikes the correct balance between privacy concerns and access concerns, please see response to comment by the State Bar Committee on Appellate Courts.</p> <p>With regard to the use of the term “mental health proceedings” in proposed rule 8.83(c)(1)(D), the committees note that this language is taken verbatim from the trial courts (in rule 2.503 (c)(4)) The committees are not aware that any difficulties have arisen in the trial courts with respect to the use of this term. The committees’ view is that if a definition is to be considered, it should be considered for both the trial and appellate rules at the same time.</p>

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			<p>selecting the particular proceedings that are exempt from remote access also appears unclear. Without such a rationale, the list contains some items that seem somewhat arbitrary.</p> <p>As to proposed rule 8.83 generally, the Judicial Council may want to consider whether the protections of private information in subdivision (d) (extraordinary disclosure of criminal records) – requiring redaction of personal, financial and health information – should apply more broadly to <u>all</u> publicly available information in electronic case records. Consideration should also be given to whether such privacy protections should apply equally to information obtained remotely and at a courthouse. There is a risk that the court may underestimate the extent to which case-by-case access and courthouse-only access may nevertheless be subject to data mining, invasion of privacy, and bulk distribution. The court’s rule against bulk distribution, alone, may be readily circumvented by simply transmitting one case at a time, and in any event if the rule is broken there may be no effective remedy for the person whose personal data was mined.</p> <p>To ensure equitable access by members of the public and to prevent unreasonable charges to the public by private contractors, the Judicial Council is encouraged to consider modifying Rule 8.85(b) as follows: To the extent that public access to a court’s electronic records is</p>	<p>As discussed above in response to the comment of the Orange County Bar Association suggesting that the proposed rules include a rule parallel to rule 2.507, the committees found that the current practices of the appellate courts are in line with the requirements placed on the trial courts, as to the information included in and excluded from electronic records made available remotely, and that a rule on the subject is not needed. Specifically as to Standing Committee’s suggestion that the requirements for redaction under proposed rule 8.83(d)(2) apply to all publicly available information in electronic records, the committees note that the structure of the proposed new rules as to when the requirement for redaction applies is taken directly from the trial court rules. Based on the experience of the trial courts, the committees did not find it necessary to extend the protections of rule 8.83(d)((2). If the rules are adopted as proposed, and issues arise, the appellate courts can later consider whether changes are needed based on their experience in implementing the rules and providing public access to electronic records. Please see the response to the comments of the Courthouse News Service regarding proposed rule 8.85 (b), above. The committees’ view is that because the appellate courts are not currently</p>

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			provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable <u>and promote equitable public access while covering the cost of providing access.</u>	using vendors to provide public access to records, the addition suggested by the Standing Committee on the Delivery of Legal Services is not necessary at this time. For the same reason, the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule.
7.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	Our court would like to emphasize the need to make sure that confidential documents, such as juvenile cases, remain confidential. We recognize the proposal does address this, but wanted to make sure this requirement was at the forefront of the drafters' consideration when making any additional changes to this rule.	The committees appreciate the commentator's reminder with regard to the importance of maintaining the confidentiality of confidential documents.



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VIA HAND DELIVERY

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Comments of Courthouse News Service on Proposed Rules on Access to Electronic Appellate Court Records

Dear Sir/Madam:

On behalf of Courthouse News Service, we respectfully submit these comments and suggestions in response to the invitation to comment by the Judicial Council of California on the proposed rules related to Access to Electronic Appellate Court Records (SPR 15-03) (“Proposed Rules”).

I. Introduction

Courthouse News Service is a nationwide news service that focuses on the court record, from the initial pleading through judgment and appeal. Its more than 3,000 subscribers include law firms in California and throughout the nation, as well as other media outlets, such as the Los Angeles Times and San Jose Mercury News, putting Courthouse News in the position of a pool reporter. On a national level, Courthouse News has a greater number of reporters covering courthouses than any other media outlet. Its web site, www.courthousenews.com, is updated daily with staff-written articles and columns and averages about 1 million readers per month. In recent months, Courthouse News has been credited as the source for stories by media outlets such as The Wall Street Journal, the Washington Post, and many others.

As a news service that focuses on the court record, Courthouse News is keenly interested in any proposed rules related to access to electronic court records, including appellate records. In reviewing the Proposed Rules, Courthouse News found much to like. However, it did identify one area of concern, namely, Proposed Rule of Court 8.85, which provides, in subsection (b), that “[t]o the extent that public access to a court’s electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable.”

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As a preliminary matter, it has been Courthouse News' experience that public access to court records is best performed by the court itself, rather than by a vendor. There are several reasons for this, but the most important are the practical control over the court record that a court loses when a vendor controls that record, coupled with the higher user fees for access that tend to be charged by vendors (who by their very nature are seeking to maximize their profits). To this end, ideally, the proposed rules would not allow for vendor-controlled access systems at all.

However, to the extent a decision is made to allow courts to make their electronic records available exclusively through a vendor, at the very least the rules should address the two main issues that make in-house public access the preferred option: (1) vendor control over the public court record; and (2) the amount of, and circumstances under which, a fee may be charged.

Courthouse News is aware that the Proposed Rules are in many respects similar to the Rules of Court already in place for access to electronic trial court records. *See* Rules of Court 2.500-2.507. The concerns noted below are not unique to appellate records, but rather are informed, in large part, by Courthouse News' experience over the years in accessing electronic trial court records, including in California under Rules 2.500-2.507.

II. Vendors As Electronic Public Access Providers

The scope of a vendor's permitted use of court records is a serious issue, and becomes even more important when a court's chosen vendor – or its affiliates – are also engaged in news reporting activities. For example, the vendors currently active in the court records space include Thomson Reuters Court Management Solutions, formerly LT Court Tech, which is part of one of the world's leading publishers of legal information through Thomson Reuters' Westlaw division; Journal Technologies, Inc., which represents the merger of three smaller case management vendors – Sustain Technologies, ISD Corporation and New Dawn – and is owned by the Daily Journal Corporation, publisher of legal newspapers in California and Arizona; and LexisNexis, also one of the world's leading publishers of legal information, including offerings such as alerts and trackers through its CourtLink division.

