

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR16-06

Title	Action Requested
Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend title 8 (Cal. Rules of Court, rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204)	January 1, 2017
Proposed by	Contact
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Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

The Proposal

The existing appellate e-filing rules were created when e-filing was new to the appellate courts. Since their adoption, e-filing has been implemented in most of the appellate courts, and is mandatory in most cases in those courts. The rules, which treat appellate e-filing as a kind of pilot project, do not reflect the realities of appellate e-filing.

Moreover, as the appellate courts have implemented e-filing court by court, those courts implementing e-filing have looked to the courts where e-filing is already in use to determine how best to proceed. Thus in many areas, the practices and the local rules of the appellate courts regarding e-filing are similar or the same for the courts that have implemented e-filing programs. In some areas, the local rule requirements are in actual conflict with existing rules of court; for example, the requirements as to how e-filed briefs are to be paginated.

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 These proposals are circulated for comment purposes only.

To provide for a beneficial consistency, the ITAC and the AAC have undertaken a review of the appellate rules to identify areas where the existing rules of court fail to reflect the existing e-filing and e-service practices of the appellate courts, or where the rules conflict with those practices. The committees propose a thorough revision of the appellate e-filing rules to align those rules with the e-filing practices of the appellate courts. The proposal would:

- Revise rule 8.70 to eliminate outdated references to e-filing “projects” in the appellate courts.
- Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.
- Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (See detailed description below of proposed renumbered rule 8.78.)
- Create new rule 8.71, implementing mandatory e-filing in the appellate courts. E-filing would be required of all parties in all cases, except where otherwise provided by rule of court, local rule, or court order. Self-represented parties would be exempt from e-filing requirements unless they agreed to e-file. Trial courts would be exempt from e-filing unless they agreed to e-file. Any party would be able to ask to be excused from mandatory e-filing upon a showing of undue hardship or significant prejudice. These changes conform to the practices and local rules of the appellate courts that have implemented e-filing.
- Delete rule 8.72, with some of its provisions moved into new rule 8.71.
- Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (See detailed description below of proposed renumbered rule 8.79.)
- Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.
- Renumber rule 8.75 as rule 8.73, and add a provision allowing a court to include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.
- Renumber rule 8.76 as rule 8.74, add a requirement that a court’s required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents. The new provisions are consistent with the requirements imposed by appellate courts that have implemented e-filing.
- Renumber rule 8.77 as rule 8.75.

- Renumber rule 8.78 as rule 8.76.
- Renumber rule 8.79 as rule 8.77 and change the provision regarding delayed delivery of a filing due to technical problems with the court’s electronic filing system. The proposed amended rule would provide that a filer who misses a deadline due to such technical problems may file the document as soon thereafter as practicable and move to have the document accepted as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was originally sought to be filed. The new provision is consistent with the practices and local rules of those Courts of Appeal that have implemented e-filing.
- Revise rule 8.78, renumbered from existing rule 8.71, so that electronic filing will no longer be considered consent to accept electronic service. Some parties may be able to file documents electronically but choose to receive service of documents in paper form. Existing provisions applying to electronic filing would be deleted, as electronic filing will now be addressed in rule 8.71. A provision is newly added to rule 8.78 providing that for purposes of the rule, the word “party” includes a nonparty that has agreed to or has been ordered to accept electronic service or to serve documents electronically. Rule 8.78(f) is revised to provide that when a document is electronically served the proof of service need not state that the server is not a party to the case, and to delete the requirement for the proof of service to state the time of service.
- Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, as electronic filing is proposed to become mandatory under proposed rule 8.71. Rule 8.79 is further revised to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service. Subdivision (a) (2) (B), prohibiting the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee, is proposed to be deleted.
- Amend rule 8.204 (b)(7) to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be omitted from the cover page. This is consistent with the proposed new rule for pagination of e-filed documents in the language added to proposed renumbered rule 8.74, and with the requirements of the local rules of the appellate courts. It ensures that page numbering of a PDF document is consistent with the page numbers shown on the document, which is not the case when, for example, Roman numerals are used for the table of contents and table of authorities.

Alternatives Considered

The committees considered deferring action on the appellate e-filing rules until the appellate courts have had longer experience with e-filing. The committees determined that the experience of the appellate courts thus far has been adequate to support making the changes proposed;

further changes can be made as further experience is gained or as practices change. The revised rules will provide clear guidance to appellate litigants and put into the statewide rules the appellate e-filing practices that are in fact being used statewide.

Implementation Requirements, Costs, and Operational Impacts

Because the proposed changes are intended to make the rules consistent with existing e-filing practices in the appellate courts, ITAC and the AAC do not anticipate that the changes to the rules will incur new costs or require implementation on the part of the 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 the proposed rules consistent with current appellate e-filing practices and local rules?
- Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?
- Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.

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

- Are the proposed amended rules consistent with current appellate e-filing practices and local rules?
- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

Cal. Rules of Court, amendments to title 8, at pages 5–24.

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204 of the California Rules of Court would be amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 5. E-filing

Rule 8.70. ~~Purpose, a~~ Application, construction, and definitions

Rule 8.71. ~~Electronic service~~ filing

Rule 8.72. ~~Documents that may be filed electronically~~ Responsibilities of court

Rule 8.73. ~~Court order requiring electronic service or filing~~ Contracts with electronic filing service providers

Rule 8.74. ~~Responsibilities of court~~ Responsibilities of electronic filer

Rule 8.75. ~~Contracts with electronic filing service providers~~ Requirements for signatures on documents

Rule 8.76. ~~Responsibilities of electronic filer~~ Payment of filing fees

Rule 8.77. ~~Requirements for signatures on documents~~ Actions by court on receipt of electronic filing

Rule 8.78. ~~Payment of filing fees~~ Electronic service

Rule 8.79. ~~Actions by court on receipt of electronic filing~~ Court order requiring electronic service

Rule 8.70. Purpose, aApplication, construction, and definitions

(a) Purpose

The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.

