

**Invitation to Comment**

Title	Electronic Filing and Service: Changes to the Rules (adopt Cal. Rules of Court, rule 2.251; amend rules 2.256, 2.257, and 2.260)
Summary	New rule 2.251 would be adopted to provide a rule on the construction of the electronic filing and service rules. Rules 2.256 (on the responsibilities of the filer), rule 2.257 (on requirements for signatures), and rule 2.260 (on electronic service) would be amended to make certain provisions more practicable and effective.
Source	Court Technology Advisory Committee Hon. Ming W. Chin, Chair
Staff	Patrick O'Donnell, Supervising Attorney, 415-865-7665, patrick.o'donnell@jud.ca.gov

Discussion

A new rule on the construction of the rules on electronic filing and service would be adopted, and three current rules would be amended. The reasons for adopting the new rule and for amending the other rules are described below.

Rule 2.251. Construction of rules

This new rule would provide direction as to how the rules in the chapter on electronic service and filing (rules 2.250–2.261) are to be construed. Specifically, rule 2.251 would state: “The rules in this chapter must be construed to authorize and permit filing and service by electronic means to the extent feasible.” This rule of construction will advance the policy that favors the use of electronic filing and service as they become more widely available. The rule also will give courts interpreting the rules on electronic service and filing guidance on construing those rules.

Rule 2.256. Responsibilities of electronic filer

Currently, this rule contains a provision that, by January 1, 2010, any format adopted by the court for electronically filed documents must allow for full text searching. (See rule 2.256(b)(2).) The committee recommends deleting this provision at the present time.

The committee is currently looking into issues relating to the preservation of privacy in electronic court records. While it is still undertaking this

review, it considers it premature to mandate that courts require formats for filed documents that permit full text searching.

Rule 2.257. Requirements for signatures on documents; retention of original signed documents

The committee proposes that rule 2.257 regarding signatures on documents filed electronically be amended. The proposed amendment to rule 2.257 is needed to clarify how long a party who has electronically filed a document containing a signature must retain the original signed document.

It appears that the clearest and most logical length of time for retaining an original, signed document would be the length of time that courts are required by law to retain that type of document under the Government Code section 68152.<sup>1</sup> Accordingly, this proposal would add a new subdivision (e) to rule 2.257, which would state:

“A party that electronically files a copy of a signed document must maintain the document bearing the original signature for the length of time prescribed for the court to retain that type of document under Government Code section 68152.”

There may sometimes be situations in which a different, shorter, time for retaining original signed documents would probably be sufficient. Nonetheless, if there is to be a general rule applicable to the retention of original signed documents in all types of cases, the times specified in Government section 68152 appear to be the safest, clearest, and most logical times to incorporate into the rule. This Invitation to Comment invites comments on whether any different time frame should be used for the retention of signed documents, and requests that anyone proposing such a different time frame explain the details and rationale for their proposal.

Finally, the committee thinks that if the proposed amendment is adopted, it may be subsequently desirable to establish by rule a procedure for parties or their attorneys to submit signed documents to the court. They may not always be able to retain signed documents in some circumstances such as the retirement of an attorney of record, the dissolution of a law firm, or other similar situations. In these circumstances, the rule would

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<sup>1</sup> For reference, a copy of Government Code section 68152 is attached at the end of this Invitation to Comment.

relieve the parties or their attorneys of the duty to retain signed documents provided those documents are submitted to the court. This Invitation to Comment invites comments and suggestions about such a procedure.

### Rule 2.260. Electronic Service

The proposed amendments to rule 2.260 are intended to clarify, update, and improve the effectiveness of this rule on electronic service. The rationale for each of the specific proposed amendments to rule 2.260 is discussed below.

#### *1. Rule 2.260(a)*

Rule 2.260(a)(2) provides that a party agrees to accept electronic service by electronically filing any document with the court. While this provision makes good sense in complex cases and most ordinary civil cases, it may pose practical problems and may serve as a barrier to e-filing in small claims cases.

In small claims cases, e-filing is often used only to file the original complaint. This is done through self-help centers, kiosks, or over the Internet. Subsequent service and filing in the small claims cases are generally done by non-electronic means. After the initial filing and service, documents are rarely served by the parties on one another (there is no discovery in such cases, for example).