It is important to keep in mind that the nature of the media and news reporting has changed dramatically in recent years. Whereas reporting about the courts used to be the exclusive domain of traditional print and broadcast media outlets, media entities reporting news and information about the courts now include a variety of electronic publishers that can instantly transmit information to targeted audiences.¹ Accordingly, news reporting about the courts now includes not only more

¹ As recently noted in The Guardian, "News nuggets are back and new gatekeepers emerging as we hark back to the days of the SMS text alert." Emily Bell, *Apple Watch Highlights the Need for Shorter News As Screen Sizes Shrink*, The Guardian, April 26, 2015, available at <http://www.theguardian.com/media/media-blog/2015/apr/26/apple-watch-shrinking-news-apps>. Indeed, many traditional news organizations are keenly aware of the importance of finding ways to push news alerts and other breaking news products to

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traditional in-depth reports about high-profile cases, but also summaries or alerts of what was filed in a given court on a given day or the latest developments in a case. These are often referred to euphemistically as “value-added services.”

In those instances where a single private vendor acts as the electronic gatekeeper for the public court record – where copies of court records pass through or reside on the vendor’s computer servers as part of a case management or e-filing system, or where the same vendor provides remote public access – that vendor also has priority access to the public court record. This control is valuable, especially for those vendors that also act as electronic publishers, because it gives them a virtually insurmountable advantage over their competitors in the news media in two ways: (1) timing and (2) cost.

With respect to timing, the chosen vendor will always be the first to receive the court records (including both the documents themselves and docket information about filings and case events), simply by virtue of its position with the court. Moreover, it receives those records in an electronically readable form that can be instantly analyzed and used to prepare and disseminate news reports to subscribers in a matter of minutes. Conversely, competing news entities must manually review these records (whether on paper or on a public access computer terminal), take notes, and create a news report, all of which takes time and means that the competing news entity is always “scooped” by the vendor.²

Similarly, with respect to cost, the vendor gets not only instantaneous access to court records, but access without charge, with those records delivered directly to the vendor’s electronic doorstep. In contrast, competing media entities must either pay a fee to the very vendor they’re competing with

their audiences. For example, The New York Times, NBC News, Fox News, BBC News and The Guardian now all offer various alert products and options to their readers so they can stay abreast of breaking news – from emailed alerts to SMS messages to Twitter updates. As The Guardian explained, “It’s an incredibly exciting time for news organisations to explore new and better ways to reach their audiences. And breaking news is the key editorial area where this is most important.” Mario Andrade, *Extra! Extra! Rethinking the Guardian Breaking News Experience*, The Guardian, April 28, 2015, available at <http://www.theguardian.com/info/developer-blog/2015/apr/28/extra-extra-rethinking-the-guardian-breaking-news-experience>.

² More than ever, with the explosion of the Internet, “real-time reporting [has become] more prevalent.” Peter Funt, *The Newsmatch Never Stops – Nor Should It*, The Wall Street Journal, Jan. 21, 2011, at A13. “News outlets and individual reporters risk losing their relevance and their readerships if they fail to get stories up and out there in real-time.” Elana Kirsh, *Untangling the Web: the 24-Minute News Cycle*, The Jerusalem Post, March 10, 2012, available at <http://www.jpost.com/OnTheWeb/Article.aspx?id=286473>. To “stand apart” in the competitive business of specialized news, one must “start[] earlier, writ[e] more and publish[] faster.” Binyamin Appelbaum, *Joe Weisenthal vs. the 24-Hour News Cycle*, The New York Times, May 10, 2012, available at <http://www.nytimes.com/2012/05/13/magazine/joe-weisenthal-vs-the-24-hour-news-cycle.html?pagewanted=all>.

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for remote access, or send a reporter to the courthouse on a continual basis to review newly e-filed records, a significant cost that the vendor does not have to bear.

In short, giving a vendor that also engages in news reporting a preferential position with respect to access to the court record, whether as part of a case management, public access or e-filing system, is no different than telling the local newspaper that it can control the door to the courthouse and will always have a head start – at a lower cost – in reporting newsworthy new civil cases than all other media outlets.³

These concerns have come to fruition in other courts where publishers have control of one or more components of the court’s computer system. A prime example is the Delaware Court of Chancery, which has an e-filing system built around what was formerly LexisNexis’ File & Serve arm (which was acquired in 2012 by a third-party group and re-named File & ServeXpress). In a 2009 email blast advertising its “Reduced Pricing for Delaware Superior Court Documents” and its alert service – which, for a fee, provided instant notification when a lawsuit against a particular defendant had been filed – Lexis boasted, “Remember, File & Serve has these documents first because we are the Court’s official e-filing provider.” This notice was a clear exploitation of the vendor’s unfair advantage, and in any instance where an e-filing or case management system vendor is also given control over public access, this inequality will always be a serious risk.

To address this risk, many state and local judicial entities are taking affirmative steps to ensure there are safety mechanisms in place, i.e., through court rules and/or contractual provisions, that limit what vendors who have access to electronic court records can do with court information and records that pass through their systems. As experience has shown, it is not enough for the contract to simply state that the court is the owner of its records and has the right to control their use, as existing Rules of Court currently require for contracts with vendors for trial court records. *See* Rule 2.505(b). Rather, the contract must make clear that the vendor may not use the court records for any purpose other than the service it is providing to the court. For example:

- Georgia’s Statewide Minimum Standards for Electronic Filing, effective September 25, 2014 (“Georgia Minimum Standards”), provide that a vendor may be authorized to conduct e-

³ It is fundamental that the government may not grant one media entity preferential access to the court record. *See Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d 1095 (C.D. Cal. 2003) (city violated First Amendment by giving television station exclusive access to an official city event while requiring other broadcasters to rely on a video feed); *accord, e.g., Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986) (trial court “erred in granting access [to discovery materials] to one media entity and not the other”); *American Broadcasting Cos., Inc. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) (“once there is ... participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable”); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976) (“All representatives of news organizations must not only be given equal access, but within reasonable limits, access with equal convenience to official news sources.”).

