

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152	January 1, 2018
Proposed by	Contact
Court Executives Advisory Committee	Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov
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Executive Summary and Origin

The Court Executives Advisory Committee recommends amending various statutes governing records retention in the Government Code. This legislative proposal would amend Government Code sections 26810, 68150, 68151, and 68152 to clarify that original wills and codicils must be retained until there is a final order of discharge in a probate proceeding that concerns all remaining testators named in the will. This proposal would also amend Probate Code section 12250 to provide a process whereby the personal representative may request delivery of the original wills and codicils in the ex parte petition for discharge. Lastly, this proposal would provide the retention period for court records in gun violence cases and would make technical amendments to the records retention statutes.

Background

In 2012, the Court Executives Advisory Committee led a collaborative effort with other advisory committees to modernize and improve the records retention statutes in the Government Code. This effort culminated in the enactment of Assembly Bill 1352 (Stats. 2013, ch. 274), which amended the Government Code to reduce the record retention periods for certain court records, to establish retention periods for new types of records that were not dealt with under existing law, and to eliminate ambiguities in the law relating to records retention.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

This legislative proposal would amend the records retention statutes in the Government Code to clarify that original wills and codicils may not be scanned and destroyed until there is a final order of discharge in a probate proceeding that concerns all remaining testators named in the will. It would also provide a process in the Probate Code for the personal representative to request delivery of the original wills and codicils after final disposition. Lastly, it would provide the retention period for court records in gun violence cases and would make technical amendments.

This proposal was developed in consultation with the Probate and Mental Health Advisory Committee.

Retain all original wills and codicils until final order of distribution

The statutes governing records retention arguably could be interpreted as allowing courts to scan and destroy original wills and codicils, even if a probate proceeding is pending or has never been initiated. This proposal would amend Government Code sections 26810, 68150(b)(2), and 68152(a)(11) to clarify that courts must retain all original wills and codicils unless and until there is a final disposition of the case, which would occur upon final order of distribution that concerns all remaining testators named in the will.

Proposed amendments to Government Code section 26810. Government Code section 26810 addresses probate documents,¹ including original wills and codicils, that are delivered to the court when an attorney has terminated a deposit under Probate Code section 732 or when the custodian of a will has died under Probate Code section 8200.

This statute authorizes scanning and destroying original wills if more than 10 years have passed since they were delivered to the court under Probate Code section 8200. (See Gov. Code, § 26810(a)(2), (e).) It also might be interpreted as allowing courts to scan and destroy original wills and codicils immediately if they are delivered to the court under Probate Code section 732. (See Gov. Code, § 26810(a)(1), (e).) These wills and codicils could be scanned and destroyed regardless of whether the testator is deceased and whether the will has ever been probated.

This proposal would amend Government Code section 26810(a)(2) and (e) to clarify that all original wills and codicils that are delivered to the court—whether they are delivered under Probate Code sections 732, 734, 8200, or 8203—may not be destroyed unless and until there is a “final disposition of the case” as defined in Government Code section 68151(c).

Proposed amendments to Government Code section 68150. Government Code section 68150(a) authorizes trial courts to maintain “court records” solely in electronic form. The term “court

¹ Probate Code section 704 defines *document* as including, inter alia, (a) a signed original will, declaration of trust, trust amendment, or other document modifying a will or trust; (b) a signed original power of attorney; and (c) a signed original nomination of conservator.

record” is defined broadly as including “[a]ll filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.” (Gov. Code, § 68151(a).) Applying this broad definition to Government Code section 68150(a) suggests that upon filing original wills and codicils with the court,² they qualify as “court records” and trial courts would arguably be authorized to scan and destroy the originals.

There is a limited exception to Government Code section 68150(a) in section 68150(b)(2) for original wills and codicils that are delivered to the court under Probate Code section 8200. These originals may not be immediately scanned and destroyed; however, they are to be retained as provided in Government Code section 26810, which currently states that they may be scanned and destroyed 10 years after delivery to the court, regardless of whether the testator is deceased and whether the will has ever been probated.

The proposal would amend Government Code section 68150(b)(2) to expand the exception to include all original wills and codicils. The proposed language would require courts to retain the originals—regardless of how they come into the court’s possession—unless and until there is a final disposition of the case as defined in Government Code section 68151(c). If an original will or codicil never becomes associated with a probate proceeding, the court would have to retain the original will or codicil permanently.

Proposed amendments to Government Code section 68151. The phrase “final disposition of the case” is defined in Government Code section 68151(c) to mean that “an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.” To clarify its application to probate proceedings for decedent estates, the term “order of judgment” would be defined for these proceedings as the order of distribution concerning all remaining testators named in the will. Applying this new definition to the other proposed amendments would require courts to retain the original wills and codicils until there is a final order of discharge concerning all remaining testators.

Proposed amendments to Government Code section 68152. This proposal would make amendments to Government Code section 68152(a)(11)(B), which provides the retention period for wills and codicils transferred or delivered to the court under Probate Code sections 732, 734, 8200, or 8203. It would clarify that if there is no underlying case, the court must retain the originals permanently.

² See Prob. Code, § 8225 (“When court admits a will to probate, . . . the will shall be filed”).

Provide a process for requesting delivery of the original wills and codicils

This proposal would amend Probate Code section 12250 and Government Code sections 26810(e), 68150(b)(2), and 68152(a)(11)(A) to provide a process for the delivery of original wills and codicils upon request by the personal representative.

Probate Code section 12250(b) would be amended to recognize that the personal representative may request in the ex parte petition for discharge the delivery of all original wills and codicils in the possession of the court under Government Code section 68150(b)(2). Government Code section 68150(b)(2), in turn, would be amended to provide that, if such a request has been made, the clerk must deliver the original wills and codicils to the personal representative or to the person identified in the order of discharge, subject to certain conditions.

One condition would be that there must be a “final disposition in the case,” which would be defined for probate decedent estate proceedings as the final order of discharge concerning all remaining testators named in the will. Another condition would be that the clerk must maintain the record in a form authorized by Government Code section 68150(a), which provides that trial court records may be maintained “in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form or forms of representation or communication satisfy the rules adopted by the Judicial Council.” The clerk could satisfy this condition, for example, by scanning and maintaining the wills and codicils as electronic records.

This process would allow for the personal representative to obtain the originals before they are scanned and destroyed by the clerk. At the same time, it would ensure that the originals are available to the court during the pendency of the probate proceeding and that they are maintained permanently as court records in an authorized form.

Parallel amendments would be introduced in Government Code sections 26810(e) and 68152(a)(11) to provide for consistency in the statutes addressing the retention of original wills and codicils.

Gun violence cases

This proposal would also amend Government Code section 68152(a)(6) to provide the retention period for court records in gun violence cases. The proposed amendment would require that the court records for gun violence cases be retained for the same period as those for civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence cases. Superior courts must retain these cases “for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment.” (Gov. Code, § 68152(a)(6).)

Technical amendments

This proposal would also amend Government Code section 68150(a) to recognize that the Judicial Council has already adopted a rule and implementing standards and guidelines for

creating, maintaining, reproducing, or preserving court records, as required by subdivision (c).³ It would remove the references to national standards that applied while the rule and implementing standards and guidelines were in development.

In addition, the proposed amendment would make Government Code section 26810(b) consistent with Government Code section 68150(c). It would remove the reference to the national standards. Instead, it would provide that photographs, micrographs, photocopies, or electronic images of wills and codicils must be made in a manner that satisfies the standards and guidelines adopted by the Judicial Council under Government Code section 68150(c). Because these standards and guidelines already address how to maintain court records, the additional instruction to indexing and storing the photographs, micrographs, photocopies, and electronic images would be removed. It would also remove an outdated reference to film reproductions in Government Code section 26810(a).

Alternatives Considered

Because judges and litigants need access to original wills and codicils during the pendency of probate proceedings, the committee did not consider alternatives.

Implementation Requirements, Costs, and Operational Impacts

To implement this proposal, the Judicial Council would need to make changes to the forms for ex parte order of discharge to allow personal representatives to request delivery of the original will and codicil. It would also need to make changes to the form order of discharge to indicate to whom the original wills and codicils should be delivered if a request is made by the personal representative in the ex parte petition. Making these changes would require expending staffing time and resources. Superior courts would have to implement processes for clerks to deliver original wills and codicils after the final order of discharge, if there has been a request. Once the new forms and processes are in place, the courts would be relieved of the burden of retaining original wills and codicils after a case involving decedent estates is final.

³ The standards and guidelines for electronic court records are stated in the *Trial Court Records Manual*. (Cal. Rules of Court, rule 10.854; Judicial Council of Cal., *Trial Court Records Manual* (rev. Jan. 1, 2016), pp. 35–45.)

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the references in Government Code section 68152(a)(11)(A) to “final disposition of the estate proceeding” be changed to “final disposition of the case” to be consistent with section 68152 generally?
- Should the references to “codicils” in Probate Code section 12250 and Government Code sections 26810, 68150, and 68152 be replaced with “documents modifying a will”?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would one year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Probate Code section 12250 and Government Code sections 26810 and 68150–68152, at pages 7–9

Probate Code section 12250 and Government Code sections 26810, 68150, and 68152 would be amended, effective January 1, 2018, to read:

1 **Probate Code section 12250**

2 (a) When the personal representative has complied with the terms of the order for final
3 distribution and has filed the appropriate receipts or the court has excused the filing of a
4 receipt as provided in Section 11753, the court shall, on ex parte petition, make an order
5 discharging the personal representative from all liability incurred thereafter.

6 (b) The personal representative's ex parte petition for discharge may request the delivery
7 of all original wills and codicils in the possession of the court under Government Code
8 section 68150(b)(2).

9 ~~(b)~~(c) Nothing in this section precludes discharge of the personal representative for
10 distribution made without prior court order, so long as the terms of the order for final
11 distribution are satisfied.

12
13 **Government Code section 26810**

14 (a) The clerk of the superior court may cause the following documents to be
15 photographed, microphotographed, photocopied, or electronically imaged, ~~or otherwise~~
16 ~~reproduced on film~~ and stored in that form:

17 (1) A document transferred to the clerk under Section 732 of the Probate Code.

18 (2) A will or codicil delivered to the clerk of the superior court under Section 732, 734,
19 8200, or 8203 of the Probate Code ~~if the clerk has held the will for at least 10 years;~~
20 however, the originals may not be destroyed except as provided under subdivision (e).

21 (b) The photograph, microphotograph, photocopy, or electronic image shall be made in a
22 manner that meets the ~~minimum standards or guidelines recommended by the American~~
23 ~~National Standards Institute or the Association for Information and Image Management~~
24 standards and guidelines adopted by the Judicial Council of California under Section
25 68150(c). All these photographs, microphotographs, photocopies, and electronic images
26 ~~shall be indexed, and shall be stored in a manner and place that reasonably assures their~~
27 ~~preservation indefinitely against loss, theft, defacement, or destruction.~~

28 (c) Before proof of death of the maker of a document or will referred to in subdivision
29 (a), the photographs, microphotographs, photocopies, and electronic images shall be
30 confidential, and shall be made available only to the maker. After proof of death of the
31 maker of the document or will by a certified copy of the death certificate, the
32 photographs, microphotographs, photocopies, and electronic images shall be public
33 records.

34 (d) Section 26809 does not apply to a will or other document referred to in subdivision
35 (a), or to the reproduction authorized by this section.

36 (e) Upon making the reproduction authorized by this section, the clerk of the superior
37 court may destroy the original document, except that the clerk shall not destroy an
38 original will or codicil until there is a final disposition of the case as defined in Section
39 68151(c) in a probate proceeding. If requested by the personal representative under
40 Section 12250(b) of the Probate Code, the clerk shall provide the originals to the personal
41 representative or other person identified in the order of discharge, but only after final

1 disposition of the case and only if the clerk maintains the records in a form authorized by
2 Section 68150(a).

3
4 **Government Code section 68150**

5 (a) Trial court records may be created, maintained, and preserved in any form or forms of
6 communication or representation, including paper, optical, electronic, magnetic,
7 micrographic, or photographic media or other technology, if the form or forms of
8 representation or communication satisfy the rules adopted by the Judicial Council
9 pursuant to subdivision (c), ~~once those rules have been adopted. Until those rules are~~
10 ~~adopted, the court may continue to create, maintain, and preserve records according to the~~
11 ~~minimum standards or guidelines for the preservation and reproduction of the medium~~
12 ~~adopted by the American National Standards Institute or the Association for Information~~
13 ~~and Image Management.~~

14 (b)(1) This section shall not apply to court reporters' transcripts or to specifications for
15 electronic recordings made as the official record of oral proceedings. These records shall
16 be governed by the California Rules of Court.

17 (2) This section shall not apply to original wills and codicils ~~delivered to the clerk of the~~
18 ~~court under Section 8200 of the Probate Code. Original wills and codicils shall be~~
19 ~~retained as provided in Section 26810. The originals shall be retained until the final~~
20 ~~disposition of the case. If requested by the personal representative under Section~~
21 ~~12250(b) of the Probate Code, the clerk shall provide the originals to the personal~~
22 ~~representative or other person identified in the order of discharge, but only after final~~
23 ~~disposition of the case and only if the clerk maintains the records in a form authorized by~~
24 ~~Section 68150(a).~~

25 (c) The Judicial Council shall adopt rules to establish the standards or guidelines for the
26 creation, maintenance, reproduction, or preservation of court records, including records
27 that must be preserved permanently. The standards or guidelines shall reflect industry
28 standards for each medium used, if those standards exist. The standards or guidelines
29 shall ensure that court records are created and maintained in a manner that ensures
30 accuracy and preserves the integrity of the records throughout their maintenance. They
31 shall also ensure that the records are stored and preserved in a manner that will protect
32 them against loss and ensure preservation for the required period of time. Standards and
33 guidelines for the electronic creation, maintenance, and preservation of court records
34 shall ensure that the public can access and reproduce records with at least the same
35 amount of convenience as paper records previously provided.

36 (d)-(l) * * *

37
38 **Government Code section 68151**

39 The following definitions apply to this chapter:

40 (a)-(b) * * *

41 (c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment
42 has been entered in the case or proceeding, the judgment has become final, and no
43 postjudgment motions or appeals are pending in the case or for the reviewing court upon

1 the mailing of notice of the issuance of the remittitur. In a criminal prosecution, the order
2 of judgment shall mean imposition of sentence, entry of an appealable order, including,
3 but not limited to, an order granting probation, commitment of a defendant for insanity,
4 or commitment of a defendant as a narcotics addict appealable under Section 1237 of the
5 Penal Code, or forfeiture of bail without issuance of a bench warrant or calendaring of
6 other proceedings. In a probate decedent estate proceeding, the order of judgment shall
7 mean the order of final distribution concerning all remaining testators named in the will.

8 (d) “Retain permanently” means that the court records shall be maintained permanently
9 according to the standards or guidelines established pursuant to subdivision (c) of Section
10 68150.

11
12 **Government Code section 68152**

13 The trial court clerk may destroy court records under Section 68153 after notice of
14 destruction, and if there is no request and order for transfer of the records, except the
15 comprehensive historical and sample superior court records preserved for research under
16 the California Rules of Court, when the following times have expired after the date of
17 final disposition of the case in the categories listed:

18 (a) Civil actions and proceedings, as follows:

19 (1)–(5) * * *

20 (6) Civil harassment, domestic violence, elder and dependent adult abuse, private
21 postsecondary school violence, gun violence, and workplace violence cases: retain for the
22 same period of time as the duration of the restraining or other orders and any renewals
23 thereof, then retain the restraining or other orders permanently as a judgment; 60 days
24 after expiration of the temporary restraining or other temporary orders; retain judgments
25 establishing paternity under Section 6323 of the Family Code permanently.

26 (7)–(10) * * *

27 (11) Probate:

28 (A) Decedent estates: retain permanently all orders, judgments, and decrees of the court,
29 all inventories and appraisals, and all wills and codicils of the decedent filed in the case,
30 including those not admitted to probate. If requested by the personal representative under
31 Section 12250(b) of the Probate Code, the clerk shall provide the original will or codicil
32 to the personal representative or other person identified in the order of discharge, but only
33 after final disposition of the case and only if the clerk maintains the records in a form
34 authorized by Section 68150(a) of the Government Code. All other records: retain for
35 five years after final disposition of the estate proceeding.

36 (B) Wills and codicils transferred or delivered to the court pursuant to Section 732, 734,
37 8200, or 8203 of the Probate Code in which there is no underlying case: retain the
38 original records permanently. ~~For wills and codicils delivered to the clerk of the court~~
39 ~~under Section 8200 of the Probate Code, retain the original documents as provided in~~
40 ~~Section 26810.~~

41 (C)–(H) * * *

42 (12)–(15) * * *

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Enact Penal Code section 690.5	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, (415) 865-4534 kimberly.dasilva@jud.ca.gov
Information Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Tara Lundstrom, (415) 865-7650 tara.lundstrom@jud.ca.gov

Executive Summary and Origin

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

Background

The project is progressing in two phases. Phase one occurred during 2015 and involved developing and amending the California Rules of Court effective January 1, 2016. Phase two is taking place during 2016, for rules effective January 1, 2017 and statutes effective January 1, 2018.

Phase one focused on technical changes to the rules. In most cases these changes accounted for digital copies, e-mailing, and electronic filing where those practices were already authorized by statute but where the rules had not yet been revised to acknowledge existing practices. In the absence of express legislation authorizing electronic filing and service in criminal proceedings, the committees did not recommend similar proposed amendments to the Criminal Rules.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Phase two includes this legislative proposal to add a Penal Code section authorizing permissive electronic filing and service in criminal proceedings. It also focuses on more substantive changes to the California Rules of Court and concurrent legislative proposals, which are represented in separate proposals.

The Proposal

Code of Civil Procedure section 1010.6 authorizes electronic filing and service of documents in civil proceedings. No corresponding authority exists in the Penal Code to authorize electronic filing and service of documents in criminal cases.

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

This proposal would add section 690.5 to part 2 of the Penal Code to apply section 1010.6(a) and (b) to criminal proceedings.

Alternatives Considered

The committees considered whether proposing amendments to the Criminal Rules of the California Rules of Court authorizing electronic filing and service absent express statutory authority was appropriate. They concluded that express statutory authority would be clearer.

Implementation Requirements, Costs, and Operational Impacts

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

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would one year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachment

1. Proposed new Penal Code section 690.5, at page 13

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

1 **§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions**

2

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

5

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

8

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INVITATION TO COMMENT

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Title	Action Requested
Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code sections 1170 and 1170.3	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Adrienne Toomey, 415-865-7977 adrienne.toomey@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to Penal Code sections 1170 and 1170.3¹ to promote uniformity and clarify judicial sentencing authority when imposing concurrent or consecutive judgments under section 1170(h) implicating multiple counties. Specifically, the proposed amendment to section 1170 would direct that when the court imposes a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.

Background

The Criminal Justice Realignment Act made significant changes to the sentencing and supervision of persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants are convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (Pen. Code, § 1170(h).)

Under realignment, when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department, unless the court finds, in the interests of justice,

¹ All statutory references are to the Penal Code.

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that such suspension is not appropriate in a particular case. (Pen. Code, § 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (Pen. Code, § 1170(h)(5)(B).) The realignment act also created “postrelease community supervision,” whereby certain offenders being released from state prison are no longer supervised by the state parole system, but instead supervised by a local county supervision agency. (Pen. Code, §§ 3450–3465.) And following the realignment act, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings, but instead adversarial judicial proceedings conducted in county superior courts. (Pen. Code, § 1203.2.)

The realignment legislation is silent on the issue of sentences from multiple jurisdictions. The issue is significant because now counties must carry the cost and burdens of local incarceration and supervision. Section 1170.1, which governs multiple count and multiple case sentencing for commitments to state prison and county jail, and California Rules of Court, Rule 4.452 require the second judge in a consecutive sentencing case to “resentence” the defendant on any prior case. Currently, there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

The Proposal

The proposal is intended to provide uniformity and guidance to courts when imposing concurrent or consecutive judgments under Penal Code section 1170(h) implicating multiple counties.

The Criminal Law Advisory Committee proposes amending section 1170 and 1170.3 as follows:

- Amend section 1170(h)(6) to provide: “When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.” Renumber current subdivisions (h)(6) and (h)(7) to (h)(7) and (h)(8) respectively.
- Amend section 1170.3 by adding subdivision (a)(7), which reads: “Determine the county or counties of incarceration and supervision when the court is imposing a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county or counties.”

Implementation Requirements, Costs, and Operational Impacts

The committee considered the potential burdens that any legislative and rule changes may place on the courts. The committee, however, determined that these amendments are appropriate because they are necessary to provide uniformity and guidance to courts on this issue, which has significant financial and other impacts on courts and counties.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- Would the proposal provide other efficiencies? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.

Attachments

1. Proposed amendments to Penal Code sections 1170 and 1170.3, at pages 17–18

Sections 1170 and 1170.3 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **1170.**

2
3

4 (h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision
5 where the term is not specified in the underlying offense shall be punishable by a term of
6 imprisonment in a county jail for 16 months, or two or three years.

7 (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be
8 punishable by imprisonment in a county jail for the term described in the underlying offense.

9 (3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony
10 conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or
11 current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a
12 prior felony conviction in another jurisdiction for an offense that has all the elements of a serious
13 felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision
14 (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5
15 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of
16 the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a
17 felony punishable pursuant to this subdivision shall be served in state prison.

18 (4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by
19 law, including pretrial diversion, deferred entry of judgment, or an order granting probation
20 pursuant to Section 1203.1.

21 (5) (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular
22 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend
23 execution of a concluding portion of the term for a period selected at the court's discretion.

24 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph
25 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall
26 commence upon release from physical custody or an alternative custody program, whichever is
27 later. During the period of mandatory supervision, the defendant shall be supervised by the
28 county probation officer in accordance with the terms, conditions, and procedures generally
29 applicable to persons placed on probation, for the remaining unserved portion of the sentence
30 imposed by the court. The period of supervision shall be mandatory, and may not be earlier
31 terminated except by court order. Any proceeding to revoke or modify mandatory supervision
32 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section
33 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless
34 in actual custody related to the sentence imposed by the court, the defendant shall be entitled to
35 only actual time credit against the term of imprisonment imposed by the court. Any time period
36 which is suspended because a person has absconded shall not be credited toward the period of
37 supervision.

38 (6) When the court is imposing a judgment pursuant to this subdivision concurrent or
39 consecutive to a judgment or judgments previously imposed pursuant to this subdivision in
40 another county or counties, the court rendering the second or other subsequent judgment shall
41 determine the county or counties of incarceration and supervision of the defendant.

1 (~~6~~ 7) The sentencing changes made by the act that added this subdivision shall be applied
2 prospectively to any person sentenced on or after October 1, 2011.

3 (7 8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall
4 become effective and operative on January 1, 2015, and shall be applied prospectively to any
5 person sentenced on or after January 1, 2015.

6 ***

7 **1170.3.**

8

9 The Judicial Council shall seek to promote uniformity in sentencing under Section 1170 by:

10 (a) The adoption of rules providing criteria for the consideration of the trial judge at the time of
11 sentencing regarding the court's decision to:

12 (1) Grant or deny probation.

13 (2) Impose the lower, middle, or upper prison term.

14 (3) Impose the lower, middle, or upper term pursuant to paragraph (1) or (2) of subdivision (h) of
15 Section 1170.

16 (4) Impose concurrent or consecutive sentences.

17 (5) Determine whether or not to impose an enhancement where that determination is permitted
18 by law.

