JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 23, 2016

To
Judicial Council Technology Committee

From
Tara Lundstrom, Attorney
Criminal Justice Services Office

Subject
Modernization Project: Legislative and rules proposals to promote e-filing, e-service, and e-business

Action Requested
Please review by August 25 meeting

Deadline
August 25, 2016

Contact
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Background

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee ("ITAC") is leading a multi-year effort to comprehensively review and modernize the statutes and rules so that they will be consistent with and foster modern e-business practices. ITAC is coordinating with six other advisory committees with relevant subject matter expertise, including the Civil and Small Claims Advisory Committee ("CSCAC"), the Family and Juvenile Law Advisory Committee ("FJLAC"), and the Criminal Law Advisory Committee ("CLAC").

This modernization project is being carried out in two phases. Last year, ITAC and the other advisory committees completed phase I—an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing e-filing and e-service and with e-business practices in general. This year, the advisory committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder e-business practices.

ITAC, CSCAC, FJLAC, and CLAC have recommended to the Rules and Projects Committee and the Policy Coordination and Liaison Committee that these proposals be presented to the Judicial Council during its October and December meetings. As the Judicial Council's internal committee on technology and ITAC's governing advisory body, the council's Technology Committee is also being asked to review these proposals before they are submitted to the Judicial Council.

Rules proposal to amend titles 2, 3, and 5 of the California Rules of Court

ITAC, CSCAC, and FJLAC have recommended a rules proposal that would amend the rules in titles 2, 3, and 5. This proposal includes new formatting rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

Following the public comment period, ITAC and CSCAC diverged in their recommendations for amending the rules on paper courtesy copies and on text searchability for electronically filed exhibits and forms. These differences, and their ultimate resolution when the committees were able to reach one, are described below.

Text searchability for e-filed exhibits and forms. CSCAC and ITAC initially split as to whether the rules should require that e-filed exhibits and forms be text searchable. Whereas CSCAC preferred that rule 2.256(b) require that only e-filed "papers" be text searchable, ITAC preferred extending this requirement to e-filed exhibits and forms "when feasible." CSCAC would have added an advisory committee comment to state a preference for text searchable e-filed exhibits and forms for the convenience of the court and the parties.

Chairs and interested committee members from both CSCAC and ITAC convened on August 22 and resolved the split by revising the proposed amendment to rule 2.256(b)(3) to provide as follows:

> **Rule 2.256(b)(3)**
> **(b) Format of documents to be filed electronically**
> A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:
>
> (1)–(2) * * *
>
> (3) The document must be text searchable when technologically feasible without impairment of the document's image.

> If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.
>
> **Advisory Committee Comment**
>
> Subdivision (b)(3). The term "technologically feasible" does not require more than the application of standard, commercially available optical character recognition (OCR) software.

Paper courtesy copies. CSCAC and ITAC also split as to whether paper courtesy copies should be required not only upon the request of a judge, but also by local rule. Whereas CSCAC recommended that rule 2.252(i) provide only that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred also adding "or paper courtesy copies may be required by local rule."

During the August 22 meeting, the participants from both committees could not resolve the split, and considered three options by vote. Because no option was agreed upon by all of the participants, the options are being passed along for JCTC's consideration and evaluation.

The majority of CSCAC participants on the call (three out of four) continued to prefer the option of requiring paper courtesy copies only upon request by a judge. They reasoned that judges would receive paper courtesy copies under a local rule, even if they did not want them. Disallowing local rules on paper courtesy copies would create greater flexibility and allow judges who are ready to transition to a paperless case environment to do so without being hampered by a local rule. CSCAC participants also stressed that their proposed rule would not preclude courtesy copies when desired by a judge and that each judge would control how the request is communicated to the parties; for example, requests for courtesy copies could be made in case management orders.

The majority of ITAC participants on the call (three out of four) continued to prefer the option of requiring paper courtesy copies not only by judicial request, but also by local rule. They reasoned that certain types of filings, such as summary judgment motions, typically run in the hundreds of pages in length and are not easily navigated electronically. ITAC participants also expressed concern about communicating the request for courtesy copies to the parties in master calendar courts. In direct calendar courts, each case is assigned to a particular judge, who may then issue a case management order with his or her request for courtesy copies. In contrast, because cases are not assigned to individual judges in master calendar courts, judges would need to find some other means to communicate their request to the parties. A local rule would provide greater clarity in this context. Lastly, ITAC participants stressed that in transitioning the trial

courts to new electronic filing systems, especially in large courts with many judges, it is helpful to have local rules stating standard electronic requirements. This uniformity assists the court in communications with the public and the bar.

The participants in the August 22 meeting also discussed the option of removing the proposed amendment to rule 2.252 on courtesy copies from the rules proposal entirely. Six out of the eight participants (three CSCAC members and three ITAC members) agreed with pursuing this option in the absence of resolution by the committees on specific rule language. Because the California Rules of Court do not currently address paper courtesy copies, this option would, in effect, preserve the status quo—where some courts have adopted local rules requiring paper courtesy copies in certain instances and some judges make specific requests for paper courtesy copies.

Ultimately, because the participants could not reach an agreement that was satisfactory to all, they decided to forward all three options to the Judicial Council Technology Committee ("JCTC") and the Rules and Projects Committee for their input. JCTC should discuss whether to weigh in on the proposal in favor of any of the three options. If the JCTC recommends removing the proposed rule on paper courtesy copies from this year's rules modernization proposal, it may consider directing the committees to reconsider and further develop this proposed rule next year.

Legislative proposal to amend the Code of Civil Procedure

During its August 1 meeting, ITAC recommended a legislative proposal that would amend the Code of Civil Procedure provisions governing e-filing, e-service, and e-signatures. Specifically, this legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Before circulating for public comment, the following advisory committees provided input on this proposal: Civil and Small Claims Advisory Committee, Family and Juvenile Law Committee, and the Advisory Committee on Providing Access and Fairness. After circulating for public comment, the Civil and Small Claims Advisory Committee provided additional input.

Legislative proposal to amend the Penal Code

ITAC and CLAC have recommended a legislative proposal that would provide express authority for permissive electronic filing and service in criminal proceedings. It would add section 690.5 to the Penal Code to apply the electronic filing and service provisions in subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 to criminal actions.

Attachments

1. Draft Judicial Council report for rules proposal amending titles 2, 3, and 5 of the California Rules of Court (including proposed amendments and comment chart)
2. Draft Judicial Council report for legislative proposal amending the Code of Civil Procedure (including proposed amendments and comment chart)
3. Draft Judicial Council report for legislative proposal amending the Penal Code (including proposed amendments and comment chart)

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455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2016

Title
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)

Rules, Forms, Standards, or Statutes Affected
Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392

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

Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 23, 2016

Contact
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Executive Summary

The Information Technology Advisory Committee (ITAC) recommends amending various rules in titles 2, 3, and 5 of the California Rules of Court as part of phase II of the Rules Modernization Project. These amendments are substantive changes to the rules that are intended to promote electronic filing, electronic service, and modern e-business practices. With one

exception, the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee also recommend the amendments to the rules in their respective subject-matter areas.

ITAC and CSCAC have made separate recommendations for the proposed amendment to rule 2.252(i) on paper courtesy copies of electronically filed documents. Whereas CSCAC recommends requiring paper courtesy copies only upon request of the individual judge, ITAC would also allow for paper courtesy copies to be required by local rule.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.

The text of the amended rules is attached at pages 11–26.

Previous Council Action

The Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a multiyear 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 is coordinating with other advisory committees, including the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee (FJLAC), with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. Phase I culminated in the Judicial Council's adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. This rules proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

This proposal includes new formatting rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

The rule amendments in titles 2 and 3 have been reviewed and recommended by ITAC and CSCAC; those in title 5 have been reviewed and recommended by ITAC and FJLAC.

Formatting of electronically filed documents

Rule 2.256(b) states the formatting requirements for documents that are electronically filed in the trial courts. This proposal would add references to rule 2.256(b) in rules 2.100, 2.104, and 2.114 to clarify that the formatting requirements in rule 2.256(b) apply to electronically filed "papers," exhibits, and forms.

Text-searchable electronic documents. This proposal would amend rule 2.256(b) to provide that an electronically filed document must be text searchable when technologically feasible without impairing the document's image. This requirement would apply broadly to all electronically filed documents, including "papers," exhibits, and forms.[1]

Although both ITAC and CSCAC agreed that electronically filed "papers" should be text searchable, the committees initially split regarding whether to extend this requirement to electronically filed exhibits and forms. Whereas CSCAC recommended that an advisory committee comment to rule 2.256(b) state a preference for text searchable exhibits and forms for the convenience of the court and the parties, ITAC preferred requiring that electronically filed exhibits and forms be text searchable "when feasible."

After further discussion, the two committees were able to resolve their differences by providing guidance on the intended meaning of the term "feasible." They recommended requiring that all electronically filed documents be text searchable "when technologically feasible without impairment of the document's image." They also decided to provide further guidance in an advisory committee comment, which would specify that "[t]he term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

In addition, the requirement that "papers" be text searchable is intended to discourage litigants from printing and scanning "papers" before electronically filing them, which creates documents that are not text searchable. Because converting from a document created with word processing software to portable document format ("PDF") may result in a slight reduction or enlargement of font size in the document, this proposal would amend rule 2.118 by adding a new subdivision (a)(3) to provide that a clerk may not reject papers for filing solely because "[t]he font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF format."

Electronic bookmarks for exhibits. This proposal would amend rule 3.1110(f) to require that electronic exhibits contain electronic bookmarks, unless they are submitted by a self-represented litigant. The electronic bookmarks must have (1) links to the first page of each exhibit and (2)

[1] The term "papers" is defined in rule 2.3(2) as "all documents except exhibits, 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."

titles that identify the exhibit number or letter and briefly describe the exhibit. This proposal would also add an Advisory Committee Comment, which would state that, under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free. In addition, this proposal would amend rule 3.1113(i) to require electronic bookmarking where authorities or cases are lodged in electronic form.

Page numbering

This proposal would amend the rules governing pagination for "papers," motion documents, and motion memoranda—rules 2.109, 3.1110(c), and 3.1113(h)—to provide that page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3) and that the page number may be suppressed and need not appear on the first page. These amendments recognize that judicial officers find it easier to navigate electronic documents when the page number in the footer matches the page number of the electronic document. To provide for consistency, this method of page numbering would apply to both electronic and paper documents, and, as a result, the pages of tables of content in memoranda will no longer be paginated using lower-case Roman numerals.[2]

To ensure that the amendment to rule 3.1113(h) would not alter the number of pages allowed for memoranda, this proposal would also amend rule 3.1113(d) by providing that the caption page and the notice of motion and motion are not counted in determining whether a memorandum exceeds the page limit. Subdivision (d) already provides that exhibits, declarations, attachments, the table of contents, the table of authorities, and the proof of service are not counted.

Proof of electronic service

This proposal would amend rule 2.251(i) to conform the requirements for proof of electronic service to the statutes and rules governing electronic service. It would also eliminate the requirement that the person completing the proof of electronic service state the time of electronic service.

Electronic service by a party. In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of service by mail in Code of Civil Procedure section 1013a, subject to several exceptions. Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that the "the person making the service" is "not a party to the cause," and subdivision (i) of rule 2.251 does not currently provide an exception to this requirement. However, subdivision (e) of rule 2.251 and the statute governing electronic service expressly allow for electronic service by a party. (See Code Civ. Proc., § 1010.6(a)(1)(A).) To eliminate this internal inconsistency, this proposal would add another exception to rule 2.251(i) to recognize that parties may electronically serve documents.

