



# JUDICIAL COUNCIL OF CALIFORNIA

TECHNOLOGY COMMITTEE

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## JUDICIAL COUNCIL TECHNOLOGY COMMITTEE

### MINUTES OF OPEN MEETING

June 1, 2022

12:00 – 1:00 PM

Videoconference

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**Advisory Body Members Present:** Hon. Kyle S. Brodie, Chair; Hon. Jonathan B. Conklin; Hon. Carol Corrigan; Mr. David Fu; Ms. Rachel W. Hill; Mr. Shawn Landry; and Hon. Glenn Mondo

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**Advisory Body Members Absent:** Hon. C. Todd Bottke, Vice-Chair; and Hon. Kevin C. Brazile

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**Liaison Member Absent:** Hon. Sheila F. Hanson

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**Others Present:** Hon. Louis R. Mauro; Ms. Heather Pettit; and Judicial Council staff

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### OPEN MEETING

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#### Call to Order and Roll Call

The chair called the meeting to order and took roll call.

#### Approval of Minutes

The advisory body reviewed and approved the minutes of the May 18, 2022, Judicial Council Technology Committee meeting.

There were no public comments for this meeting.

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### DISCUSSION AND ACTION ITEMS (ITEMS 1–3)

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#### Item 1

##### Chair Report

**Update:** Hon. Kyle S. Brodie, Chair, provided an update on activities since the last meeting. He reported at the May 25, 2022, Information Technology Advisory Committee (ITAC) meeting on the preparations for next fiscal year's Court Technology Modernization Funding and the Strategic Plan workstream. The Strategic Plan for Technology 2023-26 Update Workstream has completed work on goals 1–4 and introduced a new goal 5 titled "Promote Equal Access to the Digital Court."

**Item 2**

**Information Technology Advisory Committee (ITAC): Update and Report**

**Update:** Hon. Louis R. Mauro, Vice-Chair, Information Technology Advisory Committee reported that ITAC held a hybrid meeting with members participating both in person and remotely on May 25, 2022. ITAC's liaisons gave updates with potential technology impacts. T ITAC approved an amendment to its 2022 Annual Agenda authorizing the Ad Hoc Working Group on Post-Pandemic Initiatives; the proposal will be presented at the next Technology Committee meeting. There were also updates on the statuses of the Strategic Plan Workstream, Court Technology Modernization Funding cycle, the proposed branch budget, and the Hybrid Courtroom Workstream. The committee's next meeting is scheduled for June 29, 2022.

**Action:** The committee received the report.

**Item 3**

**Court Technology Modernization Funding (Action Requested)**

**Update:** Ms. Heather Pettit, Director, Judicial Council Information Technology shared updates after receiving feedback from ITAC for the next round of Court Technology Modernization Funding (CTMF) allocations on priorities, project requirements, and guiding principles.

**Action:** Members approved the proposed CTMF program priorities, project requirements, and guiding principles.

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned.

New One-Time Project	
7. Projects Assigned by the Ad-Hoc Workgroup on Post-Pandemic Initiatives (P3)	Priority 1
	Scope category(ies): Policy
<p><b>Project Summary:</b> The Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) referred two recommendations to ITAC for development and/or implementation: <i>Expand Options for E-Filing and E-Signatures</i> and <i>Maintain or Improve Online Self-Help Services and Live Chat on Court Websites</i>.</p> <p><b>Key Objectives:</b></p> <p><b><i>Expand Options for E-Filing and E-Signatures</i></b></p> <p>(a) Review, identify and make recommendations for any relevant amendments of California Rules of Court and legislation that may hinder the filing of documents at different courthouses (e.g., through the use of e-filing), as well as what may constrain the ability of filers to use e-signatures.</p> <p><b><i>Maintain or Improve Online Self-Help Services and Live Chat on Court Websites</i></b></p> <p>(b) ITAC will monitor the Judicial Council's existing and ongoing effort to optimize the California Courts Self-Help Center and assist courts in migrating to the web hosting platform offered by the council.</p> <p>(c) ITAC will monitor the council's current and ongoing program to create viable chatbots and live chat options for use by courts.</p> <p>(d) Judicial Council Information Technology will report progress on these programs to ITAC.</p> <p><b>Origin of Project:</b> Ad Hoc Workgroup on Post-Pandemic Initiatives</p> <p><b>Status/Timeline:</b> December 2023</p> <p><b>Fiscal Impact:</b></p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <i>ITAC:</i> Rules &amp; Policy Subcommittee</li> <li>• <i>Judicial Council Staffing:</i> Information Technology, Legal Services, Leadership Services; P3 Workgroup staff</li> <li>• <i>Collaborations:</i> P3 Workgroup liaisons; Court Executives Advisory Committee and other advisory bodies as needed</li> </ul>	



## JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

March 15, 2022

Hon. Sheila F. Hanson  
Judge of the Superior Court of California,  
County of Orange  
700 West Civic Center Drive  
Santa Ana, California 92701

Dear Judge Hanson:

As chair of the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3), I want to express our appreciation for your willingness to consider and provide feedback on the various draft concepts the workgroup generated after hearing from a wide variety of stakeholders. Your feedback was particularly useful in helping us analyze the strength of various concepts and the appropriate timing for when to move forward with these. At this time, we are asking advisory committees to take the lead in developing these concepts into concrete proposals, whether rules, possible legislation, pilot projects, or guidance on good practices.

We now request that the Information Technology Advisory Committee take the lead in developing the following concepts:

- ***Expand Options for E-Filing and E-Signatures***  
P3 encourages expanded options for E-Filing and E-Signatures. Upon completion of its study of expanding statewide e-filing, we ask that the Information Technology Advisory Committee (ITAC) work with appropriate advisory bodies to identify and address any California Rules of Court and legislation that may hinder the filing of documents at different courthouses, as well as what may constrain the ability of filers to use e-signatures.

Hon. Sheila F. Hanson

March 15, 2022

Page 3

- ***Maintain or Improve Online Self-Help Services and Live Chat on Court Websites***  
The Judicial Council should continue the existing and ongoing effort to optimize the California Courts Self-Help Center and assist courts in migrating to the hosting platform offered by the council. Likewise, the council should continue the current and ongoing program to create viable chatbots and live chat options for use by courts.

In September 2021, we requested that you include placeholder language on your annual agenda to account for additional work that may flow to your advisory committee out of the workgroup's efforts. Now that this work has solidified, I request that you work with advisory committee staff to revise this placeholder on your annual agenda and forward to Jessica Goldstein, staff to the Technology Committee, who will coordinate submission to the oversight committee for approval. We have also asked the Court Executives Advisory Committee to provide input and assist you as you work to develop these concepts. Please reach out to them at the appropriate time to include them in your process.

P3 Workgroup members will serve as liaisons to the advisory committees working on these concepts. Your P3 liaisons are Hon. Kyle S. Brodie, Hon. Ann C. Moorman, Mr. Kevin Harrigan, Ms. Rebecca Fleming, and Ms. Gretchen Nelson. These members, along with workgroup staff, will be available to assist you throughout this process. If you have any questions, please feel free to reach out to our P3 Workgroup staff contact, Deirdre Benedict at [deirdre.benedict@jud.ca.gov](mailto:deirdre.benedict@jud.ca.gov). Our workgroup members and staff look forward to working with you.

Sincerely,



Marsha G. Slough

Associate Justice of the Court of Appeal

Fourth Appellate District, Division Two

MGS/db

cc: Hon. Louis R. Mauro, Vice-Chair, Associate Justice of the Court of Appeal, Third Appellate District

Hon. Kyle S. Brodie, Judge of the Superior Court of San Bernardino County

Hon. Ann C. Moorman, Presiding Judge of the Superior Court of Mendocino County

Kevin Harrigan, Court Executive Officer, Superior Court of Tehama County

Rebecca Fleming, Court Executive Officer, Superior Court of Santa Clara County

Hon. Sheila F. Hanson

March 15, 2022

Page 3

Gretchen Nelson, Attorney at Law

Millicent Tidwell, Chief Deputy Director, Judicial Council

Shelley Curran, Chief Policy & Research Officer, Judicial Council

Heather L. Pettit, Chief Information Officer, Information Technology, Judicial Council

Deirdre Benedict, Supervising Analyst, Criminal Justice Services, Judicial Council

Camilla Kieliger, Analyst, Legal Services, Judicial Council

Jamel Jones, Information Systems Supervisor, Information Technology, Judicial Council

Jessica Goldstein, Senior Business Systems Analyst, Information Technology, Judicial Council



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# REPORT TO THE JUDICIAL COUNCIL

Item No.: **TBD**

For business meeting on: September 20, 2022

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**Title**

Rules: Remove Reporting Requirement for Courts with Mandatory Electronic Filing

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2023

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 2.253

**Date of Report**

July 1, 2022

**Recommended by**

Information Technology Advisory

Committee

Hon. Sheila F. Hanson, Chair

**Contact**

Andrea L. Jaramillo, 916-263-0991

[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

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### Executive Summary

The Information Technology Advisory Committee recommends amending a rule of the California Rules of Court that requires trial courts with mandatory electronic filing to submit reports about their electronic filing programs to the Judicial Council. The committee recommends amending the rule to remove the requirement because the reports are no longer needed.

### Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2023, amend rule 2.253 of the California Rules of Court to remove subdivision (b)(7) from the rule.

The text of the amended rule is attached at page 4.