19 (6) Deny a period of mandatory supervision in the interests of justice under paragraph (5) of
20 subdivision (h) of Section 1170 or determine the appropriate period and conditions of mandatory
21 supervision. The rules implementing this paragraph shall be adopted no later than January 1,
22 2015.

23 (7) Determine the county or counties of incarceration and supervision when the court is imposing
24 a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment
25 or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county
26 or counties.

27 ***

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INVITATION TO COMMENT

[ITC prefix as assigned]__

Title	Action Requested
Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1319.5	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 1319.5 to provide courts with discretion to approve, without a hearing in open court, own recognizance (OR) releases under a court-operated or court-approved pretrial release program for arrestees with three or more prior failures to appear (FTAs). This proposal was developed at the request of courts that are actively engaged in developing and expanding pretrial programs in an effort to improve pretrial processes, address the effects of jail overcrowding and court calendar impacts, provide judges with options in ordering pretrial release, and increase access to justice in the earliest stages of a criminal proceeding.

Background

There is growing recognition that, in many cases, the interests of public safety and those of the accused can best be served by appropriate pretrial release, and courts are increasingly implementing innovative pretrial release programs.¹ Pretrial programs can provide courts with a range of release options and encourage the exercise of judicial discretion in imposing an effective level of pretrial supervision, particularly for offenders who may have failed to appear for court hearings in the past. Appropriate pretrial release can also help to address the historic

¹ In her State of the Judiciary Address to a Joint Session of the California Legislature on March 8, 2016, Chief Justice Tani G. Cantil-Sakauye noted that the legislature had provided funds for 12 court pretrial release programs, and that, “[t]here are interesting studies, and the takeaways from the studies are that in some cases pretrial detention actually increases recidivism. And in other types of offenders we found that supervised release is actually as effective as money bail.”

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overcrowding of California's jails, a problem that became more significant with criminal justice realignment.

Courts in many counties have been working with justice system partners to develop effective pretrial programs. These programs provide for judicial determination of each offender's suitability for some form of OR release, including offenders who may have multiple FTAs, a factor that is often related to jail overcrowding. For many courts, the motivation in creating an evidence-based pretrial program has been to increase judicial discretion to order release for appropriate defendants, and to ensure that: (1) the court's release decision is informed by a risk assessment conducted by the probation department and/or jail officials, with a recommendation based on county-specific guidelines that establish which defendants are eligible for release; and (2) the majority of individuals granted OR release are supervised by probation officers, court marshals and/or local law enforcement, rather than released without any form of supervision. Neither of these conditions are commonly in place when consent decrees or court orders require jail officials to release arrestees in order to meet jail caps.²

For defendants who receive court-approved OR release, however, Penal Code section 1318 requires that the defendant sign an agreement that includes the defendant's promise: (1) to appear at all times and places, as ordered by the court; (2) to obey all reasonable conditions imposed by the court; (3) not to depart the state without leave of the court; and (4) to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California.³ Courts have broad authority to impose additional appropriate conditions when granting OR release, including drug testing and electronic monitoring.

Some pretrial programs include a pre-arraignment OR release component, providing judges with discretion to approve releases that allow arrestees to return to their jobs and families, while imposing statutory conditions and appropriate levels of supervision. These programs use a non-adversarial review process that operates during regular court hours, and on weekends and holidays with independent judicial review and release determinations by the on-call magistrate. The efforts of courts to implement these innovative programs have been hindered by the inflexible requirements of section 1319.5, which requires a hearing in open court before some arrestees can be granted OR release. Since courts cannot schedule a hearing in open court on weekends and holidays, jail officials may have no option but to release offenders to meet the jail cap. Without supervision or court date reminders, many will fail to appear for subsequent court dates, and so the dysfunctional cycle of arrest and unsupervised jail release will continue.

² Currently, jails in 18 counties in California are operating under a state or federal court order that places a mandatory limit on the number of inmates who may be housed in those jails (a jail cap). When a jail reaches capacity, officials are required to release a sufficient number of inmates to meet the limit imposed by the jail cap. In 2010, jails released approximately 6800 unsentenced inmates each month due to lack of capacity. Magnus Lofstrom and Katherine Kramer, "Capacity Challenges in California's Jails" Public Policy Institute of California, 2012.

³ All further statutory references are to the Penal Code unless otherwise specified.

Section 1319.5 requires a hearing in open court before an offender arrested for a felony offense who has previously failed to appear in court three or more times over the preceding three years may be granted OR release. In counties where a sizeable portion of those arrested already have multiple FTAs, the restriction in section 1319.5 limits the number of arrestees the court may consider for OR release without a hearing in open court, constraining judicial discretion and limiting the courts' ability to efficiently process pre-arraignment releases for appropriate defendants.

The Proposal

The Criminal Law Advisory Committee proposes amending section 1319.5 to allow judges to grant pre-arraignment OR release under court-operated or court-approved pretrial release programs to individuals arrested for a felony offense who have three or more FTAs in the previous three years, and to allow judicial discretion to grant such release without a hearing in open court. The proposal would provide judges with greater flexibility in ordering supervised pre-arraignment OR release, encourage greater efficiency in case processing, assist courts in addressing the impact of jail overcrowding on court calendars and justice system partners, increase access to justice in the earliest stages of a criminal proceeding, and potentially improve outcomes for defendants who benefit from earlier release. The proposal is intended to provide operational efficiencies for courts committed to the use of evidence-based pretrial programs that are struggling to process large populations of arrestees who, in response to many years of jail overcrowding and other factors, have amassed numerous FTAs making them ineligible for pre-arraignment OR release under the restrictions in section 1319.5.

The proposal would add an exception to section 1319.5(b)(2) addressing release under a court-operated or court-approved pretrial release program. The requirement to have a hearing in open court on OR release would apply to any person who has failed to appear in court as ordered three or more times over the three years preceding the current arrest, “unless the person is released under a court-operated or court-approved pretrial release program.”

Alternatives Considered

The committee alternatively considered more expansive amendments to section 1319.5 but determined that the current, limited proposal would appropriately enhance the discretion of judges, encourage court efficiencies, and assist justice system partners.

Implementation Requirements, Costs, and Operational Impacts

Under the proposal, judges would have discretion to grant pre-arraignment OR release under a court-operated or court-approved pretrial program, which would likely result in fewer FTAs, fewer court hearings, and greater efficiency in processing cases. For courts with a court-operated or approved pretrial program, potential implementation costs and operational impacts may include additional court time to review pretrial reports and, as appropriate, impose various modes of supervision for arrestees released OR prior to arraignment. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh implementation costs and operational impacts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the proposed revisions an effective way to address the restrictions imposed by Penal Code section 1319.5?

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Penal Code section 1319.5, at page 23

Section 1319.5 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **Penal Code section 1319.5.**

2 (a) No person described in subdivision (b) who is arrested for a new offense may be released
3 on his or her own recognizance until a hearing is held in open court before the magistrate or
4 judge.

5 (b) Subdivision (a) shall apply to the following:

6 (1) Any person who is currently on felony probation or felony parole.

7 (2) Any person who has failed to appear in court as ordered, resulting in a warrant being
8 issued, three or more times over the three years preceding the current arrest, except for
9 infractions arising from violations of the Vehicle Code, and who is arrested for any of the
10 following offenses, unless the person is released under a court-operated or court-approved
11 pretrial release program:

12 (A) Any felony offense.

13 (B) Any violation of the California Street Terrorism Enforcement and Prevention Act (Chapter
14 11 (commencing with Section 186.20) of Title 7 of Part 1).

15 (C) Any violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1 (assault
16 and battery).

17 (D) A violation of Section 484 (theft).

18 (E) A violation of Section 459 (burglary).

19 (F) Any offense in which the defendant is alleged to have been armed with or to have
20 personally used a firearm.

21

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INVITATION TO COMMENT

[ITC prefix as assigned-]

Title	Action Requested
Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1203.9	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kim DaSilva, 415-865-4534 kim.dasilva@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. The proposal was developed at the request of criminal judges who expressed concerns about the inability of transferring courts to do so under current law.

Background

Penal Code section 1203.9 governs intercounty transfer procedures for all probation and mandatory supervision cases. Under the statute a court must transfer a case to the court of the county in which the supervisee resides permanently unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. (Pen. Code § 1203.9(a)(1).) Under current law, a receiving court may provide comments to the transferring court on the propriety of a proposed transfer. (See Pen. Code § 1203.9(a)(2) and Rule 4.530(e).) Before ruling on the transfer motion, the transferring court must state on the record that it received and considered the receiving court's comments. (Rule 4.530(e)(3).) Although a receiving court may transfer a case back to the transferring court if the defendant moves back to that county, the receiving court has no ability to transfer the case back under other circumstances.

However, there are instance when transferring a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the parties. Examples of

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this include post-conviction challenges such as habeas corpus petitions, re-sentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.

The Proposal

To address these instances when the court, the litigation at issue, or the parties would benefit from the ability of a receiving court to transfer a case back to the transferring court for a limited purpose the committee proposes amending Penal Code section 1203.9 to add a subdivision (f) to authorize a receiving court to refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, or evidence, that the matter would more appropriately be conducted by the transferring court.

Alternatives Considered

No alternatives were considered.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal would ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. The text of the proposed amendment to Penal Code section 1203.9, at page 26

Section 1203.9 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 1203.9. Probation or mandatory supervision; transfer of cases; jurisdiction;**
2 **payment of fees and penalties; rules**

3
4 (a) * * * (e) * * *

5 (f) The receiving court may refer a particular hearing or other court proceeding back to
6 the transferring court for the limited purpose of conducting the proceeding if the
7 receiving court determines, based upon the geographic location of the parties, victims,
8 witnesses, or evidence, that the matter would more appropriately be conducted by the
9 transferring court. The Judicial Council shall adopt rules of court to govern referrals
10 under this subdivision, including factors for consideration when determining the
11 propriety of the referral and related procedural requirements.

12 (g) The Judicial Council shall promulgate rules of court for procedures by which the
13 proposed receiving county shall receive notice of the motion for transfer and by which
14 responsive comments may be transmitted to the court of the transferring county. The
15 Judicial Council shall adopt rules providing factors for the court's consideration when
16 determining the appropriateness of a transfer, including, but not limited to, the following:

17 (1) Permanency of residence of the offender.

18 (2) Local programs available for the offender.

19 (3) Restitution orders and victim issues.

20 (h) The Judicial Council shall consider adoption of rules of court as it deems appropriate
21 to implement the collection, accounting, and disbursement requirements of subdivisions

22 (d) and (e).

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Juvenile Law: Electronic Filing and Service in Juvenile Proceedings	Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code	Proposed Effective Date January 1, 2018
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	Contact Diana Glick, 916-643-7012 diana.glick@jud.ca.gov
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Proposed by Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov
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Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee (ITAC) recommend amending the Welfare and Institutions Code to authorize electronic filing and service under Code of Civil Procedure section 1010.6 in juvenile proceedings. This legislative proposal would add a new section 212.5 to the Welfare and Institutions Code that would incorporate by reference Code of Civil Procedure section 1010.6, subject to appropriate conditions and limitations on electronic service for juvenile proceedings. The proposal would also amend various Welfare and Institutions Code provisions to implement new section 212.5 consistently throughout the code.

Background

Code of Civil Procedure section 1010.6 and trial court rules 2.250–2.261 of the California Rules of Court authorize electronic filing and electronic service in civil matters. Effective July 1, 2014,

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the Judicial Council amended rule 5.522 to enable the electronic filing of juvenile court documents in accordance with the trial court rules, specifically rules 2.252 et seq. However, the council expressly excluded the application of trial court rule 2.251 to juvenile proceedings. (See Cal. Rules of Court, rule 5.522(b)(4) [“This rule does not incorporate the electronic service provisions in rule 2.251”].) Rule 2.251 authorizes electronic service and sets forth technical requirements for electronic service.

Effective January 1, 2016, Assembly Bill 879 amended Welfare and Institutions Code sections 290.1–295 to authorize notice of certain juvenile dependency hearings by e-mail. While this legislative proposal circulates for public comment, the Judicial Council will consider whether to adopt rule amendments and a new form to implement AB 879 (Stats. 2015, ch. 219).

The Proposal

The provisions of AB 879 apply to a defined set of hearings conducted for children in the juvenile dependency system and authorize notice by e-mail for those hearings specified in sections 290.1–295. The legislation set important parameters for electronic service in the juvenile context and codified protections for parties and other persons who may consent to receive an e-mail notice of hearing.

This proposal seeks to apply the electronic filing and service provisions contained in section 1010.6 of the Code of Civil Procedure to juvenile dependency and delinquency proceedings, while preserving—and in some cases expanding upon—the conditions and limitations on electronic service set forth in AB 879.

New proposed section 212.5

Specifically, the proposal would add a new section 212.5 to the Welfare and Institutions Code, which would expressly apply the provisions of section 1010.6 of the Code of Civil Procedure to all juvenile proceedings, while setting limitations and conditions on the electronic service of parties and other persons. The limitations on electronic service include the following:

- Electronic service is authorized only if the county and the court choose to permit electronic service.
- Electronic service on a party or other person is permitted only upon consent to receive electronic service by the party or other person.
- A party or other person may withdraw prior consent to electronic service.
- Consent or withdrawal of prior consent to receive electronic service may be filed with the court only by a party or other person, or that person’s attorney.
- Electronic service is not permitted on minors who are under the age of 16.
- If the party or other person to be served is a minor who is 16 years old or older, electronic service is permitted only upon consent by both the minor and the minor’s attorney.

- The party or other person must be served by both electronic means and by other means specified in the statute if (1) the document to be served is the notice of hearing at which the social worker will recommend the termination of parental rights, or the appellate advisements required pursuant to Welfare and Institutions Code section 366.26(l)(3)(A); or (2) there is a citation issued pursuant to section 661, or a hearing is noticed under section 777(d).
- If the minor is an Indian child, or the court has reason to know that an Indian child is involved, service shall be provided exclusively in accordance with Welfare and Institutions Code section 224.2.

In addition, the proposed new section 212.5 codifies paragraph (3) of subdivision (b) of rule 5.522 of the California Rules of Court, which provides that the confidentiality of juvenile records shall be preserved through encryption when these records are transmitted electronically. The requirement to apply encryption to ensure the confidentiality of records would apply to both electronic filing and electronic service. The committees explored the issue of encryption of documents and determined that the term “encryption” is unlikely to become obsolete in the near to midterm future because it does not denote a specific technological application; rather, it applies broadly to technology that preserves the confidentiality of documents.

Lastly, proposed new section 212.5 would prohibit the electronic service of a psychological or medical report pertaining to a minor.

Proposed amendments to sections 248 and 248.5

These sections describe service of the written findings and court orders when a referee hears a juvenile case. This proposal would add references to the new section 212.5 to authorize electronic service of these written findings and orders.

Proposed amendments to sections 290.1, 290.2, 291, 292, 293, 294, 295, and 316.1

These sections govern notice in the following types of juvenile dependency hearings: detention, jurisdiction, disposition, review, and termination of jurisdiction hearings. They were amended by AB 879 to authorize e-mail notices of hearings. This proposal would amend sections 291, 292, 293, 294, 295, and 316.1 to replace the language added by AB 879 with a cross-reference to the proposed new section 212.5. These proposed amendments are intended to implement electronic service in juvenile proceedings and to streamline the notice provisions in the Welfare and Institutions Code.

In addition, in implementing AB 879, the committees determined that from an operational perspective, it is unlikely that a person entitled to notice would have the opportunity to be fully informed of his or her right to notice and the advisability of consenting to electronic notice of hearings before the initial petition hearing. Therefore, the authorization for electronic notice of an initial petition hearing in sections 290.1 and 290.2 would be removed from the code. The proposal would clarify that electronic service of these notices is not permitted.

Proposed amendments to section 297

This section contains notice provisions for subsequent and supplemental petitions, as well as petitions for modification. The proposal would allow for electronic service of these types of petition hearings, pursuant to proposed new section 212.5.

Proposed amendments to section 302

This section requires a social worker who provides a parent or guardian with notice of a proceeding at which the social worker intends to present a report, to provide a copy of the report to the parents or guardians and to their attorneys. This proposal would authorize electronic service of this report under the proposed new section 212.5.

Proposed amendments to section 342

This section currently provides that procedures for initial hearings also apply to subsequent petitions. This proposal would allow for other procedures as provided by law. Section 297 contains greater detail on the notice requirements for subsequent petitions and also authorizes electronic service.

Proposed amendments to section 362.4

This section requires that upon the termination of jurisdiction over a minor, and if there is a juvenile court custody order filed, the clerk of the receiving court must mail a copy of the order with the case number to the juvenile court and mail a copy to the parents. This proposal would add a cross-reference to new proposed section 212.5 to allow the court to send the order to the receiving court by electronic means and to electronically serve a copy of the order on the parents.

Proposed amendments to sections 364.05 and 366.05

These sections apply to social workers in counties of the first class; they are required to mail a copy of specified reports to certain parties. The proposal would authorize electronic service of these reports subject to the requirements of proposed new section 212.5.

Proposed amendments to section 366.21

This section provides for regular status review hearings for dependent children. There are several social worker reports referenced in this section. The proposal would add a specific reference to proposed new section 212.5 authorizing electronic service of the social worker report required to be provided to parents and others at least 10 calendar days prior to the hearing. The proposal would also authorize electronic service of the report containing a summary of the social worker's recommendation for disposition that must be provided to foster parents, relative caregivers, and certified foster parents.

Proposed amendments to section 366.26

This section applies to permanency hearings for dependent children and requires that a notice of hearing pursuant to this section must contain an advisement regarding the appellate rights and responsibilities of litigants. Currently, the appellate advisements may be given orally, if the party

is present in court, or by first-class mail. In keeping with the approach of AB 879, this proposal would allow for electronic service of the notice of appellate advisements, subject to one exception: if the social worker will recommend the termination of parental rights at the hearing, electronic service may only be in addition to service by first-class mail. This exception is also stated in the proposed new section 212.5.

Proposed amendment to section 387

This section contains a notice provision for supplemental petitions to modify a previous order of placement. The proposal would authorize electronic service of supplemental petitions under proposed new section 212.5.

Proposed amendment to section 607.2

This section requires the court to hold a hearing prior to termination of jurisdiction over a ward under specified circumstances. The proposal would authorize electronic service of the notice of hearing under this section.

Proposed amendment to section 630

This section sets forth the requirements for notice of an initial detention hearing in juvenile delinquency. Mirroring the approach with initial petition hearings in juvenile dependency, the proposal would prohibit the electronic service of notice of initial detention hearings under this section.

Proposed amendments to section 658

This section describes the notice required for jurisdictional hearings on initial and supplemental petitions. The proposal would prohibit electronic service of notice for a jurisdictional hearing on an initial petition when the child was detained and those persons entitled to notice were not present at the initial detention hearing. The proposal would authorize electronic service of notice of a jurisdictional hearing on a supplemental petition.

Proposed amendments to section 660

This section provides different notice requirements for a jurisdictional hearing depending on whether the minor was detained in custody and whether the parties and persons entitled to notice were present at the detention hearing. The proposal would authorize electronic service for these hearings, except for hearings where the child is detained and those persons entitled to service were not present at the detention hearing.

Proposed amendment to section 661

This section provides for a citation to appear to be issued by the juvenile court to parents of wards. The proposal would authorize electronic service of the citation only in addition to other forms of service required by law.

Proposed amendment to section 727.4

This section contains notice provisions for several types of juvenile delinquency hearings that occur after the initial petition hearing. These include wardship probation hearings and six-month and 12-month hearings for dependents who are subsequently adjudged to be wards of the court. The proposal would allow for electronic service of notices of these hearings under proposed new section 212.5.

Proposed amendments to section 777

This section provides for service of notice of hearing on a violation of probation. The proposal authorizes service of a notice of hearing issued pursuant to subdivision (b) to be electronic service according to new proposed section 212.5. The proposal would authorize electronic service of a notice of hearing held pursuant to subdivision (d), in which there is an order to detain the minor pending adjudication of the alleged violation, only in addition to other legally-required forms of service.

Proposed amendment to section 778

This section provides for a hearing on a petition to modify an order of the court. The proposal would authorize electronic service of the notice of this hearing.

Proposed amendments to section 779

Section 779 requires that courts serve notice on the Director of the Youth Authority by U.S. mail when the court decides to change, modify, or set aside an order of commitment. This proposal would eliminate the requirement that service must be by U.S. mail.

Proposed amendment to section 785

This section provides for a hearing on a petition to terminate jurisdiction or modify an order of the court for a ward who has not been committed to the Youth Authority. The proposal would authorize electronic service of the notice of this hearing.

Proposed amendments to section 903.45

This section describes the process by which a county financial evaluation officer determines whether a parent must pay for the costs of care for a minor who is in the custody of the juvenile court. The statute provides that if a parent or guardian agrees to assume responsibility for certain costs, the order to pay those costs may be granted as long as a copy of the order is served on the person by mail. This proposal would authorize electronic service of this order under proposed new section 212.5.

Alternatives Considered

As an alternative, the committees considered extending AB 879's authorization of e-mail notices of hearings to juvenile delinquency hearings, without adopting electronic service in the juvenile context.

Implementation Requirements, Costs, and Operational Impacts

Implementation may require additional training and changes in court procedures in those courts that choose to allow for electronic service of notices of hearing and other documents. Because AB 879's authorization for e-mailing notices of hearings will be in place for two years before this proposal could go into effect, it is foreseeable that some courts may implement electronic notice in the interim; implementing this proposal should result in minimal implementation costs for these courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there other sections in the Welfare and Institutions Code that will require amendment in order to facilitate electronic filing or service in juvenile proceedings?
- Are there any juvenile dependency or delinquency proceedings for which this proposal recommends extending electronic service of the notice of the hearing that should remain limited to first-class mail or personal delivery?
- Should this proposal limit the persons who are authorized to obtain the consent to electronic service and file the consent with the court to parties and other persons and their attorneys? Should the legislation provide more specificity on encryption? Or should it be left for the rules?
- Is the provision requiring the use of encryption to preserve the confidentiality of electronic documents sufficient to ensure that juvenile records will be protected?
- Is the prohibition on electronic service of psychological and medical evaluations sufficient to protect these documents from unwarranted disclosure? Are there other documents that should be included?
- Is it appropriate to limit electronic service to adults and minors who are at least 16 years old?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

Attachments and Link

1. Proposed amendments to the Welfare and Institutions Code, at pages 34–53
2. Link A: Assembly Bill 879 (Stats. 2015, ch. 219),
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB879

Section 212.5 of the Welfare and Institutions Code would be enacted and sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 would be amended, effective January 1, 2018, to read:

1
2 **§ 212.5.**

3
4 Unless otherwise provided by law, Section 1010.6 of the Code of Civil Procedure shall apply to
5 juvenile matters, with the following exceptions and conditions:

6 (a) Electronic service is authorized only if the county and the court choose to permit electronic
7 service.

8 (b) Electronic service on a party or other person shall be permitted only upon consent to receive
9 electronic service by the party or other person. A party or other person may withdraw prior
10 consent to electronic service. The Judicial Council shall create a form designed to implement this
11 section.

12 (c) Consent or withdrawal of prior consent to receive electronic service may be filed with the
13 court only by a party or other person entitled to service, or that person's attorney.

14 (d) If the party or other person to be served is a minor, electronic service shall be permitted only
15 upon consent by the minor and by the minor's attorney.

16 (e) Electronic service is not permitted:

17 (1) On any party or other person who is under the age of 16 years old; or

18 (2) Of a psychological or medical report of a minor.