[2] The Information Technology Advisory Committee and the Appellate Advisory Committee have recommended similar amendments to the pagination requirements in rules 8.204(b) and 8.74(b) for appellate briefs and documents that are electronically filed in the appellate courts.

Time of electronic service. This proposal would amend rule 2.251(i)(1) to remove the requirement that the proof of electronic service state the time of electronic service. In practice, this requirement has proved unworkable: the person completing the proof of electronic service will not know the precise time of electronic service until after the document is served. Because this requirement also appears in the proof of service for fax filing, this proposal would make the same change to rule 2.306(h)(1).

Paper courtesy copies

At present, the rules are silent as to whether paper courtesy copies may be required when documents are filed electronically. This proposal would add a new subdivision (i) to rule 2.252 to address paper courtesy copies.

CSCAC and ITAC have split as to whether paper courtesy copies should be required not only upon the request of a judge, but also by local rule. Whereas CSCAC recommended that rule 2.252(i) provide only that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred also adding "or paper courtesy copies may be required by local rule."

Because the committees were unable to agree upon a proposed rule, they are presenting two recommendations to the council for its consideration:

CSCAC recommendation for amending rule 2.252:

(i) Paper courtesy copies

A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.

ITAC recommendation for amending rule 2.252:

(i) Paper courtesy copies

A judge may request that electronic filers submit paper courtesy copies of an electronically filed document, or paper courtesy copies may be required by local rule.

"Return" of lodged records

During phase I of the Rules Modernization Project, the Judicial Council amended rules 2.551, 2.577, and 3.1302 to provide for the return of materials lodged in electronic form. The advisory committees and commentators raised concerns that the rule language regarding the return of electronic materials did not necessarily mean that the court would be required to delete the electronic record maintained in its document management system. Accordingly, the committees decided to revisit these rules this year and provide for a new process that addresses these concerns.

The purpose of amending rules 2.551(b)(6) and 2.577(d)(4) is to modernize the process for returning the lodged record to accommodate electronic records. It is not intended to change the basic underlying procedure: when a motion to seal is denied, rules 2.551(b)(6) and 2.577(d)(4) provide for the return of the lodged record to the moving party or, in the alternative, allow the moving party to notify the court within 10 days of the order denying the motion that the record is to be filed unsealed.

To better reflect this purpose, the committees decided to revise the amendments to rules 2.551(b)(6) and 2.577(d)(4) to provide that the moving party has 10 days following an order denying a motion or application to seal—unless ordered otherwise by the court—to notify the court that the lodged record is to be filed unsealed. The clerk must unseal and file the record upon receiving the notification. If the clerk does not receive notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete the lodged records if in electronic form. Based on comments received in response to the invitation to comment, the committees decided not to require that courts send a separate notice of destruction prior to destroying electronic lodged records. The court order denying the sealing motion was thought to provide sufficient notice to the moving party.

The committees also revised rule 3.1302(b) to provide that courts may continue to maintain other lodged materials; however, if the court elects not to maintain them, they must be returned by mail if in paper form or permanently deleted after notifying the party lodging the material if in electronic form. The committees decided to require that a notice be sent prior to destruction of any electronic lodged records under rule 3.1302 because the submitting party would not otherwise have notice of the destruction.

Additional technical amendments to the rules

Lastly, this proposal would make additional technical amendments to the rules that were not identified during phase I of the Rules Modernization Project. These technical changes include the following:

- Amending rule 2.104 to clarify that the font size must be not smaller than 12 points on papers if they are filed electronically or on paper;
- Amending rule 2.110 to refer to “font” instead of “type”;
- Amending rule 2.111(1) to delete the language “if available” in reference to fax and e-mail addresses on the first page of papers;
- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rules 2.551(f) and 2.577(g) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them;
- Amending rule 3.250(b) to describe the process for retaining the originals of papers that are not filed where the originals are in electronic form;

- Amending rule 3.751 to recognize that a party may agree to electronic service, or a court may require electronic service by local rule or court order, under rule 2.251 in complex civil cases;
- Amending rule 3.823(d) to cross-reference Code of Civil Procedure sections 1013 and 1010.6;
- Amending rule 3.1306 to provide that a party who requests judicial notice of material in electronic form must make arrangements to have it electronically accessible to the court at the time of the hearing;
- Amending rule 3.1362 to recognize that an attorney requesting to be relieved as counsel may serve notice of the motion, the declaration, and the proposed order by electronic means, subject to certain safeguards;
- Amending rule 5.66 to recognize that the proof of service of a response to a petition or complaint may be on *Proof of Electronic Service* (form POS-050/EFS-050);
- Amending rules 5.380(c), 5.390(e), 5.392(b), (d), and (f) to replace the term "mail" and "mailing" with "serve" and "serving"; and
- Amending rule 5.390(e) to recognize that a clerk may file a certificate of electronic service.

Comments, Alternatives Considered, and Policy Implications

This rules proposal circulated for public comment during the spring 2016 cycle. Seven comments were submitted in response to the invitation to comment; two agreed with the proposal, three agreed with the proposal if modified, and two did not indicate their position. None of the comments addressed the amendments in title 5. The specific responses from ITAC and CSCAC to each comment are available in the attached comment chart at pages 27–58.

ITAC and CSCAC considered various alternatives in proposing rule amendments to titles 2 and 3, including whether electronically filed exhibits and forms should be text searchable, whether the rules should allow for paper courtesy copies, and whether self-represented litigants should be exempt from all or some of the new electronic requirements. The invitation to comment requested specific comment on several of these alternatives.

Text searchability of electronically filed documents. Several commentators expressed concerns if the rules were amended to require that electronically filed exhibits be text searchable. These concerns included the difficulties in applying OCR software to voluminous and poorly reproduced exhibits and the possible expense of obtaining OCR software of sufficient quality.

ITAC and CSCAC also initially split as to whether electronically filed exhibits and forms should be text searchable. Whereas CSCAC recommended that rule 2.256(b) require that only electronically filed "papers" be text searchable, ITAC preferred extending this requirement to electronically filed exhibits and forms "when feasible." CSCAC would have added an advisory committee comment to state a preference for text searchable exhibits and forms for the convenience of the court and the parties, but would not have made text searchability a requirement for these types of documents.

In light of public comments and further committee discussion, the committees ultimately agreed to recommend that electronically filed documents, including exhibits and forms, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance, the committees also recommended adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character resolution (OCR) software."

Paper courtesy copies of electronically filed documents. Commentators also responded to the request for comment on the proposed new rule on courtesy copies. As circulated, the proposed amendment to rule 2.252(i) would have required paper courtesy copies upon request of the judge.

Several commentators appreciated the flexibility built into the circulated rule and thought it would ultimately promote the transition to paperless case environments. One commentator questioned allowing for courtesy copies because they eliminate the primary benefit of electronic filing for litigants: the time and expense saved by not delivering paper copies to the courthouse.

Another commentator preferred omitting reference to courtesy copies from the rules or, in the alternative, also allowing for courtesy copies by local rule. This commentator reflected that the subject of local courtesy copies has been left to judicial discretion or local rule thus far and emphasized the importance of continuing to allow for both individual and local options to provide for flexibility in the early stages of implementing electronic filing in local courts.

ITAC and CSCAC were unable to reach an agreement in their recommendations for a new rule on paper courtesy copies. Whereas CSCAC recommended that rule 2.252(i) provide only that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred also adding "or paper courtesy copies may be required by local rule."

In support of its recommendation, CSCAC reasoned that requiring paper courtesy copies only upon request by a judge would provide for flexibility while also promoting the transition to a paperless case environment. If local rules on paper courtesy copies were allowed, judges would receive paper courtesy copies under a local rule even if they did not want them, resulting in unnecessary expense for litigants and the waste of natural resources. Alternatively, disallowing local rules on paper courtesy copies would permit those judges who are ready to transition to a paperless case environment to do so without being hampered by a local rule. Each judge would control how the request is communicated to the parties, including, for example, making the request in case management orders.

In support of its recommendation, ITAC reasoned that requiring paper courtesy copies not only upon request of the judge, but also by local rule would give autonomy to local courts to decide how best to transition to electronic filing. Local courts could determine whether paper courtesy copies should always be provided for certain types of cases, such as summary judgment motions. Uniformity might be especially helpful in master calendar courts where judges would need to

find some means other than a case management order to convey their request for courtesy copies to the parties. Uniformity would also assist courts, especially larger courts, as they transition to new electronic filing systems by providing for clarity in their communications with the bar and public.

Self-represented litigants. Lastly, several commentators questioned the balance struck by the committees with respect to self-represented litigants. One requested that self-represented, disabled, and low-to-moderate income litigants be exempted from the requirement that electronically filed documents be text searchable and that disabled and low-to-moderate income litigants be exempted from the electronic bookmarking requirement.

In declining to pursue these recommendations, the ITAC and CSCAC took the following under consideration: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.

Another commentator questioned why self-represented litigants were exempt from the electronic bookmarking requirement. With a view to promoting both electronic filing and access to the courts, the committees concluded that the electronic bookmarking requirement would be too burdensome for self-represented litigants; it requires downloading additional software and possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees preferred to lower potential barriers to electronic filing.

Implementation Requirements, Costs, and Operational Impacts

The committees expect that the amendments would ultimately result in efficiency gains and cost savings for the courts at minimal expense, if any, to litigants.

Requiring that electronically filed documents be text searchable would assist judicial officers and research attorneys. Although courts may incur additional expense for clerk review of filings to ensure text searchability, it is expected that the requirement will result in overall savings from avoiding the significant cost and delay of applying OCR software to electronically filed documents. Litigants may readily convert “papers” created by word processing software free of additional charge to text searchable PDFs. Generating text searchable exhibits may require the application of OCR software, a common feature included in many scanners. The committees decided that the added benefits of text searchability to the courts outweighed the costs to the litigants.

Electronic bookmarks will facilitate and expedite the review of electronic exhibits by judicial officers and research attorneys. Adding electronic bookmarks to electronic exhibits would not result in any additional costs to litigants as open source software is available. Electronic bookmarks are also cheaper and less time intensive to apply compared to tabbing or separating paper exhibits. Because self-represented parties are exempt from the bookmarking requirement, it would not negatively impact them.

The notice requirement in rule 3.1302(b) for lodged electronic materials may result in costs for courts, but courts can avoid that cost retaining and not deleting the lodged materials. Notice is required only if courts elect to delete electronic lodged materials.

Attachments and Links

1. Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252 (with alternate versions for proposed subdivision (i)), 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392, at pages 11–26
2. Chart of comments, at pages 27–58

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court would be amended, effective January 1, 2017, to read:

Title 2. Trial Court Rules

Rule 2.100. Form and format of papers presented for filing in the trial courts

(a)–(b) * * *

(c) Electronic format of papers

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

Rule 2.103. Size, quality, and color of papers

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.

Rule 2.104. ~~Printing; f~~ Font size; printing

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. 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 a font not smaller than 12 points~~.

Rule 2.105. Font style

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.109. Page numbering

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

Rule 2.110. Footer

(a)–(b) * * *

(c) ~~Type~~ Font size

The title of the paper in the footer must be in at least 10-point ~~type~~ font.

Rule 2.111. Format of first page

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

(1) 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 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. 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.

(2)–(11) * * *

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image. Exhibits submitted with papers filed electronically must meet the requirements in rule 2.256(b).

Rule 2.118. Acceptance of papers for filing

(a) Papers not in compliance

The clerk of the court must not accept for filing or file any papers that do not comply with the rules in this chapter, except the clerk must not reject a paper for filing solely on the ground that:

(1) It is handwritten or hand-printed; ~~or~~

(2) The handwriting or hand printing on the paper is in a color other than black or blue-black~~.~~; or

(3) The font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF.