## Relevant Previous Council Action

The Judicial Council adopted rule 2.253 of the California Rules of Court effective July 1, 2013.<sup>1</sup>

## Analysis/Rationale

Rule 2.253 authorizes trial courts to require parties, by local rule, to file electronically in civil cases subject to conditions enumerated in the rule. One condition is that courts “report semiannually to the Judicial Council on the operation and effectiveness of the court’s [mandatory electronic filing] program.”<sup>2</sup> The proposal would eliminate the requirement that a trial court with mandatory electronic filing by local rule submit reports about its electronic filing program to the Judicial Council. The Information Technology Advisory Committee (ITAC) determined the reports are no longer needed for the reasons identified below.

When the Judicial Council adopted the reporting requirement, the purpose was to “provide a basis for evaluating different practices and procedures and for making future recommendations, including recommendations about what should be the effective time of electronic filing.”<sup>3</sup> The issue of “what should be the effective time of electronic filing” is now resolved. In 2017, the Judicial Council sponsored Assembly Bill 976, which, among other things, established that a document filed between 12:00 a.m. and 11:59:59 p.m. on a court day is deemed to have been filed that court day.<sup>4</sup> The bill passed, and the updated effective time of electronic filing has been law since January 1, 2018.

In 2017, the Legislature passed an additional bill, Assembly Bill 103, to amend Code of Civil Procedure section 1010.6 to require the Judicial Council to submit four reports to the Legislature containing specific information about electronic filing and electronic service in the trial courts.<sup>5</sup> Unlike rule 2.253, Code of Civil Procedures section 1010.6’s reporting requirement encompasses all electronic filing, not just mandatory electronic filing, as well as electronic service.<sup>6</sup> Accordingly, the Judicial Council is currently gathering information about electronic filing in the trial courts. In addition, to gather information about electronic filing in the future or beyond what is statutorily required, the Judicial Council can collect data on an as-needed basis without semiannual reports from the courts about mandatory electronic filing. For example, ITAC can survey the courts to collect data to evaluate practices and procedures and make recommendations.

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<sup>1</sup> All further references to rules are to the California Rules of Court.

<sup>2</sup> Rule 2.253(b)(7).

<sup>3</sup> Link A, p. 7.

<sup>4</sup> See Link B.

<sup>5</sup> See Link C. Three reports were due in 2018, 2019, and 2021. The remaining report is due in 2023.

<sup>6</sup> Code Civ. Proc., § 1010.6(h)(5).



## **Policy implications**

The proposal raises no significant policy implications and was non-controversial.

## **Comments**

The proposal circulated for public comment from April 1, 2022 through May 13, 2022. Four commenters responded to the invitation to comment. Three agreed with the proposal, and one did not indicate a position. Two commenters, including the one that did not indicate a position, agreed that the proposal appropriately addresses its stated purpose. There were no detailed substantive comments. The chart of comments is attached at page 5.

## **Alternatives considered**

The alternative to removing the reporting requirement would be to take no action. However, the ITAC did not consider this a preferable alternative as the reporting requirement would necessitate courts to take on unnecessary workload.

## **Fiscal and Operational Impacts**

The proposal is not expected to result in any costs. Removing the requirement would ensure courts do not expend their resources to create the reports identified in the rule.

## **Attachments and Links**

1. Cal. Rules of Court, rule 2.253, at page 4.
2. Chart of comments, at page 5.
3. Link A: Judicial Council of Cal., Advisory Com. Rep., Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases (June 21, 2013), <https://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.
4. Link B: Assembly Bill 976 (Stats. 2017, ch. 319), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB976](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB976).
5. Link C: Assembly Bill 103 (Stats. 2017, ch. 17), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB103](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB103).
6. Link D: Code of Civil Procedure section 1010.6, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP)

Rule 2.253 of the California Rules of Court would be amended, effective January 1, 2023, to read:

**Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order**

**(a) \* \* \***

**(b) Mandatory electronic filing by local rule**

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

~~(1)–(6) \* \* \*~~

~~(7) A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court's program.~~

**(c) \* \* \***

**SPR22-25****Rules: Remove Reporting Requirement for Courts with Mandatory Electronic Filing** (amend Cal. Rules of Court, rule 2.253)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association By Daniel S. Robinson, President	A	* In response to a request for specific comments about whether the proposal appropriately addresses the state purpose, the comment replied that it does.	No response required.
2.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	No specific comment.	No response required.
3.	Superior Court of Orange County, Family Law Division (no name provided)	NI	* In response to a request for specific comments about whether the proposal appropriately addresses the state purpose, the comment replied that it does.	No response required.
4.	Superior Court of Placer County by Jake Chatters, Executive Officer	A	No specific comment.	No response required.

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



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# REPORT TO THE JUDICIAL COUNCIL

Item No.: **TBD**

For business meeting on:

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**Title**

Rules: Remote Access by Attorneys to  
Criminal Electronic Records

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2023

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 2.519

**Date of Report**

July 1, 2022

**Recommended by**

Information Technology Advisory

Committee

Hon. Sheila F. Hanson, Chair

**Contact**

Andrea L. Jaramillo, 916-263-0991,

[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

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### Executive Summary

The Information Technology Advisory Committee recommends amending a rule of the California Rules of Court to authorize trial courts to provide private criminal defense attorneys broader remote access to criminal electronic records. The proposal originates with the California Attorneys for Criminal Justice, an advocacy organization comprised of criminal defense lawyers and associated professionals. The purpose of the proposal is to improve parity of remote access in criminal cases between private defense counsel and public defenders and prosecutors.

### Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2023, amend rule 2.519 of the California Rules of Court to authorize trial courts to provide attorneys representing defendants in criminal cases with remote access to any criminal electronic records that they would have otherwise been able to view at a courthouse.

The text of the amended rule is attached at pages 8–9.

## Relevant Previous Council Action

Effective July 1, 2002, the Judicial Council adopted rules of the California Rules of Court<sup>1</sup> that address public access to trial court electronic records, including remote access. The rules did not address access to electronic records by persons who were less than the public at large such as a party, a party's attorney, or a person working for a government entity.

In 2017, nine advisory committees formed a joint ad hoc subcommittee to develop a rule proposal on remote access to provide statewide structure, guidance, and authority on remote access to electronic records in the trial courts by a party, a party's designee, a party's attorney, an authorized person working for the same legal organization as a party's attorney, an authorized persons working in a qualified legal services project, court appointed persons, and persons working for government entities. Effective January 1, 2019, the Judicial Council adopted the final proposal.

## Analysis/Rationale

The purpose of the proposal is to ensure the rules on remote access to criminal electronic records treat private criminal defense counsel on par with public defenders and prosecutors. Under the remote access rules, criminal electronic records are available to specified users, including district attorneys, public defenders, and private criminal defense attorneys, but private attorneys are currently limited to remotely accessing their clients' records only. For example, the current rules would not allow a private attorney to remotely access electronic records in cases of witnesses or codefendants. California Attorneys for Criminal Justice (CACJ), an advocacy organization comprised of criminal defense lawyers and associated professionals, recommended the rules be changed as parity between private defense counsel and public defenders was necessary to ensure remote access is fair. The Information Technology Advisory Committee (ITAC) considered the issue and agreed that amending the rules to provide private defense counsel with parity of remote access to criminal electronic records is fair and appropriate. As discussed in more in the "Comments" section below, commenters on the proposal agreed.

## Policy implications

### ***The proposal is consistent with branch strategic and tactical plans for technology***

The proposal is consistent with the goals and objectives of the branch's Strategic Plan for Technology (Strategic Plan) and Tactical Plan for Technology (Tactical Plan). The Strategic Plan identifies four high-level goals for information technology. One of the goals is to "promote the modernization of statutes, rules, and procedures to facilitate the use of technology in court operations and the delivery of court services."<sup>2</sup> The Tactical Plan incorporates this goal and specifies that objectives include continuing "modernization of statutes, rules, and procedures to permit and enhance the use of technology in court operations and the delivery of court services," and developing and updating "rules, standards, and guidelines in areas in which new

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<sup>1</sup> All further references to rules are to the California Rules of Court.

<sup>2</sup> Link A, p. 4.

technologies affect court operations and access to the courts.”<sup>3</sup> The proposal will provide courts authority to use technology solutions to provide remote access to criminal electronic records to criminal defense counsel, reducing the need for in-person service.

***Practical obscurity of criminal electronic records was a concern given the large pool of potential users***

Practical obscurity is the relative difficulty of obtaining paper records. A trip to the courthouse to photocopy a paper record or to print an electronic record involves substantially more time and effort than remotely accessing an electronic record. When adopting the public access rules, the Judicial Council considered this issue and built practical obscurity into the rules by prohibiting *public* remote access to certain types of electronic records, including criminal electronic records, and limiting the viewing of such records to the courthouse. This was intentional to help prevent widespread public dissemination of such records, which can contain highly sensitive personal information.

The pool of potential remote users under the proposal would be any attorney representing a criminal defendant. While this would be much smaller than the entire public, it would still be a significant number of people. ITAC considered the issue of practical obscurity given this large pool of potential remote users in deciding whether to recommend amending the rule. ITAC determined that given that the proposed amendment is limited in scope as it applies only to attorneys representing parties in criminal cases, attorneys are bound by professional obligations of candor toward the courts, and attorneys are bound by the terms of remote access described in rules, the proposed amendments should strike an appropriate balance between privacy and access to provide private criminal defense counsel with access on par with public defenders. Two commenters commented on this issue: the Superior Court of Los Angeles County and the Orange County Bar Association. Both agreed that the proposal strikes an appropriate balance and would aid representation of criminal defendants.