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filing only if the vendor “disclaims any ownership right in any electronic case or document or portion thereof, including any commercial right to resell, recombine, reconfigure or retain any database, document or portion thereof transmitted to or from the court.”

(§ 4(b))

- Tennessee Supreme Court Rule 46 prohibits e-filing vendors from “providing any fee-based services related to the e-filed documents.” (Subsection B.4)
- A contract between the California Superior Court for the County of San Francisco and LexisNexis specifies that “Contractor shall not permit access to, release or distribute copies of case filings and document submissions retained in its system,” except to the parties and Court users, and that “Contractor shall not provide access to or release Court records, official or unofficial, directly or indirectly, except as expressly authorized by the Court.” (¶ 18)
- A contract between the California Superior Court for the County of Los Angeles and Journal Technologies, Inc., for case management services provides, “LASC Data shall be and remain the property of LASC and LASC shall retain exclusive rights and ownership thereto. The data of LASC shall not be used by Contractor for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents.” (§ 20.10)

Copies of these standards, rules and contracts are enclosed for your reference.

As the foregoing demonstrates, more and more courts recognize the importance of ensuring that vendors may not use their preferential position with respect to the electronic court record to gain an unfair advantage in disseminating information about courts. With this in mind, Courthouse News respectfully suggests that Proposed Rule 8.85 be amended to add language similar to that used in the Georgia Minimum Standards, as follows:

Rule 8.85. Fees for electronic access

* * *

(c) _____ To the extent that public access to a court’s electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that the vendor is prohibited from reselling, recombining, reconfiguring, or retaining any copies of the court’s electronic records or any portion thereof, other than in connection with providing the public access services pursuant to the agreement.

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III. Fees for Access

Whether access is provided by a vendor or the court itself, Courthouse News does not necessarily oppose charging a reasonable fee for the convenience of remote access over the Internet, so long as three concerns are addressed. *First*, to the extent a fee is charged for remote access over the Internet, there must also be some way for interested members of the press and public to access court records at the courthouse itself free of charge. *Second*, to the extent a fee is charged for remote access to newly filed court records, there should be some way for the press and public to review those records on the day they are filed without paying a fee. And *third*, any fee for remote access over the Internet should be structured in a way that makes it affordable to members of the press who have a legitimate and frequent need to access court records.

As currently drafted, the Proposed Rules fail to address these three concerns, and Courthouse News respectfully submits that the Proposed Rules should be amended accordingly.

First, as currently drafted, the rules allow a vendor to impose a fee for access to electronic records under all circumstances, even if that access is provided via a public access terminal at the courthouse itself, and even if those records are not available for review in paper form, such as an e-filed record. *See, e.g.*, Proposed Rules 8.85(b) (“To the extent that public access to a court’s electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable.”); 8.82(2) (defining “electronic record” as “a court record that requires the use of an electronic device to access,” including, *inter alia*, e-filed records). While it is one thing to impose a fee to review records remotely over the Internet, respectfully, imposing a fee to simply look at a public court record, without any alternative for a free review, is presumptively unconstitutional.

Second, to the extent public access to electronic court records is provided free of charge via computer terminals at the courthouse, but for a fee over the Internet, care must be taken to avoid a situation in which records are available online for a fee before they may be reviewed free of charge at the courthouse itself, in effect imposing a fee for timely access to newly filed court records while only providing free-of-charge access on a delayed basis. This issue can arise if, for example, a court uploads newly filed electronic records after the courthouse has closed for the day, so that the only way to review newly filed court records on the same day they are filed is remotely over the Internet, with fees that can quickly add up. Indeed, this exact problem has arisen in at least two of California’s trial courts. There are several ways to address this issue, including waiving any remote access fees for newly filed court records, such as those filed within the past 24 hours.

Third, to the extent that records can be viewed free of charge at the courthouse but a fee is assessed to review those same records remotely over the Internet, Courthouse News respectfully submits that the fee should be structured in a way that it does not become cost-prohibitive for journalists to perform their traditional role of reviewing newsworthy case records on a daily basis as they flow into the court. This problem arises when even seemingly modest fees are assessed to review

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records on a per-document or per-page basis. While such fees may not impose an undue burden on members of the public who only need to see a few documents on an occasional basis, they quickly add up for news organizations such as Courthouse News that have a frequent and legitimate need to review court records, with the effect that paid online access can become cost-prohibitive. Such a result would seem to be contrary to public policy, which should **encourage** press review of court records. *See, e.g., Cox Broad. Co. v. Cohn*, 420 U.S. 469, 492 (1975) (“in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations”).

There are a couple of different ways to address this concern. One way is to provide remote access to newly filed appellate court records free of charge. A second way is to offer a subscription-based fee for remote access, such as a reasonable monthly fee for unlimited remote access. Either set-up ensures that traditional free access at the courthouse continues, while giving journalists the ability to easily and conveniently access court records over the Internet so that they may provide information about new cases and case developments to the public.

With these three concerns in mind, Courthouse News urges the judiciary to amend the Proposed Rules as follows:

Rule 8.85. Fees for electronic access

* * *

(b) To the extent that public access to a court’s electronic records is provided exclusively through a vendor, the contract with the vendor must ensure any fees the vendor imposes for the costs of providing access are reasonable. In addition:

(1) To the extent access to a court’s electronic record is the exclusive means for the public to review that record, such access must be provided at no charge upon filing on public access terminals available at the courthouse.⁴

⁴ *See, e.g., Georgia Minimum Standards, No. 3(d)*, which provides, “The clerk ensures that electronic documents are publicly accessible upon filing for viewing at no charge on a public access terminal available at the courthouse during regular business hours.” In addition, the Advisory Committee note to Proposed Rule 8.85(b) could clarify that in situations where the court is unable to provide electronic public access at the courthouse itself to court records filed late in the day because the court has closed its doors to the public for the day, but those records are available via remote access after hours, fees for remote access to those records will be waived for a period of time – for example, for 24 hours after filing, or until the court opens for business the following day.

