

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR13-13

Title	Action Requested
Court Administration: Repeal Rules Mandating Use of Recycled Paper	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Repeal Cal. Rules of Court, rules 1.22, 2.101, 2.131, and 10.503 and amend rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614	January 1, 2014
Proposed by	Contact
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Executive Summary and Origin

This proposal would eliminate all California Rules of Court mandating use of recycled paper—those rules addressed to courts as well as those addressed to parties. The statutory mandate that courts ensure at least 50 percent of reportable purchases, including paper products, are recycled products would remain in effect. This proposal was originally recommended by the Court Executives Advisory Committee, at the request of the Superior Court of Orange County, as one of the suggestions that the committee submitted to the Rules and Project Committee of the Judicial Council to achieve cost savings and efficiencies.

The Proposal

The proposal would eliminate all California Rules of Court¹ mandating the use of recycled paper, effective January 1, 2014. The rules that would be repealed in their entirety are:

- Rule 1.22. Recycled paper (*documents filed or served in actions in all courts*)
- Rule 2.101. Use of recycled paper; certification by attorney or party (*documents filed or served in actions in trial courts*)

¹ All further references to rules are to California Rules of Court unless otherwise indicated.

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 These proposals are circulated for comment purposes only.

- Rule 2.131 Use of recycled paper (*forms filed in trial courts*)
- Rule 10.503. Use of recycled paper by all courts

The rules that would be amended to remove the provisions regarding recycled paper are:

- Rule 1.6. Definitions and use of terms (*delete (22) definition of “recycled”*)
- Rule 3.1368. Paper format (*CEQA administrative records*)
- Rule 8.144. Form of the record (*civil appeals in courts of appeal*)
- Rule 8.204. Contents and form of briefs (*civil appeals in courts of appeal*)
- Rule 8.804. Definitions (*delete (20), definition of “recycled” pertaining to superior court appellate division*)
- Rule 8.838. Form of the record (*civil appeals in superior court appellate division*)
- Rule 8.883. Contents and form of briefs (*limited civil and misdemeanor appeals*)
- Rule 8.928. Contents and form of briefs (*infraction appeals*)
- Rule 10.614. Local court forms

The proposed amendments to the rules are attached at pages 6–12.

This proposal originated from the Superior Court of Orange County, which seeks to eliminate added costs to the courts of using recycled paper versus other forms of paper and to stop what the proponent describes as micromanagement of court operations. When the rules requiring use of recycled paper were first adopted by the council, the issue of cost was also raised by those objecting to the rule. At that time, however, recycled paper was available for the same cost as non-recycled paper. Court administrators state that this is no longer true, and that courts would save money by not being required to use recycled paper for all purposes.² The issue is therefore one of balancing the social benefit of using recycled paper and being in the forefront of statewide efforts to reduce waste, on the one hand, against the higher cost of such paper, particularly in the fiscal crisis the courts are currently experiencing.

Rules mandating use of recycled paper by courts

Rule 10.503 mandates that all courts use recycled paper for all purposes except for uses for which recycled paper is not practically available. In addition rule 8.144 and rule 8.838, addressing the form and format of the clerk’s and reporter’s transcripts in appellate cases, mandate that courts produce those records on recycled paper and provide that covers of recycled card stock are preferred. This proposal would repeal rule 10.503 in its entirety and amend rules 8.144 and 8.838 to remove the requirement and preference for recycled paper.

The proposed repeal of the rules mandating the use of recycled paper will not totally eliminate the requirement that courts use such paper but only cut in half the amount of such paper they are required to purchase. Courts would still have to comply with the statewide statutory mandate for

² Preliminary research by staff had confirmed that recycled paper is more expensive than non-recycled paper on the retail level. Currently, the price of a 5000-sheet case of 20 lb. basic copy/printer paper from Office Depot or Staples is \$41.99, while the price of equivalent paper made from 30 percent postconsumer material (the standard for “recycled” paper under the current rules of court) is \$47.99.

governmental agencies to use recycled paper. In March 2011, the Legislature enacted the Judicial Branch Contracting Law, requiring all courts throughout the state, the Judicial Council, and the Administrative Office of the Courts to comply with provisions of the Public Contract Code that are applicable to state agencies and departments and are related to the procurement of goods and services. (Pub. Contract Code, §19204(b).) These provisions include the requirement that at least 50 percent of reportable purchases are recycled products, including categories covering paper products, office supplies, office products, and a wide range of other products. (Pub. Contracts Code, §12203; see also *Judicial Branch Contracting Manual*, ch. 3, §3.3(A), “Utilizing Recycled Content Products.”) Therefore, even if the council repeals rule 10.503 and the other rules of court mandating use of recycled paper, courts would continue to be required by statute to buy recycled paper for at least 50 percent of their paper purchases.