Thus, the general rule that filing electronically constitutes consent to electronic service will not always apply in small claims cases. Accordingly, this proposal would add to rule 2.260(a) a new subpart (3) stating:

“A party in a small claims case may elect to not accept service electronically under (2) by indicating, at the time of electronically filing its claim, that it does not consent to electronic service in the case. A court that provides for electronic filing in small claims cases must provide a means for a party filing electronically to indicate if the party does not consent to electronic service in the case.”

This provision preserves the general principle that filing and service by electronic means are favored, even in small claims cases. But it recognizes that parties in small claims cases may not have readily accessible means to accept electronic service and should not be required to consent to it in every case. Hence, new (a)(3) would allow small claims

litigants to opt out of electronic service by indicating that they do not consent to electronic service at the time they file their claims.

*2. Rule 2.260(b)*

This subdivision starts with the words “By January 1, 2009.” Because this time has passed and the new provision is in effect, the prefatory language should be deleted.

*3. Rule 2.260(f)(1)(D)*

This provision currently states that proofs of electronic service must state that “the transmission was reported as complete and without error.” This language was derived from the fax filing rules, but it does not apply accurately to electronic filing. In e-filing and service, the filer does not receive an error report. So, the current language should either be eliminated entirely or changed to state “that no message was received that the transmission was undeliverable” to reflect the realities of e-filing and service.

The committee proposes that the statement be eliminated entirely. Proofs of service by mail do not require any declaration that the serving party did not receive notice that the mail was undeliverable. This same approach should be used for electronic service. Electronic service should not impose additional requirements on parties that would make it more burdensome or complicated to use than service by mail.

*4. Rule 2.260(f)(4)*

The rules on electronic service do not currently prescribe the length of time that a party must retain an original signed document when a copy has been filed or served electronically. As described above, a proposed amendment adding rule 2.257(e) would prescribe a general rule regarding the length of time for retaining such documents. Rule 2.260(f)(4) would be amended to be consistent with the new provision in rule 2.257(e).

New and amended rules 2.251, 2.256, 2.257, and 2.260 are attached at pages 5–10. Government Code section 68152 is attached at pages 11–15.

Rules 2.251 of the California Rules of Court would be adopted, and rules 2.256, 2.257, and 2.260 would be amended, effective January 1, 2010, to read:

1 **Rule 2.251. Construction of rules**

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3 The rules in this chapter must be construed to authorize and permit filing and  
4 service by electronic means to the extent feasible.

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7 **Rule 2.256. Responsibilities of electronic filer**

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9 (a) **Conditions of filing \* \* \* \***

10  
11 (b) **Format of documents to be filed electronically**

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

16  
17 (1) The software for creating and reading documents must be in the public  
18 domain or generally available at a reasonable cost.

19  
20 ~~(2) By January 1, 2010, any format adopted by the court must allow for full~~  
21 ~~text searching. Documents not available in a format that permits full~~  
22 ~~text searching must be scanned or imaged as required by the court,~~  
23 ~~unless the court orders that scanning or imaging would be unduly~~  
24 ~~burdensome. By January 1, 2010, such scanning or imaging must allow~~  
25 ~~for full text searching to the extent feasible.~~

26  
27 ~~(3)~~(2) The printing of documents must not result in the loss of document  
28 text, format, or appearance.

29  
30 If a document is filed electronically under the rules in this chapter and cannot  
31 be formatted to be consistent with a formatting rule elsewhere in the  
32 California Rules of Court, the rules in this chapter prevail.

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35 **Rule 2.257. Requirements for signatures on documents; retention of original,**  
36 **signed documents**

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38 (a) – (d) \* \* \*

39  
40 **(e) Length of retention of original signed documents**

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42 A party that electronically files a copy of a signed document must maintain  
43 the document bearing the original signature for the length of time prescribed

1           for the court to retain that type of document under Government Code section  
2           68152.

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5   **Rule 2.260. Electronic service**

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7   **(a) Consent to electronic service**

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9       (1) When a notice may be served by mail, express mail, overnight delivery,  
10       or fax transmission, electronic service of the notice is permitted when  
11       authorized by these rules.