**Comments**

The proposal circulated for public comment from April 7, 2022, through May 20, 2022. Seven commenters responded to the invitation to comment. Five agreed with the proposal, and two did not indicate a position. The chart of comments is attached at pages 10–16. In addition to comments received through the public comment process, ITAC received comments from the Criminal Law Advisory Committee (CLAC), which discussed the proposal at its April 4, 2022 meeting. Finally, at its June 29, 2022 meeting, ITAC also discussed an ITAC member’s concerns about the need for the rule and the increasing complexity of the remote access rules.

***Comments on the benefits of the proposal***

One private attorney, the Orange County Bar Association, and the Joint Rules Subcommittee of the Court Executives Advisory Committee (CEAC) and Trial Court Presiding Judges Advisory Committee (TCPJAC) commented on the impact on defense counsel and the benefits of

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<sup>3</sup> Link B, p. 40.

providing remote access. These benefits include ensuring defense counsel can access the most current information, check if information is accurate, promptly seek correction of errors, and verify court dates so clients do not miss court appearances. The Orange County Bar Association noted that clients often do not understand some court orders and mix up their court dates. The Orange County Bar Association further stated, “[r]emote access immediately solves such common problems and can cut down on needless court continuances.” The Joint Rules Subcommittee of CEAC and TCPJAC noted that the proposal should be implemented “because it enhances the fairness and effectiveness of the criminal process.” In addition to the public comments received during the public comment period, ITAC solicited internal comments from CLAC. The members were supportive of the proposal, and one member remarked that the proposal would be a “huge benefit to the criminal justice system.”

#### ***Responses to a request for specific comments about sanctions for violations of the rule***

ITAC asked for specific comments about whether there should be additional consequences, beyond termination of remote access, that should be specifically identified in the rule for failure to comply with the terms of remote access. The Orange County Bar Association commented that this was unnecessary as “[s]uffice it to say that the trial court may sanction counsel. Sanctions may thus be applied by the court on a case by case basis depending on the severity of noncompliance.” One court commented that failure to comply was a breach of trust and incidents of violations “should be accessible to potential future clients and other courts (maybe through Bar Association?).” ITAC agreed with the Orange County Bar Association that listing more possible sanctions in the rule is unnecessary because judges have the power to sanction and would be in the best position to determine appropriate sanctions tailored to specific sets of circumstances. In addition, ITAC also noted that user agreements provide another mechanism to address misuse of remote access. Courts have the authority to define the conditions of remote access through user agreements and may terminate remote access if a user violates an agreement. (Rule 2.527).

#### ***Comments that were beyond the scope of the proposal***

Three of the commenters recommended changes beyond the scope of the proposal. Two commenters recommended authorizing remote access to criminal electronic records by victim’s counsel. One commenter recommended expanding the search terms attorneys can use when searching electronic records. While these comments are beyond the scope of the current proposal, they are topics ITAC can revisit when developing its next annual agenda.

#### ***ITAC member comments on the need for the rule and increasing complexity of the remote access rules***

At ITAC’s June 29, 2022 meeting, one member questioned whether the proposal was necessary and raised concerns that the remote access rules are becoming too complex and increasingly challenging to manage in the courts. This proposal would add another layer of complexity to the existing rules. The member cast the lone no vote against the proposal. Another member acknowledged that providing remote access could present difficulties but commented that providing remote access was a worthy goal in the context of this proposal not only to meet user

expectations about the ability to access the court remotely but also to ensure the rules offer a level playing field for remote access to criminal electronic records.

### **Alternatives considered**

ITAC considered maintaining the status quo, proposal language recommended by CACJ, limiting access by public defenders, and providing attorneys with remote access to any electronic record they could access at the courthouse.

#### ***The status quo***

ITAC considered taking no action. The problem with the status quo is that a private attorney would still need to visit a courthouse to access certain criminal court records, for example, criminal court records of a codefendant, whereas a public defender or prosecutor would not. This was a concern if it could impact the quality of representation of a criminal defendant if needed records are burdensome to obtain. During the comment period, ITAC received comments on the benefits of the proposal on representation including ensuring defense counsel can access the most current information, check if information is accurate, promptly seek correction of errors, and verify court dates so clients do not miss court appearances.

The benefit of the status quo is that it promotes practical obscurity and limits the potential online dissemination of criminal electronic records. This is discussed in detail in the “Policy Implications” section, above.

#### ***CACJ’s proposed language***

CACJ proposed amending rule 2.540 to include private counsel within its scope. However, rule 2.540 specifically addresses remote access by persons working for government entities only and is in an article of the rules exclusive to government entities. As such, ITAC determined the proposed changes would be more suitable in amendments to rule 2.519, which includes private attorneys within its scope. Accordingly, ITAC developed a revised proposal to amend rule 2.519 instead of rule 2.540.

#### ***Limiting remote access by public defenders***

Instead of expanding the scope of electronic records that private counsel can access remotely, one alternative to provide parity of remote access with public defenders would be limiting the scope of public defenders’ remote access to only those clients represented by the public defender’s office.

ITAC considered this approach undesirable for a few reasons. First, it may be impractical and controversial, especially for courts that have already established remote access for public defenders. Second, it would also create a new parity issue: all criminal defense attorneys would have remote access that is less than what prosecutors could have under the rules. Even if prosecutors were limited to the cases they were prosecuting, they would practically have greater access than defense counsel in each county because there is one district attorney’s office in each county but multiple defense counsel. Thus, remote users from the district attorney’s office would be able to access significantly more criminal electronic records than public and private defense



counsel. As such, there would be a parity issue since district attorneys would have the ability to remotely access criminal electronic records in cases of witnesses or codefendants, while defense counsel would not necessarily have the same access. Accordingly, this was the least desirable alternative to the proposed amendments and the status quo.

***Providing attorneys remote access to any electronic record they could access at the courthouse***  
ITAC considered whether there was a broader issue of providing attorneys remote access to *any* electronic records that they could access at the courthouse. Given the broad pool of remote users, this also raised concerns about practical obscurity. Ultimately, ITAC decided to keep the scope of the proposal limited to address the specific problem CACJ identified but may explore broader access to other case types in the future with the participation of other Judicial Council advisory committees as the issue is raised by stakeholders seeking remote access.

### **Fiscal and Operational Impacts**

While the proposed rule amendment would authorize courts to allow remote access to electronic criminal records by private criminal defense counsel, courts would need to implement appropriate technological updates in their systems to provide remote access and ensure staff were trained on the update. The rules recognize that courts have varying financial means, security resources, or technical capabilities to allow them to implement remote access systems.<sup>4</sup> Thus, implementation is only required to the extent it is feasible for a court to do so.<sup>5</sup>

The Superior Court of Orange County and the Joint Rules Subcommittee of CEAC and TCPJAC commented on operational impacts on existing automated systems. The court detailed some of the necessary steps for a court to update technology systems and noted that it was possible for that court to implement the proposal. The Joint Rules Subcommittee of CEAC and TCPJAC commented that there “would potentially be significant fiscal impacts on those courts without the existing IT infrastructure” but that the rules account for feasibility, and courts only need to implement the rule to the extent feasible to do so considering the court’s resources and technical capability. In addition to the public comments received, ITAC solicited internal comments from CLAC. One member commented that building an online portal would require considerable cost and administrative effort to allow remote access as proposed.

In addition to the above, the Superior Court of Orange County commented that some costs would be reduced related to the production of paper copies of court records, such as the cost of paper, ink cartridges, and wear and tear on printing equipment. Similarly, when providing internal comments, one of the CLAC members noted there could be a reduction in costs associated with people coming into the courthouses to access court records.

### **Attachments and Links**

1. Cal. Rules of Court, rule 2.519 at pages 8–9.

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<sup>4</sup> Rule 2.516.

<sup>5</sup> *Ibid.*

2. Chart of comments, at pages 10–16.
3. Link A: Strategic Plan for Technology 2019–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>
4. Link B: Tactical Plan for Technology 2021–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Tactical-Plan.pdf>

DRAFT

Rule 2.519 of the California Rules of Court would be amended, effective January 1, 2023, to read:

**Rule 2.519. Remote access by a party's attorney**

**(a) Remote access generally permitted**

(1) A party's attorney may have remote access to electronic records ~~in the party's actions or proceedings~~ under this rule or under rule 2.518. If a party's attorney gains remote access under rule 2.518, the requirements of rule 2.519 do not apply.

(2) If a court notifies an attorney of the court's intention to appoint the attorney to represent a party in a criminal, juvenile justice, child welfare, family law, or probate proceeding, the court may grant remote access to that attorney before an order of appointment is issued by the court.

**(b) Level of remote access**

(1) A party's attorney may be provided remote access to the same electronic records in the party's actions or proceedings that the party's attorney would be legally entitled to view at the courthouse.

(2) An attorney representing a party in a criminal action may be provided remote access to any electronic criminal records that the attorney would be legally entitled to view at the courthouse.

**(c) Terms of remote access applicable to an attorney who is not the attorney of record**

Except as provided in subdivision (b)(2), an attorney who represents a party, but who is not the party's attorney of record in the party's actions or proceedings, may remotely access the party's electronic records, provided that the attorney:

(1) Obtains the party's consent to remotely access the party's electronic records; and

(2) Represents to the court in the remote access system that he or she has obtained the party's consent to remotely access the party's electronic records.

**(d) Terms of remote access applicable to all attorneys**

~~A party's~~ An attorney may remotely access the electronic records only for the purpose of assisting ~~the~~ a party with ~~the~~ that party's court matter.