19 (f) The party or other person shall be served both by electronic means and by other means
20 specified in the relevant statute if:

21 (1) The document to be served is the notice of hearing, or the appellate advisements required
22 pursuant to subparagraph (A) of paragraph (3) of subdivision (l) of Section 366.26, for a hearing
23 at which the social worker will recommend the termination of parental rights; or

24 (2) The document to be served is a citation pursuant to Section 661, or a notice of hearing
25 pursuant to subdivision (d) of Section 777.

26 (g) If the minor is an Indian child, or the court has reason to know that an Indian child is
27 involved, service shall be provided exclusively in accordance with Section 224.2.

28 (h) Electronic service and electronic filing must be conducted in a manner that preserves and
29 ensures the confidentiality of records by encryption.

30
31 **§ 248.**

32
33 (a) * * *

34 (b) Service, as provided in this section, shall be made as follows:

35 (1) * * *

36 (2) If paragraph (1) is not applicable, service shall be made by mail or by electronic service
37 pursuant to Section 212.5, within the time period specified in Section 248.5, to the last known
38 address of those persons or to the address designated by those persons appearing at the hearing
39 before the referee and the ~~mailing~~ documents served shall include, if applicable, the written
40 explanation of the right to seek review of the order. If the parent or guardian does not have a last
41 known address or electronic service address designated, then service ~~by mail~~ shall be to that
42 party in care of his or her counsel.

1
2 **§ 248.5.**
3

4 All written findings and orders of the court shall be served by the clerk of the court personally, or
5 by first-class mail, or by electronic service pursuant to Section 212.5, within three judicial days
6 of their issuance on the petitioner, the minor or the minor's counsel, the parent or the parent's
7 counsel, and the guardian or the guardian's counsel.
8

9 **§ 290.1.**
10

11 If the probation officer or social worker determines that the child shall be retained in custody, he
12 or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile
13 court, who shall set the matter for hearing on the detention hearing calendar. The probation
14 officer or social worker shall serve notice as prescribed in this section.

15 (a)-(d) * * *

16 (e) Service of the notice shall be written or oral. If the person being served cannot read, notice
17 shall be given orally. ~~Except as provided in subdivisions (f), (g), and (h), written notice may be~~
18 ~~served by electronic mail if the county, or city and county, and the court choose to permit service~~
19 ~~by electronic mail and the person to be served has consented to service by electronic mail by~~
20 ~~signing Judicial Council Form EFS-005. Notice shall not be served electronically under this~~
21 section.

22 (f) * * *

23 ~~(g) Except as provided in subdivision (h), if notice is required to be provided to a child pursuant~~
24 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~
25 ~~mail only if all of the following requirements are satisfied:~~

26 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

27 ~~(2) The child is 16 years of age or older.~~

28 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
29 ~~005.~~

30 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
31 ~~Judicial Council Form EFS-005.~~

32 ~~(h) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~
33 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~
34 ~~of the following requirements are satisfied:~~

35 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

36 ~~(2) The child is 14 or 15 years of age.~~

37 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
38 ~~005.~~

39 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
40 ~~Judicial Council Form EFS-005.~~

41 ~~(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
42 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~
43

44 **§ 290.2.**
45

1 Upon the filing of a petition by a probation officer or social worker, the clerk of the juvenile
2 court shall issue notice, to which shall be attached a copy of the petition, and he or she shall
3 cause the same to be served as prescribed in this section.

4 (a)-(b) * * *

5 (c) Notice shall be served as follows:

6 (1) * * *

7 ~~(3) Except as provided in subdivisions (e), (f), and (g), notice may be served by electronic mail~~
8 ~~in lieu of notice by first class mail if the county, or city and county, and the court choose to~~
9 ~~permit service by electronic mail and the person to be served has consented to service by~~
10 ~~electronic mail by signing Judicial Council Form EFS-005. Notice shall not be served~~
11 ~~electronically under this section.~~

12 (d)-(e) * * *

13 ~~(f) Except as provided in subdivision (g), if notice is required to be provided to a child pursuant~~
14 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~
15 ~~mail only if all of the following requirements are satisfied:~~

16 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

17 ~~(2) The child is 16 years of age or older.~~

18 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
19 ~~005.~~

20 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
21 ~~Judicial Council Form EFS-005.~~

22 ~~(g) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~
23 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~
24 ~~of the following requirements are satisfied:~~

25 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

26 ~~(2) The child is 14 or 15 years of age.~~

27 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
28 ~~005.~~

29 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
30 ~~Judicial Council Form EFS-005.~~

31 ~~(h) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
32 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

33
34 **§ 291.**

35
36 After the initial petition hearing, the clerk of the court shall cause the notice to be served in the
37 following manner:

38 (a)-(d) * * *

39 (e) Service of the notice of the hearing shall be given in the following manner:

40 (1) If the child is detained and the persons required to be noticed are not present at the initial
41 petition hearing, they shall be noticed by personal service or by certified mail, return receipt
42 requested.

43 (2) If the child is detained and the persons required to be noticed are present at the initial petition
44 hearing, they shall be noticed by personal service, ~~or~~ by first-class mail, or by electronic service
45 pursuant to Section 212.5.

1 (3) If the child is not detained, the persons required to be noticed shall be noticed by personal
2 service, ~~or by first-class mail, or by electronic service pursuant to Section 212.5,~~ unless the
3 person to be served is known to reside outside the county, in which case service shall be by first-
4 class mail or by electronic service pursuant to Section 212.5.

5 ~~Except as provided in subdivisions (g), (h), and (i), notice may be served by electronic mail in~~
6 ~~lieu of notice by first class mail if the county, or city and county, and the court choose to permit~~
7 ~~service by electronic mail and the person to be served has consented to service by electronic mail~~
8 ~~by signing Judicial Council Form EFS-005.~~

9 (f)-(g) * * *

10 (h) ~~Except as provided in subdivision (i), if notice is required to be provided to a child pursuant~~
11 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~
12 ~~mail only if all of the following requirements are satisfied:~~

13 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

14 (2) ~~The child is 16 years of age or older.~~

15 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
16 ~~005.~~

17 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~
18 ~~Judicial Council Form EFS-005.~~

19 (i) ~~If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~
20 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~
21 ~~of the following requirements are satisfied:~~

22 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

23 (2) ~~The child is 14 or 15 years of age.~~

24 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
25 ~~005.~~

26 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~
27 ~~Judicial Council Form EFS-005.~~

28 (j) ~~This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
29 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

30
31 **§ 292.**

32
33 The social worker or probation officer shall give notice of the review hearing held pursuant to
34 Section 364 in the following manner:

35 (a)-(d) * * *

36 (e) Service of the notice shall be by personal service, by first-class mail, ~~or by certified mail,~~
37 ~~return receipt requested, addressed to the last known address of the person to be noticed,~~ or by
38 electronic service pursuant to Section 212.5. ~~Except as provided in subdivisions (f), (g), and (h),~~
39 ~~notice may be served by electronic mail if the county, or city and county, and the court choose to~~
40 ~~permit service by electronic mail and the person to be served has consented to service by~~
41 ~~electronic mail by signing Judicial Council Form EFS-005.~~

42 (f) * * *

43 (g) ~~Except as provided in subdivision (h), if notice is required to be provided to a child pursuant~~
44 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~
45 ~~mail only if all of the following requirements are satisfied:~~

- ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~
~~(2) The child is 16 years of age or older.~~
~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-005.~~
~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing Judicial Council Form EFS-005.~~
~~(h) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic mail as well as by regular mail if all of the following requirements are satisfied:~~
~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~
~~(2) The child is 14 or 15 years of age.~~
~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-005.~~
~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing Judicial Council Form EFS-005.~~
~~(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

§ 293.

The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21, 366.22, or 366.25 in the following manner:

~~(a)-(d) * * *~~

~~(e) Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed, or by personal service on the person, or by electronic service pursuant to Section 212.5. Service of a copy of the notice shall be by personal service, or by certified mail, return receipt requested, by electronic service under Section 212.5, or any other form of notice that is equivalent to service by first-class mail. Except as provided in subdivisions (g), (h), and (i), notice may be served by electronic mail in lieu of notice by first class mail if the county, or city and county, and the court choose to permit service by electronic mail and the person to be served has consented to service by electronic mail by signing Judicial Council Form EFS-005.~~

~~(f) * * *~~

~~(g) * * *~~

~~(h) Except as provided in subdivision (i), if notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic mail only if all of the following requirements are satisfied:~~

- ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~
~~(2) The child is 16 years of age or older.~~
~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-005.~~
~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing Judicial Council Form EFS-005.~~

~~(i) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic mail as well as by regular mail if all of the following requirements are satisfied:~~

- 1 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~
2 ~~(2) The child is 14 or 15 years of age.~~
3 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
4 ~~005.~~
5 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
6 ~~Judicial Council Form EFS-005.~~
7 ~~(j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
8 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

9
10 **§ 294.**

11
12 The social worker or probation officer shall give notice of a selection and implementation
13 hearing held pursuant to Section 366.26 in the following manner:

14 (a)-(d) * * *

15 (d) Regardless of the type of notice required, or the manner in which it is served, once the court
16 has made the initial finding that notice has properly been given to the parent, or to any person
17 entitled to receive notice pursuant to this section, subsequent notice for any continuation of a
18 Section 366.26 hearing may be by first-class mail to any last known address, by an order made
19 pursuant to Section 296, by electronic service pursuant to Section 212.5, except as provided in
20 paragraphs (2) and (3) of subdivision (h) and subdivision (i), by electronic mail if the county, or
21 city and county, and the court choose to permit service by electronic mail and the person to be
22 served has consented to service by electronic mail by signing Judicial Council Form EFS-005, or
23 by any other means that the court determines is reasonably calculated, under any circumstance,
24 to provide notice of the continued hearing. However, if the recommendation changes from the
25 recommendation contained in the notice previously found to be proper, notice shall be provided
26 to the parent, and to any person entitled to receive notice pursuant to this section, regarding that
27 subsequent hearing.

28 (e) * * *

29 (f) Notice to the parents may be given in any one of the following manners:

30 (1) If the parent is present at the hearing at which the court schedules a hearing pursuant to
31 Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings,
32 their right to counsel, the nature of the proceedings, and the requirement that at the proceedings
33 the court shall select and implement a plan of adoption, legal guardianship, or long-term foster
34 care for the child. The court shall direct the parent to appear for the proceedings and then direct
35 that the parent be notified thereafter only by first-class mail to the parent's usual place of
36 residence or business only or by electronic service pursuant to Section 212.5. In lieu of notice by
37 first class mail, notice may be served by electronic mail if the county, or city and county, and the
38 court choose to permit service by electronic mail and the person to be served has consented to
39 service by electronic mail by signing Judicial Council Form EFS-005.

40 (2)-(3) * * *

41 (4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of
42 residence or business, and thereafter ~~mailed to~~ served on the parent named in the notice by first-
43 class mail at the place where the notice was delivered or by electronic service pursuant to Section
44 212.5.

1 (5) If the residence of the parent is outside the state, service may be made as described in
2 paragraph (1), (3), or (4) or by certified mail, return receipt requested.

3 (6) If the recommendation of the probation officer or social worker is legal guardianship or long-
4 term foster care, service may be made by first-class mail to the parent's usual place of residence
5 or business or by electronic service pursuant to Section 212.5. ~~or, i~~ In the case of an Indian child,
6 tribal customary adoption, service may be made by first-class mail to the parent's usual place of
7 residence or business. ~~In lieu of notice by first class mail, notice may be serviced by electronic~~
8 ~~mail if the county, or city and county, and the court choose to permit service by electronic mail~~
9 ~~and the person to be served has consented to service by electronic mail by signing Judicial~~
10 ~~Council Form EFS-005.~~

11 (7) If a parent's identity is known but his or her whereabouts are unknown and the parent cannot,
12 with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive,
13 the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating
14 the name of the parent and describing the efforts made to locate and serve the parent.

15 (A) If the court determines that there has been due diligence in attempting to locate and serve the
16 parent and the probation officer or social worker recommends adoption, service shall be to that
17 parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does
18 not have an attorney of record, the court shall order that service be made by publication of
19 citation requiring the parent to appear at the date, time, and place stated in the citation, and that
20 the citation be published in a newspaper designated as most likely to give notice to the parent.
21 Publication shall be made once a week for four consecutive weeks. Whether notice is to the
22 attorney of record or by publication, the court shall also order that notice be given to the
23 grandparents of the child, if their identities and addresses are known, by first-class mail or by
24 electronic service pursuant to Section 212.5.

25 (B) If the court determines that there has been due diligence in attempting to locate and serve the
26 parent and the probation officer or social worker recommends legal guardianship or long-term
27 foster care, no further notice is required to the parent, but the court shall order that notice be
28 given to the grandparents of the child, if their identities and addresses are known, by first-class
29 mail or by electronic service pursuant to Section 212.5.

30 (C) * * *

31 (g)(1) * * *

32 (h) (1) Notice to all counsel of record shall be by first-class mail; or by electronic service
33 pursuant to Section 212.5. ~~by electronic mail if the county, or city and county, and the court~~
34 ~~choose to permit service by electronic mail and the person to be served has consented to service~~
35 ~~by electronic mail by signing Judicial Council Form EFS-005.~~

36 (2) ~~Except as provided in paragraph (3), if notice is required to be provided to a child, written~~
37 ~~notice may be served on the child by electronic mail only if all of the following requirements are~~
38 ~~satisfied:~~

39 ~~(A) The county, or city and county, and the court choose to permit service by electronic mail.~~
40 ~~(B) The child is 16 years of age or older.~~
41 ~~(C) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
42 ~~005.~~
43 ~~(D) The attorney for the child has consented to service of the minor by electronic mail by signing~~
44 ~~Judicial Council Form EFS-005.~~

1 ~~(3) If notice is required to be provided to a child, written notice may be served on the child by~~
2 ~~electronic mail as well as by regular mail if all of the following requirements are satisfied:~~
3 ~~(A) The county, or city and county, and the court choose to permit service by electronic mail.~~
4 ~~(B) The child is 14 or 15 years of age.~~
5 ~~(C) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
6 ~~005.~~
7 ~~(D) The attorney for the child has consented to service of the minor by electronic mail by signing~~
8 ~~Judicial Council Form EFS-005.~~
9 ~~(i)-(l) * * *~~
10 ~~(m) Notwithstanding any choice by a county, or city and county, and the court to permit service~~
11 ~~of written notice of court proceedings by electronic mail, or consent by any person to service of~~
12 ~~written notice by electronic mail by signing Judicial Council Form EFS-005, notice of any~~
13 ~~hearing at which the county welfare department is recommending the termination of parental~~
14 ~~rights may only be served electronically by electronic mail only if notice is also given by another~~
15 ~~means of service provided for in this section.~~
16 ~~(n) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
17 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~
18

19 **§ 295.**

20
21 The social worker or probation officer shall give notice of review hearings held pursuant to
22 Sections 366.3 and 366.31 and for termination of jurisdiction hearings held pursuant to Section
23 391 in the following manner:

24 ~~(a)-(d) * * *~~

25 ~~(e) Service of notice shall be by first-class mail addressed to the last known address of the person~~
26 ~~to be provided notice or by electronic service pursuant to Section 212.5. ~~Except as provided in~~~~
27 ~~subdivisions (g), (h), and (i), notice may be served by electronic mail in lieu of notice by first-~~
28 ~~class mail if the county, or city and county, and the court choose to permit service by electronic~~
29 ~~mail and the person to be served has consented to service by electronic mail by signing Judicial~~
30 ~~Council Form EFS-005. In the case of an Indian child, notice shall be by registered mail, return~~
31 ~~receipt requested.~~

32 ~~(f)-(g) * * *~~

33 ~~(h) Except as provided in subdivision (i), if notice is required to be provided to a child pursuant~~
34 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~
35 ~~mail only if all of the following requirements are satisfied:~~

36 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

37 ~~(2) The child is 16 years of age or older.~~

38 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
39 ~~005.~~

40 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
41 ~~Judicial Council Form EFS-005.~~

42 ~~(i) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~
43 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~
44 ~~of the following requirements are satisfied:~~

45 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

1 ~~(2) The child is 14 or 15 years of age.~~

2 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
3 ~~005.~~

4 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~
5 ~~Judicial Council Form EFS-005.~~

6 ~~(j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
7 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

8
9 **§ 297.**

10
11 ~~(a) Notice required for an initial petition filed pursuant to Section 300 is applicable to a~~
12 ~~subsequent petition filed pursuant to Section 342. A subsequent petition filed pursuant to Section~~
13 ~~342 shall be noticed pursuant to Sections 290.1 and 290.2, except that service may be electronic~~
14 ~~service pursuant to Section 212.5.~~

15 (b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile
16 court shall immediately set the matter for hearing within 30 days of the date of the filing, and the
17 social worker or probation officer shall cause notice thereof to be served upon the persons
18 required by, and in the manner prescribed by, Sections 290.1, 290.2, and 291, except that service
19 may be electronic service pursuant to Section 212.5.

20 (c)-(d) * * *

21
22 **§ 302.**

23
24 (a) * * *

25 (b) Unless their parental rights have been terminated, both parents shall be notified of all
26 proceedings involving the child. In any case where the social worker is required to provide a
27 parent or guardian with notice of a proceeding at which the social worker intends to present a
28 report, the social worker shall also provide both parents, whether custodial or noncustodial, or
29 any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing,
30 either personally by personal service, or by first-class mail, or by electronic service pursuant to
31 Section 212.5. The social worker shall not charge any fee for providing a copy of a report
32 required by this subdivision. The social worker shall keep confidential the address of any parent
33 who is known to be the victim of domestic violence.

34 (c)-(d) * * *

35
36 **§ 316.1.**

37
38 (a)(1) * * *

39 ~~(2) Except as provided in subdivisions (b) and (c), in addition to providing his or her permanent~~
40 ~~mailing address, the court may, if the county, or city and county, and the court choose to permit~~
41 ~~service by electronic mail, permit any party who is entitled to notice of court proceedings, upon~~
42 ~~his or her consent to service by electronic mail by signing Judicial Council Form EFS-005, to~~
43 ~~voluntarily provide the court with a designated electronic mail address for the purpose of~~
44 ~~receiving notice by electronic mail. Upon his or her appearance before the court, each party who~~
45 consents to electronic service pursuant to Section 212.5 ~~by electronic mail~~ shall designate for the

1 court his or her electronic ~~mail~~ service address. The court shall advise each party that the
2 electronic ~~mail~~ service address will be used by the court and the social services agency for
3 purposes of providing notice pursuant to Sections ~~290.1, 290.2,~~ 291, 292, 293, 294, 295, 297,
4 and 342, unless and until the party notifies the court or the social services agency of a new
5 electronic ~~mail~~ service address in writing or unless the party withdraws consent to electronic
6 service.

7 ~~(b) Except as provided in subdivision (c), the court may permit a child who appears before the~~
8 ~~court and who is entitled to notice of court proceedings to voluntarily provide the court with a~~
9 ~~designated electronic mail address for the purpose of receiving notice by electronic mail only~~
10 ~~under the following circumstances:~~

11 ~~(1) If the child is 16 years of age or older, notice shall be served by first class mail, or if all of the~~
12 ~~following requirements are satisfied, by electronic mail:~~

13 ~~(A) The county, or city and county, and the court choose to permit service by electronic mail.~~

14 ~~(B) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
15 ~~005.~~

16 ~~(C) The attorney for the child has consented to service of the minor by electronic mail by signing~~
17 ~~Judicial Council Form EFS-005.~~

18 ~~(2) If the child is 14 or 15 years of age, written notice may be served on the child by electronic~~
19 ~~mail as well as by regular mail if all of the following requirements are satisfied:~~

20 ~~(A) The county, or city and county, and the court choose to permit service by electronic mail.~~

21 ~~(B) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~
22 ~~005.~~

23 ~~(C) The attorney for the child has consented to service of the minor by electronic mail by signing~~
24 ~~Judicial Council Form EFS-005.~~

25 ~~(e) Notice of court proceedings by electronic mail is not permitted in any of the following~~
26 ~~circumstances:~~

27 ~~(1) For notice of any hearing at which the county welfare department is recommending~~
28 ~~termination of parental rights, in which case notice may only be served by electronic mail if~~
29 ~~supplemental and in addition to first class mail.~~

30 ~~(2) If the social worker or probation officer knows or has reason to know that an Indian child is~~
31 ~~involved, in which case notice shall be given in accordance with Section 224.2.~~

32 ~~(3) If the person entitled to notice is a child under 14 years of age.~~

33 ~~(d) The Judicial Council may develop a form for the designation of a permanent mailing address~~
34 ~~by parents and guardians for use by the courts and social services agencies.~~

35 ~~(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~
36 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

37
38 **§ 342.**

39
40 In any case in which a minor has been found to be a person described by Section 300 and the
41 petitioner alleges new facts or circumstances, other than those under which the original petition
42 was sustained, sufficient to state that the minor is a person described in Section 300, the
43 petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the
44 juvenile court has been terminated prior to the new allegations.

1 Unless otherwise provided by law, All procedures and hearings required for an original petition
2 are applicable to a subsequent petition filed under this section.

3
4 **§ 362.4.**

5
6 When the juvenile court terminates its jurisdiction over a minor who has been adjudged a
7 dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and
8 proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the
9 minor's parents, or proceedings to establish the paternity of the minor child brought under the
10 Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family
11 Code, are pending in the superior court of any county, or an order has been entered with regard
12 to the custody of that minor, the juvenile court on its own motion, may issue a protective order as
13 provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order
14 determining the custody of, or visitation with, the child.

15 Any order issued pursuant to this section shall continue until modified or terminated by a
16 subsequent order of the superior court. The order of the juvenile court shall be filed in the
17 proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity,
18 at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part
19 thereof.

20 If no action is filed or pending relating to the custody of the minor in the superior court of any
21 county, the juvenile court order may be used as the sole basis for opening a file in the superior
22 court of the county in which the parent, who has been given custody, resides. The court may
23 direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior
24 court of the county in which the order is to be filed. The clerk of the superior court shall,
25 immediately upon receipt, open a file, without a filing fee, and assign a case number.

26 The clerk of the superior court shall, upon the filing of any juvenile court custody order, send a
27 copy of the order with the case number by first-class mail or by electronic means pursuant to
28 Section 212.5 ~~a copy of the order with the case number~~ to the juvenile court and to the parents at
29 the address listed on the order. The Judicial Council shall adopt forms for any custody or
30 restraining order issued under this section. These form orders shall not be confidential.

31
32 **§ 364.05.**

33
34 Notwithstanding Section 364, in a county of the first class, a copy of the report required pursuant
35 to subdivision (b) of Section 364 shall be provided to all parties at least 10 calendar days prior to
36 the hearing. This may be accomplished by mailing or electronically serving pursuant to Section
37 212.5 the report at least 15 calendar days prior to the hearing to a party whose address is within
38 the State of California, or at least 20 calendar days prior to the hearing to a party whose address
39 is outside the State of California. The court shall grant a reasonable continuance, not to exceed
40 10 calendar days, upon request by any party or his or her counsel on the ground that the report
41 was not provided at least 10 calendar days prior to the hearing as required by this section, unless
42 the party or his or her counsel has expressly waived the requirement that the report be provided
43 within the 10-day period or the court finds that the party's ability to proceed at the hearing is not
44 prejudiced by the lack of timely service of the report. In making this determination, the court

1 shall presume that a party is prejudiced by the lack of timely service of the report, and may find
2 that the party is not prejudiced only by clear and convincing evidence to the contrary.