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13       (2) A party ~~indicates that the party~~ agrees to accept electronic service by:

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15           (A) Filing and serving a notice that the party accepts electronic  
16           service. The notice must include the electronic notification  
17           address at which the party agrees to accept service; or

18  
19           (B) Electronically filing any document with the court. The act of electronic  
20           filing is evidence that the party agrees to accept service at the electronic  
21           notification address the party has furnished to the court under rule  
22           2.256(a)(4).

23  
24       (3) A party in a small claims case may elect to not accept service  
25       electronically under (2) by indicating, at the time of electronically filing  
26       its claim, that it does not consent to electronic service in the case. A  
27       court that provides for electronic filing in small claims cases must  
28       provide a means for a party filing electronically to indicate if the party  
29       does not consent to electronic service in the case.

30  
31       (4) A party that has consented to electronic service under ~~(2)~~(3) and has  
32       used an electronic filing service provider to file and serve documents in  
33       a case consents to service on that electronic filing service provider as  
34       the designated agent for service for the party in the case, until such time  
35       as the party designates a different agent for service.

36  
37   **(b) Maintenance of electronic service lists**

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39       ~~By January 1, 2009, or before if possible,~~ A court that permits electronic  
40       filing in a case must maintain and make available electronically to the parties  
41       an electronic service list that contains the parties' current electronic  
42       notification addresses, as provided by the parties that have filed  
43       electronically in the case.

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(c) – (e) \* \* \* \*

**(f) Proof of service**

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:

- (A) The electronic notification address of the person making the service, in addition to that person’s residence or business address;
- (B) The date and time of the electronic service, instead of the date and place of deposit in the mail;
- (C) The name and electronic notification address of the person served, in place of that person’s name and address as shown on the envelope; and
- (D) That the document was served electronically ~~and that the transmission was reported as complete and without error~~, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

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

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

(4) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant’s original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a). The party that is maintaining a proof of electronic service of a document bearing the declarant’s original signature must retain the proof of service of the document for the length of time prescribed for the court to retain that type of document under Government Code section 68152.

**(g) Electronic service by court**

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

## Government Code Section 68152

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

- (a) Adoption: retain permanently.
- (b) Change of name: retain permanently.
- (c) Other civil actions and proceedings, as follows:
  - (1) Except as otherwise specified: 10 years.
  - (2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.
  - (3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.
  - (4) Eminent domain: retain permanently.
  - (5) Family law, except as otherwise specified: 30 years.
  - (6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.
  - (7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.
  - (8) Paternity: retain permanently.
  - (9) Petition, except as otherwise specified: 10 years.
  - (10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.
  - (11) Small claims: 10 years.
  - (12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.
- (d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:
  - (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.
  - (2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

- (1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.
- (2) Felony, except as otherwise specified: 75 years.
- (3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.
- (4) Misdemeanor, except as otherwise specified: five years.
- (5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.
- (6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.
- (7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five years.
- (8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.
- (9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.
- (10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.
- (11) Infraction, except as otherwise specified: three years.
- (12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

- (f) Habeas corpus: same period as period for retention of the records in the underlying case category.
- (g) Juvenile.
  - (1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.
  - (2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions **Code**. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.
  - (5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.
- (h) Probate.
  - (1) Conservatorship: 10 years after decree of termination.
  - (2) Guardianship: 10 years after the age of 18.
  - (3) Probate, including probated wills, except as otherwise specified: retain permanently.
- (i) Court records of the appellate division of the superior court: five years.

- (j) Other records.
- (1) Applications in forma pauperis: any time after the disposition of the underlying case.
  - (2) Arrest warrant: same period as period for retention of the records in the underlying case category.
  - (3) Bench warrant: same period as period for retention of the records in the underlying case category.
  - (4) Bond: three years after exoneration and release.
  - (5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.
  - (6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.
  - (7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.
  - (8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.
  - (9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.
  - (10) Index, except as otherwise specified: retain permanently.
  - (11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.
  - (12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.
  - (13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.
  - (14) Minutes: same period as period for retention of the records in the underlying case category.
  - (15) Naturalization index: retain permanently.

- (16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.
- (17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.
- (18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of the court records under this section shall be extended as follows:

- (1) By order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.
- (2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

## Item SPR09-26 Response Form

**Title:** **Electronic Filing and Service: Changes to the Rules** (adopt Cal. Rules of Court, rule 2.251; amend rules 2.256, 2.257, and 2.260)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009</b>
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