- 1 (2) ~~A party's~~ An attorney may not distribute for sale any electronic records  
2 obtained remotely under the rules in this article. Such sale is strictly  
3 prohibited.  
4
- 5 (3) ~~A party's~~ An attorney must comply with any other terms of remote access  
6 required by the court.  
7
- 8 (4) Failure to comply with these rules may result in the imposition of sanctions,  
9 including termination of access.

DRAFT

**SPR22-27****Rules: Remote Access to Criminal Electronic Records** (amend Cal. Rules of Court, rule 2.519)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Victims Legal Resource Center by Mariam El-menshaw, Director	NI	* The commenter recommended victim's counsel be granted remote access to electronic criminal records and included amendment language to that effect.	Adding victim's counsel is beyond the scope of the current proposal. However, the committee appreciates the issue being raised and this is a topic the committee may consider for development in a future rule cycle.
2.	Joint Rules Subcommittee (JRS) of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee	A	The JRS notes that this proposal should be implemented because it enhances the fairness and effectiveness of the criminal process.	The committee agrees.
			<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>Impact on existing automated systems. <ul style="list-style-type: none"> <li>There would potentially be significant fiscal impacts on those courts without the existing IT infrastructure to provide this access, except that the Rule 2.516 already makes the following exception: "To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515, subject to the conditions and limitations stated in this article and otherwise provided by law."</li> </ul> </li> </ul>	The committee appreciates the potential for significant fiscal impacts to update technology systems and will include it in the final report. The committee agrees that feasibility will impact whether a court can implement the technological solutions to allow access described in the rule.
3.	Loyola Law School Rights In Systems Enforced (RISE) Clinic by Stephanie Richard, Director	NI	* The commenter recommended victim's counsel be granted remote access to electronic criminal records and included amendment language to that effect.	Adding victim's counsel is beyond the scope of the current proposal. However, the committee appreciates the issue being raised and this is a

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

**SPR22-27****Rules: Remote Access to Criminal Electronic Records** (amend Cal. Rules of Court, rule 2.519)

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

				topic the committee may consider for development in a future rule cycle.
4.	Marc McBride Attorney	A	I fail to see the potential harm with allowing private defense attorneys to have the same electronic access that they would get if either (1) they were Public Defenders or (2) they physically walked into a courthouse clerk's office. However, denying this access leads to the potential that interests of a client will be compromised because, for instance, the lawyer has a delay in finding out that a case has been filed or an arrest warrant was issued. It can cause problems where court dates are missed because the lawyer cannot quickly verify that courts/clerks have inputted information accurately. It also makes it more difficult to determine whether, for instance, a client's name has been misspelled which could result in additional warrants. I just see absolutely no downside and significant areas that count as an upside.	The comments about the impact on representation of criminal defendants are helpful for the committee's understanding of the issue.
5.	Orange County Bar Association by Daniel S. Robinson, President	A	<p>* In response to the invitation to comment's question, "Does the proposal appropriately address its stated purpose?", the commenter responded: "Yes, the proposal appropriately addresses the stated purpose and is long overdue."</p> <p>Immediate and timely access to comprehensive electronic criminal records by private defense counsel is part of access to justice for their clients. There is absolutely no practical or ethical reason why only government lawyers should have special electronic access to court files. The continuing limited facility access brought on by Covid-19, the</p>	<p>No response required.</p> <p>The comments about the impact on representation of criminal defendants are helpful for the committee's understanding of the issue.</p>

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

## SPR22-27

### Rules: Remote Access to Criminal Electronic Records (amend Cal. Rules of Court, rule 2.519)

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

		<p>downsizing of many clerk's offices, the electronic filing of criminal motions and the expansion of remote appearances in criminal cases underscores the need to provide remote access to electronic criminal records.</p> <p>Private criminal defense attorneys frequently represent clients throughout California. For example, it is not uncommon for a lawyer to have their office in southern California yet be retained to represent a defendant in Northern California. While attorney services do exist for lawyers to have criminal records pulled and copied from a particular Superior Court jurisdiction, such services are expensive. In counties that do not have comprehensive electronic record systems, the physical pulling of a court file and the actual copying of records by the clerk's office can also be costly, unduly time consuming and is simply inefficient for both the lawyer and the court. Many defendants do not retain private counsel until they have first appeared in court. Often defendants are misinformed or do not understand what they are charged with or by any special orders the court has made with regard to them. They frequently are wrong about the next appearance date the court has ordered or if any outstanding warrants have been issued. Appearance notices issued by Sheriff's Departments upon release from jail are often lost. Remote access immediately solves such common problems and can cut down on needless court continuances.</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree.

## SPR22-27

### Rules: Remote Access to Criminal Electronic Records (amend Cal. Rules of Court, rule 2.519)

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

		<p>Sometimes, court clerks inadvertently enter the wrong term which the court has not ordered. Where counsel has electronic access to court records, counsel can review such entries and if an error exists seek immediate amelioration of the mistake.</p> <p>The list of potential impacts is endless as to privately retained clients no matter how diligent a defense counsel tries to be. Even appellate counsel has need for immediate remote access to the complete record of what occurred in the trial court when preparing an appeal in a criminal case. One need only compare the amount of information available to counsel by the outstanding Criminal Defense Attorney Portal maintained by the Orange County Superior Court and compare it with the embarrassing paucity of that offered for a fee by the Los Angeles Superior Court. The OC Criminal Defense Attorney Portal should be the model for all trial court jurisdictions to adopt.</p>	
		<p>* In response to the invitation to comment's question, "Does the proposal appropriately address its stated purpose?" the commenter stated, "A proper balance is struck. Even where counsel has not been retained remote access is still possible (c) and (d)."</p>	No response required.
		<p>* In response to the invitation to comment's question, "Should remote access be broader than what the proposal provides?" the commenter stated:</p> <p>The proposed rule does not delineate exactly which court records will be available remotely.</p>	The committee agrees that it would be more effective if all the court records counsel could view at the courthouse were available remotely. However, what courts are able to provide remotely depends on their resources and technical capability. Accordingly, there will be variability on what is available remotely from each court.

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



## SPR22-27

### Rules: Remote Access to Criminal Electronic Records (amend Cal. Rules of Court, rule 2.519)

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

			Different counties who already provide some form of access vary in how much information is available remotely. Some only provide court dates while others permit access to all minute orders of the court, charging documents, motions, witnesses called, jury instructions etc.. As a practical matter to be effective, the electronic records available remotely should be the same as counsel could view at the courthouse.	
			Additionally, although not part of the rule per se, the remote electronic records should be searchable by private counsel not only case number but also by an individual's name and birth date.	Rule 2.252 of the California Rules of Court currently limits searches to case caption or case number. Amending the rules to allow for additional search terms is beyond the scope of the current proposal. However, it is a topic the committee may consider for a future rule cycle.
			* In response to the invitation to comment's question, "Should remote access be narrower than what the proposal provides?", the commenter stated, "No."	No response required.
			* In response to the invitation to comment's question, "Should there be any additional consequences identified in the rule for failure to comply with the terms of remote access? If yes, what consequences should be included?" the commenter stated, "Identification of individual sanctions for noncompliance need not be listed by the rule. Suffice it to say that the trial court may sanction counsel. Sanctions may thus be applied by the court on a case by case basis depending on the severity of noncompliance."	The committee agrees that listing more sanctions in the rule is unnecessary since judges have the power to sanction and would be in the best position to determine appropriate sanctions tailored to specific sets of circumstances.
6.	Superior Court of Los Angeles County	A	If the rule is not amended, the quality of representation by private counsel may be impacted	The committee appreciates the response to its request for comments on the impact on

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**SPR22-27****Rules: Remote Access to Criminal Electronic Records** (amend Cal. Rules of Court, rule 2.519)

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

	by Bryan Borys		if they are forced to make greater efforts to obtain records, even though they would not completely be denied access to them.	representation. The committee agrees that regardless of the proposal, court records would not be denied to private counsel as they would still be accessible at the courthouse or remotely within the limitations of the current version of rule 2.519.
			The proposal adequately strikes a balance between the privacy of the subject of the record and accessibility of the record for private counsel. Because the records would be accessible if the attorney made an in-person request, the privacy concern is not increased simply because of remote accessibility. Moreover, the attorney would still be bound by rules of ethics and professional responsibility.	No response required.
			At a minimum, notice of termination of remote access as a sanction for non-compliance should be explicitly stated. We take no position as to whether additional consequences should be identified.	Rule 2.519(d)(4) includes express provision of termination of access for non-compliance as a possible sanction.
7.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor		Failure to comply is a breach of trust with the defendant and with the court. Violation incidents should be accessible to potential future clients and other courts (maybe through Bar Association?)	The committee agrees that violating the rules is a breach of trust. The committee determined though that it is unnecessary to detail more possible sanctions in the rule since judges have the power to sanction and would be in the best position to determine appropriate sanctions tailored to specific sets of circumstances.
			The courts would save about \$55.00 for each paper box. Less money would be spent on ink cartridges and minor wear and tear of the printer.	The committee appreciates the information potential cost savings and will include it in the final report.