The committees concluded that the requirement placed on courts by statute was sufficient to further the social benefits of reducing waste through use of recycled paper, particularly in light of the stringent budget reductions currently being implemented by the courts.

Rules mandating use of recycled paper by parties

Having concluded that the rule mandating that courts use recycled paper was overly burdensome and should be repealed, the committees turned to the rules mandating use of recycled paper by the parties. The committees concluded that if the mandate on the court is removed, the mandate on the parties should be repealed at the same time.

The rules of court currently require that parties use recycled paper for documents they file in a trial or appellate court and for copies of those document that they serve on other parties. (Rule 1.22(a).)³ The attorney, party, or other person filing or serving a document certifies by the act of filing or service, that the document was produced on paper purchased as recycled. (Rule 2.122(b).) The rule does not mandate enforcement by the courts and the committees determined that the mandate that parties use recycled paper is seldom, if ever, enforced by courts. Further, they concluded that attempting to enforce the rule on a regular basis would be an additional and very heavy burden on an already overburdened court system. The committees concluded that it was not good policy to keep rules on the books that are not enforced and therefore propose that the mandate for parties’ use of recycled paper also be removed.

Further, with the removal of the mandate on the court to use recycled paper for all purposes, courts might not use recycled paper to produce Judicial Council or local court forms—forms which courts regularly provide to parties. Therefore, when parties file such forms, it would be impossible for them to know whether they are filing papers on recycled paper, although the rules require that they do so. (See rules 2.131, 10.614.) The committees concluded this was yet another reason to remove the recycled paper mandate from parties at the same time it is removed from the courts.

³ This rule is reiterated in the rules regarding form and format of papers filed with the courts. See rule 2.101(a) (papers, documents, and exhibits filed with a trial court), rule 2.131 (forms filed with a trial court), rule 8.204 (briefs in court of appeals), rule 8.883 (briefs in limited civil appeals and misdemeanors), 8.928 (briefs in infraction appeals). This proposal would also repeal or amend each of those rules.

Alternatives Considered

The committees considered several alternatives to this proposal.

Alternative 1. Take no action

The committees recognized that the council originally adopted these rules to advance the statewide goal of reducing waste and considered not making any changes to the rules. However, as described above, the committees concluded that action was appropriate in light of the current fiscal crisis in the courts and the current statutory mandate that courts include recycled paper as at least half of the paper they procure.

Alternative 2. Temporarily suspend mandate on courts

The committees considered a proposal to only temporarily suspend the mandate on courts to use recycled paper, for three or four years until court budgets improved. While some members of the committees preferred this proposal, the majority concluded that it would only move the issue into the future—because there would always be budgetary constraints of some kind—and that it made sense to make the decision to change the rules now rather than deferring it.

Alternative 3. Leave mandate on parties in place

The committees considered removing the mandate from the courts alone, leaving in place the rules requiring parties to file and serve documents on recycled paper. They concluded, however, that the rules regarding use of recycled paper should be the same for both courts and parties. The difficulty in enforcing the rule and the complexity of requiring parties to file forms on recycled paper even while courts are not providing the forms on recycled paper, were also considered in rejecting this alternative.

Implementation Requirements, Costs, and Operational Impacts

This proposal would not impose any implementation requirements or operational burdens on courts or others. It is expected to save money for the courts. The only cost would be the potential burden on society from additional waste generated because courts and parties would reduce the amount of recycled paper they use.

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 reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

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

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- 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?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

Proposed amended rules, at pages 6–12

Rules 1.22, 2.101, 2.131, and 10.503 of the California Rules of Court would be repealed and rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614 would be amended, effective January 1, 2014, to read:

1 **Title 1. Rules Applicable to All Courts**

2
3 **Chapter 1. Preliminary Rules**

4
5 **Rule 1.6. Definitions and use of terms**

6
7 As used in the California Rules of Court, unless the context or subject matter otherwise requires:

8
9 (1)–(21) * * *

10
11 ~~(22) "Recycled" as applied to paper means "recycled printing and writing paper" as defined by~~
12 ~~section 12209 of the Public Contract Code.~~

13
14 ~~(23)~~(22) "California Courts Web Site" means the Web site established by the Judicial Council
15 that includes news and information, reference materials, rules and forms, and a self-help
16 center. The address is: www.courts.ca.gov.