(b)–(c) * * *

Rule 2.140. Judicial Council forms

Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1. Electronic Judicial Council forms must meet the requirements in rule 2.256.

Rule 2.251. Electronic service

(a)–(h) * * *

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

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

(B) The proof of electronic service must state:

~~(A)~~ (1) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~ (2) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~ (3) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~ (4) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) * * *

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

(4) * * *

(j) * * *

Rule 2.252. General rules on electronic filing of documents

(a)–(h) * * *

CSCAC recommendation:

(i) Paper courtesy copies

A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.

ITAC recommendation:

(i) Paper courtesy copies

A judge may request that electronic filers submit paper courtesy copies of an electronically filed document, or paper courtesy copies may be required by local rule.

Rule 2.256. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

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

(1)–(2) * * *

(3) The document must be text searchable when technologically feasible without impairment of the document's image.

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

Advisory Committee Comment

Subdivision (b)(3). The term "technologically feasible" does not require more than the application of standard, commercially available optical character recognition (OCR) software.

Rule 2.306. Service of papers by fax transmission

(a)–(g) * * *

(h) Proof of service by fax

Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013(a), except that:

(1) The ~~time,~~ date~~,~~ and sending fax machine telephone number must be used instead of the date and place of deposit in the mail;

(2)–(5) * * *

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1)–(2) * * *

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

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly ~~remove~~ transfer all the documents in (A)(i) from the envelope, container, or secure electronic file ~~where they are located and place them in~~ to the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4)–(5) * * *

(6) *Return of lodged record*

If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record if it is in electronic form.

(c)–(d) * * *

(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 form~~at~~, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2)–(4) * * *

(f) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(g)–(h) * * *

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

(a) * * *

(b) Application to file records in confidential name change proceedings under seal

An application by a confidential name change petitioner to file records under seal must be filed at the time the petition for name change is submitted to the court. The application must be made on the *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410) and be accompanied by a *Declaration in Support of Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-420), containing facts sufficient to justify the sealing.

(c) * * *

(d) Procedure for lodging of petition for name change

(1)–(3) * * *

(4) If the court denies the application to seal, ~~the clerk must return the lodged record to the petitioner and must not place it in the case file unless the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record if it is in electronic form.

(e) * * *

(f) Order

(1)–(2) * * *

(3) 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~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(g) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(h) * * *

Title 3. Civil Rules

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(c) * * *

Rule 3.751. Electronic service

Parties may consent to electronic service, or the court may require electronic service by local rule or court order, under rule 2.251. The court may provide in a case management order that documents filed electronically in a central electronic depository available to all parties are deemed served on all parties.

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 as provided by Code of Civil

Procedure section 1010.6. ~~by two days.~~ If service is in the manner provided by ~~mail~~ Code of Civil Procedure section 1013, the times prescribed in this rule are increased as provided by ~~five days~~ that section.

Rule 3.1110. General format

(a)–(b) * * *

(c) Pagination of documents

Documents ~~bound together~~ must be consecutively paginated. ~~If the document is filed electronically, t~~ The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

(d)–(e) * * *

(f) Format of exhibits

(1) An index of exhibits must be provided. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.

(2) Pages from a single deposition must be designated as a single exhibit.

(3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. ~~An index to exhibits must be provided. Pages from a single deposition and associated exhibits must be designated as a single exhibit.~~

(4) Electronic exhibits must meet the requirements in rule 2.256(b). Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(g) * * *

Advisory Committee Comment

Subdivision (f)(4). Under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free.

Rule 3.1113. Memorandum

(a)–(c) * * *

(d) Length of memorandum

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

(e)–(g) * * *

(h) Pagination of memorandum

~~(1)~~ The pages of a memorandum must be numbered consecutively beginning with the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

~~(2) Notwithstanding any other rule, a memorandum that includes a table of contents and a table of authorities must be paginated as follows:~~

~~(A) The caption page or pages must not be numbered;~~

~~(B) The pages of the tables must be numbered consecutively using lower-case roman numerals starting on the first page of the tables; and~~

~~(C) The pages of the text must be numbered consecutively using Arabic numerals starting on the first page of the text.~~

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. ~~and~~ If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4).

(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~~ If in paper form, the copy must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) * * *

(j)–(m) * * *

Rule 3.1302. Place and manner of filing

(a) * * *

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which ~~the materials may be returned~~ a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

Rule 3.1306. Evidence at hearing

(a)–(b) * * *

(c) Judicial notice

A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

(1) Specify in writing the part of the court file sought to be judicially noticed; and

(2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Rule 3.1362. Motion to be relieved as counsel

(a)–(c) * * *

(d) Service

The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail.

(1) If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(~~1~~A) The service address is the current residence or business address of the client; or

(~~2~~B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

(e) * * *

Title 5. Family and Juvenile Rules

Rule 5.66. Proof of service

(a) Requirements to file proof of service

Parties must file with the court a completed form to prove that the other party received the petition or complaint or response to petition or complaint.

(b) Methods of proof of service

(1) The proof of service of summons may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service of Summons* (form FL-115).

(2) The proof of service of response to petition or complaint may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service by Mail* (form FL-335) ~~or,~~ *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service* (form POS-050/EFS-050).

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a)–(b) * * *

(c) Notice of Entry of Judgment

When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

Rule 5.390. Bifurcation of issues

(a)–(d) * * *

(e) Notice by clerk

Within 10 days after the order deciding the bifurcated issue and any statement of decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the parties and file a certificate of mailing or a certificate of electronic service.

Rule 5.392. Interlocutory appeals

(a) * * *

(b) Certificate of probable cause for appeal

(1) * * *

(2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the order. The motion must be heard within 30 days after the order deciding the bifurcated issue is ~~mailed~~ served.

(3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to the parties. If the motion is not determined within 40 days after ~~mailing of~~ serving the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(c) * * *

(d) Motion to appeal

(1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~ court serves the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.

(2)–(6) * * *

(e) * * *

(f) Proceedings if motion to appeal is granted

(1) * * *

(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of the record that are needed for the full consideration of the appeal.

(3)–(4) * * *

(g)–(h) * * *

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committee Response
1.	David Chapman Judge Superior Court of Riverside County	AM	In courts that have electronic access to all of its own files, there is no need for a party requesting judicial notice of the court's own records to "provide the court . . . with a copy of the material." (c)(2) as written makes no sense – how does someone "make arrangements to have a file electronically accessible" It is suggested beginning that sentence with "If the file is not electronically accessible to the court" so it would read: "If the file is not electronically accessible to the court , make arrangements with the clerk to have the file in the courtroom at the time of the hearing." An alternative would be "or confirm with the clerk that the file is electronically accessible to the court" so it would say "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."	ITAC and CSCAC appreciate Judge Chapman's input. The committees agree. The proposed amendment to rule 3.1306(c)(2) has been revised to provide: "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."
2.	Orange County Bar Association by Todd G. Friedland President	A	The proposal asks for specific comments. The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents. We are hesitant to advocate requiring all exhibits be text searchable at this	The committees appreciate the Orange County Bar Association's support. They decided to recommend requiring that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committee Response
			early juncture, but agreeable assuming "where feasible" language is used. The language "where feasible" gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable but not mandatory. Costs to litigants to obtain the necessary software programing to ensure that its documents are text searchable should be assessed.	further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."
3.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	NI	***Does the proposal appropriately address the stated purpose?*** Generally, yes. The stated purpose of the proposed amendments is "to promote electronic filing, electronic service, and modern e-business practices." Widespread consensus exists in the legal community that text-searchable and electronically bookmarked documents are easier to read and interact with on electronic media (including both computers and e-readers). Yet absent an accompanying mandate that litigants electronically file documents in all state courts, these particular amendments (text searchability and bookmarking) tend to *reflect* existing e-business practices more than they *promote* wider adoption of these practices. PDF writers are built into most word processors, and they are simpler and more cost effective than printing documents and scanning them (which creates much larger file sizes). The efficiencies built into the technology itself therefore already	The committees appreciate the input of the State Bar Committee on Administration of Justice. No response required.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committee Response
			promote electronic filing and service. What the rules will do, however, is render electronic media more accessible to judicial officers, who in turn may be more inclined to mandate electronic filing or service than they would have previously. To this extent, the rules appear to promote the stated purpose. Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction.	

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committee Response
			There is another way in which bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service. ***Should the rules require that electronic exhibits be text searchable to the extent feasible?*** No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings	The committees appreciate the difficulties that litigants may encounter in applying OCR software to scanned documents. Accordingly, the committees opted to recommend requiring that electronic documents, including electronically filed exhibits, be text searchable "when

	Commentator	Position	Comment	Committee Response
			originate as paper documents, which are often poorly reproduced. Scanning and applying Optical Character Recognition ("OCR") software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet. Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule.	technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committee Response
			Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? **Yes.**	No response required.
			Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? **They should not.**	No response required.
			Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? **Mitigation likely is not necessary.** There should be no concerns about document metadata being carried into electronic documents that are saved as PDFs. When a document is saved as a PDF, the PDF writer (e.g., Acrobat) strips the document's metadata (including tracked changes) from the document and does not transfer any underlying document properties to the PDF. (CAJ uses Acrobat as a continuing example, but different PDF writers should work the same way.) Acrobat *will* create new creation-date and author metadata for the PDF itself, and Acrobat takes that data from the computer on which the document is saved as a PDF. But this data should not reveal sensitive underlying document information, and it is	No response required.

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			possible to use a data scrubber to remove that data in the rare event that it does contain sensitive information. The one scenario litigants should be careful about is document redaction. Most PDF writers do not automatically burn in redactions (i.e., remove the underlying text). But in recent years, Adobe has modified its software to prompt users to burn in redactions, rendering the process user-friendly. Of note, federal courts nationwide mandate e-filing, and many federal courts specifically require that documents be submitted in PDF format. *E.g.*, N.D. Cal. L. R. 5-1(e) (2) ("Documents filed electronically must be submitted in PDF format. Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to PDF format."); C.D. Cal. L. R. 5-4.3.1 ("Documents filed electronically must be submitted in PDF. . . . PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED."). Anecdotal evidence suggests that unintentionally retained metadata has not been	

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			an issue in federal court filings, although some courts have online FAQs that guide litigants through these issues. *E.g.*, https://www.cacd.uscourts.gov/e-filing/faq/pdf-related%20questions (Central District of California); http://www.cand.uscourts.gov/pages/946 (Northern District of California). ***Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?*** If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 ("A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.") would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).	Although CSCAC agrees with the commentator, ITAC has recommend also allowing courts to require paper courtesy copies by local rule. Both proposals will be presented to the council.

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4.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	AM	• Does the proposal appropriately address the stated purpose? Yes. • Should the rules require that electronic exhibits be text searchable to the extent feasible? Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable. • Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing	The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services. The committees recommend that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software." As recommended by the committees, the rule would not carve out an exception for self-represented litigants.