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(2) To the extent the vendor is permitted to impose a fee for the cost of providing access remotely over the Internet, there must be an option available to members of the public who have a frequent need to access records to do so without incurring excessive costs, such as through subscription-based fees.⁵

IV. Conclusion

Courthouse News greatly appreciates the consideration of its views on these matters. To the extent you have any questions, or would like to discuss these comments further, please do not hesitate to contact us.

Respectfully submitted,



Rachel E. Matteo-Boehm
On behalf of Courthouse News Service

cc: Courthouse News Service

⁵ Alternatively, the instruction in suggested Proposed Rule 8.85(b)(2) could be provided as part of an Advisory Committee note to Proposed Rule 8.85.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
August 7, 2015	Please review for August 20 meeting
To	Deadline
Judicial Council Technology Committee	August 20, 2015
From	Contact
Court Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Jessica Craven 818-558-3103 phone jessica.craven@jud.ca.gov
Subject	
Update to the <i>Trial Court Records Manual</i> : Electronic Signature Standards and Guidelines	

Background

Both the Court Technology Advisory Committee (CTAC) and the Court Executives Advisory Committee (CEAC) have been tasked with proposing standards and guidelines governing electronic signatures by courts and judicial officers. These standards are intended to implement Government Code section 68150(g), which authorizes the use of electronic signatures by courts and judicial officers “in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section.” The CEAC Records Management Subcommittee developed proposed standards and guidelines for inclusion in the *Trial Court Records Manual*. During its meeting on August 7, 2015, CEAC reviewed these proposed standards and guidelines and recommended that they be circulated to the presiding judges and court executive officers of the superior courts for comment. CTAC will review the proposed standards and guidelines during its August 18 meeting. Staff will report orally on the CTAC meeting at the Judicial Council Technology Committee’s August 20 meeting.

Recommendation

CTAC and CEAC recommend circulating the proposed standards and guidelines to the presiding judges and court executive officers of the superior courts for comment.

Discussion

Electronic signatures by courts and judicial officers are authorized under Government Code section 68150(g), which provides as follows:

Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology *in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section*. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(Italics added). Subdivision (g) was added to the Government Code, effective January 1, 2011, by Assembly Bill 1926.¹ (Stats. 2010; ch. 167.) The Judicial Council has not yet developed implementing procedures, standards, and guidelines. The proposed standards and guidelines are loosely modeled on the Uniform Electronic Transactions Act and New York State's Electronic Signatures and Records Act Guidelines.

The proposed standards and guidelines include sections (1) describing their purpose and the underlying principles motivating the drafters; (2) providing definitions; (3) establishing the format for electronic signatures; (4) stating guidelines for ensuring that electronic signatures are executed or adopted with intent to sign, attributable to an authorized person, and capable of verification; (5) establishing how to execute electronic signatures under penalty of perjury; (6) establishing the legal effect of electronic signatures; (7) providing a list of acceptable security procedures; (8) stating the effect of the digitized signatures created by scanning the original signatures of judicial officers and courts; and (9) providing examples of court-created documents that may be electronically signed by a court or judicial officer.

¹ This amendment was part of a broader reform of Government Code section 68150 in AB 1926 to authorize the creation and maintenance of electronic trial court records.

In addition to these standards implementing Government Code section 68150(g), the proposed update to the *Trial Court Records Manual* includes a section outlining the various provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers. Lastly, there is a section stating the effect of digitized signatures created by scanning paper documents submitted to the courts.

Attachments and Links

- Memorandum to the Presiding Judges and Court Executive Officers of the Superior Courts with attachment (proposed update to the *Trial Court Records Manual*)
- *Trial Court Records Manual* (rev. January 1, 2014), available at <http://www.courts.ca.gov/documents/trial-court-records-manual.pdf>



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MEMORANDUM

Date	Action Requested
August 6, 2015	Please review and submit any comments by e-mail to josely.yangco-fronda@jud.ca.gov
To	Deadline
Presiding Judges of the Superior Courts Court Executive Officers of the Superior Courts	[To be determined]
From	Contact
Court Executives Advisory Committee Ms. Mary Beth Todd, Chair Mr. Richard D. Feldstein, Vice-chair	Josely Yangco-Frona (415) 865-7626 josely.yangco-fronda@jud.ca.gov
Court Technology Advisory Committee Hon. Terence L. Bruiniers	
Subject	
<i>Trial Court Records Manual</i> : Proposed Electronic Signature Standards and Guidelines to Implement Government Code Section 68150(g)	

Executive Summary

The Court Executives Advisory Committee (CEAC) and the Court Technology Advisory Committee (CTAC) propose updating the *Trial Court Records Manual* to include new standards and guidelines that would govern the use of electronic signatures by trial courts and judicial officers. These standards and guidelines would implement Government Code section 68150(g), which authorizes electronic signatures by a court or judicial officer “in accordance with procedures, standards, and guidelines established by the Judicial Council.” The update would also include new sections in the *Trial Court Records Manual* that would (1) outline the various

provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers; and (2) state the effect of digitized signatures created by scanning paper court records.

Background

For over twenty years, Government Code section 68150(a) has authorized the preservation of trial court records in electronic form. (Stats. 1994; ch. 1030.) With the enactment of Assembly Bill 1926 in 2010, this provision was expanded to allow superior courts to create and maintain court records in electronic form. (Stats. 2010; ch. 167.) Electronic court records were to be subject to rules adopted by the Judicial Council establishing standards and guidelines for their creation, maintenance, reproduction, and preservation. (See Gov. Code, §§ 68150(a) and (c).) The Judicial Council sponsored AB 1926 to facilitate the transition by courts to paperless case environments.