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

**SPR22-27****Rules: Remote Access to Criminal Electronic Records** (amend Cal. Rules of Court, rule 2.519)

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

		<p>An implementation requirement for the courts would be to have technological updates to their case management systems. Each county would have to secure its software program for technical capabilities and security. The court's IT Department would set its process by verifying the user, having a California bar number, and accepting the court's disclaimer to access records remotely. Each court should have a strategy if any counsel cannot retrieve confidential or sealed documents. Each court's website should provide instructions on gaining remote access to records for counsel.</p>	<p>The committee appreciates the information about the technological implementation requirements and will include it in the final report.</p>
		<p>It is currently possible for Orange County Superior Court to implement at present. The court already has a process in place for private counsel and government entities.</p>	<p>No response required.</p>

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



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

Item No.: **TBD**

For business meeting on:

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**Title**

Rules: Remote Access to Electronic Records  
by Appellate Appointed Counsel  
Administrators, Courts of Appeal, and the  
Habeas Corpus Resource Center

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2023

**Date of Report**

July 1, 2022

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 2.515,  
2.521, 2.523, and 2.540

**Contact**

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**Recommended by**

Information Technology Advisory  
Committee  
Hon. Sheila F. Hanson, Chair

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### Executive Summary

The Information Technology Advisory Committee recommends amending four rules of the California Rules of Court to authorize trial courts to provide remote access to electronic records to administrators contracted to run appellate appointed counsel programs, the Courts of Appeal, and the Habeas Corpus Resource Center. The proposal originated with a recommendation from staff of the Sixth District Appellate Program, which is one of the contracted administrators.

### Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2023:

1. Amend rule 2.515 of the California Rules of Court to add authorized persons working for an appellate appointed counsel administrator to the rule.

2. Amend rule 2.521 of the California Rules of Court to add authorized persons working for an appellate appointed counsel administrator to the rule, define what the administrators are and who persons working for them are, and delineating terms of remote access.
3. Amend rule 2.523 of the California Rules of Court to add appellate appointed counsel administrators to the rule and describe their responsibilities related to remote access.
4. Amend rule 2.540 of the California Rules of Court to add the Courts of Appeal and Habeas Corpus Resource Center to the rule and specify to which electronic records they may have remote access.

The text of the amended rules is attached at pages 10–14.

### **Relevant Previous Council Action**

Effective July 1, 2002, the Judicial Council adopted rules of the California Rules of Court<sup>1</sup> that address public access to trial court electronic records, including remote access. The rules did not address access to electronic records by persons who were less than the public at large such as a party, a party's attorney, or a person working for a government entity.

In 2017, nine advisory committees formed a joint ad hoc subcommittee to develop a rule proposal on remote access to provide statewide structure, guidance, and authority on remote access to electronic records in the trial courts by a party, a party's designee, a party's attorney, an authorized person working for the same legal organization as a party's attorney, an authorized persons working in a qualified legal services project, court appointed persons, and persons working for government entities. Effective January 1, 2019, the Judicial Council adopted the final proposal.

### **Analysis/Rationale**

The proposal includes rule amendments to authorize trial courts to provide remote access to appellate appointed counsel administrators,<sup>2</sup> the Courts of Appeal, and the Habeas Corpus Resource Center. The proposal originated with a recommendation from staff of the Sixth District Appellate Program, which is one of the administrators, who noted that in-person service for court record access was backlogged at many trial courts. This was having a significant impact on programs like Sixth District Appellate Program, and clients being served through them because it hinders the programs' ability to act on behalf of clients and delays the movement of cases through the appellate courts. Additional details concerning time spent to review or copy files in-person are provided in the "Comments" section below.

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<sup>1</sup> All further references to rules are to the California Rules of Court.

<sup>2</sup> Also known as "appellate projects."

### **Remote access by appellate appointed counsel administrators**

Under rule 8.300 of the California Rules of Court, Courts of Appeal are required to "adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel."<sup>3</sup> Courts of Appeal are also required to evaluate the qualifications of appointed counsel, match appointed counsel with cases, and evaluate the performance of appointed counsel.<sup>4</sup> Rather than administering appointed counsel programs themselves, Courts of Appeal are authorized to "contract with an administrator having substantial experience in handling appellate court appointments to perform any of the duties prescribed[.]"<sup>5</sup> Currently, contract administrators operate programs in all six appellate districts.<sup>6</sup> Criminal matters constitute the bulk of the work for appointed appellate counsel though they also handle juvenile justice, child welfare, and civil commitment cases. In addition, there is one administrator—the California Appellate Project-San Francisco—that provides similar services as other appellate appointed counsel administrators, but only for indigent defendants sentenced to death.

The current rules do not provide a mechanism for appellate appointed counsel administrators to obtain remote access to electronic records. While the rules currently authorize remote access to a party's electronic records by the party's attorney including an attorney who was not the attorney of record in the trial court,<sup>7</sup> this is insufficient to address the administrators' needs. An administrator may need access to court records before counsel is appointed or when appointed counsel becomes unavailable. For example, a potential client may contact an administrator and the administrator would need access to records to determine if the client is entitled to appointed counsel. As a second example, if a criminal defendant files an appeal following a guilty plea, which requires a certificate of probable cause to appeal,<sup>8</sup> but there is no certificate, the administrator may need to work with the defendant and view the defendant's court records to resolve the certificate of probable cause issue before counsel can be appointed. As a third example, as part of their obligations, administrators need to view court records as part of their evaluation of the performance of appointed appellate counsel.<sup>9</sup> As a final example, appointed counsel may become unavailable during the appeal and, if that occurs, the administrator may need to access court records to act on behalf of the client before new counsel can be appointed or facilitate transferring information to new counsel.

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<sup>3</sup> Rule 8.300(a)(1).

<sup>4</sup> Rule 8.300(b)–(c).

<sup>5</sup> Rule 8.300(e)(1).

<sup>6</sup> A list of the administrators is available on the California Courts website at <https://www.courts.ca.gov/13714.htm>.

<sup>7</sup> Rule 2.519(c).

<sup>8</sup> Pen. Code, § 1237.5.

<sup>9</sup> See rule 8.300(d) (obligation to "review and evaluate the performance of each appointed counsel to determine whether counsel's name should remain on the list at the same level, be placed on a different level, or be deleted from the list").

### **Remote access by Courts of Appeal**

Courts of Appeal are responsible for operating a program for appellate appointed counsel under rule 8.300 of the California Rules of Court. However, as noted previously, that rule authorizes that work to be contracted to an administrator, which is the current practice in all appellate districts. A Court of Appeal that uses a contract administrator is responsible for providing "the administrator with the information needed to fulfill the administrator's duties."<sup>10</sup> Extending remote access to Courts of Appeal should help facilitate information sharing to administrators if the administrators lack needed information. In addition, should a Court of Appeal choose to operate its own appointed counsel program rather than contracting with an administrator, the rule would facilitate the Court of Appeal meeting its rule 8.300 obligations. The proposal includes remote access to case types in which a party is entitled to appointed counsel on appeal.

### **Remote access by the Habeas Corpus Resource Center**

Like the California Appellate Project-San Francisco, the Habeas Corpus Resource Center only represents indigent defendants sentenced to death. In addition, it "recruits and trains attorneys to expand the pool of private counsel qualified to accept appointments in death penalty habeas corpus proceedings and serves as a resource to appointed counsel[.]"<sup>11</sup> Unlike the administrators discussed previously, the Habeas Corpus Resource Center is a government entity. Accordingly, the proposal includes it within the scope of rule 2.540, which addresses remote access by government entities. The proposal includes remote access to criminal electronic records and habeas corpus electronic records. During the development of the proposal, Habeas Corpus Resource Center staff indicated these were the case types to which remote access would provide a benefit to the organization.<sup>12</sup>

### **Policy implications**

The proposal is consistent with the goals and objectives of the branch's Strategic Plan for Technology (Strategic Plan) and Tactical Plan for Technology (Tactical Plan). The Strategic Plan identifies four high-level goals for information technology. One of the goals is to "promote the modernization of statutes, rules, and procedures to facilitate the use of technology in court operations and the delivery of court services."<sup>13</sup> The Tactical Plan incorporates this goal and specifies that objectives include continuing "modernization of statutes, rules, and procedures to permit and enhance the use of technology in court operations and the delivery of court services," and developing and updating "rules, standards, and guidelines in areas in which new technologies affect court operations and access to the courts."<sup>14</sup> The proposal will provide courts authority to use technology solutions to provide remote access to electronic records by

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<sup>10</sup> Cal. Rules of Court, rule 8.300(e)(2).

<sup>11</sup> Habeas Corpus Resource Center,

<sup>12</sup> According to Habeas Corpus Resource Center staff, courts vary in how habeas corpus records are categorized. Some include them with underlying criminal records while others have a distinct habeas corpus case type.

<sup>13</sup> Link A, p. 4.

<sup>14</sup> Link B, p. 40.

authorized users from appellate appointed court administrators, Courts of Appeal, and the Habeas Corpus Resource Center, reducing the need for in-person service.

### **Comments**

The proposal circulated for public comment from April 1, 2022, through May 13, 2022. The proposal received five comments from 10 commenters on the proposal. The six appellate appointed counsel administrators submitted a joint comment. Nine commenters agreed with the proposal, and one commenter agreed if modified. Comments covered topics including benefits of the proposal, whether the rule should expressly name the administrators, and areas for potential future rule development. The chart of comments is attached at pages 15–22. In addition, at its June 29, 2022 meeting, ITAC also discussed an ITAC member’s concerns about the increasing complexity of the remote access rules and whether a better approach would be to provide universal remote access to public electronic records for all users.

#### ***Comments by the administrators on the benefits of the proposal***

The appellate appointed counsel administrators included detailed comments about the impact remote access would have on them and appointed counsel. It would significantly reduce the need to visit courthouses to view court records and reduce time spent on the phone trying to locate information. This is discussed in more detail in the “Fiscal and Operational Impacts” section, below.