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			Service Providers or by applying data scrubbing software? Yes to first question. SCDLS has no comments about the remaining questions. • Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved. **Additional Comments** The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all	No response required. No response required. The committees appreciate this suggestion, but decline to pursue it. They weighed the following considerations: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of

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			(which would be contrary to the proposal's general intent to promote e-filing). The rule (see Rule 3.1110(f)) should also not require that all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.	electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.
5.	Superior Court of Orange County Judicial Assistance Group Sheri A. Bull Program Coordinator	NI	**GENERAL COMMENTS** **REJECTION OF DOCUMENTS OFFERED FOR FILING FOR NON-COMPLIANCE WITH FORM AND FORMAT RULES – PAGE NUMBERING, SEARCHABLE TEXT, AND BOOKMARKING EXHIBITS** *COMMENT*: The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and	The committees appreciate the input from the Superior Court of Orange County's Judicial Assistance Group. The committees carefully considered the additional burden on clerks resulting from the proposed amendments to rule 2.100 (requiring that "papers" filed electronically be text

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			are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed. In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (**proposed Rules 2.109**, **3.1110(c)**, and **3.1113(h)**), whether the documents submitted is text searchable (**proposed Rule 2.256(b)(3)**), or whether the exhibit format requirements are followed (**proposed Rule 3.1110(f)**) . As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court. **PERMANENTLY DELETING RECORDS**	searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that exhibits submitted with electronically filed "papers" be text searchable). These three amendments would be subject to the general requirement in rule 2.118 that clerks "must not accept for filing or file any papers that do not comply with the rules in this chapter." The proposed amendment to rule 3.1110(f) (requiring that electronic exhibits contain electronic bookmarks) is not subject to rule 2.118 because it does not fall within chapter 1 of title 2 of the California Rules of Court. The committees note that rule 2.118 currently requires rejecting filings for failure to comply with the prescribed font size. Even though courts may not have the resources for clerks to check every document for font size, the committee determined that it would be beneficial to provide an exception in the rules for minimal font variation attributable to converting documents from word processing format to PDF. Anecdotal evidence from practitioners suggests that some have had documents rejected due to minor variations in font size caused by conversion. At the very least, the concern that a document might be rejected due to such variations has caused some practitioners to create PDFs by scanning.

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			IN ELECTRONIC ENVIRONMENT *PROPOSAL*: **Rule 2.551(b)(6)**, **Rule 2.577(d)(4)**, and **Rule 3.1302(b)** contemplate that the clerk "permanently delete" a document that has been filed, or offered for filing in certain situations, and send notice of the deletion.	The purpose of amending rule 2.551(b)(6) is to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records. It is not intended to change the basic underlying procedure in subdivision (b)(6) of the rule. In the event that a motion is denied, subdivision (b)(6) provides for the return of the record to the moving party or, in the alternative, allows the moving party to notify the court that the record is to be filed (unsealed). To better reflect this purpose, the committees decided to revise subdivision (b)(6) as follows: If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this

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				notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record from the court record if it is in electronic form.
			COMMENT on DESTRUCTION: In a typical electronic record environment it may not be possible to 'delete' a document, if 'delete' means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases maybe stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee. Focusing on the intended outcome of 'destruction', is the issue one of access to the	While there may be technical issues with the ability to completely "delete" all electronic documents, the crucial legal point is that the lodged materials record should be deleted or removed *from the record*. The proposed new language—"permanently delete the lodged record"—achieves this purpose. Merely removing public access controls would not. The committees view deletion as necessary here, where lodged materials are accompanied with a request that they be filed under seal. The sensitive nature of these documents requires that they be permanently deleted if the motion is denied, unless otherwise requested by the party. Because existing statutes require the destruction of similarly sensitive court records (e.g., the destruction of juvenile records under Welfare and Institutions Code section 826(a)), the committees are confident that case management systems have the capability of deleting lodged materials or can be repurposed to do so.

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			document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively 'destroyed'. This can be accomplished with changes to document access codes, often referred to as security levels. Instead of stating "the clerk must . . . permanently delete", the rules should say "the clerk must . . . eliminate public access to the document", or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g). Finally, the 'deletion' of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge's decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court. More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example, in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-	Rule 2.551 currently does not contemplate the retention of lodged materials that are submitted with a motion to seal for purposes of any appeals, regardless of whether these materials are submitted in paper or electronic form. Because this suggestion is beyond the scope of the current rules proposal, it will be deferred for further review by the committees next year. Rules 2.551 would apply to lodged materials in probate cases only if they are submitted in connection with a motion to seal. Any lodged materials in probate cases that are submitted with a motion to seal must be deleted if the motion is denied, unless otherwise specified by the moving party.

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			term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of "if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records indefinitely". *COMMENT on NOTICE OF DESTRUCTION:* Sending a notice of document deletion seems unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record. **ELECTRONIC PROOF OF SERVICE – REMOVING TIME OF SERVICE** *PROPOSAL: Rule 2.251(i)* . . . . *(B) The proof of electronic service must state:*	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged material be filed unsealed within 10 days of the order, or the court will permanently delete the lodged material. Accordingly, the committees have revised the proposed amendment to eliminate the notice requirement.

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			. . . . *(B) (2) The date and time of the electronic service, instead of the date and place of deposit in the mail;* . . . . *COMMENT:* For most documents, the time of service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states that "a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance . . . ." Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the language "and time", and adding ", if relevant to validity of service" or something like that.	The committees understand this concern. ITAC is concurrently pursuing a legislative proposal that would amend the cut-off time for the effective date of electronic service to 11:59:59 p.m. With this legislation, it is expected that the exact time of electronic service will be an issue in far fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information. That said, there will still be instances when the exact time of electronic service will be an issue. On balance, the committees determined that the benefits of eliminating the time requirement from proofs of electronic service outweighed the costs. Only after electronic service has been effected will the exact time of electronic service be known. Requiring that the proof of electronic service specify the time of electronic service has led many to leave the time blank for fear of committing perjury. The committees also reasoned that there are other means for ascertaining the time of electronic service when needed.

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			EXEMPTION FOR SELF-REPRESENTED PARTY *PROPOSAL*: Proposed **Rule 3.1110(f)(4)** exempts self-represented parties from book marking exhibits. *COMMENT*: This is yet another example of the Judicial Council's unnecessary deference to self-represented litigants. Self-represented litigants are not necessarily incapable of complying with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally. **INVITATION TO COMMENT SPR16-25 SPECIFIC COMMENTS** Does the proposal appropriately address the stated purpose?	The committees decline to pursue this recommendation at this time. The proposed amendments are tailored to promote electronic filing and service in the trial courts. Adding electronic bookmarks to exhibits requires downloading additional software and possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees decided to lower potential barriers to electronic filing.

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			☐ Should the rules require that electronic exhibits be text searchable to the extent feasible? *YES*	The committees have opted to revise the rules proposal to require that electronic documents, including electronically filed exhibits, be text searchable "when feasible."
			☐ Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? *While PDF is, on one sense, a proprietary format, it is now so ubiquitous that it is reasonable to require its use. There are also so many programs, many free, for producing PDFs and addressing metadata issues that it is not burdensome to require its use.*	No response required.
			☐ Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? *In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement.*	No response required.

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			Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this. The advisory committees also seek comments from *courts* on the following cost and implementation matters: ☐ Would the proposal provide cost savings? If so please quantify. *The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to perform a text search on all electronic documents individually to ensure compliance.* *Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to*	The committees understand the concern about creating additional burden for courts. The amendments to rule 2.100 (requiring that "papers" filed electronically be text searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that all exhibits submitted with electronically filed "papers" be text searchable) are consistent with the other formatting rules in chapter 1 of title 2. They will also result in substantial cost efficiencies for the courts, not only in terms of judicial time, but also in the time and expense of applying OCR software to electronically filed documents. It is also possible that some aspects of clerk review might be processed automatically, depending on the policy files of each court's electronic filing

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			navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.	management systems. As acknowledged by the Judicial Assistance Group, courts already lack sufficient resources to provide for clerk review of all filings for compliance with the rules. In lieu of delaying the implementation date of these new formatting requirements, each court will continue to allocate resources to clerk review as it sees fit. Moreover, the concern about resources points to the larger issue of whether the council should reconsider the utility of rule 2.118, which requires that clerks reject filings if they do not comply with the formatting rules in chapter 1 of title 2. The larger question of whether rule 2.118 should be modified is outside the scope of the present rules proposal, as circulated, but it will be referred for further consideration to the Civil and Small Claims Advisory Committee.
			☐ 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. *Courts would need time to work with eFiling applications to ensure they support new*	No response required.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			guidelines. Courts will also need time to communicate with justice partners, the public, as well as training for staff and judges. *We would like clarification whether the implementation of amendments to the CRC would apply to Family Law and Juvenile case types or if there are any limitations or discretion by our court that can be specified.* *We need about 6 months to implement training and procedure updates to get staff familiar with PDF capabilities, text searchable guidelines, and what staff should be looking for when accepting or rejecting documents due to formatting errors.* ☐ Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Not if it is expected that attorneys would fully comply and clerks would be able to check for compliance after only two months' notice. While we support text searchable documents, the public still needs education regarding how*	Yes, the proposed amendments to titles 2 and 3 would apply to family and juvenile proceedings. The trial court rules in title 2 of the California Rules of Court "apply to all cases in the superior courts unless otherwise specified by a rule or statute." (Cal. Rules of Court, rule 2.2.) The civil rules in title 3 "apply to all civil cases in the superior courts, including general civil, *family*, *juvenile*, and probate cases, unless otherwise provided by a statute or rule in the California Rules of Court." (*Id.*, rule 3.10, italics added; see also *id.*, rule 5.2(d) ["Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail"].) Please see the committees' response above to these concerns.

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	Commentator	Position	Comment	Committee Response
			to create one. Orange County still receives a high volume of non-text searchable electronic documents even though it is a less efficient process for the parties involved. A phased in approach seems more pragmatic, where in the first year the filings would not be rejected. During that time, courts could notify parties that future filings that are not text searchable would be rejected. *If exhibits must be e-filed, bookmarked and text searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.* *This concern would be more easily mitigated if Electronic Filing Service Providers and/or courts apply data scrubbing software.*	Because rule 2.118 does not apply to rule 3.1110, clerks would not be required to reject for filing any electronic exhibits that do not comply with the new requirement that electronic exhibits contain electronic bookmarks. It would be left to each individual court to decide whether and how to enforce it. Because rule 2.118 does apply to rule 2.114, clerks would be required to reject for filing all exhibits submitted with electronically filed papers if they are not text searchable. No response required.
6.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committees appreciate the support of the Superior Court of San Diego County.

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	Commentator	Position	Comment	Committee Response
7.	TCPJAC/CEAC Joint Rules Subcommittee	AM	Suggested Modifications: **Rule 2.109. Page numbering** Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation. **Rule 2.111. Format of first page** We suggest adding language to (7), as this information would be useful to the court: "(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is ~~assigned.~~ **assigned, including the type of event, date and time.**" **Rule 2.252(i) Paper Courtesy Copies** The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of "courtesy copies" has been left to judicial discretion or to direction provided by local rule. For example, many judges will require counsel to create a binder of motions in limine and related papers	The committees appreciate the input of the TCPJAC/CEAC Joint Rules Subcommittee. The committees considered the subcommittee's concerns that the proposed amendment to rule 2.109 would result in an increase in workload for clerks. After weighing the costs and benefits, the committee decided to pursue the proposed amendment because of its significant benefit to judicial officers in referencing page numbers from the bench. The committees decided against pursuing this suggestion because it is outside of the rules proposal, as circulated. It will be referred to the Civil and Small Claims Advisory Committee for future consideration. Although ITAC agrees with the suggestion to allow courts to require paper courtesy copies by local rule, CSCAC has recommended requiring paper courtesy copies only upon request by the individual judge. Both recommendations will be presented to the council.