3
4 **§ 366.05.**

5
6 Notwithstanding subdivision (c) of Section 366.21, in a county of the first class, any
7 supplemental report filed in connection with a status review hearing held pursuant to subdivision
8 (a) of Section 366 shall be provided to the parent or legal guardian and to counsel for the child at
9 least 10 calendar days prior to the hearing. This may be accomplished by mailing or
10 electronically serving pursuant to Section 212.5 the report at least 15 calendar days prior to the
11 hearing to a party whose address is within the State of California, or at least 20 calendar days
12 prior to the hearing to a party whose address is outside the State of California. The court shall
13 grant a reasonable continuance, not to exceed 10 calendar days, upon request by any party or his
14 or her counsel on the ground that the report was not provided at least 10 calendar days prior to
15 the hearing as required by this section, unless the party or his or her counsel has expressly
16 waived the requirement that the report be provided within the 10-day period or the court finds
17 that the party's ability to proceed at the hearing is not prejudiced by the lack of timely service of
18 the report. In making this determination, the court shall presume that a party is prejudiced by the
19 lack of timely service of the report, and may find that the party is not prejudiced only by clear
20 and convincing evidence to the contrary.

21
22
23 **§ 366.21.**

24
25 (a)–(b) * * *

26 (c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental
27 report with the court regarding the services provided or offered to the parent or legal guardian to
28 enable him or her to assume custody and the efforts made to achieve legal permanence for the
29 child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships
30 between a child who is 10 years of age or older and has been in out-of-home placement for six
31 months or longer and individuals who are important to the child, consistent with the child's best
32 interests; the progress made; and, where relevant, the prognosis for return of the child to the
33 physical custody of his or her parent or legal guardian; and shall make his or her
34 recommendation for disposition. If the child is a member of a sibling group described in
35 subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and
36 recommendation may also take into account those factors described in subdivision (e) relating to
37 the child's sibling group. If the recommendation is not to return the child to a parent or legal
38 guardian, the report shall specify why the return of the child would be detrimental to the child.
39 The social worker shall provide the parent or legal guardian, counsel for the child, and any court-
40 appointed child advocate with a copy of the report, including his or her recommendation for
41 disposition, at least 10 calendar days prior to the hearing. The report may be served
42 electronically pursuant to Section 212.5. In the case of a child removed from the physical
43 custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days
44 prior to the hearing, provide a summary of his or her recommendation for disposition to any
45 foster parents, relative caregivers, and certified foster parents who have been approved for

1 adoption by the State Department of Social Services when it is acting as an adoption agency or
2 by a county adoption agency, community care facility, or foster family agency having the
3 physical custody of the child. The social worker shall include a copy of the Judicial Council
4 Caregiver Information Form (JV-290) with the summary of recommendations to the child's
5 foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's
6 primary language when available, along with information on how to file the form with the court.
7 The summary of the recommendation may be served electronically pursuant to Section 212.5.

8 (d)-(l) * * *

9
10 **§ 366.26.**

11
12 (a)-(k) * * *

13 (l)(1)-(2) * * *

14 (3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the
15 following:

16 (A) A trial court, after issuance of an order directing a hearing pursuant to this section be held,
17 shall advise all parties of the requirement of filing a petition for extraordinary writ review as set
18 forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall
19 be made orally to a party if the party is present at the time of the making of the order. ~~or~~ If the
20 party is not present at the time of making the order, this notice shall be made by the clerk of the
21 court by first-class mail by the clerk of the court to the last known address of a party not present
22 at the time of making the order or by electronic service pursuant to Section 212.5. If the notice is
23 for a hearing at which the social worker will recommend the termination of parental rights,
24 service may be electronic service only in addition to service by first-class mail.

25 (B)-(D) * * *

26 (4) * * *

27 (5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this
28 section is issued on or after January 1, 1995.

29 (m)-(n) * * *

30
31 **§ 387.**

32
33 (a)-(c) * * *

34 (d) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately
35 set the same for hearing within 30 days, and the social worker shall cause notice thereof to be
36 served upon the persons and in the manner prescribed by Sections 290.1 and 291, except that
37 service under this subdivision may be electronic service pursuant to Section 212.5.

38 (e) * * *

39
40 **§ 607.2.**

41
42 (a) On and after January 1, 2012, the court shall hold a hearing prior to terminating jurisdiction
43 over a ward who satisfies any of the following criteria:

44 (1)-(3) * * *

45 (4) Service of the notice of hearing may be electronic service pursuant to Section 212.5

1 (b) At a hearing during which termination of jurisdiction over a ward described in subdivision (a)
2 is being considered, the court shall take one of the following actions:

3 (1) * * *

4 (2)(A) * * *

5 (B) The court shall set a hearing within 20 judicial days of the date of the order described in
6 subparagraph (A) to review the child welfare services department's decision and may either
7 affirm its decision not to file a petition pursuant to Section 300 or order the child welfare
8 services department to file a petition pursuant to Section 300. Service of the notice of hearing
9 may be electronic service pursuant to Section 212.5

10 (3)-(6) * * *

11 (c)-(d) * * *

12
13 **§ 630.**

14
15 (a) If the probation officer determines that the minor shall be retained in custody, he shall
16 immediately proceed in accordance with Article 16 (commencing with Section 650) to cause the
17 filing of a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the
18 matter for hearing on the detention calendar. Immediately upon filing the petition with the clerk
19 of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the
20 probation officer or the prosecuting attorney, as the case may be, shall serve such minor with a
21 copy of the petition and notify him of the time and place of the detention hearing. The probation
22 officer, or the prosecuting attorney, as the case may be, shall thereupon notify each parent or
23 each guardian of the minor of the time and place of such hearing if the whereabouts of each
24 parent or guardian can be ascertained by due diligence. Such notice may be given orally. Service
25 under this subdivision shall not be made electronically.

26 (b) * * *

27
28 **§ 658.**

29
30 (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk of the juvenile
31 court shall issue a notice, to which shall be attached a copy of the petition, and he or she shall
32 cause the same to be served upon the minor, if the minor is eight or more years of age, and upon
33 each of the persons described in subdivision (e) of Section 656 whose residence addresses are set
34 forth in the petition and thereafter before the hearing upon all persons whose residence addresses
35 become known to the clerk. If the court has ordered the care, custody, and control of the minor to
36 be under the supervision of the probation officer for foster care placement pursuant to
37 subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster
38 parents, preadoptive parents, legal guardians or relatives providing care to the minor. The clerk
39 shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the district
40 attorney has notified the clerk of the court that he or she wishes to receive the petition,
41 containing the time, date, and place of the hearing. Service under this subdivision may be
42 electronic service pursuant to Section 212.5 except that electronic service is not authorized if the
43 minor is detained and those persons entitled to notice are not present at the initial detention
44 hearing.

1 (b) Upon the filing of a supplemental petition where the minor has been declared a ward of the
2 court or a probationer under Section 602 in the original matter, the clerk of the juvenile court
3 shall issue a notice, to which shall be attached a copy of the petition, and he or she shall cause
4 the notice to be served upon the minor, if the minor is eight or more years of age, and upon each
5 of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth
6 in the supplemental petition and thereafter known to the clerk. The clerk shall issue a copy of the
7 supplemental petition to the minor's attorney, and to the district attorney if the probation officer
8 is the petitioner, or, to the probation officer if the district attorney is the petitioner, containing the
9 time, date, and place of the hearing. If the court has ordered the care, custody, and control of the
10 minor to be under the supervision of the probation officer for foster care placement pursuant to
11 subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster
12 parents, preadoptive parents, legal guardians, or relatives providing care to the minor. Service
13 under this subdivision may be electronic service pursuant to Section 212.5.
14
15
16

17 **§ 660.**
18

19 (a) Except as provided in subdivision (b), if the minor is detained, the clerk of the juvenile court
20 shall cause the notice and copy of the petition to be served on all persons required to receive that
21 notice and copy of the petition pursuant to subdivision (e) of Section 656 and Section 658, either
22 personally or by certified mail with request for return receipt, as soon as possible after filing of
23 the petition and at least five days prior to the time set for hearing, unless the hearing is set less
24 than five days from the filing of the petition, in which case, the notice and copy of the petition
25 shall be served at least 24 hours prior to the time set for hearing. Service under this subdivision
26 shall not be made electronically.

27 (b) If the minor is detained, and all persons entitled to notice pursuant to subdivision (e) of
28 Section 656 and Section 658 were present at the detention hearing, the clerk of the juvenile court
29 shall cause the notice and copy of the petition to be served on all persons required to receive the
30 notice and copy of the petition, ~~either personally~~ by personal service, or by first-class mail, or by
31 electronic service pursuant to Section 212.5, as soon as possible after the filing of the petition
32 and at least five days prior to the time set for hearing, unless the hearing is set less than five days
33 from the filing of the petition, in which case the notice and copy of the petition shall be served at
34 least 24 hours prior to the time set for the hearing. Service under this subdivision may be
35 electronic service pursuant to Section 212.5 except that electronic service is not authorized if the
36 minor is detained and those persons entitled to notice are not present at the detention hearing.

37 (c) If the minor is not detained, the clerk of the juvenile court shall cause the notice and copy of
38 the petition to be served on all persons required to receive the notice and copy of the petition,
39 ~~either personally~~ by personal service, or by first-class mail, or by electronic service pursuant to
40 Section 212.5, at least 10 days prior to the time set for hearing. If that person is known to reside
41 outside of the county, the clerk of the juvenile court shall ~~mail-serve~~ the notice and copy of the
42 petition, by first-class mail or by electronic service pursuant to Section 212.5, to that person, as
43 soon as possible after the filing of the petition and at least 10 days before the time set for hearing.
44 Failure to respond to the notice shall in no way result in arrest or detention. In the instance of
45 failure to appear after notice by first-class mail or electronic service, the court shall direct that

1 the notice and copy of the petition is to be personally served on all persons required to receive
2 the notice and a copy of the petition. However, if the whereabouts of the minor are unknown,
3 personal service of the notice and a copy of the petition is not required and a warrant for the
4 arrest of the minor may be issued pursuant to Section 663. Personal service of the notice and
5 copy of the petition outside of the county at least 10 days before the time set for hearing is
6 equivalent to service by first-class mail or electronic service. Service may be waived by any
7 person by a voluntary appearance entered in the minutes of the court or by a written waiver of
8 service filed with the clerk of the court at or prior to the hearing.

9 (d) * * *

10
11 **§ 661.**

12
13 In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its
14 citation directing any parent, guardian, or foster parent of the person concerning whom a petition
15 has been filed to appear at the time and place set for any hearing or financial evaluation under the
16 provisions of this chapter, including a hearing under the provisions of Section 257, and directing
17 any person having custody or control of the minor concerning whom the petition has been filed
18 to bring the minor with him or her. The notice shall in addition state that a parent, guardian, or
19 foster parent may be required to participate in a counseling or education program with the minor
20 concerning whom the petition has been filed. If the proceeding is one alleging that the minor
21 comes within the provisions of Section 601, the notice shall in addition contain notice to the
22 parent, guardian, or other person having control or charge of the minor that failure to comply
23 with the compulsory school attendance laws is an infraction, which may be charged and
24 prosecuted before the juvenile court judge sitting as a superior court judge. In those cases, the
25 notice shall also include notice that the parent, guardian, or other person having control or charge
26 of the minor has the right to a hearing on the infraction before a judge different than the judge
27 who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the
28 provisions of Section 170.6 of the Code of Civil Procedure. Personal service of the citation shall
29 be made at least 24 hours before the time stated therein for the appearance. Service under this
30 section may be electronic service only in addition to other forms of service required by law.

31
32 **§ 727.4.**

33
34 (a)(1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be ~~mailed~~ served by
35 the probation officer to the minor, the minor's parent or guardian, any adult provider of care to
36 the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents,
37 community care facility, or foster family agency, and to the counsel of record if the counsel of
38 record was not present at the time that the hearing was set by the court, by first-class
39 mail addressed to the last known address of the person to be notified, ~~or shall be personally~~
40 served by personal service on those persons, or by electronic service pursuant to Section 212.5,
41 not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall
42 contain a statement regarding the nature of the status review or permanency planning hearing and
43 any change in the custody or status of the minor being recommended by the probation
44 department. The notice shall also include a statement informing the foster parents, relative
45 caregivers, or preadoptive parents that he or she may attend all hearings or may submit any

1 information he or she deems relevant to the court in writing. The foster parents, relative
2 caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not
3 be made parties to the proceedings. Proof of notice shall be filed with the court.

4 (2) * * *

5 (b)–(d) * * *

6
7 **§ 777.**

8
9 An order changing or modifying a previous order by removing a minor from the physical
10 custody of a parent, guardian, relative, or friend and directing placement in a foster home, or
11 commitment to a private institution or commitment to a county institution, or an order changing
12 or modifying a previous order by directing commitment to the Youth Authority shall be made
13 only after a noticed hearing.

14 (a) * * *

15 (b) Upon the filing of such notice, the clerk of the juvenile court shall immediately set the same
16 for hearing within 30 days, and the probation officer shall cause notice of it to be served upon the
17 persons and in the manner prescribed by Sections 658 and 660. Service under this subdivision
18 may be electronic service pursuant to Section 212.5.

19 (c) * * *

20 (d) An order for the detention of the minor pending adjudication of the alleged violation may be
21 made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of
22 this chapter. Service under this subdivision may be electronic service only in addition to other
23 forms of service required by law.

24
25 **§ 778.**

26
27 (a)(1) * * *

28 (2) If it appears that the best interests of the child may be promoted by the proposed change of
29 order or termination of jurisdiction, the court shall order that a hearing be held and shall give
30 prior notice, or cause prior notice to be given, to such persons and by such means as prescribed
31 by Sections 776 and 779, by electronic service pursuant to Section 212.5, and, in such instances
32 as the means of giving notice is not prescribed by such sections, then by such means as the court
33 prescribes.

34 (b)(1)–(4) * * *

35
36 **§ 779.**

37
38 The court committing a ward to the Youth Authority may thereafter change, modify, or set aside
39 the order of commitment. Ten days' notice of the hearing of the application therefor shall be
40 served ~~by United States mail~~ upon the Director of the Youth Authority. In changing, modifying,
41 or setting aside the order of commitment, the court shall give due consideration to the effect
42 thereof upon the discipline and parole system of the Youth Authority or of the correctional
43 school in which the ward may have been placed by the Youth Authority. Except as provided in
44 this section, nothing in this chapter shall be deemed to interfere with the system of parole and

1 discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole
2 and discharge of wards of the juvenile court committed to the Youth Authority, or with the
3 management of any school, institution, or facility under the jurisdiction of the Youth Authority.
4 Except as provided in this section, this chapter does not interfere with the system of transfer
5 between institutions and facilities under the jurisdiction of the Youth Authority. This section
6 does not limit the authority of the court to change, modify, or set aside an order of commitment
7 after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to,
8 or failing to, provide treatment consistent with Section 734.

9 However, before any inmate of a correctional school may be transferred to a state hospital, he or
10 she shall first be returned to a court of competent jurisdiction and, after hearing, may be
11 committed to a state hospital for the insane in accordance with law.

12
13 **§ 785.**

14
15 (a) Where a minor is a ward of the juvenile court, the wardship did not result in the minor's
16 commitment to the Youth Authority, and the minor is found not to be a fit and proper subject to
17 be dealt with under the juvenile court law with respect to a subsequent allegation of criminal
18 conduct, any parent or other person having an interest in the minor, or the minor, through a
19 properly appointed guardian, the prosecuting attorney, or probation officer, may petition the
20 court in the same action in which the minor was found to be a ward of the juvenile court for a
21 hearing for an order to terminate or modify the jurisdiction of the juvenile court. The court shall
22 order that a hearing be held and shall give prior notice, or cause prior notice to be given, to those
23 persons and by the means prescribed by Sections 776 and 779, by electronic service pursuant to
24 Section 212.5, or where the means of giving notice is not prescribed by those sections, then by
25 such means as the court prescribes.

26 (b)-(d) * * *

27
28 **§ 903.45.**

29
30 (a) * * *

31 (b) In a county where a board of supervisors has designated a county financial evaluation officer,
32 the juvenile court shall, at the close of the disposition hearing, order any person liable for the
33 cost of support, pursuant to Section 903, the cost of legal services as provided for in Section
34 903.1, probation costs as provided for in Section 903.2, or any other reimbursable costs allowed
35 under this code, to appear before the county financial evaluation officer for a financial evaluation
36 of his or her ability to pay those costs. If the responsible person is not present at the disposition
37 hearing, the court shall cite him or her to appear for a financial evaluation. In the case of a
38 parent, guardian, or other person assessed for the costs of transport, food, shelter, or care of a
39 minor under Section 207.2 or 903.25, the juvenile court shall, upon request of the county
40 probation department, order the appearance of the parent, guardian, or other person before the
41 county financial evaluation officer for a financial evaluation of his or her ability to pay the costs
42 assessed.

43 If the county financial evaluation officer determines that a person so responsible has the ability
44 to pay all or part of the costs, the county financial evaluation officer shall petition the court for
45 an order requiring the person to pay that sum to the county or court, depending on which entity

1 incurred the expense. If the parent or guardian is liable for costs for legal services pursuant to
2 Section 903.1, the parent or guardian has been reunified with the child pursuant to a court order,
3 and the county financial evaluation officer determines that repayment of the costs would harm
4 the ability of the parent or guardian to support the child, then the county financial evaluation
5 officer shall not petition the court for an order of repayment, and the court shall not make that
6 order. In addition, if the parent or guardian is currently receiving reunification services, and the
7 court finds, or the county financial officer determines, that repayment by the parent or guardian
8 will pose a barrier to reunification with the child because it will limit the ability of the parent or
9 guardian to comply with the requirements of the reunification plan or compromise the parent's or
10 guardian's current or future ability to meet the financial needs of the child, or in any case in
11 which the court finds that the repayment would be unjust under the circumstances of the case,
12 then the county financial evaluation officer shall not petition the court for an order of repayment,
13 and the court shall not order repayment by the parent or guardian. In evaluating a person's ability
14 to pay under this section, the county financial evaluation officer and the court shall take into
15 consideration the family's income, the necessary obligations of the family, and the number of
16 persons dependent upon this income. A person appearing for a financial evaluation has the right
17 to dispute the county financial evaluation officer's determination, in which case he or she is
18 entitled to a hearing before the juvenile court. The county financial evaluation officer, at the time
19 of the financial evaluation, shall advise the person of his or her right to a hearing and of his or
20 her rights pursuant to subdivision (c).

21 At the hearing, a person responsible for costs is entitled to have, but shall not be limited to, the
22 opportunity to be heard in person, to present witnesses and other documentary evidence, to
23 confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her,
24 and to receive a written statement of the findings of the court. The person has the right to be
25 represented by counsel, and, if the person is unable to afford counsel, the right to appointed
26 counsel. If the court determines that the person has the ability to pay all or part of the costs,
27 including the costs of any counsel appointed to represent the person at the hearing, the court shall
28 set the amount to be reimbursed and order him or her to pay that sum to the county or court,
29 depending on which entity incurred the expense, in a manner in which the court believes
30 reasonable and compatible with the person's financial ability.

31 If the person, after having been ordered to appear before the county financial evaluation officer,
32 has been given proper notice and fails to appear as ordered, the county financial evaluation
33 officer shall recommend to the court that the person be ordered to pay the full amount of the
34 costs. Proper notice to the person shall contain all of the following:

35 (1)-(3) * * *

36 (4) A warning that if the person fails to appear before the county financial evaluation officer, the
37 officer will recommend that the court order the person to pay the costs in full.

38 If the county financial evaluation officer determines that the person has the ability to pay all or a
39 portion of these costs, with or without terms, and the person concurs in this determination and
40 agrees to the terms of payment, the county financial evaluation officer, upon his or her written
41 evaluation and the person's written agreement, shall petition the court for an order requiring the
42 person to pay that sum to the county or the court in a manner that is reasonable and compatible
43 with the person's financial ability. This order may be granted without further notice to the
44 person, provided a copy of the order is served on the person by mail or by electronic means
45 pursuant to section 212.5.

1 However, if the county financial evaluation officer cannot reach an agreement with the person
2 with respect to either the liability for the costs, the amount of the costs, the person's ability to
3 pay the costs, or the terms of payment, the matter shall be deemed in dispute and referred by the
4 county financial evaluation officer back to the court for a hearing.
5 (c)-(d) * * *

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INVITATION TO COMMENT

[ITC prefix as assigned]-__

Title	Action Requested
Small Claims: Provision of Court Interpreters	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550	January 1, 2018
Proposed by	Contact
Language Access Plan Implementation Task Force Hon. Mariano-Florentino Cuéllar, Chair	Elizabeth Tam-Helmuth, 415-865-4604 elizabeth.tam@jud.ca.gov

Executive Summary and Origin

On January 22, 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts*. The plan provides a comprehensive set of 75 recommendations to help create a branch wide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations. The plan provides that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to limited English proficient (LEP) court users in all courtroom proceedings, including small claims proceedings.

In order to complete the systematic expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Language Access Plan (LAP) Implementation Task Force recommends that the Judicial Council sponsor legislation to (1) amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings, and (2) amend Code of Civil Procedure section 116.550 to require courts to provide credentialed interpreters in small claims actions, consistent with the language of Evidence Code section 756, which prioritizes the manner in which courts will provide interpreters if there are not sufficient resources to provide interpreters in all civil matters.

Background

In January 2015, following an extensive stakeholder participation process that included public

hearings and public comment, the Judicial Council adopted the *Strategic Plan for Language Access for the California Courts*.¹ The Language Access Plan (LAP) provides a comprehensive set of recommendations to help create a branchwide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations.

Effective January 1, 2015, Evidence Code section 756 provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, at no cost to the parties, regardless of the income of the parties. If sufficient funding is not available to provide interpreters in all civil matters, the statute sets forth an order of priority for courts to follow in deploying interpreters. Small claims matters are in priority 8, "all other civil matters." (Assembly Bill 1657, Stats. 2014, ch. 721.)

The Chief Justice established the LAP Implementation Task Force in March 2015, pursuant to recommendations in the LAP.² Chaired by Supreme Court Justice Mariano-Florentino Cuéllar, with Judge Manuel J. Covarrubias of the Superior Court of Ventura County serving as vice-chair, the Task Force has a three- to five-year charge and is overseen by the Judicial Council's Executive and Planning Committee.

The LAP states that legislative action to amend, delete, or add statutory language, and Judicial Council action to create or revise court forms or rules of court, will be necessary to fully and effectively implement the recommendations contained in this Language Access Plan. Such actions should include clarification of existing statutes..." (LAP, p. 78). Two specific LAP recommendations describe legislation necessary to ensure qualified interpreters, subject to court resources, are provided in small claims actions:

LAP Recommendation #71. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to include small claims proceedings in the definition of court proceedings for which qualified interpreters must be provided.

LAP Recommendation #72. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.

Judicial Council-sponsored legislation to amend California Government Code section 68560.5(a) and Civil Code of Procedure section 116.550 as described below (to delete the exception for small claims proceedings, and require credentialed interpreters for small claims, respectively)

¹ The full report, *Strategic Plan for Language Access in the California Courts*, may be viewed at: www.courts.ca.gov/documents/CLASP_report_060514.pdf

² Information regarding the Language Access Plan Implementation Task Force is available at: <http://www.courts.ca.gov/LAP.htm>

will ensure that, when resources allow, qualified and adequate interpreter services are provided in small claims proceedings.