#### ***Responses to a request for specific comments about expressly naming the administrators***

The Information Technology Advisory Committee (ITAC) asked for specific comments about whether rule 2.521(a)(2)(B) should include both the general definition of “appellate appointed counsel administrators” as “organizations contracted with the Courts of Appeal or Judicial Council to administer programs for appointed counsel on appeal” and the list of current administrators by name.

The administrators commented that both the general definition and the list of names should be included. In particular, listing the names should help “avoid confusion over whether an entity seeking remote access is one of the appellate projects contemplated by the rules. Given that some appeals are transferred to other districts, it is possible that superior court staff may not be familiar with the names of each of the appellate projects that might seek access, especially on only rare occasions.” The Superior Court of Orange County commented that “[t]he list of names of each organization makes the rule clear and concise.” The Orange County Bar Association indicated that the names should not be listed in the rule and that “the definition and the Advisory Committee Comment indicating where the list can be found are sufficient.” The Joint Rules Subcommittee (JRS) of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee recommended removing the specific names if they are not required as “[t]he rule would need to be updated if the names of the appellate appointed counsel changed.” Before the proposal circulated, the Technology Committee raised the same concern as JRS.



ITAC determined that expressly listing the administrators by name was the clearest option. Of particular concern to committee members was the audience of court staff that would be tasked with developing system updates to implement the rule. These staff may be unfamiliar with program administrators for appointed counsel on appeal therefore including the names of the administrators would make the rule easier to implement and not require additional work or room for error. As one ITAC member noted, the list of administrators represents a “small, unique group of service providers” and including their names in the rule would help ensure that only those service providers would get remote access.

An advisory committee comment provides a link to more details about each administrator, including which districts in which they operate, on the California Courts website. ITAC considered including these details in the advisory committee comment, but determine the link was sufficient. While one option was to not list the administrators in the rule and rely only on the link, the ITAC did not think that was as clear as simply listing them in the rule without need to click on a link unless more information about them was needed.

While amending the rule would be necessary if an administrator changed, this would not be an onerous amendment and the committee did not consider the need to potentially make such an amendment in the future to be greater than the need for a rule that is clear for court personnel to follow. One member was concerned about the time needed to effectuate a rule change to remove, add, or change an administrator’s name. Other members noted that the administrators have been established for a long time<sup>15</sup> and that if a new contract was to be established with a new administrator, that would be known well in advance, making it easier to timely amend the rule. ITAC also considered that amending the rule to reflect the name of a new administrator could potentially be expedited as a technical rule change. In considering this issue, ITAC noted the California Appellate Project—San Francisco is included by name in several existing rules.<sup>16</sup> Thus, there is precedent to include the names of specific such organizations in the California Rules of Court.

***Comments on areas for potential future rule development.***

Some of the commenters recommended changes beyond the scope of the proposal or that would otherwise be best addressed through a future rule proposal. First, the appellate appointed counsel administrators commented that the rules should specify that no use fees should be charged for the administrators to access electronic records remotely. Addressing fees is beyond the proposal’s scope, but it is a topic the committee could consider in a future rulemaking process. Second, the Superior Court of Riverside County recommended further amending rule 2.540 to add more case types for remote access by county child welfare agencies. In addition, the court recommended adding adult protective services and regional centers to the rule. The court commented that the “lack of this access causes operational issues for trial courts.” Adding additional case types for county child welfare agencies and adding adult protective services and regional centers to rule

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<sup>15</sup> All the administrators have been operating since the 1980s.

<sup>16</sup> See, e.g., rules 4.315(a), 8.603(a), & 8.619(f)(1)(B).

2.540 is beyond the proposal's scope, but it is another topic the committee can consider for future rule development. Third, the appellate appointed counsel administrators commented that Courts of Appeal have broad authority to appoint counsel so it may be prudent to add more case types. The committee may consider this in the future if a need arises. The list of government entities and case types in rule 2.540 does not account and cannot account for every possible scenario where a need for remote access may arise. However, subdivision (b)(1)(Q) of rule 2.540 allows a trial court to provide remote access to a government entity for a case type not listed when there is good cause to do so.

Finally, the Superior Court of Orange County commented that the Habeas Corpus Resource Center should be authorized to access electronic records related to mental health. The proposal specifies access to criminal electronic records and habeas corpus electronic records, consistent with a request from the Habeas Corpus Resource Center staff early in the rule development process. ITAC staff contacted the Habeas Corpus Resource Center in light of the court's comment. Habeas Corpus Resource Center staff agreed that mental health court records are the type of records it regularly needs to access in the course of its work as well as juvenile court records. However, they did not realize it may be possible to remotely access electronic records of these types. Habeas Corpus Resource Center staff explained that they deal primarily with older records only available on paper and microfiche. ITAC observed that as a practical matter, courts may not have some records in an electronic format, such as older records, but that the rule could provide authority to access them if and when they are available in an electronic format in the future. ITAC may consider adding additional case types for Habeas Corpus Resource Center remote access in a future rulemaking process.

***ITAC member comments on the increasing complexity of the remote access rules and the possibility of providing universal remote access***

At ITAC's June 29, 2022 meeting, one member raised concerns that the remote access rules are becoming too complex with too many provisions tailored to specific users. The member noted that more and more users are allowed remote access to public electronic records and that it could be a problem to continue to exclude the public from remote access to certain electronic records. The member commented that the committee should consider amending the rules to provide for universal remote access for all users to public court records. The member cast the lone no vote against the proposal. Another member agreed that universal remote access is something the committee should consider, but at a future time.

**Alternatives considered**

ITAC considered taking no action but determined that was not a desirable approach given the significant impact reported by the Sixth District Appellate Project that requiring in-person services had on appellate appointed program administrators and clients being served through them.

Rather than adding appellate appointed counsel administrators to rule 2.521, ITAC considered drafting a separate, standalone rule for appellate appointed counsel administrators. However, to maintain the logical flow of the rules, it would have had to renumber several rules to add a

standalone rule. ITAC decided it would be preferable and less confusing to amend an existing rule. ITAC determined that rule 2.521, which relates to remote access by court-appointed persons, is topically similar to the proposed amendments for appellate appointed counsel administrators and would be the appropriate place to bring the administrators into the remote access rules.

ITAC had considered providing a more general definition of “appellate appointed counsel administrator” rather than listing each administrator by name but determined that specifying the administrators by name made the rule clearer as discussed in more detail in the “Comments” section, above.

### **Fiscal and Operational Impacts**

Courts may need to make system updates or execute new agreements to allow remote access by the new users described in the proposed amendments. Courts may need to train staff regarding which electronic records the new users described in the proposed amendments may remotely access. Under rule 2.516, courts are required to authorize remote access by specified users only to the extent it is feasible to do so. Financial and technological limitations may affect the feasibility of providing remote access. Costs and specific implementation requirements would vary across the courts depending on each court’s current capabilities and approach to providing services. One court, the Superior Court of Orange County, commented that it would be able to implement the proposal now.

The appellate appointed counsel administrators commented on impacts to them and appointed counsel. The administrators explained that in a “10-year period end[ing] June 30, 2020, panel attorneys statewide claimed compensation for review of superior court records in more than 11,000 appeals--more than 13% of all court appointed counsel appeals during that time period.” In addition, several of the administrators “offer the service of having project staff review superior court records for the benefit of appointed panel attorneys” and all of them have staff who:

regularly have contact with the superior court clerks regarding the superior court records on matters being appealed. Whether the time is spent visiting the superior court in person or on the telephone with superior court clerical staff to acquire information, valuable [administrator] staff and superior court staff time would be saved if the appellate projects were given direct access to the electronic superior court records as described in the proposed amendments.

Based on the above, the ability to access electronic records remotely could have a significant impact on the operation of the appellate appointed counsel programs as it would reduce time spent viewing records in-person or trying to find information over the phone. It could also reduce the need for court staff to provide in-person services at counters or over the phone.

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540, at pages 10–14.

2. Chart of comments, at pages 15–22.
3. Link A: Strategic Plan for Technology 2019–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>
4. Link B: Tactical Plan for Technology 2021–2022, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Tactical-Plan.pdf>

DRAFT

Rules 2.515, 2.521, 2.523, and 2.540 of the California Rules of Court would be amended, effective January 1, 2023, to read:

**Article 3. Remote Access by a Party, Party’s Designee, Party’s Attorney,  
Court-Appointed Person, or Authorized Person Working in a Legal Organization,  
~~or~~ in a Qualified Legal Services Project, or for an Appellate Appointed Counsel  
Administrator**

**Rule 2.515. Application and scope**

**(a) \* \* \***

**(b) Who may access**

The rules in this article apply to remote access to electronic records by:

- (1) A person who is a party;
- (2) A designee of a person who is a party;
- (3) A party’s attorney;
- (4) An authorized person working in the same legal organization as a party’s attorney;
- (5) An authorized person working in a qualified legal services project providing brief legal services; ~~and~~
- (6) A court-appointed person; and
- (7) An authorized person working for an appellate appointed counsel administrator.

**Advisory Committee Comment**

Article 2 allows remote access in most civil cases, and the rules in article 3 are not intended to limit that access. Rather, the article 3 rules allow broader remote access—by parties, parties’ designees, parties’ attorneys, authorized persons working in legal organizations, authorized persons working in a qualified legal services project providing brief services, ~~and~~ court-appointed persons, and authorized persons working for an appellate appointed counsel administrator—to those electronic records where remote access by the public is not allowed.