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	Commentator	Position	Comment	Committee Response
			and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(l) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of "all filings generated by their motions in limine" and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule 2E (requiring courtesy copies of all motion papers except for motions in cases designated as "complex"); Alameda County Superior Court Rule 3.30 (for civil cases "[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard").) Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule	

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			1012(b)(4) ("The court may by order require the delivery of paper courtesy copies of e-filed documents."); Monterey County Superior Court Rule 1.06E ("A judge may order a paper courtesy copy at any time, either printed or through electronic delivery").) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit "one courtesy paper copy of all filed documents requiring Court review, action, or signature directly to the assigned Judge's department); Alameda County Superior Court Rule 1.85(i) (when a document is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard).) It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of	

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			motions and their accompanying evidence. It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions. (1) Delete proposed subsection (i) of Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in other contexts (i.e., it the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed). (2) Redraft the proposal to expressly allow	

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			the alternative of a local rule to require courtesy copies. We suggest the following language: "A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule."	
			Rule 2.551(b)(6) Return of lodged record It seems unnecessary and would create additional workload to, "**send notice of deletion to the submitting party.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this.	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged records be filed unsealed within 10 days of the order, or the court will permanently delete the lodged records, if in electronic form. Accordingly, the committee has revised the proposed amendment to eliminate the notice requirement.
			We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing."**	The intent behind the amendments is not to change the current process for paper lodged records, but to provide a parallel process for electronic lodged records. The committees revised the proposed amendment to make this clear. In addition, resubmission of the lodged records would be burdensome for both the moving party and the court, and could potentially lead to errors. Instead, if the moving party notifies the court that the lodged records should be filed, the rule would provide that the court must unseal and file it. This is consistent with current practices and

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	Commentator	Position	Comment	Committee Response
				procedures.
			This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file."	The committees revised the amendments to eliminate reference to the term "case file."
			Rule 2.551(e)(1) In the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.	This requirement is currently in the rules and is outside the scope of the rules proposal, as circulated. The committees may take this into consideration in developing future modernization proposals.
			Rule 2.577(d)(4)	

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			As above, it seems unnecessary and would create additional workload to, "**send notice of deletion to the petitioner.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this. We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file." **Rule 2.577(f)(3)**	The committees have revised the proposed amendment to rule 2.577(d)(4) to remove the notice requirement. Please see the committees' response above. Please see the committees' response above.

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			As above, in the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.	
			Rule 3.1110(f) Format of Exhibits (4) The language in this section is too restrictive. We suggest a change in the second sentence from, **"…electronic exhibits must include electronic bookmarks…"** to **"…electronic documents must include electronic bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein…"**	The committees decided to retain the language that was circulated for public comment, which requires more generally that exhibits include electronic bookmarks with links to the first page of each exhibit. Depending on the experience applying this rule, the committees may revisit it to determine whether more precision is desirable.
			Rule 3.1302(b) As above, it seems unnecessary and would	Distinct from rules 2.551 and 2.557, which govern

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			create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "**The clerk must send notice of deletion to the submitting party,**" or at least changing the word, **"must"** to **"may"**.	the lodged records in the context of sealing motions, rule 3.1302 does not address lodged materials of a sensitive nature. The committees determined that these lodged materials may be maintained by the court. But if the court elects to destroy them, notice would need to be sent to the moving party. Unlike rules 2.551 and 2.557, where the court issues an order denying the motion to seal or the motion for a confidential name change, the court would not otherwise put the moving party on notice of the destruction. To better clarify that rule 3.1302(b) requires notice only if the court opts to delete the lodged materials, the committees have revised the amendment by combining the last two sentences as follows: "If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material."

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15, 2016

Title
Technology: Electronic Filing, Service, and Signatures

Rules, Forms, Standards, or Statutes Affected
Enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
August 22, 2016

Contact
Tara Lundstrom, 415-865-7995
tara.lundstrom@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends that the Judicial Council propose adding new Code of Civil Procedure section 1013b and amending sections 664.5, 1010.6, and 1011. This legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Sponsor legislation enacting new Code of Civil Procedure section 1013b; and

2. Sponsor legislation amending Code of Civil Procedure sections 664.5, 1010.6, and 1011.

The text of the proposed new and amended statutes is attached at pages 9–14.

Previous Council Action

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since January 1, 2000, Code of Civil Procedure section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) The Judicial Council first adopted statewide rules implementing permissive electronic filing and service in the trial courts in 2002.

Four years ago, the Legislature enacted Assembly Bill 2073, which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320; codified at Code Civ. Proc., § 1010.6(d).) AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. (Code Civ. Proc., § 1010.6(f).) Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. (*Id.,* § 1010.6(g).) Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service in civil cases.

Rationale for Recommendation

This legislative proposal builds on the lessons learned in promulgating the uniform mandatory electronic filing and service rules, as well as the experience of the Superior Court of Orange County and other superior courts in implementing mandatory and permissive electronic filing. It would amend the Code of Civil Procedure to authorize electronic signatures, promote consistency in the requirements for electronic filing and service, codify various provisions in the trial court rules, and clarify the application of section 1010.6's electronic service provisions in other statutes.

In developing this proposal, the Information Technology Advisory Committee (ITAC) sought input from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness.

Proposed amendments to section 1010.6

The proposed amendments to section 1010.6 would authorize electronic signatures on electronically filed documents, provide for consistency in the effective date of filing across courts and case types, consolidate the mandatory electronic filing provisions, and codify the provisions that are currently in the rules on mandatory electronic service, effective date of electronic service, and protections for self-represented litigants.

Authorize electronic signatures on electronically filed documents. Section 1010.6(b)(2)(B) currently requires that anyone who electronically files a document signed under penalty of perjury must print, sign, and keep the document indefinitely. These requirements have proved burdensome for litigants, especially government agencies and other high-frequency filers.

This proposal would amend subdivision (b)(2)(B) to provide that electronically filed documents may in the future be signed under penalty of perjury by means of an electronic signature. The proposed amendment would require that the electronic signature satisfy procedures, standards, and guidelines established by the Judicial Council. The language mirrors Government Code section 68150(g), which currently authorizes electronic signatures by judges and the courts.

To accommodate those without access to electronic-signature technology, the proposal would also retain but modify the procedures required in the current statute. The proposed amendment would still allow documents to be printed and signed by hand (in lieu of an electronic signature); however, it would eliminate the requirement that the original signature be maintained indefinitely. Instead, it would require the person signing the document to maintain the original signatures only until "final disposition of the case" as defined in Government Code section 68151(c).

Provide for a consistent effective date of filing across courts and case types. Under current law, where electronic filing is permissive, documents must be received before the "close of business"—which is defined as 5 p.m. or the time at which the court would not accept filing at its filing counter, whichever is earlier—in order to be deemed filed that day. (Code Civ. Proc., § 1010.6(b)(3).) However, in authorizing the Superior Court of Orange County's mandatory electronic filing pilot project, the Legislature provided that the court "may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely." (*Id.*, § 1010.6(d)(1)(D).)

With the exception of the Superior Court of Orange County's mandatory electronic filing pilot project, the statute is silent as to when documents must be electronically filed for mandatory electronic filing cases to be deemed filed that day. (See *id.*, § 1010.6(g)(2).) In adopting uniform rules for mandatory electronic filing, the Judicial Council elected to allow courts to provide by local rule for up-until-midnight electronic filing in mandatory electronic filing cases (the approach provided by the Legislature for the Superior Court of Orange County's mandatory electronic filing pilot project); otherwise, in the absence of such a local rule, the document must be filed by "close of business" to be deemed filed that day. (Cal. Rules of Court, rule 2.253(b)(7).) The rules also define "close of business" as "5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier." (*Id.*, rule 2.250(b)(10).)

Accordingly, the current statute and rules allow for both inter- and intracourt variation in the effective date for electronic filing depending on (1) whether electronic filing is permissive or mandatory for the case type and (2) what time a court stops accepting filings each day. The

potential for variation has increased in recent years as budget concerns have caused many courts to cut back on the hours that their filing counters are open. To provide for consistency across courts and case types, the committee recommends that the cutoff time be midnight for determining the effective date of filing for both permissive and mandatory electronic filing.

In response to comments requesting that the statute specifically address documents received electronically by a court at 12:00 a.m. and on non-court days, the committee revised the proposal as follows: "Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on a non-court day shall be deemed filed on the next court day."

Codify the effective date of electronic service. The statute is silent with respect to the effective date of electronic service. Instead, the effective date of electronic service is specified in rule 2.251(h)(4), which provides that electronic service that "occurs after the close of business is deemed to have occurred on the next court day." As noted above, the rules define "close of business" as "5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier." (*Id.*, rule 2.250(b)(10).)

This proposal would codify the effective date of service by adding a new paragraph (5) to section 1010.6(a). To provide for consistency across courts and with the proposed effective date of electronic filing, the new paragraph would provide: "Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a non-court day shall be deemed served on the next court day."

Consolidate the mandatory electronic filing provisions. Subdivision (d) of section 1010.6 provides that the Superior Court of Orange County may establish a pilot project to require that parties to specified civil actions electronically file and serve documents. Subdivision (g) provides that trial courts may require mandatory electronic filing by local rule after the Judicial Council adopts uniform mandatory electronic filing and service rules. Because the statutory authorization for the pilot project expired on July 1, 2014, this proposal would amend section 1010.6 to eliminate references to the pilot project and consolidate the provisions governing mandatory electronic filing in subdivision (d).

Codify the mandatory electronic service provisions. This proposal would codify the mandatory electronic service provisions from the rules. Subdivision (a) of section 1010.6—which governs electronic service in trial courts generally—does not expressly authorize mandatory electronic service. (See Code Civ. Proc., § 1010.6(a)(2) [authorizing electronic service of a document "when a party has agreed to accept service electronically in that action"].)[1] Subdivisions (c) and

[1] Subdivision (a)(3) does allow courts to electronically serve a document if the party has agreed to accept electronic service or the court has ordered electronic service under subdivisions (c) or (d), which currently refer to mandatory electronic service in complex civil cases and the Superior Court of Orange County's pilot project. But it does not expressly allow courts—other than the Superior Court of Orange County—to require electronic service of a

(d) recognize that mandatory electronic service may be required by court order in complex civil cases or by local rule as part of the Superior Court of Orange County's electronic filing pilot project. The authority for the mandatory electronic service rules is instead derived from subdivision (f) of section 1010.6, which required the Judicial Council, on or before July 1, 2014, to adopt uniform rules to permit mandatory electronic filing and service of documents in the trial courts.

In adopting rules to implement subdivision (f), the Judicial Council decided to allow courts to require electronic service by local rule or court order. (Cal. Rules of Court, rule 2.251(c)(1) ["A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in the Code of Civil Procedure section 1010.6 and the rules . . ."].) Similarly, under rule 2.251(c)(2), if a court requires a party to electronically file documents in an action, the party "must also serve documents and accept service of documents electronically from all other parties," subject to certain exceptions. (See also *id.*, rule 2.251(b) [providing that a party consents to electronic service by electronic filing of any document with the court, unless the party is self-represented].)

To codify these rules, this proposal would amend subdivision (d) not only to consolidate the mandatory electronic filing provisions, but also to authorize mandatory electronic service. Authorizing mandatory electronic service in revised subdivision (d) would track the language in current subdivisions (c) and (d), which authorize both mandatory electronic filing and service in complex cases and through the Superior Court of Orange County's pilot project. This proposal would also codify these rules by amending subdivision (a)(2) to recognize that electronic service is required when a court has ordered electronic service under subdivisions (c) or (d) (as revised).

Codify the protections for self-represented persons. The trial court rules that implement the electronic filing and service provisions of section 1010.6 already contain significant protections for self-represented persons. Rules 2.251(c)(2)(B) and 2.253(b)(2) exempt self-represented persons from mandatory electronic filing and service. These rules were adopted in response to the instructions in section 1010.6(f) that the uniform mandatory electronic filing and service rules include statewide policies on unrepresented litigants.

This proposal would codify the exceptions for self-represented persons by adding a new subdivision (d)(4) to provide that unrepresented persons are exempt from mandatory electronic filing and service. It would also amend subdivisions (a)(2) and (3) to provide that mandatory electronic service applies to parties and other persons only if they are represented.