Prior Circulation

To our knowledge, there has not been previous circulation and/or attempts to amend California Government Code section 68560.5(a) and Code of Civil Procedure section 116.550.

The Proposal

The Task Force recommends that the Judicial Council sponsor legislation to (1) amend Government Code section 68560.5(a) to delete the exception for providing interpreters in small claims proceedings; and (2) amend Code of Civil Procedure section 116.550 to require courts to provide credentialed interpreters in small claims actions, along with all other civil matters.

California Government Code §68560.5(a)

Current text³

(a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. However, “court proceeding” does not include a small claims proceeding.

Proposed revision

(a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. ~~However, “court proceeding” does not include a small claims proceeding.~~

California Code of Civil Procedure §116.550

Current text⁴

(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.

(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court’s experience.

(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.

³ CA Government Code § 68560.5 is available at:
www.leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68560.5.&lawCode=GOV

⁴ CA Code of Civil Procedure § 116.550 is available at:
www.leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=116.550.&lawCode=CCP

(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.

Proposed revision⁵

(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court ~~may~~ *shall appoint an interpreter* ~~permit another individual (other than an attorney) to assist interpret~~ for that party. *The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.*

~~(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.~~

~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.~~

~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.~~

Alternatives Considered

No alternatives were considered. Failure to amend the above-referenced statutes will result in confusion and is contrary to provisions in both the LAP and the newly enacted provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all court proceedings, subject to available resources, including small claims proceedings.

Implementation Requirements, Costs, and Operational Impacts

The Governor's proposed budget for fiscal year 2016–2017 appropriates an additional \$7 million, ongoing, for the expansion of interpreter services in civil proceedings. If approved, trial courts throughout the state should have funding available to address and meet increased costs necessary to provide interpreter services. To the extent funding is not yet sufficient to provide interpreters in all civil matters, small claims matters, contained within the final priority group, may not receive interpreters immediately.

⁵ CA Government Code §68561 is available at:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68561.&lawCode=GOV

Proposed revisions to the Code of Civil Procedure section 116.550 to include small claims proceedings would require the use of qualified (certified/registered) and credentialed interpreters, similar to the requirements for all other court proceedings, which benefits California's approximate 7 million LEP residents and potential court users. Adding this would also require courts to follow the steps for provisionally qualifying interpreters (California Rules of Court, Rule 2.893) when there is no credentialed interpreter available.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Language Access Plan Implementation Task Force is interested in comments on the following:

- If the proposed amendments regarding the provision of interpreters in small claims matters become law, what operational changes for the courts may be necessary (e.g., training, updating court web pages, or interpreter scheduling)?
- If the proposed amendments are made to the California Code, what are some recommended steps to help inform attorneys, judicial officers, court staff, and/or court interpreters regarding the changes?

Attachments and Links

1. Text of Government code section 68560.5(a), at page 59
2. Text of Code of Civil Procedure section 116.550, at page 60

Government Code section 68560.5(a) would be amended, effective January 1, 2018, to read:

- 1 (a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a
- 2 civil case filed in a court of record. ~~However, “court proceeding” does not include a small~~
- 3 ~~claims proceeding.~~

Code of Civil Procedure section 116.550 would be amended, effective January 1, 2018, to read:

- 1 a) If the court determines that a party does not speak or understand English sufficiently to
2 comprehend the proceedings or give testimony, and needs assistance in so doing, the
3 court ~~may~~ *shall appoint an interpreter* ~~permit another individual (other than an attorney)~~
4 to ~~assist~~ *interpret* for that party. *The requirements of Government Code section 68561*
5 *apply to the appointment of interpreters in small claims matters.*
- 6 (b) ~~Each small claims court shall make a reasonable effort to maintain and make~~
7 ~~available to the parties a list of interpreters who are able and willing to aid parties~~
8 ~~in small claims actions either for no fee, or for a fee which is reasonable~~
9 ~~considering the nature and complexity of the claims. The list shall include~~
10 ~~interpreters for all languages that require interpretation before the court, as~~
11 ~~determined by the court in its discretion and in view of the court's experience.~~
- 12 (c) ~~Failure to maintain a list of interpreters, or failure to include an interpreter for a~~
13 ~~particular language, shall not invalidate any proceedings before the court.~~
- 14 (d) ~~If a court interpreter or other competent interpreter is not available to aid a party in~~
15 ~~a small claims action, at the first hearing of the case the court shall postpone the~~
16 ~~hearing one time only to allow the party the opportunity to obtain another~~
17 ~~individual (other than an attorney) to assist that party. Any additional continuances~~
18 ~~shall be at the discretion of the court.~~
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INVITATION TO COMMENT

LEG16-__

Title	Action Requested
Subordinate Judicial Officers: Court Commissioners as Magistrates	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 808	January 1, 2018
Proposed by	Contact
Trial Court Presiding Judges Advisory Committee	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov
Hon. Brian L. McCabe, Chair	Deirdre Benedict, 415-865-8915
Criminal Law Advisory Committee	deirdre.benedict@jud.ca.gov
Hon. Tricia Ann Bigelow, Chair	

Executive Summary and Origin

The Criminal Law and Trial Court Presiding Judges Advisory Committees propose amending Penal Code section 808 to include “court commissioners” within the definition of those who may serve as a “magistrate.” Magistrate duties are constitutionally and statutorily defined functions in the criminal justice system; the authority of magistrates is limited in comparison to judicial powers. This proposal was developed at the request of presiding judges to expand the pool of judicial officers who are authorized to perform magistrate duties, provide courts with greater flexibility to equitably address judicial workloads, and increase access to justice in response to the need for a more systemwide approach to balancing judicial workload.

Background

Magistrates

The role of a magistrate is unique in the criminal justice system and differs from the role of a judge. Magistrates derive their jurisdiction and limited powers from the state constitution (Cal. Const., art. I, § 14), together with the acts of the Legislature; the powers and duties of a magistrate are solely those given by statute. Penal Code section 808 defines “magistrates” as the judges of the Supreme Court, Courts of Appeal, and superior courts. Court commissioners, a type of subordinate judicial officer (SJO), are not currently included in the statutory definition. When acting as a magistrate, judges of the Supreme Court, Courts of Appeal, and superior courts have only the jurisdiction and powers conferred by law on magistrates—not those powers that pertain to their judicial offices.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Magistrates perform certain constitutionally and statutorily defined functions in the criminal justice system. The principal functions of magistrates include issuing search warrants, bench warrants, arrest warrants, and warrants of commitment (Pen. Code, §§ 1523, 881(a), 807, and 1488); fixing and granting bail (Pen. Code, § 815a); conducting preliminary examinations of persons charged with a felony and binding defendants over for trial or release (Pen. Code, § 858); and acting as the designated on-call magistrate when court is not in session (Pen. Code, § 810). The authority of a magistrate is limited to those statutory functions. A magistrate presiding at a preliminary hearing does not sit as a judge of a court and cannot exercise any of the powers of a judge in court proceedings. Unlike a judge, a magistrate lacks authority to determine the guilt or innocence of a defendant.

Court commissioners

Article VI, section 22 of the California Constitution empowers the Legislature to provide for the appointment of commissioners and other SJOs to perform subordinate judicial duties. Government Code section 72190 authorizes commissioners, under the direction of judges, to exercise the powers and perform the duties prescribed by law. The purpose of SJOs is “to assist an overburdened judiciary with the performance of ‘subordinate judicial duties.’” (*Branson v. Martin* (1997) 56 Cal.App.4th 300, 305.)

In criminal cases, court commissioners generally have authority to conduct arraignments and issue bench warrants, if directed to perform those duties by the presiding judge (Gov. Code, §§ 72190.1 and 72190.2); hear ex parte motions for orders and alternative writs and writs of habeas corpus (Code Civ. Proc., § 259); make an initial determination on whether a deviation from the bail schedule is appropriate (Pen. Code, § 1269c); and fix bail in misdemeanor Vehicle Code violation cases (Gov. Code, § 72304). In infraction cases, court commissioners are expressly authorized to exercise the same powers and duties as judges, including making probable cause determinations. (Gov. Code, § 72190; *Branson, supra*, 56 Cal.App.4th at p. 305.)

Commissioners, however, currently lack authority to issue a search warrant (see 61 Ops.Cal.Atty.Gen. 487 (1978)) or to take and enter a guilty plea at arraignment (see 67 Ops.Cal.Atty.Gen. 162 (1984)). Court commissioners may act as temporary judges when qualified to do so and appointed for that purpose, but only on stipulation of the parties. (Code Civ. Proc., § 259; see, also, Cal. Rules of Court, rule 2.831.)

The Proposal

The Criminal Law and Trial Court Presiding Judges Advisory Committees propose amending Penal Code section 808 to include “court commissioners” within the definition of “magistrate.” The proposal would expand the pool of judicial officers who are authorized to exercise magistrate powers and perform magistrate duties. By expanding the authorized duties of commissioners, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to address judicial workloads.

Over the years, judicial workload demands have exceeded the number of available judicial officers.¹ As of June 30, 2014, there were 291 authorized commissioner FTE positions in the judicial branch.² The number of SJOs assigned to each court varies widely across the state. Several reasons favor broadening the scope of commissioner authority, including:

The assignment flexibility that commissioners allow the courts;
The expertise commissioners bring to many case types; and
The ability of commissioners “to assist judges with routine preliminary matters, thereby freeing the judges for more complex matters.”³

In addition, recent rulings and legislation have enhanced the need for greater flexibility in fulfilling the duties of magistrates. The Supreme Court in *Missouri v. McNeely* (2013) 569 U.S. __ [133 S.Ct. 1552, 185 L.Ed.2d 696], for example, ruled that search warrants are required for nonconsensual blood testing during driving under the influence investigations, and that exceptions to the warrant requirement must be determined case by case based on the totality of the circumstances (see also Penal Code § 1524(a)(13) and (15) (A)(i) authorizing courts to issue search warrants under these circumstances). The ruling has amplified the number of search warrant requests, particularly off-hours requests, resulting in increased workload demands for judges who serve as on-call magistrates on nights and weekends.

Similarly, recently enacted legislation has expanded the courts’ workload by providing courts with authority to issue temporary emergency gun violence restraining orders (Pen. Code, §§ 18125–18145). Penal Code section 18145(a)(2) authorizes the issuance of temporary emergency gun violence restraining orders in accordance with the procedures for obtaining an oral search warrant, if time and circumstances do not permit the submission of a written petition. Those procedures specifically authorize magistrates to issue oral search warrants when the court is in session. Under Penal Code section 18145(b), the presiding judge designates at least one judge, commissioner, or referee to be reasonably available to issue temporary emergency gun violence restraining orders, but only when the court is not in session. Because the statutory authority for this type of restraining order is new, the workload impact is not yet known but is anticipated to be significant for some courts.

¹ Judicial Council of Cal., *Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* (November 2014), www.courts.ca.gov/12922.htm. This mandatory report to the Legislature describes the filings-based need for judicial officers in the trial courts and shows that an additional 270 full-time equivalent judicial officers are needed in 35 courts. Judicial need is calculated based on a complex workload formula. The statewide need for new judgeships is calculated by adding the judicial need among only the courts that have fewer judgeships than their workload demands.

² Judicial Council of Cal., *2015 Court Statistics Report: Statewide Caseload Trends, 2004–2005 Through 2013–2014* (2015), www.courts.ca.gov/12941.htm#id7495.

³ See Judicial Council of Cal., *Subordinate Judicial Officers: Duties and Titles* (July 2002), p. 13, www.courts.ca.gov/documents/sjowgfinal.pdf. The report found that SJOs spent at least 75 percent of their time on criminal cases performing the duties of temporary judges.

Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be expanded to include magistrate duties without causing undue confusion. In this manner, the proposal provides greater flexibility in the use of existing judicial and commissioner resources to increase access to justice while equitably addressing judicial workload concerns.

Alternatives Considered

The committees alternatively considered amending Penal Code section 808 to provide court commissioners with limited authority to exercise specifically defined magistrate powers and perform magistrate duties. (See Pen. Code, § 646.91(a), (l) [commissioners are included among the judicial officers authorized to issue ex parte emergency protective orders for persons in immediate danger of being stalked], and Pen. Code, § 809 [the Santa Clara County Superior Court night-time commissioner is “considered a magistrate for the purpose of conducting prompt probable cause hearings for persons arrested without an arrest warrant”].) The committees, however, determined that a proposal to include court commissioners as magistrates for all purposes would provide greater flexibility, enhance court efficiencies, and enable courts to more effectively and equitably address workload issues while increasing access to justice.

Implementation Requirements, Costs, and Operational Impacts

Under the proposal, local court leadership would retain discretion to decide the extent of magistrate duties that could be performed by court commissioners. For those courts that choose to incorporate the magistrate role into commissioner duties, potential implementation costs may include commissioner training. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh implementation costs.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Penal Code section 808, at page 66

Section 808 of the Penal Code would be amended, effective January 1, 2018, to read:

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§ 808

The following persons are magistrates:

(a) The judges of the Supreme Court.

(b) The judges of the courts of appeal.

(c) The judges of the superior courts.

(d) Court commissioners.

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective Proceedings	Review and submit comments by June 14, 2016
	Proposed Effective Date
	January 1, 2018
Proposed Rules, Forms, Standards, or Statutes	Contact
Enact Probate Code section 1266; amend Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1265, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; repeal Probate Code section 1216; amend Welfare and Institutions Code sections 728 and 5362	Douglas Miller, 818-558-4178 douglas.miller@jud.ca.gov Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov

Proposed by
Probate and Mental Health Advisory
Committee
Hon. John H. Sugiyama, Chair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Executive Summary and Origin

The Probate and Mental Health Advisory Committee and the Information Technology Advisory Committee (ITAC) recommend amending the Probate Code to authorize the electronic service of

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

notices and other papers in guardianship, conservatorship, and other probate matters. This legislative proposal would amend Probate Code section 1215 to allow for the electronic service of notices and other papers if the party or other person has consented to receiving service by electronic means and has provided an electronic service address. It would also amend various statutes throughout the Probate Code, and Welfare and Institutions Code sections 728 and 5362 to implement this proposal.

Background

ITAC is leading a multiyear effort to comprehensively review and modernize the statutes and rules so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with other advisory committees, including the Probate and Mental Health Advisory Committee, with relevant subject-matter expertise.

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

The Judicial Council's advisory committees are circulating three legislative proposals on modernization for public comment during the spring 2016 cycle. In addition to the present proposal, the proposals would amend the Penal Code to authorize permissive electronic filing and service in criminal matters and would amend the Welfare and Institutions Code to allow for electronic service of notices and other papers by consent in juvenile dependency and delinquency matters.

The Proposal

This proposal would amend the Probate Code to authorize electronic service of notices and other papers if the party or other person consents to receive electronic service and provides an electronic service address.

Authorizing electronic service by consent

Currently, Probate Code section 1215 states that if a notice or other paper is required or permitted to be mailed to a person, the notice or other paper must be mailed as provided in section 1215 or personally delivered as provided in section 1216.

This proposal would amend section 1215 to recognize three means of service of notices and other papers: service by mail, personal service, and electronic service. This would be accomplished by adding the provisions on personal service in section 1216 to a new subdivision

(b) in section 1215.¹ Section 1215's provisions on mail service would be placed under a new subdivision (a) and would be updated to recognize current terminology in use by the U.S. Postal Service. A new subdivision (c) would allow for electronic service of notices and other papers on a person under Code of Civil Procedure section 1010.6(a), but only if the person has filed written consent to receive electronic service and has provided an electronic service address. Incorporating Code of Civil Procedure section 1010.6(a) by reference in the proposed new subdivision (c) of Probate Code section 1215 would provide for consistency in the implementation of electronic service across case types.

In addition, the committees concluded that consent was necessary before a notice or other paper could be electronically served on a person under Probate Code section 1215 because of the variety of persons entitled to be served with notices and other papers in the administration of a decedent's estate or trust and in conservatorship, guardianship, and other protective proceedings. These individuals differ from parties in general civil matters because they need not ever intervene or otherwise become actively involved in the proceeding or administration of the estate or trust.²

This proposal would also amend section 1265 and add a new section 1266. Section 1265 would provide that proof of electronic service may be made in the manner provided in Code of Civil Procedure section 1013b. In another legislative proposal circulating this spring, the ITAC and the Civil and Small Claims Advisory Committee have proposed adding a new section 1013b to the Code of Civil Procedure to codify rule 2.251(i) of the California Rules of Court, the trial court rule on proof of electronic service. The present proposal would also add a new Probate Code section 1266 that would contain section 1265's current language.

Designating which notices and other papers may be electronically served

This proposal would authorize electronic service where the Probate Code currently allows for service by mail and personal delivery. Where the Probate Code allows for service only by personal delivery, the statute would remain unaltered; it would still require that these notices and other papers be personally delivered. To implement electronic service of notices and other papers under section 1215, this proposal would amend various statutes throughout the Probate Code by replacing the terms "mail" and "personal delivery" with references to "service pursuant to Section 1215." Welfare and Institutions Code sections 728 and 5362 would be similarly amended.

The following types of notices and other papers could be electronically served if the person or entity to be served has consented to receive electronic service:

¹ Because Probate Code section 1216 would fully be incorporated into section 1215, this proposal would strike section 1216 in its entirety.

² Although Probate Code section 1215 would not apply to the service of documents in contested probate matters, the provisions authorizing electronic filing and service in Code of Civil Procedure section 1010.6 and its implementing rules would govern. (See Prob. Code, § 1000 [stating that the provisions in the Code of Civil Procedure apply to the Probate Code].)

General provisions

- Notices of hearing under the Fiduciaries' Wartime Substitution Law (Prob. Code, § 366)
- Notices of hearing on petition for a protective order before a probate referee (Prob. Code, § 453(a))
- Notices provided to the Attorney General where notice to the State of California is required (Prob. Code, § 1209)
- Notices of hearing served on a surety who has filed a court bond in a proceeding (Prob. Code, § 1213)
- Requests for special notice and notices, petitions, reports, accounts, inventories, appraisals, and other papers served pursuant to a request for special notice (Prob. Code, §§ 1250, 1252)

Probate administration of decedent estates and trusts

- Notices of hearing on petition for administration of a decedent's estate (Prob. Code, § 8110)
- Notices of hearing on petition for administration of an estate involving a testamentary trust of property for charitable purposes, copies of petition, and copies of will to the Attorney General (Prob. Code, § 8111)
- Notices of hearing on petition for appointment as administrator requesting priority (Prob. Code, § 8469)
- Notices of appointment of a successor personal representative (Prob. Code, § 8522);
- Copies of initial or supplemental inventories and appraisals on persons requesting special notice (Prob. Code, § 8803)
- Notices of hearing on petition for waiver of appraisal by a probate referee and copies of petition and proposed inventory and appraisal (Prob. Code, § 8903)
- Notices of hearing on written objection to the appraisal and copies of written objection (Prob. Code, § 8906)
- Notices of hearing on petition to remove the designated probate referee and copies of the personal representative's affidavit (Prob. Code, § 8924)
- Notices of hearing on petition to invest money of the estate in possession of the personal representative and copies of petition (Prob. Code, § 9732)
- Notices of hearing on petition for personal representative's participation as a general or limited partner in partnership in which decedent was a general partner and copies of petition (Prob. Code, § 9762)
- Written objections to disposition or abandonment of tangible personal property (Prob. Code, §§ 9783, 9787)
- Notices of proposed action without court supervision and written objections to proposed action (Prob. Code, §§ 10586, 10857)
- Notices of hearing on petition for preliminary or final distribution of decedent's estate (Prob. Code, § 11601)

- Copies of affidavits and attachments for claims to real property of small value (Prob. Code, § 13200)
- Notices of hearing on petition to request that administration of all or part of the estate is not necessary (Prob. Code, § 13655)
- Notifications served by the trustee on the beneficiaries of the trust (Prob. Code, §§ 16061.7–16061.9)
- Written objections to notice of the trustee’s intention to reconvert the trust from a unitrust (Prob. Code, § 16336.6)
- Notices of new payout percentage of a unitrust by trustee (Prob. Code, § 16336.6)
- Notices of proposed action by trustee and written objections to proposed action (Prob. Code, §§ 16501–16503)
- Notices of hearing on petition concerning internal affairs or existence of trust (Prob. Code, § 17203)
- Notices of hearing on petition for approval and settlement of claims against deceased settlor (Prob. Code, § 19024);
- Copies of requests for special notice of filing of petitions in pending proceedings involving a trust (Prob. Code, § 17204)
- Copies of petition for trust proceedings (Prob. Code, § 17205)
- Notices of hearing on petition to transfer trust to and from another jurisdiction (Prob. Code, §§ 17403, 17454)
- Claims filed by creditors (Prob. Code, § 19150)
- Notices of hearing on petition to allocate debts between trust and surviving spouse and copies of petition (Prob. Code, § 19323)
- Notices of hearing on petition for proration of estate taxes or generation-skipping transfer tax and copies of petition (Prob. Code, §§ 20122, 20222)

Guardianship proceedings

- Notices of hearing in guardianship, conservatorship, and other protective proceedings (Prob. Code, § 1460)
- Notices of hearing and copies of petition, report, or account to the Director of State Hospitals and Director of Developmental Services (Prob. Code, § 1461)
- Notices of hearing and copies of petition served on directors of regional centers for the developmentally disabled (Prob. Code, § 1461.4)
- Notices of hearing, notices of the filing of an inventory, and copies of the underlying petition, report, inventory, or account to the Veterans Administration (Prob. Code, § 1461.5)
- Notices of hearings on the petition for the appointment of a guardian and copies of petition to the spouse and relatives named in the petition, the person having care of the proposed ward, the Director State Hospitals, the Director of Developmental Services, the Director of Social Services, and the Veterans Administration (Prob. Code, § 1511)
- Notices informing guardians of their responsibility to complete annual status reports (Prob. Code, § 1513.2)

- Notices of hearing and copies of petition for guardianship to the Director of Social Services and to the local agency designated to investigate guardianships for the court (Prob. Code, §§ 1516, 1542)
- Notice of a juvenile court's decision to terminate or modify a guardianship previously established under the Probate Code (Welf. & Inst. Code, § 728.)