Under the rules in article 3, a party, a party’s attorney, an authorized person working in the same legal organization as a party’s attorney, ~~or~~ a person appointed by the court in the proceeding, or an authorized person working for an appellate appointed counsel administrator ~~basically~~ essentially has the same level of access to electronic records remotely that ~~he or she~~ the person would

1 have if ~~he or she~~the person were to seek to inspect the records in person at the courthouse. Thus,  
2 if ~~he or she~~the person is legally entitled to inspect certain records at the courthouse, that person  
3 could view the same records remotely; on the other hand, if ~~he or she~~the person is restricted from  
4 inspecting certain court records at the courthouse (e.g., because the records are confidential or  
5 sealed), that person would not be permitted to view the records remotely. In some types of cases,  
6 such as unlimited civil cases, the access available to parties and their attorneys is generally  
7 similar to the public's but in other types of cases, such as juvenile cases, it is much more  
8 extensive (see Cal. Rules of Court, rule 5.552).

10 For authorized persons working in a qualified legal services program, the rule contemplates  
11 services offered in high-volume environments on an ad hoc basis. There are some limitations on  
12 access under the rule for qualified legal services projects. When an attorney at a qualified legal  
13 services project becomes a party's attorney and offers services beyond the scope contemplated  
14 under this rule, the access rules for a party's attorney would apply.

16 **Rule 2.521. Remote access by a court-appointed person or person working for an**  
17 **appellate appointed counsel administrator**

19 **(a) Remote access generally permitted**

21 **(1) Remote access by a court-appointed person**

23 **(A)** A court may grant a court-appointed person remote access to electronic  
24 records in any action or proceeding in which the person has been  
25 appointed by the court.

27 ~~(2)~~**(B)** Court-appointed persons include an attorney appointed to  
28 represent a minor child under Family Code section 3150; a Court  
29 Appointed Special Advocate volunteer in a juvenile proceeding; an  
30 attorney appointed under Probate Code section 1470, 1471, or 1474; an  
31 investigator appointed under Probate Code section 1454; a probate  
32 referee designated under Probate Code section 8920; a fiduciary, as  
33 defined in Probate Code section 39; an attorney appointed under  
34 Welfare and Institutions Code section 5365; ~~or and~~ a guardian ad litem  
35 appointed under Code of Civil Procedure section 372 or Probate Code  
36 section 1003.

38 **(2) Remote access by a person working for an appellate appointed counsel**  
39 **administrator**

41 **(A)** A court may grant a person working for an appellate appointed counsel  
42 administrator remote access to electronic records.

1 (B) Appellate appointed counsel administrators are organizations  
2 contracted with the Courts of Appeal or Judicial Council to administer  
3 programs for appointed counsel on appeal. The appellate appointed  
4 counsel administrators are:

5  
6 (i) Appellate Defenders, Inc.;

7  
8 (ii) California Appellate Project—Los Angeles;

9  
10 (iii) California Appellate Project—San Francisco;

11  
12 (iv) Central California Appellate Program;

13  
14 (v) First District Appellate Project; and

15  
16 (vi) Sixth District Appellate Program.

17  
18 (C) Persons “working for an appellate appointed counsel administrator”  
19 under this rule include attorneys, employees, contractors, and  
20 volunteers.

21  
22 (D) An appellate appointed counsel administrator must designate which  
23 persons it authorizes to have remote access, and must certify that the  
24 authorized persons work for the appellate project.

25  
26 **(b) Level of remote access**

27  
28 A court-appointed person or person working for an appellate appointed counsel  
29 administrator may be provided with the same level of remote access to electronic  
30 records as the ~~court-appointed~~ person would be legally entitled to if ~~he or she~~ the  
31 person were to appear at the courthouse to inspect the court records.

32  
33 **(c) Terms of remote access**

34  
35 (1) Remote access only for purpose of fulfilling responsibilities

36  
37 (A) A court-appointed person may remotely access electronic records only  
38 for purposes of fulfilling the responsibilities for which ~~he or she~~ the  
39 person was appointed.

40  
41 (B) A person working for an appellate appointed counsel administrator may  
42 remotely access electronic records only for purposes of fulfilling the  
43 administrator’s responsibilities.

- 1  
2 (2) Any distribution for sale of electronic records obtained remotely under the  
3 rules in this article is strictly prohibited.  
4  
5 (3) All laws governing confidentiality and disclosure of court records apply to  
6 the records obtained under this article.  
7  
8 (4) A court-appointed person or person working for an appellate appointed  
9 counsel administrator must comply with any other terms of remote access  
10 required by the court.  
11  
12 (5) Failure to comply with these rules may result in the imposition of sanctions,  
13 including termination of access.  
14

15 **Advisory Committee Comment**  
16

17 **Subdivision (a)(2)(B).** A list of appellate appointed counsel administrators, including physical  
18 and web addresses and contact information, is available on the California Courts website at  
19 <https://www.courts.ca.gov/13714.htm>.  
20

21 **Rule 2.523. Identity verification, identity management, and user access**  
22

23 **(a)–(c) \* \* \***  
24

25 **(d) Responsibilities of the legal organizations, ~~or~~ qualified legal services projects,**  
26 **and appellate appointed counsel administrators**  
27

- 28 (1) If a person is accessing electronic records on behalf of a legal organization,  
29 ~~or~~ qualified legal services project, or appellate appointed counsel  
30 administrator, the organization or project must approve granting access to  
31 that person, verify the person's identity, and provide the court with all the  
32 information it directs in order to authorize that person to have access to  
33 electronic records.  
34  
35 (2) If a person accessing electronic records on behalf of a legal organization, ~~or~~  
36 qualified legal services project, or appellate appointed counsel administrator  
37 leaves ~~his or her~~ the position or for any other reason is no longer entitled to  
38 access, the organization or project must immediately notify the court so that it  
39 can terminate the person's access.  
40

41 **(e) \* \* \***  
42



1 **Rule 2.540. Application and scope**

2  
3 **(a) \* \* \***

4  
5 **(b) Level of remote access**

6  
7 (1) A court may provide authorized persons from government entities with  
8 remote access to electronic records as follows:

9  
10 (A)–(P) \* \* \*

11  
12 (Q) California Courts of Appeal: child welfare electronic records, criminal  
13 electronic records, juvenile justice electronic records, and mental health  
14 electronic records.

15  
16 (R) Habeas Corpus Resource Center: criminal electronic records and  
17 habeas corpus electronic records.

18  
19 ~~(Q)~~(S) For good cause, a court may grant remote access to electronic  
20 records in particular case types to government entities beyond those  
21 listed in (b)(1)(A)–(R). For purposes of this rule, “good cause” means  
22 that the government entity requires access to the electronic records in  
23 order to adequately perform its legal duties or fulfill its responsibilities  
24 in litigation.

25  
26 ~~(R)~~(T) All other remote access for government entities is governed by  
27 articles 2 and 3.

28  
29 (2) Subject to (b)(1), the court may provide a government entity with the same  
30 level of remote access to electronic records as the government entity would  
31 be legally entitled to if a person working for the government entity were to  
32 appear at the courthouse to inspect court records in that case type. If a court  
33 record is confidential by law or sealed by court order and a person working  
34 for the government entity would not be legally entitled to inspect the court  
35 record at the courthouse, the court may not provide the government entity  
36 with remote access to the confidential or sealed electronic record.

37  
38 (3) This rule applies only to electronic records. A government entity is not  
39 entitled under these rules to remote access to any documents, information,  
40 data, or other types of materials created or maintained by the courts that are  
41 not electronic records.

42  
43 **(c) \* \* \***

**SPR22-26****Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center** (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Defenders, Inc., California Appellate Project—Los Angeles, California Appellate Project—San Francisco, Central California Appellate Program, First District Appellate Project, and Sixth District Appellate Program by Laurel Thorpe, Executive Director, Central California Appellate Program	A	<p>The appellate projects strongly support the proposed amendments recommended by the Information Technology Advisory Committee to Rules of Court, rules 2.515, 2.521, 2.523, and 2.540.</p> <p>The quantity of appellate project staff contacts with the superior courts for information contained in superior court records, and time associated with it, is not data that the appellate projects specifically track. But the number of cases in which compensation is claimed by panel attorneys for reviewing superior court records (whether in electronic form or not) in person at the superior court is tracked, giving at least some context on how often it is necessary to review superior court records once an appeal has been initiated. In the 10-year period ended June 30, 2020, panel attorneys statewide claimed compensation for review of superior court records in more than 11,000 appeals--more than 13% of all court appointed counsel appeals during that time period. That data does not include other instances where there was direct communication with superior court staff but did not involve the full review of the records at the superior court, as that activity is claimed under a category that includes a variety of tasks.</p> <p>Several of the appellate projects offer the service of having project staff review superior court records for the benefit of appointed panel attorneys, but all of the appellate projects do</p>	<p>No response required.</p> <p>The committee appreciates the quantification of data indicating the significant amount of time appointed counsel and staff of the appellate projects/appointed appellate counsel administrators spend at courthouses to view court records or spend over the phone talking to court staff for information. It appears the administrators and appointed counsel serving may benefit from significant time efficiencies from remote access. The committee will include this information in its final report.</p>