Trial Court Records Manual

Effective January 1, 2011, the Judicial Council adopted rule 10.854 to implement AB 1926. This rule tasked Judicial Council staff—in collaboration with the trial court presiding judges and court executives—with preparing, maintaining, and distributing a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records, consistent with the Government Code and the rules of court and policies adopted by the council. The first version of this manual, known as the *Trial Court Records Manual*, was approved by the council at the same time that it adopted rule 10.854.

Judicial Council staff—in collaboration with the trial court presiding judges and court executives—is also responsible for periodically updating the *Trial Court Records Manual* to reflect changes in technology that affect the creation, maintenance, and retention of court records. (Cal. Rules of Court, rule 10.854(c).) Proposed changes must be made available for comment from the trial courts before the manual is updated or changed. (*Ibid.*) Since it was first issued, the council has twice updated the *Trial Court Records Manual*.

Electronic signatures by courts and judicial officers

As part of the effort to modernize the management of trial court records, AB 1926 also authorized the use of electronic signatures by courts and judicial officers. The bill added subdivision (g) to Government Code section 68150, which provides as follows:

Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology *in*

accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(Gov. Code, § 68150(g).) This proposal would implement Government Code section 68150(g) by updating the *Trial Court Records Manual* to include standards and guidelines for the use of electronic signatures by courts and judicial officers.

This year, the Legislature enacted AB 432, which will introduce new section 34 to the Code of Civil Procedure. Similar to Government Code section 68150(g), new Code of Civil Procedure section 34 will provide that electronic signatures by courts and judicial officers are as effective as original signatures. AB 432 also defines the term “electronic signature” in Code of Civil Procedure section 17(a)(3) as “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.”

The Proposal

This proposal would update the *Trial Court Records Manual* to implement Government Code section 68150(g) by adding a new section to the manual that would establish standards and guidelines governing the use of electronic signatures on court-created records. In addition, new sections would be added to (1) outline the various provisions in the Code of Civil Procedure, Penal Code, and California Rules of Court that authorize electronic signatures submitted to the courts by attorneys, parties, and law enforcement officers and (2) state the effect of digitized signatures created by scanning paper court records.

Electronic signatures on court-created documents

A new section 6.2.1 would be added to the manual to establish standards and guidelines governing electronic signatures by the court and judicial officers. The proposed standards and guidelines are loosely modeled on the Uniform Electronic Transactions Act and New York State’s Electronic Signatures and Records Act Guidelines.

Purpose, drafting principles, and definitions. A new section 6.2.1.A would state the purpose of the standards and guidelines and list the principles that motivated the drafters. These principles include that the standards should not be more restrictive than those for traditional “wet”

signatures; that they should consider how the signature is being applied when setting the level of authentication required; that they should allow for flexibility in the method of applying and the appearance of the signature; and that they should, wherever possible, avoid requiring specific proprietary tools. A new section 6.2.1.B would provide definitions applicable to the standards and guidelines, including a definition for “electronic signature” that mirrors the definition that will be added by AB 432 to Civil Code of Procedure section 17.

Format of electronic signatures. The format of electronic signatures would be stated in new section 6.2.1.C. Electronic signatures could be in the form of (1) a digitalized image of the person’s signature, (2) an “/s/” followed by the person’s name, or (3) any other electronically created method of indicating with clarity the name of the person whose signature is being affixed to the document.

Guidelines governing intent, attribution, and verification. A new section 6.2.1.D would provide guidelines to ensure (1) that the signer intended to sign the document, (2) that the electronic signature is attributable to an authorized person, and (3) that the electronic signature can be verified. To demonstrate intent, it must be clear to a person, when presented with the opportunity to sign a document, that the person is being asked to sign the document electronically. To ensure that the signer is authorized to sign, the document must be presented for an electronic signature only to an authorized person or someone authorized to execute the signature on that person’s behalf. An electronic signature may be attributed to a person if it was the act of the person (or the act of someone authorized to sign on that person’s behalf), which may be shown in any manner, including the efficacy of the security procedure applied when the signature is executed or adopted. And lastly, the identity of the signer must be capable of verification. Courts would be instructed to retain any data relevant to verifying electronic signatures, such as the signer’s identity and the date and time that the signature is executed or adopted.

This section would also provide a “practice tip” to recommend that courts consider designing their business practices and technology systems—such as workflows, pop-up screens, and access and security procedures—to facilitate compliance with these guidelines.

Signatures under penalty of perjury. A new section 6.2.1.E would govern signatures required by law to be made under penalty of perjury. Electronic signatures would be made under penalty of perjury if the electronic record includes the electronic signature, all of the information as to which the declaration pertains, and a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

Legal effect of electronic signatures. As provided by Government Code section 68150(g) and Code of Civil Procedure section 34, a new section 6.2.1.F would state that electronic signatures by courts and judicial officers have the same effect as original signatures on paper documents.

Acceptable security procedures. Acceptable security procedures for identity verification would be addressed in a new section 6.2.1.G. This section would provide that all systems used in the capture, application, and storage of electronic signatures and documents are subject to the data and information security guidelines recommend in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts (Draft-May 27, 2015)*. This requirement would ensure that access is limited to authorized individuals and that original files and documents have not been altered or modified since they were created.

In addition, this section would recognize both real-time digitized signatures and system-applied signatures as acceptable procedures for verifying identity. Real-time digitized signatures would be defined as graphical images of a handwritten signature, where the signature is captured by means of a digital pen, pad, or other device that converts the physical act of signing into a digital representation of the signature and applies that digital representation to a document, transaction, or database entry. User authentication for real-time digitized signatures would be similar to the authentication of traditional “wet” signatures.

System-applied signatures would be defined as electronic signatures applied to documents, transactions, or databases through the use of a computer, software, or application following an affirmative action (e.g., clicking on a check box) by the signer or someone authorized to act on his or her behalf. Four methods of user identification would be recognized for system-applied electronic signatures: (1) password or PIN, where the user is authenticated through a password or PIN either tied directly to the application of the signature or used to gain access to the computer application, database, or network; (2) symmetric cryptography, where the user is authenticated using a cryptographic key that is known to the system and the signer; (3) asymmetric cryptography (digital certificates), where the user is authenticated using both public and private keys; and (4) biometrics, where the user is authenticated using biometrics such as voice, fingerprint, or retina.