Conservatorship proceedings

- Notices of hearing on petition for appointment of a conservator and copies of petition (Prob. Code, § 1822)
- Copies of the report prepared by the court investigator (Prob. Code, § 1826)
- Copies of the report prepared by the regional center in limited conservatorship proceedings for persons with developmental disabilities (Prob. Code, § 1827.5)
- Orders appointing conservators and information notices of the rights of conservatees (Prob. Code, § 1830)
- Notices of hearing and copies of petition to secretary or head of the U.S. department or agency concerned if the proposed conservatee is an absentee (Prob. Code, § 1842)
- Notices of hearing and copies of petition for appointment of a conservator to the proposed conservatee (Prob. Code, § 1847)
- Findings of the court investigator on periodic review of conservatorship (Prob. Code, § 1851)
- Notices of hearing on petition for appointment of a conservator (Prob. Code, § 2250)
- Notices of a conservatee's death (Prob. Code, § 2357)
- Notices of hearing on petition for appointment of a successor conservator and copies of petition (Prob. Code, § 2683)
- Reports of court investigators on appointment of a successor conservators (Prob. Code, § 2684)
- Notices of hearing on petition to modify or vacate an order requiring application of the income or principal of community property to the support and maintenance of the conservatee and copies of petition (Prob. Code, § 3088)
- Notices of hearing on petition for authorization of a transaction involving community property where a spouse lacks legal capacity and copies of petition (Prob. Code, § 3131)
- Notices of hearing on petition for capacity determinations and health care decisions for adults without a conservator and copies of petition (Prob. Code, § 3206)
- Notifications of automatic termination of one-year appointment for conservators for gravely disabled persons and decrees terminating conservatorship (Welf. & Inst. Code, § 5362)

Both guardianship and conservatorship proceedings

- Notices of hearing on petition for transfer and copies of petition (Prob. Code, § 2214)
- Notices of hearing on petition for temporary appointment and copies of petition (Prob. Code, § 2250)
- Notices of change of residence of the guardian or conservator (Prob. Code, § 2352)

- Notices of intention to change the residence of the ward or conservatee (Prob. Code, § 2352)
- Notices of hearing on petition to authorize medical treatment and copies of petition to spouse or domestic partner of conservatee and relatives named in the petition (Prob. Code, § 2357)
- Copies of inventories and appraisals of the estate and notices of how to file an objection (Prob. Code, §§ 2610, 2611, 2612)
- Notices of hearing on written objections to an appraisal made by a probate referee and copies of objections (Prob. Code, § 2614)
- Requests for special notice in guardianship and conservatorship proceedings (Prob. Code, § 2700)
- Notices of hearing, petitions, accounts, inventories or appraisals of estates, or other papers served pursuant to a request for special notice (Prob. Code, § 2702)
- Notices of hearing on petition to transfer personal property out of state and copies of petition (Prob. Code, § 2804)
- Notices of hearing on petition for discharge after transfer of all property of the estate to the foreign guardian or conservator, copies of the final account of the guardian or conservator, and copies of petition (Prob. Code, § 2808)

Other protective proceedings

- Notices of hearing on petition to order that balance of estate be placed in a special needs trust and copies of petition (Prob. Code, § 3602)
- Notices of hearing on petition to set aside the personal property of absent federal personnel (Prob. Code, § 3704)
- Petitions for removal of property of a nonresident (Prob. Code, § 3801)
- Notices of hearing on petition to designate a minor’s successor custodian (Prob. Code, § 3918)

Additional technical amendments to implement electronic service

This proposal would also make various technical amendments to the Probate Code by replacing references to mail and personal delivery to provide for service, including electronic service, under section 1215:

- Amend Probate Code section 1050 to recognize that the judgment roll in a proceeding under the Probate Code consists of, inter alia, affidavits showing “service pursuant to Section 1215” of any notice of hearing or order to show cause;
- Amend Probate Code section 1212 to recognize that notice shall be given in the manner provided in Code of Civil Procedure 413.30 if the address of a person to whom a notice or other paper is required to be “served pursuant to Section 1215” is unknown;
- Amend Probate Code section 1214 to recognize that if a notice or other paper is required or permitted to be served “pursuant to Section 1215” on a represented person, the notice or other paper must also be served on the attorney;

- Amend Probate Code section 1217 to recognize that if a notice or other paper is required to be served or otherwise given, but the means of service is not specified in the statute, the notice or other paper shall be “served pursuant to Section 1215”;
- Amend Probate Code sections 8100, 9052, 9153, 19011, 19040, 19052, 19153 to notify creditors in specified notices and Judicial Council claim forms that they may “serve pursuant to Section 1215” copies of their claims; and
- Amend Probate Code section 10585 to require that the notice of a proposed action contain the e-mail addresses of the personal representative and other persons to contact.

Alternatives Considered

The committees considered amending section 1215 to provide for “electronic delivery” instead of “electronic service” under Code of Civil Procedure section 1010.6(a). The committees decided against pursuing this option to provide for consistency across statutes and case types.

Implementation Requirements, Costs, and Operational Impacts

This proposal is not expected to require implementation or result in any costs for the courts because most of these notices and other papers are not served by the courts. Electronic service of these notices and other papers would require access to the appropriate technology, but would also provide for efficiencies and cost savings. Because electronic service is authorized only by consent, it would be left up to the individual entitled to receive notice or other paper to determine whether any costs outweigh the benefits.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Proposed amendments to the Probate Code, at pages 75–105
2. Proposed amendments to the Welfare and Institutions Code, at page 106

Section 1266 of the Probate Code would be enacted, sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1265, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222 would be amended, and section 1216 would be repealed, effective January 1, 2018, to read:

1
2 **§ 366.**
3

4 Notice of a hearing under this part shall be ~~mailed~~ served pursuant to Section 1215 at least 15
5 days before the hearing ~~to~~ on each fiduciary and consultant and ~~to~~ on the following persons:
6

7 (a) In the case of a trust, ~~to~~ on each known beneficiary, subject to the provisions of Chapter 2
8 (commencing with Section 15800) of Part 3 of Division 9.
9

10 (b) In the case of a decedent’s estate, as provided in Section 1220 ~~to~~ on both of the following:
11

12 (1)–(2) * * *
13

14 (c) * * *
15

16 (d) In other cases, ~~to~~ on any additional interested persons required by the court to receive notice.
17

18 **§ 453.**
19

20 (a) On petition of a person required to appear before the probate referee pursuant to this chapter,
21 the court may make a protective order to protect the person from annoyance, embarrassment, or
22 oppression. The petitioner shall ~~mail~~ serve pursuant to Section 1215 notice of the hearing on the
23 petition ~~to~~ on the probate referee and ~~to~~ on the personal representative, guardian, conservator, or
24 other fiduciary at least 15 days before the date set for the hearing. Any subpoena issued by the
25 probate referee is stayed during the pendency of the petition.
26

27 (b) On petition of the probate referee, the court may make an order to show cause why a person
28 who is required, but fails, to appear before the probate referee pursuant to this chapter, should
29 not be compelled to do so. The probate referee shall ~~mail~~ serve pursuant to Section 1215 notice
30 of the hearing on the petition ~~to~~ on the person at least 15 days before the date set for the hearing.
31

32 **§ 1050.**
33

34 The judgment roll in a proceeding under this code consists of the following papers, where
35 applicable:
36

37 (a) In all cases:
38

1 (1)–(2) * * *

2
3 (3) Any notice of the hearing, and any order to show cause made in the proceeding, with the
4 affidavits showing publication, posting, ~~or mailing, or personal delivery~~ service pursuant to
5 Section 1215 of the notice or order as may be required by law or court order.

6
7 (4)–(7) * * *

8
9 (b)–(e) * * *

10
11 **§ 1209.**

12
13 (a) * * *

14
15 (b) Where notice is required to be given to the Attorney General, the notice shall be ~~mailed to~~
16 served pursuant to Section 1215 on the Attorney General at the office of the Attorney General at
17 Sacramento, California.

18
19 **§ 1212.**

20
21 Unless the court dispenses with the notice, if the address of the person to whom a notice or other
22 paper is required to be ~~mailed or delivered~~ served pursuant to Section 1215 is not known, notice
23 shall be given as the court may require in the manner provided in Section 413.30 of the Code of
24 Civil Procedure.

25
26 **§ 1213.**

27
28 (a) The following persons shall ~~mail~~ serve pursuant to Section 1215 a notice, as described in
29 Section 1211, ~~to~~ on a surety who has filed a court bond in a proceeding:

30
31 (1)–(4) * * *

32
33 (b) Within five days after entry of an order to suspend or remove a guardian, conservator, or
34 personal representative, the person who filed a petition to suspend or remove a guardian or, if the
35 order to suspend or remove a guardian, conservator, or personal representative was issued upon a
36 motion by the court, the court, shall notify the surety who has filed a court bond of the order ~~by~~
37 first-class mail, postage prepaid.

38
39 (c) The notice required by this section shall be ~~mailed to~~ served on the addressee listed on the
40 surety bond.

41
42 (d) * * *

1 § 1214.

2
3 If a notice or other paper is required or permitted to be ~~mailed, delivered,~~ served pursuant to
4 Section 1215 on, or otherwise given to a person who is represented by an attorney of record, the
5 notice or other paper shall also be ~~mailed to~~ served on this attorney, unless otherwise specified in
6 a request for special notice.

7
8 § 1215.

9
10 Unless otherwise expressly provided, ~~a notice or other paper that is required or permitted to be~~
11 served on a person shall be served by mail as provided in subdivision (a), personally served as
12 provided in subdivision (b), or electronically served as provided in subdivision (c) of this section.

13
14 ~~(a) Mail service If a notice or other paper is required or permitted to be mailed to a person, the~~
15 ~~notice or other paper shall be mailed as provided in this section or personally delivered as~~
16 ~~provided in Section 1216.~~

17
18 ~~(b)(1) The A~~ notice or other paper shall ~~may~~ be ~~sent~~ served by mail as follows:

19
20 ~~(1)(A) First-class~~ By regular mail if the person's address is within the United States. ~~First-class~~
21 Regular mail includes first-class, priority, certified, registered, and express mail.

22
23 ~~(2)(B) Airmail~~ By international mail if the person's address is not within the United States.
24 International mail includes first-class international, priority mail international, priority mail
25 express international, and global express guaranteed.

26
27 ~~(e)(2)~~ The notice or other paper shall be deposited for collection in the United States mail, in a
28 sealed envelope, with postage paid, addressed to the person to whom it is mailed.

29
30 ~~(d)(3)~~ Subject to Section 1212, the notice or other paper shall be addressed to the person at the
31 person's place of business or place of residence.

32
33 ~~(e)(4)~~ When the notice or other paper is deposited in the mail, mailing is complete and the period
34 of notice is not extended.

35
36 (b) Personal service

37
38 (1) A notice or other paper may be personally served on a person.

39
40 (2) Personal service is complete when the notice or other paper is personally served on the
41 person who is to receive it.

42
43 (c) Electronic service

1
2 (1) A notice or other paper may be electronically served on a person under subdivision (a) of
3 Section 1010.6 of the Code of Civil Procedure if the person has filed written consent to receive
4 electronic service and provided an electronic service address.

5
6 (2) Electronic service is complete when the notice or other paper is sent.

7
8 **§ 1216. [Section deleted.]**

9
10 ~~(a) If a notice or other paper is required or permitted to be mailed to a person, it may be delivered~~
11 ~~personally to that person. Personal delivery as provided in this section satisfies a provision~~
12
13 ~~that requires or permits a notice or other paper to be mailed.~~

14
15 ~~(b) Personal delivery pursuant to this section is complete when the notice or other paper is~~
16 ~~delivered personally to the person who is to receive it.~~

17
18 **§ 1217.**

19
20 If a notice or other paper is required to be served or otherwise given and no other manner of
21 giving the notice or other paper is specified by statute, the notice or other paper shall be ~~mailed~~
22 ~~or personally delivered as provided in this chapter~~ served pursuant to Section 1215.

23
24 **§ 1220.**

25
26 (a) When notice of hearing is required to be given or served as provided in this section:

27
28 (1) At least 15 days before the time set for the hearing, the petitioner or the person filing the
29 report, account, or other paper shall cause notice of the time and place of the hearing to be
30 ~~mailed to~~ served pursuant to Section 1215 on the persons required to be given notice.

31
32 (2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be
33 ~~mailed to~~ served pursuant to Section 1215 on all of the following:

34
35 (A)–(B) * * *

36
37 (3) Subject to Section 1212, the notice shall be ~~addressed to~~ served pursuant to Section 1215 on
38 the person required to be given notice at the person's place of business, ~~or~~ place of residence, or
39 electronic service address.

40
41 (b)–(c) * * *

1 **§ 1250.**

2
3 (a) * * *

4
5 (b) The request for special notice shall be so entitled and shall set forth the name of the person
6 and the address to which notices shall be ~~sent~~ served pursuant to Section 1215.

7
8 (c)–(d) * * *

9
10 (e) A copy of the request shall be ~~personally delivered or mailed to~~ served pursuant to Section
11 1215 on the personal representative or ~~to~~ on the attorney for the personal representative. If
12 personally ~~delivered~~ served, the request is effective when it is delivered. If mailed or
13 electronically served, the request is effective when it is received.

14
15 (f) * * *

16
17 **§ 1252.**

18
19 (a) Unless the court makes an order dispensing with the notice, if a request has been made
20 pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report,
21 account, or other paper shall give written notice of the filing, together with a copy of the petition,
22 report, account, or other paper, and the time and place set for the hearing, by ~~mail to~~ service
23 pursuant to Section 1215 on the person named in the request at the address set forth in the
24 request, at least 15 days before the time set for the hearing.

25
26 (b) If a request has been made pursuant to Section 1250 for special notice of the filing of an
27 inventory and appraisal of the estate or of the filing of any other paper that does not require a
28 hearing, the inventory and appraisal or other paper shall be ~~mailed~~ served pursuant to Section
29 1215 not later than 15 days after the inventory and appraisal or other paper is filed with the court.

30
31 **§ 1265.**

32
33 ~~Proof of notice, however given, may be made by evidence presented at the hearing.~~ Proof of
34 electronic service may be made in the manner prescribed in Section 1013b of the Code of Civil
35 Procedure.

36
37 **§ 1266.1265.**

38
39 Proof of notice, however given, may be made by evidence presented at the hearing.

40
41 **§ 1460.**

42
43 (a) * * *

1
2 (b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a
3 person filing a petition, report, or account, shall cause the notice of hearing to be ~~mailed to~~
4 served pursuant to Section 1215 on each of the following persons:

5
6 (1)–(6) * * *

7
8 (c)–(e) * * *

9
10 **§ 1461.**

11
12 (a) * * *

13
14 (b) Notice of the time and place of hearing on the petition, report, or account, and a copy of the
15 petition, report, or account, shall be ~~mailed to~~ served pursuant to Section 1215 on the director at
16 the director’s office in Sacramento at least 15 days before the hearing if both of the following
17 conditions exist:

18
19 (1)–(2) * * *

20
21 (c)–(d) * * *

22
23 **§ 1461.4.**

24
25 (a) The petitioner shall ~~mail or personally~~ serve pursuant to Section 1215 a notice of the hearing
26 and a copy of the petition ~~to~~ on the director of the regional center for the developmentally
27 disabled at least 30 days before the day of the hearing on a petition for appointment in any case
28 in which all of the following conditions exist:

29
30 (1)–(4) * * *

31
32 (b) * * *

33
34 **§ 1461.5.**

35
36 Notice of the time and place of hearing on a petition, report, or account, and a notice of the filing
37 of an inventory, together with a copy of the petition, report, inventory, or account, shall be
38 ~~mailed to~~ served pursuant to Section 1215 on the office of the Veterans Administration having
39 jurisdiction over the area in which the court is located at least 15 days before the hearing, or
40 within 15 days after the inventory is filed, if both of the following conditions exist:

41
42 (a)–(b) * * *

43

1 **§ 1511.**

2
3 (a)–(b) * * *

4
5 (c) Notice shall be ~~given by mail sent to~~ served pursuant to Section 1215 on their addresses
6 stated in the petition, or in any manner authorized by the court, ~~to~~ on all of the following:

7
8 (1)–(3) * * *

9
10 (d) If notice is required by Section 1461 or Section 1542 to be given to the Director of State
11 Hospitals or the Director of Developmental Services or the Director of Social Services, notice
12 shall be ~~mailed~~ served pursuant to Section 1215 as so required.

13
14 (e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from
15 the Veterans Administration, notice shall be ~~mailed to~~ served pursuant to Section 1215 on the
16 office of the Veterans Administration referred to in Section 1461.5.

17
18 (f)–(i) * * *

19
20 **§ 1513.2.**

21
22 (a) To the extent resources are available, the court shall implement procedures, as described in
23 this section, to ensure that every guardian annually completes and returns to the court a status
24 report, including the statement described in subdivision (b). A guardian who willfully submits
25 any material information required by the form which he or she knows to be false shall be guilty
26 of a misdemeanor. Not later than one month prior to the date the status report is required to be
27 returned, the clerk of the court shall ~~mail to~~ serve pursuant to Section 1215 on the guardian ~~by~~
28 ~~first-class mail~~ a notice informing the guardian that he or she is required to complete and return
29 the status report to the court. The clerk shall enclose or attach with the letter a blank status report
30 form for the guardian to complete and return ~~by mail~~. If the status report is not completed and
31 returned as required, or if the court finds, after a status report has been completed and returned,
32 that further information is needed, the court shall attempt to obtain the information required in
33 the report from the guardian or other sources. If the court is unable to obtain this information
34 within 30 days after the date the status report is due, the court shall either order the guardian to
35 make himself or herself available to the investigator for purposes of investigation of the
36 guardianship, or to show cause why the guardian should not be removed.

37
38 (b) The Judicial Council shall develop a form for the status report. The form shall include the
39 following statement: “A guardian who willfully submits any material information required by
40 this form which he or she knows to be false is guilty of a misdemeanor.” The form shall request
41 information the Judicial Council deems necessary to determine the status of the guardianship,
42 including, but not limited to, the following:

1 (1) The guardian's present address and electronic address.

2
3 (2)–(5) * * *

4
5 (c)–(d) * * *

6
7 **§ 1516.**

8
9 (a) In each case involving a petition for guardianship of the person, the petitioner shall ~~mail~~ serve
10 pursuant to Section 1215 a notice of the hearing and a copy of the petition, at least 15 days prior
11 to the hearing, ~~to~~ on the local agency designated by the board of supervisors to investigate
12 guardianships for the court. The local social services agency providing child protection services
13 shall screen the name of the guardian for prior referrals of neglect or abuse of minors. The results
14 of this screening shall be provided to the court.

15
16 (b) * * *

17
18 **§ 1542.**

19
20 In each case involving a petition for guardianship of the person, the petitioner shall ~~mail~~ serve
21 pursuant to Section 1215 a notice of the hearing and a copy of the petition, at least 15 days prior
22 to the hearing, ~~to~~ on the Director of Social Services at the director's office in Sacramento and ~~to~~
23 on the local agency designated by the board of supervisors to investigate guardianships for the
24 court.

25
26 **§ 1822.**

27
28 (a) * * *

29
30 (b) Notice shall be ~~mailed to~~ served pursuant to Section 1215 on the following persons:

31
32 (1)–(2) * * *

33
34 (c) If notice is required by Section 1461 to be given to the Director of State Hospitals or the
35 Director of Developmental Services, notice shall be ~~mailed~~ served pursuant to Section 1215 as so
36 required.

37
38 (d) If the petition states that the proposed conservatee is receiving or is entitled to receive
39 benefits from the Veterans Administration, notice shall be ~~mailed to~~ served pursuant to Section
40 1215 on the Office of the Veterans Administration referred to in Section 1461.5.

41
42 (e) If the proposed conservatee is a person with developmental disabilities, at least 30 days
43 before the day of the hearing on the petition, the petitioner shall ~~mail~~ serve pursuant to Section

1 1215 a notice of the hearing and a copy of the petition ~~to~~ on the regional center identified in
2 Section 1827.5.

3
4 (f) If the petition states that the petitioner and the proposed conservator have no prior
5 relationship with the proposed conservatee and are not nominated by a family member, friend, or
6 other person with a relationship to the proposed conservatee, notice shall be ~~mailed to~~ served
7 pursuant to Section 1215 on the public guardian of the county in which the petition is filed.
8

9 **§ 1826.**

10
11 (a) Regardless of whether the proposed conservatee attends the hearing, the court investigator
12 shall do all of the following:

13
14 (1)–(11) * * *

15
16 (12) ~~Mail~~ Serve pursuant to Section 1215, at least five days before the hearing, a copy of the
17 report referred to in paragraph (11) ~~to~~ on all of the following:

18
19 (A)–(C) * * *

20
21 (D) The spouse, registered domestic partner, and relatives within the first degree of the proposed
22 conservatee who are required to be named in the petition for appointment of the conservator,
23 unless the court determines that the ~~mailing~~ service will harm the conservatee.

24
25 (E) * * *

26
27 (b)–(h) * * *

28
29 **§ 1827.5.**

30
31 (a)–(c) * * *

32
33 (d) At least five days before the hearing on the petition, the regional center shall ~~mail~~ serve
34 pursuant to Section 1215 a copy of the report referred to in subdivision (a) ~~to~~ on all of the
35 following:

36
37 (1)–(4) * * *

38
39 (e) * * *

40
41 **§ 1830.**

42
43 (a)–(b) * * *

1
2 (c) An information notice of the rights of conservatees shall be attached to the order. The
3 conservator shall ~~mail~~ serve pursuant to Section 1215 the order and the attached information
4 notice ~~to~~ on the conservatee and the conservatee's relatives, as set forth in subdivision (b) of
5 Section 1821, within 30 days of the issuance of the order. By January 1, 2008, the Judicial
6 Council shall develop the notice required by this subdivision.

7
8 **§ 1842.**

9
10 In addition to the persons and entities to whom notice of hearing is required under Section 1822
11 or 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time
12 and place of the hearing shall be ~~mailed~~ served pursuant to Section 1215 at least 15 days before
13 the hearing ~~to~~ on the secretary concerned or to the head of the United States department or
14 agency concerned, as the case may be. In such case, notice shall also be published pursuant to
15 Section 6061 of the Government Code in a newspaper of general circulation in the county in
16 which the hearing will be held.

17
18 **§ 1847.**

19
20 In addition to the persons and entities to whom notice of hearing is required under Section 1822
21 or 2002, if the proposed conservatee is a person who is missing and whose whereabouts is
22 unknown:

23
24 (a) A copy of the petition for appointment of a conservator and notice of the time and place of
25 the hearing on the petition shall be ~~mailed~~ served pursuant to Section 1215 at least 15 days
26 before the hearing ~~to~~ on the proposed conservatee at the last known address of the proposed
27 conservatee.

28
29 (b)-(c) * * *

30
31 **§ 1851.**

32
33 (a) * * *

34
35 (b)(1) The findings of the court investigator, including the facts upon which the findings are
36 based, shall be certified in writing to the court not less than 15 days before the date of review. A
37 copy of the report shall be ~~mailed to~~ served pursuant to Section 1215 on the conservator and ~~to~~
38 on the attorneys of record for the conservator and conservatee at the same time it is certified to
39 the court. A copy of the report, modified as set forth in paragraph (2), also shall be ~~mailed to~~
40 served pursuant to Section 1215 on the conservatee's spouse or registered domestic partner, the
41 conservatee's relatives in the first degree, and if there are no such relatives, ~~to~~ on the next closest
42 relative, unless the court determines that the ~~mailing~~ service will harm the conservatee.
43

1 (2) * * *

2

3 (c)–(f) * * *

4

5 **§ 2214.**

6

7 Notice of the hearing shall be given for the period and in the manner provided in Chapter 3
8 (commencing with Section 1460) of Part 1. In addition, the petitioner shall ~~mail~~ serve pursuant to
9 Section 1215 a notice of the time and place of the hearing and a copy of the petition ~~to~~ on all
10 persons required to be listed in the petition at least 15 days before the date set for the hearing.

11

12 **§ 2250.**

13

14 (a)–(d) * * *

15

16 (e) Unless the court for good cause otherwise orders, at least five court days before the hearing
17 on the petition, notice of the hearing shall be given as follows:

18

19 (1) * * *

20

21 (2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of
22 the hearing shall be served pursuant to Section 1215 on the persons required to be named in the
23 petition for appointment of conservator. If the petition states that the petitioner and the proposed
24 conservator have no prior relationship with the proposed conservatee and has not been
25 nominated by a family member, friend, or other person with a relationship to the proposed
26 conservatee, notice of hearing shall be served pursuant to Section 1215 on the public guardian of
27 the county in which the petition is filed.

28

29 (3) A copy of the petition for temporary appointment shall be served pursuant to Section 1215
30 with the notice of hearing.