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

## SPR22-26

### Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	Commenter	Position	Comment	Committee Response
			<p>regularly have contact with the superior court clerks regarding the superior court records on matters being appealed. Whether the time is spent visiting the superior court in person or on the telephone with superior court clerical staff to acquire information, valuable project staff and superior court staff time would be saved if the appellate projects were given direct access to the electronic superior court records as described in the proposed amendments.</p> <p>Even before counsel is appointed, such access would allow the appellate projects to determine whether there are problems with the notice of appeal at an early stage that can be resolved before the jurisdictional time for the filing of a notice of appeal expires. For example, the appellate projects would be able to contact trial attorney for the filing of an amended notice of appeal, or to file an application for a certificate of probable cause where needed. Or where there appears to be a question of appealability, the appellate projects would be able to examine the superior court records to determine whether the order is appealable and the appellate project should proceed to arrange for appointment of counsel, or does not appear to be appealable (which triggers different actions among the appellate projects, depending on the practice expected by the relevant district or division of the Courts of Appeal).</p>	

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

**SPR22-26****Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center** (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	Commenter	Position	Comment	Committee Response
			<p>* In response to the question from the invitation to comment, "Does the proposal appropriately address the state purpose?" the commenter indicated it appears to.</p> <p>[T]he appellate projects are aware of rule 2.506(a), which reads, in pertinent part, "The court may impose fees for the costs of providing public access to its electronic records, under Government Code section 68150(l)." A review of section 68150, subdivision (l) reveals that "Reasonable provision shall be made for duplicating the records at cost." It might be helpful to include a provision in the proposed amendments that clarifies that there shall be no fee charged by the superior courts for remote access to the superior court electronic records by the appellate projects except to the extent permitted for duplication of records at cost, within the meaning of Government Code section 58150, subdivision (l). This distinguishes the access from other court services, such as the PACER system used in the federal courts that charges a fee simply for electronic access (in excess of a threshold) in the absence of obtaining a specific exemption from the court itself. The projects assume that "duplication of records" refers to the reproduction of the records in paper form. The projects would prefer that there be no fee charged even for duplication of records, of course, because any duplication of record would be for the benefit of the indigent defendant, who is entitled to a free transcript on appeal, and the</p>	<p>No response required.</p> <p>Amending rule 2.506(a) of the California Rules of Court or otherwise including language in the rules about fees is beyond the scope of the proposal. However, it is a topic the committee may consider for a future rule cycle.</p>

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

## SPR22-26

### Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	Commenter	Position	Comment	Committee Response
			appellate projects are not reimbursed for fees charged for access.	
			<p><b>* Rule 2.521(a)(2)(B)(i):</b> The commenter recommends the appellate projects/appellate appointed counsel program administrators be listed by name in the rule “as it will avoid confusion over whether an entity seeking remote access is one of the appellate projects contemplated by the rules. Given that some appeals are transferred to other districts, it is possible that superior court staff may not be familiar with the names of each of the appellate projects that might seek access, especially on only rare occasions. By having the individual projects expressly named in the rules, the project seeking access need only point to the appropriate rule to show its authorization for access.”</p> <p>The commenter further noted that “[t]echnically, the California Appellate Project is a single corporation with one contract to serve as administrator within the meaning of rule 8.300(e) for the Court of Appeal in the Second District, and with a separate contract to serve as appellate project on capital cases. In the jargon at the level of the appellate courts, they are referred to separately, and identifying them separately certainly clarifies for all that “both” are included within the provisions of the proposed amendments.”</p>	<p>The committee appreciates the comment addressing the request for comments on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee agrees with the comment that the administrators should be expressly listed by name as they are shown in the proposal. That is the clearest to follow for court staff implementing the rule, who may be unfamiliar with the administrators.</p>

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

## SPR22-26

### Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	Commenter	Position	Comment	Committee Response
			<b>* Rule 2.540:</b> In considering whether there are additional case types that should be included for the Court of Appeal, the comment noted, “the Court of Appeal has broad authority to appoint counsel in possibly any type of case where the Court believes appointment of counsel would serve the interest of justice or avoid unconstitutional consequences. (See <i>Salas v. Cortez</i> (1979) 24 Cal.3d 22; <i>Payne v. Superior Court</i> (1976) 17 Cal.3d 908.) Permitting the Court of Appeal to have remote access to superior court electronic records in other types of cases that do not normally involve appointment of counsel may aid in its determination whether counsel should nonetheless be appointed. (Appellate project attorneys have occasionally been requested by the Court of Appeal to represent, for example, a court reporter who must respond to an order to show cause related to the court reporter's failure to timely prepare and file a reporter's transcript.)”	The committee may consider adding more case types in the future as the need arises. The rule does not and cannot account for every situation where a government entity may need remote access to an electronic court record. Accordingly, to nonetheless allow remote access in atypical situations, subdivision (b)(1)(Q) of rule 2.540 allows a trial court to provide remote access to a government entity for a case type not listed when there is good cause to do so.
2.	Joint Rules Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee	A	Under proposed rule 2.521(a)(2)(B) – Are the names of the appellate appointed counsel required? If the specific names are not required, we would recommend removing the specific names. The rule would need to be updated if the names of the appellate appointed counsel changed.	The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee has decided to keep the rule as proposed with names of the administrators listed. While the committee agrees the rule would need to be amended if one of the administrators changed, that would not be an onerous rule amendment. In addition, the committee considered the fact that one administrator—the California Appellate Project-San Francisco—is already listed

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**SPR22-26****Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center** (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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

	Commenter	Position	Comment	Committee Response
				by name elsewhere in the California Rules of Court. Furthermore, as a practical matter, the committee considered expressly listing the names as the clearest option that will be the easiest to follow for the court operational and information technology staff who would be working on system changes to implement the rule.
3.	Orange County Bar Association by Daniel S. Robinson, President	AM	<b>* Rule 2.521(a)(2)(B):</b> The commenter indicated that the list of current appellate appointed counsel administrators should not be listed in the rule and “the definition and the Advisory Committee Comment indicating where the list can be found are sufficient.”	The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee considered the matter and decided to keep the rule as proposed with the list of administrators. See the response to comment
4.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	The list of names of each organization makes the rule clear and concise. The specific organizations listed does not allow anyone else to decide if another appellate project should fall within the realm of contracted organizations.	The committee appreciates the comment addressing the request for specific comment on whether the names of the appellate appointed counsel administrators should appear expressly in the rule. The committee agrees with the comment that the administrators should be expressly listed by name. The committee determined this would be clearest to follow and not leave any room for confusion over which organizations are included.
			<b>* The commenter indicated that Courts of Appeal and the Habeas Corpus Resource Center should have access to probate electronic records as “many criminal cases, defendants have been evaluated by mental health providers.”</b>	The proposal includes “mental health electronic records” within the scope of access for Courts of Appeal and that should encompass any relevant probate electronic records. In light of the court’s comment, the committee contacted the Habeas Corpus Resource Center (HCRC), which indicated these are the types of records HCRC regularly

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

	Commenter	Position	Comment	Committee Response
				needs but did not realize it could be possible to obtain them through remote electronic means as HCRC views older records only available on paper and microfiche. The committee notes that as a practical matter, courts may not have records in an electronic format, but that the rule could provide authority to access them if and when they are available in an electronic format in the future. Because adding these records to the rule for HCRC would necessitate an additional comment period, the committee will consider it for a future rule cycle while allowing the current proposal to move forward. Rule 2.540(b)(1)(Q) [“good cause” remote access for government entities] and rule 2.519 [remote access by a party’s attorney] may provide alternatives in the interim.
			It appears to provide cost savings for the counsel programs. Superior courts would also no longer have to budget for paper boxes, postage, and staffing hours.	The committee appreciates the insight into potential cost savings for both the administrators and the courts. The committee will include this information in its final report.
			Some kind of validation would need to be in place to ensure only authorized persons could access the records. Where will the request be to and who can request a confidential or sealed record.	The committee agrees that remote users will need to be validated. Under rule 2.523(d) of the California Rules of Court, organizations like the appellate appointed counsel administrators would be required to verify identities and provide the court with that information. In addition, the identity and access management is part of Judicial Council Information Technology’s catalog of services available to the superior courts.
			Case Processing Department clerks will need to be trained on how to retrieve the request if it is made electronically, which judicial officer will be tasked with granting or denying the request and	

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**SPR22-26****Rules: Remote Access to Electronic Records by Appellate Appointed Counsel Administrators, Courts of Appeal, and the Habeas Corpus Resource Center** (Cal. Rules of Court, rules 2.515, 2.521, 2.523, and 2.540)

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	Commenter	Position	Comment	Committee Response
			<p>determining the delivery of the document to said organization.</p> <p>The courts IT Department will have to work in conjunction with the organization's IT staff to ensure compatibility, authorization of users and deletion of users, and IT support for the organizations. A system-generated docket code will have to be created if the request is made and accepted electronically.</p> <p>Orange County Superior Court can implement this practice at present. All our criminal records are digitized. We do not foresee any barriers; however, recognize there will be issues with each organization's software program being compatible with the courts to retrieve documents.</p>	<p>The committee agrees that only persons authorized to view a confidential or sealed records would be able to view such a record remotely.</p> <p>The committee appreciates the insight into the training requirements and IT resource needs and will include that information in its final report.</p>
5.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	<p>We suggest that Rule 2.540 be further expanded to allow the following entities to have the access indicated:</p> <p>(b)(K) County child welfare agency: child welfare electronic records, family electronic records, and probate electronic records; County Adult Protective Services: family electronic records and probate electronic records; Regional Centers: family electronic records and probate electronic records.</p> <p>The lack of this access causes operational issues for trial courts.</p>	<p>The committee appreciates the suggestion. While it is beyond the scope of the currently proposed amendments, the committee will review the matter further and may consider it for a future rule cycle. Note also that rule 2.540(b)(1)(Q) allows government entities not on the list to obtain remote access with there is good cause to do so, which may provide an option for child welfare agencies and adult protective services in the interim.</p>

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