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document in cases other than complex civil cases. Nevertheless, because this proposal would amend subdivision (d) to address mandatory electronic service in all courts, this proposal would not need to make any further amendments to subdivision (a)(3).

Proposed amendments to sections 664.5 and 1011

The proposed amendments to sections 664.5 and 1011 would clarify the application of section 1010.6's electronic service provisions. Under section 1010.6(a)(2), a document may be electronically served whenever "a document may be served by mail, express mail, overnight delivery, or facsimile transmission." Similarly, subdivision (a)(3) currently provides that where the parties have consented to electronic service, or the court has required electronic service (by order or local rule in complex civil cases or in the Superior Court of Orange County's mandatory electronic filing pilot project), a court may also electronically serve any document issued by the court that is not required to be personally served.

Section 664.5 provides for mailing notice of the entry of judgment. To clarify the application of section 1010.6, references to "mail" and "certificate of mailing" would be replaced with the more inclusive terms "serve" and "certificate of service."

Section 1011 recognizes possible means of service. This proposal would add a new subdivision (c) to cross-reference section 1010.6: "Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court." This language is taken directly from section 1013, which governs service of notices or other papers. (See Code Civ. Proc., § 1013(g).)

Proposed new section 1013b

Proposed new section 1013b would codify the trial court rule governing proof of electronic service. Currently, the Code of Civil Procedure addresses proof of service by mailing, but not proof of electronic service. (See Code Civ. Proc., § 1013a.) Proof of electronic service is addressed only in the California Rules of Court. (See Cal. Rules of Court, rule 2.251(i).) To fix this apparent statutory gap and to assist other advisory committees in their efforts to modernize their statutes, the legislative proposal would add a new section 1013b.[2]

The proposed language for section 1013b(a)(1) is not currently in rule 2.251; it is intended to correct an oversight in the rule that conflicts with section 1010.6.[3] Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that "the person making the service" is "not a party to the cause." However, Code of Civil Procedure section 1010.6 allows for electronic service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) ["Electronic service may be performed directly *by a party*, by an agent of a party, including the party's attorney, or through an electronic filing service provider," italics

[2] ITAC is currently leading a collaborative, multiyear effort to modernize the statutes and rules to facilitate e-business, electronic filing, and electronic service. As part of phase II of this project, ITAC and the Probate and Mental Health Advisory Committee have recommended a legislative proposal to amend the Probate Code to authorize electronic service of notices and other papers. The Probate Code currently cross-references Code of Civil Procedure section 1013a for proof of mailing. (See Prob. Code, § 1261.) Introducing a new section 1013b on proof of electronic service to the Code of Civil Procedure would avoid adding a reference to the rules in the Probate Code.

[3] This year, the Judicial Council adopted rule amendments that will eliminate this requirement from the rule effective January 1, 2017.

added].) To reflect this difference, proposed section 1013b(a) would add another exception to the general requirement that proof of electronic service be made by any of the methods provided in section 1013a for proof of mailing. Proposed section 1013b(a)(1) would recognize that proof of electronic service need not state that the party making the service is "not a party to the cause."

The proposed language for section 1013b(a)(2) is taken directly from rule 2.251(i)(1). In stating the requirements for proof of electronic service, rule 2.251(i)(1) incorporates the requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to several exceptions. The proposed language for section 1013b(a)(2) differs from the language in rule 2.251(i)(1) in one way: it would require that the proof of electronic service list only the date of electronic service, not the time and date.[4] In practice, it has been difficult to implement the requirement that the proof of electronic service list the time of electronic service; the person executing the proof of electronic service will not know the exact time of electronic service until after it has occurred.

The proposed language for section 1013b(b) is taken directly from rule 2.251(i)(2), which provides that proof of electronic service may be in electronic form and may be electronically filed with the court. Proposed section 1013b(c) modifies the language in rule 2.251(i)(4) to cross-reference the proposed new signature requirements (discussed above) in Code of Civil Procedure section 1010.6(b)(2)(B).

Comments, Alternatives Considered, and Policy Implications

The rules proposal circulated for public comment on the spring 2016 cycle. Fourteen commentators submitted comments in response to the invitation to comment: four agreed with the proposal, seven agreed if modified, and three did not indicate their position. The committee's specific responses to each comment are available in the attached comment chart at pages 15–32.

One commentator expressed concern about the term "other person" in section 1010.6(a) and questioned to whom this term applied. The committee considered the commentator's suggestion to identify these individuals in the statute, but declined to pursue it in light of the wide variety of individuals who might fall under the category of persons other than parties. Instead, the committee determined that providing further clarification was best left for implementing rules proposals. Comprehensively identifying those who fall in the category of "other person" is complicated because it varies by case type. For example, these individuals might include grandparents, siblings, caregivers, and other adult relatives in juvenile dependency proceedings, whereas it might include creditors, known heirs and devisees, and anyone requesting special notice in probate proceedings. The Welfare and Institutions Code and Probate Code recognize service on and by these individuals.

The committee also considered recommending a 5:00 p.m. cutoff time for the effective date of electronic filing and service in proposed new subdivision (a)(5) and amended subdivision (b)(3)

[4] This year, the Judicial Council adopted rule amendments, effective January 1, 2017, that will also eliminate this requirement from the rule.

of Code of Civil Procedure section 1010.6. In light of the input received by the public and other advisory committees, the committee decided to retain its recommendation that midnight be the cutoff time. Although valid concerns were raised both in support of and against a midnight cutoff time, the committee decided that it preferred this option after weighing the arguments. A midnight cutoff time would best serve the needs of self-represented litigants, many of whom are unable to electronically file and serve during regular work hours.

Implementation Requirements, Costs, and Operational Impacts

To the extent that this proposal would codify existing requirements in the trial court rules, it is not expected to result in any additional costs or to otherwise affect the implementation of electronic filing and service in the superior courts. Standardizing the cutoff time for the effective date of electronic filing and service at midnight would require those courts that allow for electronic filing and service until close of business to make modifications to their case management systems. Overall, however, providing consistency and clarity across courts and case types is expected to result in efficiency gains for litigants.

To implement the authorization for electronic signatures, the Judicial Council would need to adopt standards and guidelines governing electronic signatures by parties and other persons. This would require staff time and resources. Because electronic signatures would be applied by the party or person either directly or through an electronic filing service provider, it is expected that there will be minimal implementation or ongoing costs for courts. Because original signatures made under penalty of perjury would no longer need to be retained indefinitely, it is expected to result in efficiencies for litigants and government agencies.

Attachments and Links

1. Proposed Code of Civil Procedure sections 664.5, 1010.6, 1011, and 1013b, at pages 9–14
2. Chart of comments, at pages 15–32

Section 1013b of the Code of Civil Procedure would be enacted and sections 664.5, 1010.6, and 1011 would be amended, effective January 1, 2018, to read:

§ 664.5.

(a) In any contested action or special proceeding other than a small claims action or an action or proceeding in which a prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and ~~mail~~ serve a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service ~~by mail~~. This subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

(b) Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the court's file in the cause.

(c) * * *

(d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve notice of entry of any judgment or ruling, whether or not appealable.

(e) The Judicial Council shall~~, by January 1, 1999, adopt a rule of court for the purposes of providing~~ provide by rule of court that, upon entry of judgment in a contested action or special proceeding in which a state statute or regulation has been declared unconstitutional by the court, the Attorney General is promptly notified of the judgment and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.

§ 1010.6.

(a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) "Electronic service" means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party's or other person's attorney, or through an electronic filing service provider.

(B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

(2) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized when a party or other person has agreed to accept service electronically in that action or when a court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d).

(3) In any action in which a party or other person has agreed to accept electronic service under paragraph (2), or in which the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

(4) * * *

(5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a non-court day shall be deemed served on the next court day.

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) * * *

(2)(A) When a document to be filed requires ~~the~~ a 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~~ the person filing 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 either of the following conditions is satisfied:

(i) That person has signed 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 until final disposition of the case, as defined in subdivision (c) of Government Code section 68151, 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.

(ii) That person has signed the document using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section.

(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~~ received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on a non-court day shall be deemed 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.~~

(4)–(6) * * *

(c) * * *

(d) A superior court may, by local rule, require electronic filing and service in civil cases, subject to the requirements and conditions stated in subdivision (b) of this section, the rules adopted by the Judicial Council under subdivision (f), and the following conditions:

(1) ~~Notwithstanding subdivision (b), the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to subdivision (e) and the following conditions:~~

~~(A)~~ The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court. Any fees charged by the court shall be for no

more than the actual cost of the electronic filing and service of the documents, and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver. Any fees charged by an electronic filing service provider shall be reasonable and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver.

~~(C)~~(3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties.

(4) Unrepresented persons are exempt from mandatory electronic filing and service.

~~(D) A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court date that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county. Documents filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest court day following the filing.~~

~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost-effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants.~~

(e) * * *

(f) The Judicial Council shall~~, on or before July 1, 2014,~~ adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, ~~which shall be informed by any study performed pursuant to paragraph (2) of subdivision (d) and~~ which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory electronic filing and service of documents for specified civil actions in the trial courts of~~

~~the state, as specified in subdivision (f), a superior court may, by local rule, require mandatory electronic filing, pursuant to paragraph (2) of this subdivision.~~

~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so pursuant to the requirements and conditions set forth in this section, including, but not limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the rules adopted by the Judicial Council, as specified in subdivision (f).~~

§ 1011.

The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a)–(b) * * *

(c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court.

§ 1013b.

(a) Proof of electronic service may be made by any of the methods provided in Section 1013a, with the following exceptions:

(1) The proof of electronic service does not need to state that the person making the service is not a party to the cause.

(2) The proof of electronic service shall state:

(A) The electronic service address of the person making the service, in addition to that person's residence or business address;

(B) The date of the electronic service, instead of the date and place of deposit in the mail;

(C) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

(D) That the document was served electronically in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(b) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(c) Proof of electronic service shall be signed as provided in subparagraph (B) of paragraph (2) of subdivision (b) of Section 1010.6.

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	Commentator	Position	Comment	Committee Response
1.	Bet Tzedek Legal Services by Janet R. Morris, Esquire Attorney	A	Bet Tzedek supports the proposal to eliminate the wet signature requirement for electronically assembled and filed documents and to establish procedures for an electronic signature. In our our experience in managing a large self help conservatorship clinic; consistency and accuracy is achieved when there is a single electronically signed and filed document. We would also like to suggest that there be a way to receive the court's orders by email as well so that a litigant could download and print them. This will assist litigants who cannot make it back to the courthouse easily to retrieve their orders post hearing.	The committee appreciates Bet Tzedek Legal Services' support. Code of Civil Procedure section 1010.6(a)(3) currently authorizes a court to electronically serve "any document issued by the court that is not required to be personally served." With the roll out of new case management systems that allow for electronic filing throughout the state, courts will increasingly be able to take advantage of this existing authority and provide for electronic service of court-issued documents.
2.	California Department of Child Support Services by Alisha A. Griffin Director Rancho Cordova	NI	DCSS has reviewed LEG16-10 entitled Technology: Electronic Filing, Service, and Signature, and is supportive of the changes JCC has proposed. The JCC proposals address much of what this department tried to address with AB 1519, namely the requirement to keep an original wet signature on a document signed under penalty of perjury indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that section to permit these documents be signed by means of electronic signature is a huge step forward so long as it does not run	The committee appreciates the input of the California Department of Child Support Services. This legislative proposal would not affect the application of Family Code section 17400(b)(3)—which governs "[n]otwithstanding any other law"—to electronically filed pleadings signed under penalty of perjury by an agent of the local child support agency.