Scanned signatures. A new section 6.2.1.H would be added to address digitized signatures that are created when courts convert their paper records into electronic records by scanning. This section would provide that the digitized signatures of judicial officers and courts created by scanning have the same validity and the same legal force and effect, as their original signatures.

Examples of court-created documents that may be electronically signed. A new section 6.2.1.I would provide a list of various court documents that may be signed electronically by a court or judicial officer. The list would be provided for illustrative purposes only and would not be intended to suggest that a signature is required on any of the identified documents, unless a signature is otherwise mandated by statute or rule. Examples provided would include judgments, orders after hearings, minute orders, notices, abstracts of judgment, arrest and search warrants, and certificates of service, among others.

Electronic signatures on documents submitted to the courts

A new section 6.2.2 would be added to the *Trial Court Records Manual* to address the statutes and rules that authorize electronic signatures on documents submitted to the courts by attorneys, parties, and law enforcement officers. This legal authority would include (1) Code of Civil Procedure section 1010.6 and rule 2.257, which govern the use of electronic signatures on electronically filed documents in civil cases; (2) Penal Code sections 817 and 1526, which provide the procedures required to authorize the electronic signatures of law enforcement officers on probable cause declarations for arrest and search warrants; and (3) Penal Code section 959.1, which authorizes the digitized facsimile of a defendant's signature on Notices to Appear issued in traffic and criminal cases for infraction and misdemeanor violations.

Signatures on scanned documents

This proposal would also add a new section 6.2.3 to address digitized signatures that are created when courts convert their paper records into electronic records by scanning. This section would provide that these digitized signatures have the same validity and the same legal force and effect, as the original signatures. It would largely duplicate the language proposed for section 6.2.1.H that is specific to the scanned signatures of judicial officers and courts. This language is duplicated here to clarify that it also applies to electronic signatures on documents submitted to the courts.

Alternatives Considered

Because Government Code section 68150(g) requires that the Judicial Council establish implementing standards and guidelines, CEAC and CTAC did not consider alternatives to this proposal to adopt these standards and guidelines as part of the *Trial Court Records Manual*.

Implementation Requirements, Costs, and Operational Impacts

Potentially significant costs could be incurred by individual courts in implementing this proposal as they might be required to procure new technology systems and equipment for capturing the electronic signatures of judicial officers and court officials. These initial costs, however, may be outweighed by the cost savings and efficiency gains that would be realized by allowing judicial officers and courts to use electronic signatures. Because implementation is voluntary, each court would determine if the benefits outweigh the costs in deciding whether to use electronic signatures on court-generated documents. Updating the manual, which is in electronic format and posted online, would result in only minimal costs to the branch.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments from the courts on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from courts on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- 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 systems, or modifying case management systems.
- Do any of the proposed standards need further clarification? If so, please describe how they should be revised.
- Are there any effective practices related to electronic signatures that are currently in use by the courts that are not covered by the proposed standards? If so, please describe these practices.

Attachments and Links

1. Proposed update to the *Trial Court Records Manual* at pages 8–19
2. *Trial Court Records Manual* (rev. January 1, 2014), available at <http://www.courts.ca.gov/documents/trial-court-records-manual.pdf>

This proposal would revise the *Trial Court Records Manual*, section 2.11, and add sections 6.2.1, 6.22, and 6.23, as follows:

2. Statutes and Rules of Court Governing Trial Court Records Management

* * *

2.1.1 Signatures on Electronically Created Court Documents

Government Code section [68150\(g\)](#) provides that any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, or similar document issued by a trial court or judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology. ~~Future versions of this manual will contain procedures, standards, or guidelines for signing, subscribing, and verifying court documents by electronic means.~~ Section 6.2.1 of this manual provides standards and guidelines for signing, subscribing, and verifying court documents by electronic means.

* * *

6. Creation, Storage, Maintenance, and Security of Records

* * *

6.2 Electronic Signatures: Standards and Guidelines

6.2.1. Electronic Signatures on Court-Created Records

A. Purpose

This section provides standards and guidelines for the creation of electronic signatures by judicial officers and the superior courts. These standards and guidelines implement [Government Code section 68150\(g\)](#), which provides that any notice, order, judgment, decree, decision, ruling opinion, memorandum, warrant, certificate of service, or similar document issued by a court or a judicial officer may be signed, subscribed, or verified using computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council.

The following principles guided the drafters in preparing these standards and guidelines:

- Electronic signature standards should provide appropriate requirements and should generally not be more restrictive than standards for traditional ‘wet’ signatures.
- Electronic signature standards should consider how the signature is being applied when setting the level of authentication required.
- Electronic signature standards should allow for flexibility in the method of applying and the appearance of the signature.

- Electronic signature standards, wherever possible, should avoid requiring specific proprietary tools. Instead the standards should present attributes of acceptable authentication tools and encourage leveraging security within other business critical systems.

B. Definitions

As used in these standards and guidelines, the following definitions apply:

- **Electronic** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- **Electronic court record** means a court record created, generated, sent, communicated, received, or stored by electronic means.
- **Electronic signature** means an electronic sound, symbol, or process attached to or logically associated with an electronic court record and executed or adopted by a person with the intent to sign the electronic court record. (Code of Civ. Proc., § 17.)
- **Person** includes judicial officers, court clerks, deputy court clerks, and others authorized to sign documents issued by a judicial officer or a court.
- **Record** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- **Security procedure** means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

C. Format of Signatures

Unless otherwise prescribed in a statute or rule, an electronic signature may be in the form of:

- A digitalized image of the person's signature;
- An /s/ followed by the person's name; or
- Any other electronically created method of indicating with clarity the name of the person whose signature is being affixed to the document.