31

32 (f)–(l) * * *

33

34 **§ 2352.**

35

36 (a)–(d) * * *

37

38 (e)(1) * * *

39

40 (2) The guardian or conservator shall ~~mail~~ serve pursuant to section 1215 a copy of the notice ~~to~~
41 on all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of
42 Section 1822 and shall file proof of service of the notice with the court. The court may, for good

1 cause, waive the ~~mailing~~ service requirement pursuant to this paragraph in order to prevent harm
2 to the conservatee or ward.

3
4 (3) If the guardian or conservator proposes to remove the ward or conservatee from his or her
5 personal residence, except as provided by subdivision (c), the guardian or conservator shall ~~mail~~
6 serve pursuant to section 1215 a notice of his or her intention to change the residence of the ward
7 or conservatee ~~to~~ on all persons entitled to notice under subdivision (b) of Section 1511 and
8 subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be ~~mailed~~
9 served at least 15 days before the proposed removal of the ward or conservatee from his or her
10 personal residence. If the notice is served less than 15 days prior to the proposed removal of the
11 ward or conservatee, the guardian or conservator shall set forth the basis for the emergency in the
12 notice. The guardian or conservator shall file proof of service of that notice with the court.

13
14 (f)–(h) * * *

15
16 **§ 2357.**

17
18 (a)–(d) * * *

19
20 (e) Notice of the petition shall be given as follows:

21
22 (1) * * *

23
24 (2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a
25 copy of the petition shall be ~~mailed to~~ served pursuant to Section 1215 on the following persons:

26
27 (A)–(B) * * *

28
29 (f)–(i) * * *

30
31 **§ 2361.**

32
33 A conservator shall provide notice of a conservatee’s death by ~~mailing~~ serving a copy of the
34 notice ~~to~~ pursuant to Section 1215 on all persons entitled to notice under Section 1460 and by
35 filing a proof of service with the court, unless otherwise ordered by the court.

36
37 **§ 2610.**

38
39 (a) Within 90 days after appointment, or within any further time as the court for reasonable cause
40 upon ex parte petition of the guardian or conservator may allow, the guardian or conservator
41 shall file with the clerk of the court and ~~mail to~~ serve pursuant to Section 1215 on the
42 conservatee and ~~to~~ on the attorneys of record for the ward or conservatee, along with notice of
43 how to file an objection, an inventory and appraisal of the estate, made as of the date of the

1 appointment of the guardian or conservator. A copy of this inventory and appraisal, along with
2 notice of how to file an objection, also shall be ~~mailed to~~ served on the conservatee's spouse or
3 registered domestic partner, the conservatee's relatives in the first degree, and, if there are no
4 such relatives, ~~to~~ on the next closest relative, unless the court determines that the mailing will
5 result in harm to the conservatee.

6
7 (b)-(e) * * *

8
9 **§ 2611.**

10
11 If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a
12 state hospital under the jurisdiction of the State Department of State Hospitals or the State
13 Department of Developmental Services, the guardian or conservator shall ~~mail~~ serve pursuant to
14 Section 1215 a copy of the inventory and appraisal filed under Section 2610 ~~to~~ on the director of
15 the appropriate department at the director's office in Sacramento not later than 15 days after the
16 inventory and appraisal is filed with the court. Compliance with this section is not required if an
17 unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with
18 respect to the ward or conservatee.

19
20 **§ 2612.**

21
22 If a timely request is made, the clerk of court shall ~~mail~~ serve pursuant to Section 1215 a copy of
23 the inventory and appraisal filed under Section 2610 ~~to~~ on the county assessor.

24
25 **§ 2614.**

26
27 (a) * * *

28
29 (b) Notice of the hearing, together with a copy of the objections, shall be given for the period and
30 in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal
31 was made by a probate referee, the person objecting shall also ~~mail~~ serve pursuant to Section
32 1215 notice of the hearing and a copy of the objection ~~to~~ on the probate referee at least 15 days
33 before the time set for the hearing.

34
35 (c) * * *

36
37 **§ 2683.**

38
39 (a) * * *

40
41 (b) Notice shall be ~~mailed to~~ served pursuant to Section 1215 on the persons designated in
42 Section 1460 and to the relatives named in the petition.

1 (c) If notice is required by Section 1461 to be given to the Director of State Hospitals or the
2 Director of Developmental Services, notice shall be ~~mailed~~ served pursuant to Section 1215 as so
3 required.

4
5 (d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice
6 shall be ~~mailed~~ served pursuant to Section 1215 as so required.

7
8 **§ 2684.**

9
10 Unless the petition states that the conservatee will be present at the hearing, the court investigator
11 shall do all of the following:

12
13 (a)-(f) * * *

14
15 (g) ~~Mail~~ Serve pursuant to Section 1215, at least five days before the hearing, a copy of the
16 report referred to in subdivision (f) ~~to~~ on all of the following:

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

19
20 **§ 2700.**

21
22 (a) * * *

23
24 (b) The request for special notice shall be so entitled and shall set forth the name of the person
25 and the address ~~to~~ on which notices shall be ~~sent~~ served pursuant to Section 1215.

26
27 (c)-(d) * * *

28
29 (e) A copy of the request shall be ~~personally delivered or mailed to~~ served pursuant to Section
30 1215 on the guardian or conservator or to the attorney for the guardian or conservator. If
31 personally ~~delivered~~ served, the request is effective when it is delivered. If mailed or
32 electronically served, the request is effective when it is received.

33
34 (f) * * *

35
36 **§ 2702.**

37
38 (a) Unless the court makes an order dispensing with the notice, if a request has been made
39 pursuant to this chapter for special notice of a hearing, the person filing the petition, account, or
40 other paper shall ~~give~~ serve pursuant to Section 1215 written notice of the filing, together with a
41 copy of the petition, account, or other paper, and the time and place set for the hearing, ~~by mail~~
42 ~~to~~ on the person named in the request at the address set forth in the request, at least 15 days
43 before the time set for the hearing.

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(b) If a request has been made pursuant to this chapter for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper shall be ~~mailed~~ served pursuant to Section 1215 not later than 15 days after the inventory and appraisal or other paper is filed with the court.

§ 2804.

At least 30 days before the hearing, the petitioner shall ~~mail~~ serve pursuant to Section 1215 a notice of the time and place of the hearing and a copy of the petition ~~to~~ on each person required to be listed in the petition at the address stated in the petition.

§ 2808.

(a) * * *

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with a notice of the hearing thereon, shall be ~~mailed~~ served pursuant to Section 1215 at least 30 days before the date of the hearing ~~to~~ on all persons required to be listed in the petition for transfer, including the foreign guardian or conservator.

§ 3088.

(a)–(e) * * *

(f) The court retains jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall ~~mail~~ serve pursuant to Section 1215 a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, ~~to~~ on the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) * * *

§ 3131.

(a)–(b) * * *

1 (c) At least 15 days before the hearing on the petition, the petitioner shall ~~mail~~ serve pursuant to
2 Section 1215 a notice of the time and place of the hearing on the petition ~~to~~ on those persons
3 required to be named in the petition at the addresses set forth in the petition.
4

5 **§ 3206.**

6
7 (a) * * *

8
9 (b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a
10 copy of the petition shall be ~~mailed to~~ served pursuant to Section 1215 on the following persons:
11

12 (1)–(2) * * *

13
14 (c) * * *

15
16 **§ 3602.**

17
18 (a)–(e) * * *

19
20 (f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the
21 petition, shall be ~~mailed to~~ served pursuant to Section 1215 on the State Director of Health Care
22 Services, the Director of State Hospitals, and the Director of Developmental Services at the
23 office of each director in Sacramento at least 15 days before the hearing.
24

25 **§ 3704.**

26
27 (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given
28 by the petitioner at least 15 days before the hearing date by all of the following means:
29

30 (1) By ~~mail~~ service pursuant to Section 1215, together with a copy of the petition, ~~to~~ on all
31 persons comprising the family of the absentee.
32

33 (2)–(3) * * *

34
35 (b) * * *

36
37 **§ 3801.**

38
39 (a) The petition shall be made upon 15 days' notice, by ~~mail or personal delivery,~~ to service
40 pursuant to Section 1215, on all of the following persons:
41

42 (1)–(2) * * *

1 (b) * * *

2
3 **§ 3918.**

4
5 (a)-(f) * * *

6
7 (g) At least 15 days before the hearing on a petition under subdivision (d) or (f), the petitioner
8 shall serve notice ~~by mail or personal delivery~~ pursuant to Section 1215 on each of the following
9 persons:

10
11 (1)-(3) * * *

12
13 (h) * * *

14
15 **§ 8100.**

16
17 The notice of hearing of a petition for administration of a decedent's estate, whether served
18 under Article 2 (commencing with Section 8110) or published under Article 3 (commencing with
19 Section 8120), shall state substantially as follows:

20
21 NOTICE OF PETITION TO ADMINISTER

22
23 ESTATE OF _____, ESTATE NO. _____

24
25 To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons who
26 may be otherwise interested in the will or estate, or both:

27
28 A petition has been filed by _____ in the Superior Court of California, County of
29 _____, requesting that _____ be appointed as personal representative to administer the
30 estate of _____ [and for probate of the decedent's will, which is available for examination
31 in the court file].

32
33 [The petition requests authority to administer the estate under the Independent Administration of
34 Estates Act. This will avoid the need to obtain court approval for many actions taken in
35 connection with the estate. However, before taking certain actions, the personal representative
36 will be required to give notice to interested persons unless they have waived notice or have
37 consented to the proposed action. The petition will be granted unless good cause is shown why it
38 should not be.]

39
40 The petition is set for hearing in Dept. No.

41
42 at _____ (Address) _____

1 on _____ (Date of hearing) _____ at _____ (Time of hearing) _____ .

2
3 IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your
4 objections or file written objections with the court before the hearing. Your appearance may be
5 in person or by your attorney.

6
7 IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim
8 with the court and ~~mail~~ serve pursuant to Section 1215 of the California Probate Code a copy ~~to~~
9 on the personal representative appointed by the court within the later of either (1) four months
10 from the date of first issuance of letters to a general personal representative, as defined in
11 subdivision (b) of Section 58 of the California Probate Code, or (2) 60 days from the date of
12 mailing or personal delivery of the notice to you under Section 9052 of the California Probate
13 Code.

14
15 YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may
16 request special notice of the filing of an inventory and appraisal of estate assets or of any petition
17 or account as provided in Section 1250 of the California Probate Code.

18
19 _____ (Name and address of petitioner or petitioner's attorney) _____
20

21 **§ 8110.**

22
23 At least 15 days before the hearing of a petition for administration of a decedent's estate, the
24 petitioner shall serve notice of the hearing ~~by mail or personal delivery~~ pursuant to Section 1215
25 on all of the following persons:

26
27 (a)-(b) * * *

28
29 **§ 8111.**

30
31 If the decedent's will involves or may involve a testamentary trust of property for charitable
32 purposes other than a charitable trust with a designated trustee resident in this state, or involves
33 or may involve a devise for charitable purposes without an identified devisee, notice of hearing
34 accompanied by a copy of the petition and of the will shall be served pursuant to Section 1215 on
35 the Attorney General as provided in Section 1209.

36
37 **§ 8469.**

38
39 (a) For good cause, the court may allow the priority given by Section 8461 to a conservator or
40 guardian of the estate of the decedent serving in that capacity at the time of death that has not
41 filed a first account, or that is acting as guardian or conservator for another person, or both.

42
43 (b) If the petition for appointment as administrator requests the court to allow the priority

1 permitted by subdivision (a), the petitioner shall, in addition to the notice otherwise required by
2 statute, serve notice of the hearing ~~by mail or personal delivery~~ pursuant to Section 1215 on the
3 public administrator.

4
5 **§ 8522.**

6
7 (a) * * *

8
9 (b) Appointment of a successor personal representative shall be made on petition and service of
10 notice pursuant to Section 1215 on interested persons in the manner provided in Article 2
11 (commencing with Section 8110) of Chapter 2, and shall be subject to the same priority as for an
12 original appointment of a personal representative. The personal representative of a deceased
13 personal representative is not, as such, entitled to appointment as successor personal
14 representative.

15
16 **§ 8803.**

17
18 On the filing of an inventory and appraisal or a supplemental inventory and appraisal, the
19 personal representative shall, pursuant to Section 1252, ~~mail~~ serve a copy ~~to~~ on each person who
20 has requested special notice.

21
22 **§ 8903.**

23
24 (a)–(b) * * *

25
26 (c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. Notice
27 of the hearing on the petition, together with a copy of the petition and a copy of the proposed
28 inventory and appraisal, shall be ~~given~~ served as provided in Sections 1215 and 1220 ~~to~~ on all of
29 the following persons:

30
31 (1)–(5) * * *

32
33 (d)–(e) * * *

34
35 **§ 8906.**

36
37 (a)–(b) * * *

38
39 (c) The person objecting shall ~~give~~ serve notice of the hearing, together with a copy of the
40 objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person
41 objecting shall also ~~mail~~ serve notice of the hearing and a copy of the objection ~~to~~ on the probate
42 referee at least 15 days before the date set for the hearing.

1 (d)–(e) * * *

2
3 **§ 8924.**

4
5 (a) The court shall remove the designated probate referee in any of the following circumstances:

6
7 (1) The personal representative shows cause, including incompetence or undue delay in making
8 the appraisal, that in the opinion of the court warrants removal of the probate referee. The
9 showing shall be made at a hearing on petition of the personal representative. The personal
10 representative shall ~~mail~~ serve pursuant to Section 1215 notice of the hearing on the petition ~~to~~
11 on the probate referee at least 15 days before the date set for the hearing.

12
13 (2) The personal representative has the right to remove the first probate referee who is designated
14 by the court. No cause need be shown for removal under this paragraph. The personal
15 representative may exercise the right at any time before the personal representative delivers the
16 inventory to the probate referee. The personal representative shall exercise the right by filing an
17 affidavit or declaration under penalty of perjury with the court and ~~mailing~~ serving a copy ~~to~~ on
18 the probate referee. Thereupon, the court shall remove the probate referee without any further act
19 or proof.

20
21 (3) * * *

22
23 (b) * * *

24
25 **§ 9052.**

26
27 The notice shall be in substantially the following form:

28
29 NOTICE OF ADMINISTRATION OF
30 ESTATE OF _____, DECEDENT

31
32 Notice to creditors:

33
34 Administration of the estate of _____ (deceased) has been commenced by _____
35 (personal representative) in Estate No. _____ in the Superior Court of California, County of
36 _____. You must file your claim with the court and ~~mail~~ serve a copy pursuant to Section
37 1215 of the California Probate Code on the personal representative within the last to occur of
38 four months after _____ (the date letters were first issued to a general personal
39 representative, as defined in subdivision (b) of Section 58 of the California Probate Code), or 60
40 days after the date this notice was mailed to you or, in the case of personal delivery, 60 days after
41 the date this notice was delivered to you, or you must petition to file a late claim as provided in
42 Section 9103 of the California Probate Code. Failure to file a claim with the court and serve a
43 copy of the claim on the personal representative will, in most instances, invalidate your claim. A

1 claim form may be obtained from the court clerk. For your protection, you are encouraged to file
2 your claim by certified mail, with return receipt requested.

3
4 (Date of mailing this notice)

5 (Name and address of personal representative or attorney)

6
7 **§ 9153.**

8
9 A claim form adopted by the Judicial Council shall inform the creditor that the claim must be
10 filed with the court and a copy ~~mailed or delivered to~~ served pursuant to Section 1215 on the
11 personal representative. The claim form shall include a proof of ~~mailing or delivery~~ service of a
12 copy of the claim ~~to~~ on the personal representative, which may be completed by the creditor.

13
14 **§ 9732.**

15
16 (a)–(b) * * *

17
18 (c) Notice of the hearing on the petition shall be ~~given~~ served as provided in Sections 1215 and
19 1220. In addition, the petitioner shall cause notice of the hearing and a copy of the petition to be
20 ~~mailed to~~ served pursuant to Section 1215 on all known devisees of property which is proposed
21 to be invested. Where the property proposed to be invested is devised to a trust or trustee, notice
22 of the hearing and a copy of the petition shall be ~~mailed to~~ served pursuant to Section 1215 on
23 the trustee or, if the trustee has not yet accepted the trust, ~~to~~ on the person named in the will as
24 trustee. Mailing Service pursuant to this subdivision shall be ~~to~~ on the person's last known
25 address as provided in Section 1220.

26
27 (d) * * *

28
29 **§ 9762.**

30
31 (a)–(c) * * *

32
33 (d) To obtain an order under this section, the personal representative or any interested person
34 shall file a petition showing that the order requested would be to the advantage of the estate and
35 in the best interest of the interested persons. Notice of the hearing on the petition shall be ~~given~~
36 served as provided in Sections 1215 and 1220. In addition, unless the court otherwise orders, the
37 petitioner, not less than 15 days before the hearing, shall cause notice of hearing and a copy of
38 the petition to be ~~mailed to~~ served pursuant to Section 1215 on each of the surviving general
39 partners at his or her last known address.

40
41 **§ 9783.**

42
43 A person described in Section 9782 may ~~deliver or mail~~ serve pursuant to Section 1215 a written

1 objection to the disposition or abandonment to the personal representative on or before the date
2 specified in the notice as the date on or after which the property will be disposed of or
3 abandoned. Subject to Section 9788, after receipt of the written objection, the personal
4 representative shall not dispose of or abandon the property without authorization by order of the
5 court obtained under Section 9611.

6
7 **§ 9787.**

8
9 (a) Except as provided in subdivision (b), a person described in Section 9782 who receives notice
10 of the proposed disposition or abandonment as provided in Section 9782, waives the right to
11 have the court later review the disposition or abandonment of the property unless the person does
12 one of the following:

13
14 (1) ~~Delivers or mails~~ Serves pursuant to Section 1215 a written objection as provided in Section
15 9783.

16
17 (2) * * *

18
19 (b) * * *

20
21 **§ 10585.**

22
23 (a) The notice of proposed action shall state all of the following:

24
25 (1) The name, ~~and~~ mailing address, and electronic address of the personal representative.

26
27 (2) The person, ~~and~~ telephone number, and electronic address to ~~each~~ contact to get additional
28 information.

29
30 (3)-(4) * * *

31
32 (b)-(c) * * *

33
34 **§ 10586.**

35
36 The notice of proposed action shall be ~~mailed or personally delivered to~~ served pursuant to
37 Section 1215 on each person required to be given notice of proposed action not less than 15 days
38 before the date specified in the notice of proposed action on or after which the proposed action is
39 to be taken. If mailed, the notice of proposed action shall be addressed to the person at the
40 person's last known address. ~~Sections 1215 and 1216 apply to the mailing or delivery of the~~
41 ~~notice of proposed action.~~

42
43 **§ 10587.**

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(a) * * *

(b) The objection to the proposed action is made by ~~delivering or mailing~~ servicing pursuant to Section 1215 a written objection to the proposed action ~~to~~ on the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

(c) * * *

§ 11601.

Notice of the hearing on the petition shall be ~~given~~ served as provided in Sections 1215 and 1220 ~~to~~ on all of the following persons:

(a)–(e) * * *

§ 13200.

(a) No sooner than six months from the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 1001 stating all of the following:

(1)–(10) * * *

(b)–(e) * * *

(f) The affiant shall ~~mail~~ serve pursuant to Section 1215 a copy of the affidavit and attachments ~~to~~ on any person identified in paragraph (4) of subdivision (a).

§ 13655.

(a) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter, or if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse’s will or for administration of the estate of the deceased spouse, notice of the hearing on the petition filed under this chapter shall be ~~given~~ served as provided in Sections 1215 and 1220 ~~to~~ on all of the following persons:

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(1)-(2) * * *

(b) The notice specified in subdivision (a) shall also be ~~mailed~~ served as provided in subdivision (a) ~~to~~ on the Attorney General, addressed to the office of the Attorney General at Sacramento, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either of the following:

(1)-(2) * * *

§ 15686.

(a) * * *

(b) A trustee may not charge an increased trustee's fee for administration of a particular trust unless the trustee first gives at least 60 days' written notice of that increased fee to all of the following persons:

(1)-(2) * * *

(3) Each beneficiary who has made a written request to the trustee for notice of an increased trustee's fee and has given an address for receiving notice ~~by mail~~.

(c) * * *

§ 16061.7.

(a)-(d) * * *

(e) The notification by trustee shall be served pursuant to Section 1215 on ~~by mail to~~ the last known address, ~~or by personal delivery~~.

(f) * * *

(g) The notification by trustee shall contain the following information:

(1) * * *

(2) The name, ~~mailing~~ mailing address, and telephone number of each trustee of the trust.

(3)-(5) * * *

1 (h) If the notification by the trustee is served because a revocable trust or any portion of it has
2 become irrevocable because of the death of one or more settlors of the trust, or because, by the
3 express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor
4 because of a contingency related to the death of one or more of the settlors of the trust, the
5 notification by the trustee shall also include a warning, set out in a separate paragraph in not less
6 than 10-point boldface type, or a reasonable equivalent thereof, that states as follows:

7
8 “You may not bring an action to contest the trust more than 120 days from the date this
9 notification by the trustee is served upon you or 60 days from the date on which a copy of the
10 terms of the trust is ~~mailed or personally delivered to~~ served on you during that 120-day period,
11 whichever is later.”

12
13 (i)–(j) * * *

14
15 **§ 16061.8.**

16
17 No person upon whom the notification by the trustee is served pursuant to this chapter, whether
18 the notice is served on him or her within or after the time period set forth in subdivision (f) of
19 Section 16061.7, may bring an action to contest the trust more than 120 days from the date the
20 notification by the trustee is served upon him or her, or 60 days from the day on which a copy of
21 the terms of the trust is ~~mailed or personally delivered to~~ served pursuant to Section 1215 on him
22 or her during that 120-day period, whichever is later.

23
24 **§ 16061.9.**

25
26 (a) * * *

27
28 (b) A trustee who fails to serve the notification by trustee as required by Section 16061.7 on an
29 heir who is not a beneficiary and whose identity is known to the trustee shall be responsible for
30 all damages caused to the heir by the failure unless the trustee shows that the trustee made a
31 reasonably diligent effort to comply with that section. For purposes of this subdivision,
32 “reasonably diligent effort” means that the trustee has ~~sent~~ served notice ~~by first-class mail to~~
33 pursuant to Section 1215 on the heir at the heir’s last ~~mailing~~ address actually known to the
34 trustee.

35
36 (c) * * *

37
38 **§ 16336.6.**

39
40 Unless expressly prohibited by the governing instrument, a trustee may reconvert the trust from a
41 unitrust or change the payout percentage of a unitrust.

42
43 (a) The trustee may make the reconversion or change in payout percentage without a court order

1 if all of the following conditions are satisfied:

2
3 (1)–(2) * * *

4
5 (3) One of the following notice requirements is satisfied:

6
7 (A) In the case of a proposed reconversion, the trustee gives written notice of the trustee’s
8 intention to convert that complies with the requirements of Chapter 5 (commencing with Section
9 16500) and no beneficiary objects to the proposed action in a writing ~~delivered to~~ served
10 pursuant to Section 1215 on the trustee within the period prescribed by subdivision (d) of Section
11 16502. The trustee’s notice shall include the information described in subdivision (3) and (4) of
12 subdivision (c) of Section 16336.4.

13
14 (B) In the case of a proposed change in payout percentage, the trustee gives written notice stating
15 the new payout percentage that the trustee proposes to adopt, which notice shall comply with the
16 requirements of Chapter 5 (commencing with Section 16500), and no beneficiary objects to the
17 proposed action in a writing ~~delivered~~ served pursuant to Section 1215 on the trustee within the
18 period prescribed by subdivision (d) of Section 16502.