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			afoul of Family Code Section 17400(b)(3) or the resulting Judicial Council Rules of Court, which states: Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision. We appreciate that the language is not mandatory in that it permits those without access to e-signature to still sign manually and then only retain the document until final deposition of the case. This option will allow our department to take a phased implementation approach if our system changes cannot be completed by the JCC effective date of January 1, 2018. The department appreciates the opportunity to	No response required.

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	Commentator	Position	Comment	Committee Response
			comment on your proposal and the work done by the JCC to advance, promote, and expand legal electronic communications. The department suggests only that the above Rule of Court or any others that may be impacted be considered prior to implementation so that all bodies of law on this issue are in line with one another.	The committee agrees and intends to propose implementing amendments to the California Rules of Court that next year. It is contemplated that e-signature standards and guidelines would also be developed next year, in collaboration with the Court Executives Advisory Committee.
3.	Laurel Halbany MRHFM LLC Oakland	AM	The proposed changes to electronic service rules should retain a filing and service deadline of "close of business" (that is, 5:00 p.m.) for a document to be considered timely filed and served that court day. Changing the deadline to "before midnight" invites gamesmanship and will, in effect, eliminate a full day from the required time of service. Vendors such as LexisNexis allow automated service, such that a document may be uploaded with the direction that it is automatically served at a particular time - for example, that a document uploaded at 4:45 p.m. not actually be served and available to opposing parties until just before midnight. While it is not uncommon for attorneys to work somewhat later than 5:00 p.m., it is far less common to be working at midnight. Thus, parties have every incentive to delay service until close to midnight, depriving their opponents of additional time to review and respond to document served.	The committee appreciates Ms. Halbany's input. On balance, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the costs. The committee also considered that the risk of gamesmanship is mitigated by the deadline extension of two court days for responding to electronically served documents (as provided in Code of Civil Procedure section 1010.6(a)(4)).

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			Additionally, the proposal is silent as to the timeliness of documents served precisely at midnight.	The committee has revised the legislative proposal to address the effective date of filing for documents that are electronically filed and served at 12:00 a.m.
4.	Lisa Los Angeles	AM	I feel that the filing deadline should be restricted to 5:00 p.m. Support staff should not have to bear the burden of working until midnight to pick up the slack for attorneys that wait until the last minute to draft and/or make revisions.	The committee shares this concern. On balance, however, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the detriments and costs.
5.	Mark W. Lomax Attorney Pasadena	AM	(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service--electronic transmission and electronic notification—proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used. (2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider. Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via	The committee appreciates Mr. Lomax's input. It declines to pursue these recommendations because the proposed new Code of Civil Procedure section 1013b adequately covers electronic service by both electronic transmission and electronic notification. New proposed Code of Civil Procedure section 1013b sufficiently contemplates electronic service by notification. The requirement in proposed section 1013b(a)(2)(D) that the proof of electronic service state that "the document was served electronically" contemplates electronic service by notification. This conclusion is supported by section 1010.6(a), which expressly recognizes "electronic service" as including "electronic transmission" and "electronic notification." Thus, "electronic notification" is a form of electronic service of a document. (See Code Civ. Proc., §

	Commentator	Position	Comment	Committee Response
			electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list." As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b. (3) Under current law, proof of service by mail is prescribed by C.C.P. section 1013a. Instead of amending section 1013a to include a provision prescribing proof of electronic service, the Judicial Council proposal recommends enacting a new C.C.P. section, 1013b, that will prescribe proof of electronic service. This could cause confusion in some cases since section 1013a is cross-referenced in a number of statutes. (See, e.g., C.C.P. §§405.23, 594(b), and 684.220(c); Civ. Code	1010.6(a)(1)(C) [defining "electronic notification" as "the notification of the party or other person that a *document is served* by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded," italics added].) The committee also viewed providing information about the electronic service provider ("EFSP) as unnecessary because EFSPs, in effect, step into the shoes of the postal service for purposes of electronic service. Just as the proof of service under section 1013a does not require identification of the mail carrier used to effect service by mail, the proof of electronic service would not identify the EFSP used to effect electronic service. The committee agrees that statutes referencing section 1013a would need to be updated to include references to proposed new section 1013b, where appropriate. It determined that this approach was preferable to adding proposed new section 1013b to section 1013a because it will ultimately provide for greater clarity in the law. It will also allow the committee to examine each statute to ensure that accompanying references to "mail" are replaced with "serve," where appropriate. The committee intends to undertake this review in recommending

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			§1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code §1261.) The fact that section 1013a is cross-referenced in those statutes, and that new section 1013b will not be, may lead some attorneys and courts to conclude that service under those statutes cannot be made electronically.	additional modernization proposals next year.
			(4) There are special provisions for service of papers under title 9 (§§680.010-724.260) of the Code of Civil Procedure, the Enforcement of Judgments Law. To avoid confusion about the application of section 1010.6 to service of papers under title 9, the council should consider appropriate proposed amendments to chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of papers. It should be noted that the council has specific rulemaking authority under title 9 (C.C.P. §681.030) and that the California Law Revision Commission has continuing authorization to review and make recommendations concerning enforcement of judgments (C.C.P. §681.035).	This recommendation is outside the scope of this legislative proposal as circulated. The committee will take it under consideration in reviewing additional legislative proposals to modernize the Code of Civil Procedure next year.
			(5) I strongly support amending C.C.P. section 664.5 to substitute "serve" for "mail" because of a conflict between section 664.5 and the California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment permitted by the Code of Civil Procedure, including electronic service	The committee appreciates this support.

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Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	Commentator	Position	Comment	Committee Response
			when permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk to "mail" (not "serve") notice of entry of judgment.	
6.	Orange County Bar Association by Todd G. Friedland President	AM	CCP Section 1010.6(a) authorizes service by electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic service, and 1010.6(a)(3) allows the court to serve its documents electronically. The proposed amendments to both of these provisions would include "other person[s]." The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and (C) mention "other person," but provide no guidance. For purposes of clarification, it is suggested that the language of the section or of the Advisory Committee Comments, indicate who is contemplated as an "other person." It is believed this clarification is of increased importance, given subsequent provisions of the section dealing with court-ordered electronic service. Further, subdivisions (a)(1)(B) and (C) indicate that "a party or other person" has authorized electronic service. This appears consistent with the proposed language for inclusion in 1010.6(a)(2) and (3) where either a party or other person has agreed to electronic service,	The committee appreciates this input, but declines to pursue this suggestion. The term "other person" is intended to encompass a variety of different individuals, depending on case type, who are not parties to the proceedings (e.g., grandparents, siblings, caregivers, and other adult relatives, among others, in juvenile cases). Because this is a legislative proposal, the committee cannot add an advisory committee comment. It also has concerns about trying to identify the full range of individuals contemplated by the statute. However, the committee will consider developing an implementing rules proposal that would amend the rules to provide further guidance on this issue. The committee declines to pursue this suggestion. The term "authorized" is not intended to refer to whether the party or other person has consented to electronic service. Instead, it refers to the electronic service address that the party or other person has provided for the purpose of receiving

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

	Commentator	Position	Comment	Committee Response
			but not where the court has ordered such service. It is suggested thought be given as to whether the use of "authorized" is accurate or desirable in subdivisions (a)(1)(B) and (C).	documents served electronically, regardless of whether electronic service is permissive or mandatory.
			Additionally, the discussion of these particular amendments notes, at page 5 of the proposal, that the mandatory electronic service imposed by 1010.6(a)(2) and (3) would apply, "to parties and other persons only if they are represented." This is not clear from the proposed language. To avoid confusion, it is suggested that the word "represented" be inserted before "other person" in the respective provisions providing for court-ordered electronic service.	The committee agrees and has incorporated this suggestion into the proposal by revising the proposed amendment to section 1010.6(a)(2) and (3) to provide "on a represented party or other *represented* person." (Italics added.)
			Section 1010.6(a)(5) and (b)(3) apply to the effective dates of service and filing, respectively. As written, the proposed language is silent as to service or filing made at midnight. Further, in both instances, the proposed language uses the concept of a court day. In connection with service, this poses a problem as service, traditionally, may be made on any day. As to filing, this could pose a problem were the language interpreted as allowing filing only on a court day, that is, one might dispute not the effective date of filing, but the very effectiveness of filing. For these reasons, it is suggested that a version of the language of the Orange County Superior	The committee agrees and has revised the proposal to address documents that electronically served and filed at 12:00 a.m. and on non-court days.

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	Commentator	Position	Comment	Committee Response
			Court pilot program as to date of filing, be adopted as to both service and filing. Assuming the concept of "court day" is retained in connection with service, the following is provided for consideration: Electronically [served – in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents [served] [filed] prior to midnight on a court day will be deemed [served] [filed] as of that day. Filing occurs at the time the document is received by the court and a confirmation of receipt is created. Any document electronically [served] [filed] at or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the next court day. Request for Specific Comments 1 - For the reasons set forth above, the proposal does not address the stated purpose. Further, there is concern with the inconsistencies posed by the provisions proposed for codification and CRC Rule 2.251. Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to expect either an agreement or a court order before they would be subject to mandatory electronic service. This, however, is not the case per Rule 2.251(b)(1)(B) which provides that the act of electronically filing any document with the court is evidence that the party has agreed to accept such service. This has proven to be an	This suggestion is outside the scope of this legislative proposal, as circulated. The committee may consider this recommendation in developing implementing rules proposals. The committee further notes that rule 2.251(b)(1)(B)—which provides that "[t]he act of e-filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court"—does not apply to self-represented

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	Commentator	Position	Comment	Committee Response
			unhappy trap for litigants and their counsel in litigation brought in the Orange County courts where electronic filing is mandatory. These proposals are made to facilitate and encourage greater use of electronic filing. Accordingly, without some acknowledgment of these inconsistencies and attendant changes to the provisions of the code section or the Rule, this will continue to be a potential trap, growing in parallel with electronic filings. It is urged that, after the proposed amendments are finalized, the forgoing provisions of Rule 2.251, together with other of its provisions such as (h)(4) utilizing "close of business," be reviewed to avoid conflicts with relevant statutes and ensure consistency in this area. 2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents electronically served and filed up until midnight be deemed served or filed on that day. Please see comments above in the general discussion as to proposed language, time, and "court day."	litigants. (See Cal. Rules of Court, rule 2.251(b)(1)(B) ["This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A)"].) This means that self-represented litigants must provide separate consent to both electronic filing *and* service. The committee agrees and intends to develop a rules proposal to implement the legislation, if enacted. The committee agrees and has revised the rules proposal to incorporate the suggestions by specifically addressing documents that are electronically filed and served at 12:00 a.m. and on non-court days.
7.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	A	As discussed below, CAJ agrees with the proposed amendments. CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original	The committee appreciates the input of the State Bar Committee on Administration of Justice. No response required.

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	Commentator	Position	Comment	Committee Response
			signed documents only until final disposition of the case, rather than indefinitely as it is presently required. CAJ supports the use of electronic signatures under the requirements that the electronic signature satisfy the procedures, standards and guidelines of the Judicial Council, to be consistent with the language in Government Code Section 68150(g). CAJ agrees that the amendments to section 1010.6 are necessary to provide a consistent, effective date of filing, so that any document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document received after midnight is deemed to have been filed on the next court day. CAJ believes this is more clear than the current requirement that documents be received "by the close of business" which may be 5:00 p.m., or earlier, and is often changing due to budget considerations of the courts who are limiting filing counter times. CAJ agrees that the proposed amendments to sections 664.5 and 1011 to reference "service" instead of "mail" are a necessary update to the language, and agrees that the recognition of electronic service as a permissible method of service in section 1011 should be added as proposed.	No response required. No response required.