17
18
19
20 **Chapter 3. Service and Filing**

21
22 ~~Rule 1.22. Recycled paper~~

23
24 ~~(a) Use of recycled paper required~~

25
26 ~~Recycled paper, as defined in rule 1.6, must be used for all original papers filed with the~~
27 ~~trial and appellate courts and for all copies of papers, documents, and exhibits, whether~~
28 ~~filed with the courts or served on other parties.~~

29
30 ~~(b) Certification~~

31
32 ~~Whenever the use of recycled paper is required by these rules, the attorney, party, or other~~
33 ~~person filing or serving a document certifies, by the act of filing or service, that the~~
34 ~~document was produced on paper purchased as recycled.~~

35
36
37 **Title 2. Trial Court Rules**

38
39 **Division 2. Papers and Forms To Be Filed**

40
41 **Chapter 1. Papers**

42
43 ~~Rule 2.101. Use of recycled paper; certification by attorney or party~~

1
2 **(a) Use of recycled paper**

3 Recycled paper must be used for the following:
4

5 ~~(1) All original papers filed with the court and all copies of papers, documents, and~~
6 ~~exhibits, whether filed with the court or served on other parties; and~~
7

8 ~~(2) The original record on appeal from a limited civil case, any brief filed with the court~~
9 ~~in a matter to be heard in the appellate division, and all copies of such documents,~~
10 ~~whether filed with the court or served on other parties.~~
11

12 **(b) Certification**
13

14 Whenever recycled paper must be used under the rules in this chapter, the attorney, party,
15 or other person filing or serving a document certifies, by the act of filing or service, that
16 the document was produced on paper purchased as recycled.
17

18 **Chapter 2. Forms**
19

20 **Rule 2.131. Recycled paper**
21

22 ~~All forms and copies of forms filed with the court must use recycled paper as defined in rule 1.6.~~
23

24 **Title 3. Civil Rules**
25

26 **Division 11. Law and Motion**
27

28 **Chapter 7. Petitions Under the California Environmental Quality Act**
29

30 **Rule 3.1368. Paper format**
31

32 **(a) Requirements**
33

34 In the paper format of the administrative record lodged in the court in a proceeding brought
35 under the California Environmental Quality Act:
36

37 ~~(1) The paper must be recycled;~~
38

39 ~~(2)~~(1) Both sides of each page must be used;
40

41 ~~(3)~~(2) The paper must be opaque, unglazed, white or unbleached, 8 1/2 by 11 inches, and
42 of standard quality no less than 20-pound weight, except that maps, charts, and other
43 demonstrative materials may be larger; and
44

1 (4)(3) Each page must be numbered consecutively at the bottom.
2

3 (b) * * *

4 **Title 8. Appellate Rules**

5
6 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

7
8 **Chapter 2. Civil Appeals**

9
10 **Article 2. Record on Appeal**

11
12 **Rule 8.144. Form of the record**

13
14 (a) **Paper and format**

15
16 (1) In the clerk's and reporter's transcripts:

17
18 (A) The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11 inches, and of at
19 least 20-pound weight;

20
21 (B)—(E) * * *

22
23 (2)—(3) * * *

24
25 (b) **Indexes * * ***

26
27 (c) **Binding and cover**

28
29 (1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no
30 more than 300 sheets.

31
32 (2) Each volume's cover, ~~preferably of recycled stock~~, must state the title and trial court
33 number of the case, the names of the trial court and each participating trial judge, the
34 names and addresses of appellate counsel for each party, the volume number, and the
35 inclusive page numbers of that volume.

36
37 (3) In addition to the information required by (2), the cover of each volume of the
38 reporter's transcript must state the dates of the proceedings reported in that volume.

39
40 (d)—(f) * * *

41
42
43 **Article 3. Briefs in the Court of Appeal**

44
45 **Rule 8.204. Contents and form of briefs**

1
2 **(a) Contents * * ***

3
4 **(b) Form**

5
6 (1) A brief may be reproduced by any process that produces a clear, black image of
7 letter quality. The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11 inches,
8 and of at least 20-pound weight.