19
20 (b) * * *

21
22 **§ 16501.**

23
24 (a) The trustee who elects to provide notice pursuant to this chapter shall ~~mail~~ serve pursuant to
25 Section 1215 notice of the proposed action ~~to~~ on each of the following:

26
27 (1)–(2) * * *

28
29 (b)–(d) * * *

30
31 **§ 16502.**

32
33 The notice of proposed action shall state that it is given pursuant to this section and shall include
34 all of the following:

35
36 (a) The name, mailing address, and ~~mailing~~ electronic address of the trustee.

37
38 (b) The name, ~~and~~ telephone number, and electronic address of a person who may be contacted
39 for additional information.

40
41 (c) A description of the action proposed to be taken and an explanation of the reasons for the
42 action.

1 (d) The time within which objections to the proposed action can be made, which shall be at least
2 45 days from the ~~mailing~~ service of the notice of proposed action.

3
4 (e) * * *

5
6 **§ 16503.**

7
8 (a) A beneficiary may object to the proposed action by ~~mailing~~ serving pursuant to Section 1215
9 a written objection ~~to~~ on the trustee at the address stated in the notice of proposed action within
10 the time period specified in the notice of proposed action.

11
12 (b)-(d) * * *

13
14 **§ 17203.**

15
16 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause
17 notice of hearing to be ~~mailed to~~ served pursuant to Section 1215 on all of the following persons:

18
19 (1)-(3) * * *

20
21 (b) * * *

22
23 (c) If a person to whom notice otherwise would be given has been deceased for at least 40 days,
24 and no personal representative has been appointed for the estate of that person, and the deceased
25 person's right, title, or interest has not passed to any other person pursuant to Division 8
26 (commencing with Section 13000) or otherwise, notice may instead be ~~given to~~ served pursuant
27 to Section 1215 on the following persons:

28
29 (1)-(2) * * *

30
31 **§17204.**

32
33 (a) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by
34 attorney, file with the court clerk where the proceedings are pending a written request stating that
35 the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or
36 all of the purposes described in Section 17200 and giving an address for receiving notice by
37 mail. A copy of the request shall be ~~personally delivered to or mailed to~~ served pursuant to
38 Section 1215 on the trustee or the trustee's attorney. If personally ~~delivered~~ served, the request is
39 effective when it is delivered. If mailed or electronically served, the request is effective when it
40 is received. When the original of the request is filed with the court clerk, it shall be accompanied
41 by a written admission or proof of service. A request for special notice may be modified or
42 withdrawn in the same manner as provided for the making of the initial request.

1 (b)(1)–(4) * * *

2
3 (c)–(d) * * *

4
5 **§ 17205.**

6
7 If a trustee or beneficiary has served and filed either a notice of appearance, in person or by
8 counsel, directed to the petitioner or the petitioner’s counsel in connection with a particular
9 petition and proceeding or a written request for a copy of the petition, and has given an address
10 to which notice or a copy of the petition may be ~~mailed or delivered~~ served pursuant to Section
11 1215, the petitioner shall cause a copy of the petition to be ~~mailed to~~ served on that person within
12 five days after service of the notice of appearance or receipt of the request.
13

14 **§ 17403.**

15
16 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause
17 notice of the time and place of the hearing to be ~~mailed to~~ served pursuant to Section 1215 on
18 each of the persons named in the petition at their respective addresses as stated in the petition.
19

20 (b) * * *

21
22 **§ 17454.**

23
24 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause
25 notice of the time and place of the hearing to be ~~mailed to~~ served pursuant to Section 1215 on
26 each of the persons named in the petition at their respective addresses as stated in the petition.
27

28 (b) * * *

29
30 **§ 19011.**

31
32 (a) * * *

33
34 (b) Any claim form adopted by the Judicial Council shall inform the creditor that the claim must
35 be filed with the court and a copy ~~mailed or delivered to~~ served pursuant to Section 1215 on the
36 trustee. The claim form shall include a proof of ~~mailing or delivery~~ service of a copy of the claim
37 ~~to~~ on the trustee, which may be completed by the claimant.
38

39 **§ 19024.**

40
41 At least 30 days before the time set for the hearing on the petition, the petitioner shall cause
42 notice of the time and place of the hearing, together with a copy of the petition, to be ~~mailed to~~
43 served pursuant to Section 1215 on each of the following persons who is not a petitioner:

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43

(a)-(d) * * *

§ 19040.

(a) * * *

(b) The caption of the notice, the deceased settlor’s name, and the name of the trustee shall be in at least 8-point type, the text of the notice shall be in at least 7-point type, and the notice shall state substantially as follows:

NOTICE TO CREDITORS

OF _____

SUPERIOR COURT OF CALIFORNIA

COUNTY OF _____

Notice is hereby given to the creditors and contingent creditors of the above-named decedent, that all persons having claims against the decedent are required to file them with the Superior Court, at _____, and ~~mail~~ serve pursuant to Section 1215 of the California Probate Code a copy ~~to~~ on _____, as trustee of the trust dated _____ wherein the decedent was the settlor, at _____, within the later of four months after _____ (the date of the first publication of notice to creditors) or, if notice is mailed or personally delivered to you, 60 days after the date this notice is mailed or personally delivered to you. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

(name and address of trustee or attorney)

(c) * * *

§ 19052.

The notice shall be in substantially the following form:

NOTICE TO CREDITORS

OF _____

SUPERIOR COURT OF CALIFORNIA

COUNTY OF _____

1 Notice is hereby given to the creditors and contingent creditors of the above-named decedent,
2 that all persons having claims against the decedent are required to file them with the Superior
3 Court, at _____, and ~~mail or deliver~~ serve pursuant to Section 1215 of the California Probate
4 Code a copy to on _____, as trustee of the trust dated _____ wherein the decedent was the
5 settlor, at _____, within the later of four months after _____ (the date of the first publication
6 of notice to creditors) or, if notice is mailed or personally delivered to you, 60 days after the date
7 this notice is mailed or personally delivered to you, or you must petition to file a late claim as
8 provided in Section 19103 of the Probate Code. A claim form may be obtained from the court
9 clerk. For your protection, you are encouraged to file your claim by certified mail, with return
10 receipt requested.

11 _____
12 _____
13 (Date of mailing this
14 notice if applicable)

15 _____
16 _____
17 (name and address of
18 trustee or attorney)

19
20 **§ 19150.**

21
22 (a) * * *

23
24 (b) A claim shall be filed with the court and a copy shall be ~~mailed to~~ served pursuant to Section
25 1215 on the trustee. Failure to ~~mail~~ serve a copy ~~to on~~ the trustee does not invalidate a properly
26 filed claim, but any loss that results from the failure shall be borne by the creditor.

27
28 **§ 19153.**

29
30 The Judicial Council may adopt a claim form which shall inform the creditor that the claim must
31 be filed with the court and a copy ~~mailed or delivered to~~ served pursuant to Section 1215 on the
32 trustee. Any such claim form shall include a proof of ~~mailing or delivery~~ service of a copy of the
33 claim ~~to on~~ the trustee which may be completed by the creditor.

34
35 **§ 19323.**

36
37 (a) * * *

38
39 (b) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause
40 notice of the time and place of hearing, together with a copy of the petition, to be ~~mailed to~~
41 served pursuant to Section 1215 on each of the following persons who are not petitioners:

42
43 (1)-(4) * * *

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§ 20122.

Not less than 30 days before the hearing, the petitioner shall do both of the following:

(a) Cause notice of the hearing and a copy of the petition to be ~~mailed to~~ served pursuant to Section 1215 on the personal representative and ~~to~~ on each person interested in the estate against whom prorated amounts may be charged pursuant to paragraph (1) of subdivision (a) of Section 20123.

(b) * * *

§ 20222.

Not less than 30 days before the hearing the petitioner shall do both of the following:

(a) Cause notice of the hearing and a copy of the petition to be ~~mailed to~~ served pursuant to Section 1215 on the trustee and each transferee against whom prorated amounts may be charged pursuant to paragraph (1) of subdivision (a) of Section 20223.

(b) * * *

Sections 728 and 5362 of the Welfare and Institutions Code would be amended, effective January 1, 2018, to read:

1 **§ 728.**

2
3 (a) * * *

4
5 (b) If the juvenile court decides to terminate or modify a guardianship previously
6 established under the Probate Code pursuant to subdivision (a), the juvenile court shall
7 provide notice of that decision to the court in which the guardianship was originally
8 established. The clerk of the superior court, upon receipt of the notice, shall file the notice
9 with other documents and records of the pending proceeding and send by first-class mail
10 or electronic service pursuant to Section 215 of the Probate Code a copy of the notice to
11 all parties of record in the superior court.

12
13 (c)-(g) * * *

14
15 **§ 5362.**

16
17 (a) The clerk of the superior court shall notify each conservator, his or her conservatee
18 and the person in charge of the facility in which the person resides, and the conservatee's
19 attorney, at least 60 days before the termination of the one-year period. If the conservator
20 is a private party, the clerk of the superior court shall also notify the mental health
21 director and the county officer providing conservatorship investigation pursuant to
22 Section 5355, at least 60 days before the termination of the one-year period. Notification
23 shall be ~~given in person or by first-class mail~~ served pursuant to Section 1215 of the
24 Probate Code. The notification shall be in substantially the following form:

25
26 [Form text here]

27
28 (b) Subject to a request for a court hearing or jury trial, the judge may, on his or her own
29 motion, accept or reject the conservator's petition.

30
31 If the conservator does not petition to reestablish conservatorship at or before the
32 termination of the one-year period, the court shall issue a decree terminating
33 conservatorship. The decree shall be ~~sent to~~ served pursuant to Section 1215 of the
34 Probate Code on the conservator and his or her conservatee ~~by first-class mail~~ and shall
35 be accompanied by a statement of California law as set forth in Section 5368.
36

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Technology: Electronic Filing, Service, and Signatures	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011	January 1, 2018
Proposed by	Contact
Information Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov

Executive Summary and Origin

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

Background

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since January 1, 2000, Code of Civil Procedure section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) Four years ago, the Legislature enacted Assembly Bill 2073, which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320; codified at Code of Civ. Proc., § 1010.6(d).)

In addition, AB 2073 instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. (Code of Civ. Proc., § 1010.6(f).) Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

by local rule. (*Id.*, § 1010.6(g).) Effective July 1, 2013, the Judicial Council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service in civil cases.

The Proposal

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

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

Proposed amendments to section 1010.6

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

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

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

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

Provide for a consistent effective date of filing across courts and case types. Section 1010.6 would also be amended to provide for a consistent effective date of filing across courts and case types: “Any document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document that is received after midnight is deemed to have been filed on the next court day.” (Proposed amended Code Civ. Proc., § 1010.6(b)(3).)

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

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

Accordingly, the current statute and rules allow for both inter- and intracourt variation in the effective date for electronic filing depending on (1) whether electronic filing is permissive or mandatory for the case type and (2) what time a court stops accepting filings each day. The potential for variation has increased in recent years as budget concerns have caused many courts to cut back on the hours that their filing counters are open. To provide for consistency across courts and case types, the committee recommends that the cutoff time be midnight for determining the effective date of filing for both permissive and mandatory electronic filing.

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

This proposal would codify the effective date of service by adding a new paragraph (5) to section 1010.6(a). To provide for consistency across courts and with the proposed effective date of electronic filing, the new paragraph would provide that “[a]ny document that is served electronically before midnight on a court day shall be deemed to have been served on that court day, and any document that is served electronically after midnight on any court day shall be deemed to have been served on the next court day.”

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

Codify the mandatory electronic service provisions. This proposal would codify the mandatory electronic service provisions from the rules. Subdivision (a) of section 1010.6—which governs electronic service in trial courts generally—does not expressly authorize mandatory electronic service. (See Code Civ. Proc., § 1010.6(a)(2) [authorizing electronic service of a document “when a party has agreed to accept service electronically in that action”].)¹ Subdivisions (c) and (d) recognize that mandatory electronic service may be required by court order in complex civil cases or by local rule as part of the Superior Court of Orange County’s electronic filing pilot project. The authority for the mandatory electronic service rules is instead derived from subdivision (f) of section 1010.6, which required the Judicial Council, on or before July 1, 2014, to adopt uniform rules to permit mandatory electronic filing and service of documents in the trial courts.

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

¹ Subdivision (a)(3) does allow courts to e-serve a document if the party has agreed to accept e-service or the court has ordered electronic service under subdivisions (c) or (d), which currently refer to mandatory electronic service in complex civil cases and the Superior Court of Orange County’s pilot project. But it does not expressly allow courts—other than the Superior Court of Orange County—to require electronic service of a document in cases other than complex civil cases. Nevertheless, because this proposal would amend subdivision (d) to address mandatory electronic service in all courts, this proposal would not need to make any further amendments to subdivision (a)(3).

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

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

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

Proposed amendments to sections 664.5 and 1011

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

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

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

Proposed new section 1013b

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

The proposed language for section 1013b(a)(1) is not currently in rule 2.251; it is intended to correct an oversight in the rule that conflicts with section 1010.6.³ Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that “the person making the service” is “not a party to the cause.” However, Code of Civil Procedure section 1010.6 allows for electronic service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) [“Electronic service may be performed directly *by a party*, by an agent of a party, including the party’s attorney, or through an electronic filing service provider,” italics added].) To reflect this difference, proposed section 1013b(a) would add another exception to the general requirement that proof of electronic service be made by any of the methods provided in section 1013a for proof of mailing. Proposed section 1013b(a)(1) would recognize that proof of electronic service need not state that the party making the service is “not a party to the cause.”

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

The proposed language for section 1013b(b) is taken directly from rule 2.251(i)(2), which provides that proof of electronic service may be in electronic form and may be electronically filed with the court. Proposed section 1013b(c) modifies the language in rule 2.51(i)(4) to cross-

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

³ as and the Civil and Small Claims Advisory Committee have also recommended circulating for public comment a rules proposal that would recommend eliminating this requirement from the rule as part of phase II of the Rules Modernization Project.

reference the proposed new signature requirements (discussed above) in Code of Civil Procedure section 1010.6(b)(2)(B).

Alternatives Considered

The committee also considered recommending that documents electronically filed and served before midnight will be deemed filed or served that day in proposed new subdivision (a)(5) and amended subdivision (b)(3). The committee consulted with other advisory committees on this issue. Recognizing that there are valid arguments in support of both options, the committee has specifically requested comment on this issue.

Implementation Requirements, Costs, and Operational Impacts

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

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

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems/
- Would one year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?
- Would removing the time of electronic service from the proof of electronic service cause any difficulties for the courts?

Attachments and Links

1. Proposed Code of Civil Procedure sections 664.5, 1010.6, 1011, and 1013b, at pages 115–119

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

1 **§ 664.5.**

2
3 (a) In any contested action or special proceeding other than a small claims action or an
4 action or proceeding in which a prevailing party is not represented by counsel, the party
5 submitting an order or judgment for entry shall prepare and ~~mail~~ serve a copy of the
6 notice of entry of judgment to all parties who have appeared in the action or proceeding
7 and shall file with the court the original notice of entry of judgment together with the
8 proof of service ~~by mail~~. This subdivision does not apply in a proceeding for dissolution
9 of marriage, for nullity of marriage, or for legal separation.

10
11 (b) Promptly upon entry of judgment in a contested action or special proceeding in which
12 a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve
13 notice of entry of judgment to all parties who have appeared in the action or special
14 proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the
15 court's file in the cause.

16
17 (c) * * *

18
19 (d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve
20 notice of entry of any judgment or ruling, whether or not appealable.

21
22 (e) The Judicial Council shall, ~~by January 1, 1999, adopt a rule of court for the purposes~~
23 ~~of providing~~ by rule of court that, upon entry of judgment in a contested action or
24 special proceeding in which a state statute or regulation has been declared
25 unconstitutional by the court, the Attorney General is promptly notified of the judgment
26 and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.

27
28 **§ 1010.6.**

29
30 (a) A document may be served electronically in an action filed with the court as provided
31 in this section, in accordance with rules adopted pursuant to subdivision (e).

32
33 (1) For purposes of this section:

34
35 (A) "Electronic service" means service of a document, on a party or other person, by
36 either electronic transmission or electronic notification. Electronic service may be
37 performed directly by a party or other person, by an agent of a party or other person,
38 including the party's or other person's attorney, or through an electronic filing service
39 provider.

40
41 (B)–(C) * * *

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

6
7 (3) In any action in which a party or other person has agreed to accept electronic service
8 under paragraph (2), or in which the court has ordered electronic service on a represented
9 party or other person under subdivision (c) or (d), the court may electronically serve any
10 document issued by the court that is not required to be personally served in the same
11 manner that parties electronically serve documents. The electronic service of documents
12 by the court shall have the same legal effect as service by mail, except as provided in
13 paragraph (4).

14
15 (4) * * *

16
17 (5) Any document that is served electronically before midnight on a court day shall be
18 deemed to have been served on that court day, and any document that is served
19 electronically after midnight on any court day shall be deemed to have been served on the
20 next court day.

21
22 (b) A trial court may adopt local rules permitting electronic filing of documents, subject
23 to rules adopted pursuant to subdivision (e) and the following conditions:

24
25 (1) * * *

26
27 (2)(A) When a document to be filed requires ~~the~~ a signature, not under penalty of perjury,
28 ~~of an attorney or a self-represented party,~~ the document shall be deemed to have been
29 signed by ~~that attorney or self-represented party~~ the person filing if filed electronically.

30
31 (B) When a document to be filed requires the signature, under penalty of perjury, of any
32 person, the document shall be deemed to have been signed by that person if filed
33 electronically and if either of the following conditions is satisfied:

34
35 (i) That person has signed a printed form of the document ~~has been signed by that person~~
36 prior to, or on the same day as, the date of filing. The attorney or person filing the
37 document represents, by the act of filing, that the declarant has complied with this
38 section. The attorney or person filing the document shall maintain the printed form of the
39 document bearing the original signature until final disposition of the case, as defined in
40 subdivision (c) of Government Code section 68151, and make it available for review and
41 copying upon the request of the court or any party to the action or proceeding in which it
42 is filed.

1
2 (ii) That person has signed the document using a computer or other technology in
3 accordance with procedures, standards, and guidelines established by the Judicial Council
4 pursuant to this section.

5
6 (3) Any document ~~that is electronically filed with the~~ received electronically by the court
7 after the close of business on any day shall be before midnight on a court day shall be
8 deemed to have been filed on that court day, and any document that is received
9 electronically after midnight is deemed to have been filed on the next court day. “Close
10 of business,” as used in this paragraph, shall mean 5 p.m. or the time at which the court
11 would not accept filing at the court’s filing counter, whichever is earlier.

12
13 (4)–(6) * * *

14
15 (c) * * *

16
17 (d) A superior court may, by local rule, require electronic filing and service in civil cases,
18 subject to the requirements and conditions stated in subdivision (b) of this section, the
19 rules adopted by the Judicial Council under subdivision (f), and the following conditions:

20
21 ~~(1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local~~
22 ~~rule and until July 1, 2014, establish a pilot project to require parties to specified civil~~
23 ~~actions to electronically file and serve documents, subject to the requirements set forth in~~
24 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to~~
25 ~~subdivision (e) and the following conditions:~~

26
27 ~~(A)~~ The court shall have the ability to maintain the official court record in electronic
28 format for all cases where electronic filing is required.

29
30 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing
31 service provider capable of electronically filing documents with the court, or to electronic
32 filing access directly through the court. Any fees charged by the court shall be for no
33 more than the actual cost of the electronic filing and service of the documents, and shall
34 be waived when deemed appropriate by the court, including, but not limited to, for any
35 party who has received a fee waiver. Any fees charged by an electronic filing service
36 provider shall be reasonable and shall be waived when deemed appropriate by the court,
37 including, but not limited to, for any party who has received a fee waiver.

38
39 ~~(C)~~(3) The court shall have a procedure for the filing of nonelectronic documents in order
40 to prevent the program from causing undue hardship or significant prejudice to any party
41 in an action, including, but not limited to, unrepresented parties.

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

2
3 ~~(D) A court that elects to require electronic filing pursuant to this subdivision may permit~~
4 ~~documents to be filed electronically until 12 a.m. of the day after the court date that the~~
5 ~~filing is due, and the filing shall be considered timely. However, if same day service of a~~
6 ~~document is required, the document shall be electronically filed by 5 p.m. on the court~~
7 ~~date that the filing is due. Ex parte documents shall be electronically filed on the same~~
8 ~~date and within the same time period as would be required for the filing of a hard copy of~~
9 ~~the ex parte documents at the clerk's window in the participating county. Documents~~
10 ~~filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest~~
11 ~~court day following the filing.~~

12
13 ~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall~~
14 ~~conduct an evaluation of the pilot project and report to the Legislature, on or before~~
15 ~~December 31, 2013, on the results of the evaluation. The evaluation shall review, among~~
16 ~~other things, the cost of the program to participants, cost effectiveness for the court,~~
17 ~~effect on unrepresented parties and parties with fee waivers, and ease of use for~~
18 ~~participants.~~

19
20 (e) * * *

21
22 ~~(f) The Judicial Council shall, on or before July 1, 2014, adopt uniform rules to permit~~
23 ~~the mandatory electronic filing and service of documents for specified civil actions in the~~
24 ~~trial courts of the state, which shall be informed by any study performed pursuant to~~
25 ~~paragraph (2) of subdivision (d) and which shall include statewide policies on vendor~~
26 ~~contracts, privacy, access to public records, unrepresented parties, parties with fee~~
27 ~~waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the~~
28 ~~integrity of electronic service. These rules shall conform to the conditions set forth in this~~
29 ~~section, as amended from time to time.~~

30
31 ~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory~~
32 ~~electronic filing and service of documents for specified civil actions in the trial courts of~~
33 ~~the state, as specified in subdivision (f), a superior court may, by local rule, require~~
34 ~~mandatory electronic filing, pursuant to paragraph (2) of this subdivision.~~

35
36 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so~~
37 ~~pursuant to the requirements and conditions set forth in this section, including, but not~~
38 ~~limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and~~
39 ~~subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the~~
40 ~~rules adopted by the Judicial Council, as specified in subdivision (f).~~

1 **§ 1011.**

2
3 The service may be personal, by delivery to the party or attorney on whom the service is
4 required to be made, or it may be as follows:

5
6 (a)–(b) * * *

7
8 (c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on
9 electronic service in the California Rules of Court.

10
11 **§ 1013b.**

12
13 (a) Proof of electronic service may be made by any of the methods provided in Section
14 1013a, with the following exceptions:

15
16 (1) The proof of electronic service does not need to state that the person making the
17 service is not a party to the cause.

18
19 (2) The proof of electronic service shall state:

20
21 (A) The electronic service address of the person making the service, in addition to that
22 person’s residence or business address;

23
24 (B) The date of the electronic service, instead of the date and place of deposit in the mail;

25
26 (C) The name and electronic service address of the person served, in place of that
27 person’s name and address as shown on the envelope; and

28
29 (D) That the document was served electronically in place of the statement that the
30 envelope was sealed and deposited in the mail with postage fully prepaid.

31
32 (b) Proof of electronic service may be in electronic form and may be filed electronically
33 with the court.

34
35 (c) Proof of electronic service shall be signed as provided in subparagraph (B) of
36 paragraph (2) of subdivision (b) of Section 1010.6.