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	Commentator	Position	Comment	Committee Response
			CAJ agrees that the new section 1013b is sufficient to address proof of service requirements as to electronic service. Our specific comments as solicited are as follows: ***Does the Proposal appropriately address the stated purpose?***	No response required.
			CAJ agrees that the proposals as stated do address the purpose, which is in major part to update the Code of Civil Procedure to properly address electronic filing and electronic service issues. ***Should the Code of Civil Procedure Section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?***	No response required.
			CAJ agrees that documents electronically filed and served up until midnight should be deemed filed or served on that day. CAJ discussed an alternative 5:00 p.m. cut-off time for electronic filing and electronic service. In discussing this, members of CAJ agreed that a midnight deadline promotes more conformity and consistency. Members referenced the Los Angeles County and Orange County e-filing	No response required.

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	Commentator	Position	Comment	Committee Response
			systems, as well as the federal filing systems, which allow for a midnight deadline for e-filing citing their efficiency. Additionally, members cited the convenience factor of being able to file documents after standard business hours, especially for self-represented litigants who may need to be at work during ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ placed significance on the fact that any risk of purported "abuse" of midnight filing deadlines is mitigated by the extended two court days allotted for electronic service presently under Code of Civil Procedure Section 1010.6(a)(4), which remains unchanged in the proposal.	
8.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	A	• Does the proposal appropriately address the stated purpose? Yes. • Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service? SCDLS believes midnight should be the cutoff time. **Additional Comments**	The committee appreciates the input of the State Bar's Standing Committee on the Delivery of Legal Services. No response required.

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	Commentator	Position	Comment	Committee Response
			SCDLS supports the proposal because it protects self-represented litigants by not requiring that they file electronically, and it protects indigent individuals represented by counsel because there the electronic filing fee will not be incurred by parties with an approved fee waiver.	No response required.
9.	Superior Court of Los Angeles County	AM	• With regard to the time deadline for electronic filing, we suggest that the views of the attorneys and advocates for self-represented litigants would be most important.	The committee appreciates the input of the Superior Court of Los Angeles County.
			• This proposal would provide cost savings due to a likely reduction in staff hours currently spent serving large numbers of the public at filing windows and processing paper documents and files.	No response required.
			• Making this law effective one year after approval would be sufficient for implementation in LASC.	No response required.
			• We believe it would work well in larger courts (100 judicial officers or more). We have no comment regarding smaller courts.	No response required.
			• Removing the time of electronic service from the proof of electronic service could cause difficulties if the proof of service is	The committee understands this concern. By amending the cut-off time for the effective date of electronic service to midnight, it is expected that

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	Commentator	Position	Comment	Committee Response
			challenged by way of motion as there would be no way for the judicial officer to determine the time and date of service other than by declaration or sworn testimony. This could cost the court money in terms of judicial time spent on this issue.	the exact time of electronic service will be an issue in fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information.
10.	Superior Court of Orange County Civil and Probate Managers by Bryan Chae Principal Analyst	NI	One of the requirements is that if the court wants to use eFiling Service Providers, they must provide more than one. While I think the purpose of this is prevent the monopolization of eFiling services by one private company, this rule does not effectively eliminate that. EFSPs frequently specialize. For example, one company may only file Family cases and another Civil. If those were the only 2 EFSPs, they still have effective monopolies.	The committee appreciates the input from the Superior Court of Orange County's Civil and Probate Managers. The committee declines to pursue this recommendation at present because it is outside the scope of the proposal, as circulated. However, the committee will take this suggestion under consideration next year. Meanwhile, courts may take this into consideration when certifying EFSPs and deciding whether to require electronic filing. Postponing mandatory e-filing is always an option if there are insufficient EFPSs for each case type to provide for a competitive electronic filing environment.
11.	Superior Court of Orange County Family Law and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	Would government agencies be exempt from maintaining original documents until "final disposition of the case" or is maintaining the electronic copy of documents sufficient?	Similar to other electronic filers (with the exception described below for local child support agencies), government agencies would have two options when electronically filing documents signed under penalty of perjury: (1) electronically signing the document under the standards and guidelines developed by the Judicial Council, or (2) printing out the document, physically signing it, and maintaining the original until final disposition of the case. Government agencies would not be required to maintain the original

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				documents if they electronically sign documents under option (1). These proposed amendments are intended to facilitate e-filing, while still ensuring that signatures made under penalty of perjury may be verified and validated if their authenticity comes into question during the pendency of the proceeding. As noted above, Family Code section 17400(b)(3) provides an exception for "pleadings signed by an agent of the local child support agency under penalty of perjury." These pleadings may be maintained "by way of an electronic copy in the Statewide Automated Child Support System." They must be retained "for the period of time prescribed by subdivision (a) of Section 68152 of the Government Code."
12.	Superior Court of San Bernardino County by Kelly McNamara Managing Attorney	AM	The proposed changes are a good start, but do not go far enough in addressing the obstacles faced by litigants who are indigent or otherwise entitled to file and obtain copies of forms at no cost, such as petitioners for domestic violence restraining orders. Until and unless the requirement to print and provide a "wet" signature is eliminated entirely, these filers will see minimal (if any) benefit from the proposed changes. The current legislation shifts the cost burden to these litigants (paper, toner, etc.) and presents an obstacle to access that many are unable to overcome. Until this obstacle is removed, the legislation does nothing to	The committee appreciates this input and shares the concern about promoting access for indigent litigants. It expects that the proposed electronic signature requirements will ultimately benefit indigent litigants, who would not be required to print and retain the original "wet" signature if they elect to electronically sign forms. This means that if they fill out the forms online, they would be able to electronically sign and electronically file the document without ever printing it out. In developing the standards and guidelines for electronic signatures in collaboration with the Court Executives Advisory Committee, the

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	Commentator	Position	Comment	Committee Response
			promote equal access, and I would be unable to support it.	committee will keep the needs of indigent and self-represented litigants in mind to ensure that the electronic signature requirements are accessible to all litigants. Judicial Council forms should also be revised to implement the legislation and allow for the application of electronic signatures to forms that require signatures under penalty of perjury.
13.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committee appreciates the Superior Court of San Diego County's support.
14.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	AM	I am absolutely in favor of legislation that will accomplish the items identified in the Executive Summary of the proposal. I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental	The committee appreciates Commissioner Wightman's support. No response required.

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	Commentator	Position	Comment	Committee Response
			complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create). Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once. I'm now wondering if anyone at the Judicial Council consulted with the AB1058 Program Manager on this topic. I apologize for not being particularly tech savvy, but it has been my experience that when certain general civil statutes are amended, in particular ones that also apply to Family Law, the area and operations of child support cases, are sometimes overlooked. Sometimes there is a need to carve out an exception for DCSS that works for their system, and other times there should not be an exception and they need to adjust. However, has the question/issue even been discussed during the process of preparing this proposal? I would ask that Fam/Juv consult with Judicial Council's AB1058 Program Manager and the State Dept. of Child Support Services (DCSS)	The committee shares Commissioner Wightman's concerns that its proposal be reviewed by others with subject matter expertise relevant to family proceedings. To that end, the committee presented this proposal to the Family and Juvenile Law Advisory Committee for its input prior to circulation. No concerns were raised at the time about the proposed amendments related to electronic sigantures. In addition, the Department of Child Support Services provided specific comment offering its general support of the proposal so long as it does not conflict with Family Code section 17400(b)(3); it does not, for the reasons stated above. Please see response above.

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	Commentator	Position	Comment	Committee Response
			to make sure that the proposal here goes far enough to accommodate their statewide system.	

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15, 2016

Title
Criminal Procedure: Legislation Applying the Electronic Filing and Service Provisions of Civil Procedure section 1010.6(a) and (b) to Criminal Actions

Rules, Forms, Standards, or Statutes Affected
Enact Penal Code section 690.5

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
August 22, 2016

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Executive Summary

The Information Technology Advisory Committee (ITAC) is leading a modernization project to amend the statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices. This legislative proposal, developed jointly by ITAC and the Criminal Law Advisory Committee (CLAC), would provide express authority for permissive electronic filing and service in criminal proceedings by adding a statute to the Penal Code applying the electronic filing and service provisions of Code of Civil Procedure section 1010.6 to criminal actions.

Recommendation

ITAC and CLAC recommend that the Judicial Council sponsor legislation enacting new Penal Code section 609.5, effective January 1, 2018.

The text of the new statute is attached at page 4.

Previous Council Action

ITAC is leading a multiyear effort to comprehensively review and modernize statutes and the California Rules of Court so that they will be consistent with and foster modern e-business practices. ITAC is coordinating with other advisory committees, including CLAC, with relevant subject-matter expertise.

This modernization project is being carried out in two phases. Phase I culminated in the Judicial Council's adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. In the absence of express legislation authorizing electronic filing and service in criminal proceedings, the committees did not recommend similar amendments to the rules governing criminal proceedings.

This legislative proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

Code of Civil Procedure section 1010.6 authorizes the electronic filing and service of documents in civil proceedings. No corresponding authority exists in the Penal Code to authorize the electronic filing and service of documents in criminal cases. This proposal would add section 690.5 to part 2 of the Penal Code to expressly apply section 1010.6(a) and (b) to criminal proceedings.

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 would incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts would not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal would provide them with express authority to do so, provided the parties consent to electronic filing and service.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment during the spring 2016 cycle. Three comments were received in response; all three agreed with the proposal. The comments are available in the attached comment chart at pages 5–6.

The committees considered proposing amendments to the criminal rules of the California Rules of Court authorizing electronic filing and service. They concluded that express statutory authority would be clearer.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal is permissive, rather than mandatory, county justice partners would not be required to electronically file and serve in criminal proceedings. Rather, the proposal would provide the option where county justice partners are technologically capable of making the transition and where the court allows for electronic filing. Hence, no implementation costs or operational impacts would be forced on courts or counties. Efficiencies and cost savings gained through implementing electronic filing and service procedures in criminal proceedings would likely offset any significant costs or operational impacts on participating courts and counties.

Attachments and Links

1. Penal Code section 690.5, at page 4
2. Chart of comments, at pages 5–6

Section 690.5 of the Penal Code would be added, effective January 1, 2018, to read:

§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions

(a) Subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 are applicable to criminal actions, except as otherwise provided in this code.

(b) The Judicial Council shall adopt uniform rules for the electronic filing and service of documents in criminal cases in the trial courts of this state.

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Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Todd Friedland President	A		The committees appreciate the support of the Orange County Bar Association
2.	State Bar of California, Standing Committee on the Delivery of Legal Services By Phong S. Wong Chair	A	<u>Does the proposal appropriately address the stated purpose?</u> Yes. In an effort to reduce the inefficiencies and economic burdens in our court systems associated with paper filings and hard-copy service of process, the Information Technology Advisory Committee for the Judicial Council is leading a modernization project to facilitate electronic filings and service. Up until now, although the Code of Civil Procedure authorizes electronic filing and service in civil proceedings, there is no corresponding authority in the Penal Code that would authorize such filings in criminal cases. This proposed legislative amendment would authorize such electronic filings in criminal cases, but would not make such electronic process mandatory. Such process would only be permissive and applicable where the courts in a particular jurisdiction have the resources to implement electronic filing and service in criminal matters, and only where the parties consent to electronic filing and service. Given the language in the amendment that requires the affected parties to consent to electronic filing and service, this amendment would have no	The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services. No response required. No response required.

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Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			impact on persons of low income or other vulnerable populations who may not have access to electronic methods of service: those persons simply would not consent to electronic service of process and would continue to receive hard-copy notices and hard-copy service of process.	
3.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		The committees appreciate the support of the Superior Court of San Diego County.