9
10 (2)–(9) * * *

11
12 (10) The cover, ~~preferably of recycled stock~~, must be in the color prescribed by rule
13 8.40(b) and, in addition to providing the cover information required by rule 8.40(c),
14 must state:

15
16 (A)–(D) * * *

17
18 (11) * * *

19
20 **(c)–(e) * * ***

21
22
23 **Division 2. Rules Relating to the Superior Court Appellate Division**

24
25 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

26
27 **Rule 8.804. Definitions**

28
29 As used in this division, unless the context or subject matter otherwise requires:

30
31 (1)—(19) ****

32
33 ~~(20) “Recycled” as applied to paper means “recycled printing and writing paper” as~~
34 ~~defined by Public Contract Code section 12209.~~

35
36 ~~(21)~~ 20 “Trial court” means the superior court from which an appeal is taken.

37
38 ~~(22)~~ 21 “Reviewing court” means the appellate division of the superior court.

39
40 ~~(23)~~ 22 “Judgment” includes any judgment or order that may be appealed

1 **Chapter 2. Appeals and Records in Limited Civil Cases**

2
3 **Article 2. Record in Civil Appeals**

4
5 **Rule 8.838. Form of the record**

6
7 **(a) Paper and format**

8
9 Except as otherwise provided in this rule, clerk's and reporter's transcripts must comply
10 with the paper and format requirements of rule 8.144(a).

11
12 **(b) Indexes * * ***

13
14 **(c) Binding and cover**

15
16 (1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no
17 more than 300 sheets, except that transcripts may be bound at the top if required by a
18 local rule of the appellate division.

19
20 (2) Each volume's cover, ~~preferably of recycled stock~~, must state the title and trial court
21 number of the case, the names of the trial court and each participating trial judge, the
22 names and addresses of appellate counsel for each party, the volume number, and the
23 inclusive page numbers of that volume.

24
25 (3) In addition to the information required by (2), the cover of each volume of the
26 reporter's transcript must state the dates of the proceedings reported in that volume
27

28
29
30 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

31
32 **Rule 8.883. Contents and form of briefs**

33
34 **(a)–(b) * * ***

35
36 **(c) Form**

37
38 (1) A brief may be reproduced by any process that produces a clear, black image of
39 letter quality. The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11 inches,
40 and of at least 20-pound weight. Both sides of the paper may be used if the brief is
41 not bound at the top.

42
43 (2)–(11) * * *

1 (d) * * *

2 **Chapter 5. Appeals in Infraction Cases**

3
4 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**

5
6 **Rule 8.928. Contents and form of briefs**

7
8 (a)–(b) * * *

9
10 (c) **Form**

11
12 (1) A brief may be reproduced by any process that produces a clear, black image of
13 letter quality. The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11 inches,
14 and of at least 20-pound weight. Both sides of the paper may be used if the brief is
15 not bound at the top.

16
17 (2)–(11) * * *

18
19 (d) * * *

20
21
22 **Title 10. Judicial Administration Rules**

23
24 **Division 3. Judicial Administration Rules Applicable to All Courts**

25
26 ~~**Rule 10.503. Use of recycled paper by all courts**~~

27
28 ~~All courts must use recycled paper for all purposes except for uses for which recycled paper is~~
29 ~~not practically available.~~

30
31
32
33 **Division 4. Trial Court Administration**

34
35 **Chapter 1. General Rules on Trial Court Management**

36
37
38 **Rule 10.614. Local court forms**

39
40 Local forms must comply with the following:

41
42 (1)–(6) * * *

43
44 (7) ~~All forms and copies of forms made available by, or presented for filing to, the court~~
45 ~~must be reproduced on recycled paper as defined in rule 2.102(2).~~

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9

~~(8)~~(7) All forms presented for filing must be firmly bound at the top and must contain two prepunched, normal-sized holes centered 2 1/2 inches apart and 5/8 inch from the top of the form.

~~(9)~~(8) If a form is longer than one page, the form may be filed on sheets printed on only one side even if the original form has two printed sides to a sheet. If a form is filed on a sheet printed on two sides, the reverse side must be rotated 180 degrees (printed head to foot).