All such signatures, to be legally effective, must satisfy the requirements stated in this section.

D. Electronic Signatures Must Be Executed or Adopted with an Intent to Sign, Attributable to an Authorized Person, and Capable of Verification

The following guidelines apply to electronic signatures executed or adopted by a judicial officer or the court:

- When a person is presented with the opportunity to sign a document electronically, it must be clear to the person that he or she is being asked to sign the document electronically. This demonstrates that the person in fact intended to sign the document. (See Code of Civ. Proc., § 17 [electronic signatures must be “executed or adopted with the intent to sign”].)
- When a document is to be signed electronically, it must be presented only to an authorized person or to someone authorized to execute the signature on the person’s behalf.
- An electronic signature is attributed to a person if it was the act of that person (or the act of someone authorized to execute or adopt the signature on that person’s behalf), which may be shown in any manner, including by showing the efficacy of any security procedure applied when the signature was executed or adopted.
- The identity of the person who executed or adopted the electronic signature must be capable of verification. If a document is signed electronically, the court should retain any data relevant to verifying the signature, such as the identity of the person who executed or adopted the signature and the date and time that the signature was executed or adopted.

Practice Tip: Courts should consider designing business practices and technology systems—such as workflows, pop-up screens, and access and security procedures—to facilitate compliance with these guidelines.

E. Signatures Under Penalty of Perjury

If a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes:

- The electronic signature;
- All of the information as to which the declaration pertains; and
- A declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

F. Legal Effect

Unless otherwise specifically provided by law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, or similar documents that are signed, subscribed, or verified by using a computer or other technological means shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a court official or judicial officer. (Gov. Code, § 68150(g); see also Code of Civ. Proc., § 34 [“An electronic signature . . . by a court or judicial officer shall be as effective as an original signature”].)

A signature may not be denied legal effect or enforceability solely because it is in electronic form. The legal effect of an electronic signature is determined from the context and circumstances surrounding its creation, execution, or adoption, and otherwise as provided by law.

G. Acceptable Security Procedures for Verification of Identity When Applying Electronic Signature

The acceptable procedures for verifying the identity of persons executing electronic signatures are varied and are subject to change as the technology in this area is developing quickly. Certain guidelines can be applied at this time to determine whether electronic signatures are verifiable.

First, all systems used in the capture, application, and storage of electronic media, including any electronic signatures or electronic documents, are subject to data and information security guidelines as recommended in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts (Draft-May 27, 2015)*. This requirement ensures that access to any electronic signature, electronically signed document, or the tools and mechanisms for applying an electronic signature is limited to authorized individuals and that original files and documents have not been altered or modified since they were created.

Second, currently acceptable procedures for verification of electronic signatures include the following:

1. Real-time digitized electronic signatures

A digitized signature is a graphical image of a handwritten signature. The signature is captured by means of a digital pen, pad, or other device that converts the physical act of signing into a digital representation of the signature and applies that digital representation to the document, transaction, or database entry.

User authentication before the application of the digitized signature should be similar to authentication methods used when a physical handwritten signature is applied to a hard copy or traditional paper document.

2. System-applied electronic signatures

A system-applied electronic signature is an electronic signature that is applied to a document, transaction or database through use of a computer, software, or application following affirmative action by the individual or a person authorized to act on the person's behalf. The affirmative action could include, for example, the requirement that the signer click on an "OK" box or similar act.

User authentication for applying a system-applied electronic signature may be obtained through one of the following methods:

- **Password or PIN** - The user is authenticated through a password or PIN to gain access to the computer application, database, or network. Alternatively or in addition, the user is authenticated through a password or PIN tied directly to the application of the signature.
- **Symmetric Cryptography** – The user is authenticated using a cryptographic key that is known to the system and the individual signing the document. This is often done via a single use password that is randomly generated.
- **Asymmetric Cryptography (Digital Certificates)** – The user is authenticated using both private and public keys. This is the most secure method of user authentication and should be considered when applying signatures made under penalty of perjury.
- **Biometrics** – The user is authenticated using biometrics, including but not limited to voice, fingerprint, or retina.

The method selected should take into consideration business requirements, cost, and relative risk and consequence of a breach. Courts should document and adopt security procedures for authentication before the implementation of a system-applied electronic signature.

H. Judicial Signatures on Scanned Documents

Government Code section 68150(a) authorizes the preservation and maintenance of trial court records in electronic form. Under this provision, trial courts may convert their paper records to electronic form by scanning. The act of scanning an original signature results in a digitized signature. The digitized signature of a court or judicial officer created by scanning shall have the same validity, and the same legal force and effect, as the original signature.

I. Examples of Court-Created Documents that May Be Electronically Signed by a Judicial Officer or Clerk

The following is a list of various court-created documents that may be signed electronically by a judge or clerk under [Government Code 68150\(g\)](#). This list is provided for illustrative purposes only. It is not intended to suggest that a signature is required on these documents, unless a signature is otherwise mandated by statute or rule.

- Judgments
- Deferred entry of judgment
- Orders after hearings
- Minute orders
- Exemplification of records
- Probable cause determinations
- Arrest warrants
- Abstracts of judgment
- Summons
- Notices
- Fee waivers granted by statute
- Certificate of mailing
- Clerk's declarations
- Entry of judgment

- Search warrants
- Bench warrants
- Protective orders
- Letters for probate
- Writs of attachment
- Writs of possession
- Writs of execution
- Lis pendens
- Notices of intent to dispose of exhibits
- Certification of records
- Clerk's certificate of service
- Felony abstract of judgment
- Notice of cost of electronic recording
- Letters for probate
- Elisors

6.2.2. Electronic Signatures on Documents Submitted to the Courts

A. Purpose

The purpose of this section is to provide guidance on the signatures that appear on documents that are submitted electronically to the courts. For such signatures, there is currently no equivalent to the comprehensive authorization for the use of electronic signatures that exists for the signatures of judicial officers and court clerks under [Government Code section 68150\(g\)](#) and Code of Civil Procedure section 34. There are, however, various statutes and rules on signatures on electronically submitted documents that apply to particular types of proceedings.

B. Signatures on Documents Filed Electronically in Civil Cases

The statutes and rules on e-filing in civil cases include specific provisions on signatures. [Code of Civil Procedure section 1010.6\(b\)\(2\)](#) provides:

(A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

Similarly, the California Rules of Court have a specific rule on the requirement for signatures on documents filed electronically with the court. [Rule 2.257](#) provides:

(a) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury, the following applies:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

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

(c) Documents requiring signatures of opposing parties

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

- (1) The party filing the document must obtain the signatures of all parties on a printed form of the document.
- (2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document in the manner provided in (a)(3)-(5).

(3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

(d) Digital signature

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

(e) Judicial signatures

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

C. Signatures on Documents in Criminal and Traffic Cases

In criminal and traffic proceedings, the Legislature has authorized the use of electronic or digital signatures in particular types of matters.

1. Probable Cause Declarations for Warrants for Arrest

[Penal Code section 817](#) addresses the procedures to be used when a peace officer submits a declaration of probable cause to obtain a warrant of arrest before criminal charges are filed.¹ These warrants are sometimes called *Ramey* warrants, referring to *People v. Ramey* (1976) 16 Cal.3d 263. (*Goodwin v. Superior Court* (2001) 90 Cal.App.4th 215, 218.) Penal Code section 817 requires the peace officer to submit a sworn statement made in writing in support of the warrant of probable cause. (Pen. Code, § 817(b).) As an alternative under Penal Code section 817(c)(2), the magistrate may take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, and the following conditions are met:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

¹ Penal Code section 817 does not apply to bench warrants or warrants for arrest that are sought via a criminal complaint. (Pen. Code, § 817(b); see also *id.*, §§ 740, 813.)

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant,² he or she shall:

- (i) Cause the warrant, supporting declarations, and attachments to be subsequently printed if those documents are received by electronic mail or computer server.
- (ii) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.
- (iii) Note on the warrant the exact date and time of the issuance of the warrant.
- (iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

2. Probable Cause Declarations for Search Warrants: Penal Code Section 1526(b)

[The text below will need to be modified if AB 39 is enacted.]

Before issuing a search warrant, the magistrate must take the officer's affidavit in writing and cause the affidavit to be subscribed by the affiant. (Pen. Code, § 1526(a); see *Powelson v. Superior Court* (1970) 9 Cal.App.3d 357, 360–361.) As an alternative to this written affidavit, [Penal Code section 1526\(b\)\(2\)](#) authorizes the magistrate to take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, telephone and electronic mail, or telephone and computer server, and if the following conditions are met:

² The magistrate may issue the warrant, if and only if, he or she is satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described in the declaration has committed the offense. (Pen. Code, § 817(a)(1).)

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

(i) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

(ii) Note on the warrant the exact date and time of the issuance of the warrant.

(iii) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The duplicate original warrant and any affidavits or attachments in support thereof shall be returned as provided in Penal Code section 1534.

3. Electronic Signatures on Notices to Appear

[Vehicle Code section 40500](#) addresses Notice to Appear for traffic violations and requires that the arresting officer prepare in triplicate a written notice to appear in court. (Veh. Code, § 40500(a); *id.* § 40600(a) [similar provisions].) The arresting officer must deliver a copy to the arrested person, a copy to the court, and a copy to the commissioner, chief of police, sheriff or other superior officer of the arresting officer. (*Id.*, §§ 40500(d), 40506.) A Notice to Appear may also be issued for non-traffic infraction and misdemeanor offenses. (Pen. Code, §§ 853.5, 853.6.)

[Penal Code section 959.1\(d\)](#) authorizes a court to receive and file an electronically transmitted Notice to Appear issued on a form approved by the Judicial Council if the following conditions are met:

- (1) The notice to appear is issued and transmitted by a law enforcement agency pursuant to specified Penal Code or Vehicle Code sections;
- (2) The court has all of the following:
 - (A) The ability to receive the notice to appear in electronic format.
 - (B) The facility to electronically store an electronic copy and the data elements of the notice to appear for the statutory period of record retention.
 - (C) The ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved.
- (3) The issuing agency has the ability to reproduce the notice to appear in physical form upon demand and payment of any costs involved.
- (4) The notice to appear that is received under subdivision (d) is deemed to have been filed when it has been accepted by the court and is in the form approved by the Judicial Council.
- (5) If transmitted in electronic form, the notice to appear is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. A notice to appear filed electronically under subdivision (d) need not be subscribed by the citing officer. An electronically submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration.

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A Judicial Council Notice to Appear form that is issued when a person is arrested for misdemeanor or infraction violations of the Vehicle Code or for nontraffic misdemeanors or infractions serves as a complaint. (Veh. Code § 40500(b); Pen. Code, § 853.9(b).) Under [rule 4.103 of the California Rules of Court](#), the Judicial Council has approved the following types of Notice to Appear forms:

Form TR-115	Automated Traffic Enforcement System Notice to Appear
Form TR-130	Traffic/Nontraffic Notice to Appear
Form TR-120	Nontraffic Notice to Appear

Form TR-106
Form TR-108

Continuation of Notice to Appear
Continuation of Citation

Form TR-130 is used for both electronic and handwritten citations. (See www.courts.ca.gov/documents/trinst.pdf; Cal. Rules of Court, rule 4.103.)

6.2.3. Signatures on Scanned Documents

Government Code section 68150(a) authorizes the preservation and maintenance of trial court records in electronic form. Under this provision, trial courts may convert their paper records to electronic form by scanning. The act of scanning an original signature results in a digitized signature. This digitized signature shall have the same validity, and the same legal force and effect, as the original signature. This section applies generally to electronic signatures by parties and others on documents submitted to the courts, in addition to electronic signatures by judicial officers and courts (which are also addressed above in the standards and guidelines implementing Government Code section 68150(g).)

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