(b)(a) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and any the Courts of Appeal that elects to implement an e-filing project.

(e)(b) Construction

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

(d)(c) Definitions

As used in this article, unless the context otherwise requires:

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- (1) “The court” means the Supreme Court or ~~any~~ a Court of Appeal ~~that elects to implement an e-filing project.~~
- (2) ~~A document may be in paper or electronic form.~~ A “document” is:
 - (A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;
 - (B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk’s or reporter’s transcript; or
 - (C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.
 - (D) A document may be in paper or electronic form.
- (3) “Electronic service” is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party’s attorney, through an electronic filing service provider, or by a court.
- (4) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
- (5) “Electronic notification” means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.
- (6) “Electronic service address” of a party means the electronic address at or through which the party has authorized electronic service.
- (7) An “electronic filer” is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.
- (8) “Electronic filing” is the electronic transmission to a court of a document in electronic form.
- (9) An “electronic filing service provider” is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

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Advisory Committee Comment

The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

Rule 8.71. Electronic service

(a) — Authorization for electronic service

~~(1) — A document may be electronically served under these rules:~~

~~(A) — If electronic service is provided for by law or court order; or~~

~~(B) — If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~

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

~~(A) — Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or~~

~~(B) — Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~

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

~~(4) — A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

1
2 **(b) — Maintenance of electronic service lists**

3
4 ~~When the court orders or permits electronic filing in a case, it must maintain and~~
5 ~~make available electronically to the parties an electronic service list that contains~~
6 ~~the parties' current electronic service addresses, as provided by the parties that have~~
7 ~~filed electronically in the case.~~

8
9 **(c) — Service by the parties**

10
11 ~~Notwithstanding (b), parties are responsible for electronic service on all other~~
12 ~~parties in the case. A party may serve documents electronically directly, by an~~
13 ~~agent, or through a designated electronic filing service provider.~~

14
15 **(d) — Change of electronic service address**

16
17 ~~(1) — A party whose electronic service address changes while the appeal or original~~
18 ~~proceeding is pending must promptly file a notice of change of address~~
19 ~~electronically with the court and must serve this notice electronically on all~~
20 ~~other parties.~~

21
22 ~~(2) — A party's election to contract with an electronic filing service provider to~~
23 ~~electronically file and serve documents or to receive electronic service of~~
24 ~~documents on the party's behalf does not relieve the party of its duties under~~
25 ~~(1).~~

26
27 ~~(3) — An electronic service address is presumed valid for a party if the party files~~
28 ~~electronic documents with the court from that address and has not filed and~~
29 ~~served notice that the address is no longer valid.~~

30
31 **(e) — Reliability and integrity of documents served by electronic notification**

32
33 ~~A party that serves a document by means of electronic notification must:~~

34
35 ~~(1) — Ensure that the documents served can be viewed and downloaded using the~~
36 ~~hyperlink provided;~~

37
38 ~~(2) — Preserve the document served without any change, alteration, or modification~~
39 ~~from the time the document is posted until the time the hyperlink is~~
40 ~~terminated; and~~

41
42 ~~(3) — Maintain the hyperlink until the case is final.~~

43
44 **(f) — Proof of service**

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

3
4 (A) ~~The electronic service address of the person making the service, in~~
5 ~~addition to that person's residence or business address;~~

6
7 (B) ~~The date and time of the electronic service, instead of the date and~~
8 ~~place of deposit in the mail;~~

9
10 (C) ~~The name and electronic service address of the person served, in place~~
11 ~~of that person's name and address as shown on the envelope; and~~

12
13 (D) ~~That the document was served electronically, in place of the statement~~
14 ~~that the envelope was sealed and deposited in the mail with postage~~
15 ~~fully prepaid.~~

16
17 (2) ~~Proof of electronic service may be in electronic form and may be filed~~
18 ~~electronically with the court.~~

19
20 (3) ~~The party filing the proof of electronic service must maintain the printed~~
21 ~~form of the document bearing the declarant's original signature and must~~
22 ~~make the document available for inspection and copying on the request of the~~
23 ~~court or any party to the action or proceeding in which it is filed, in the~~
24 ~~manner provided in rule 8.77(c).~~

25
26 **(g) ~~Electronic service by or on court~~**

27
28 (1) ~~The court may electronically serve any notice, order, opinion, or other~~
29 ~~document issued by the court in the same manner that parties may serve~~
30 ~~documents by electronic service.~~

31
32 (2) ~~A document may be electronically served on a court if the court consents to~~
33 ~~electronic service or electronic service is otherwise provided for by law or~~
34 ~~court order. A court indicates that it agrees to accept electronic service by:~~

35
36 (A) ~~Serving a notice on all parties that the court accepts electronic service.~~
37 ~~The notice must include the electronic service address at which the~~
38 ~~court agrees to accept service; or~~

39
40 (B) ~~Adopting a local rule stating that the court accepts electronic service.~~
41 ~~The rule must indicate where to obtain the electronic service address at~~
42 ~~which the court agrees to accept service.~~

43
44 **Rule 8.71. Electronic filing**

1 **(a) Mandatory electronic filing**

2
3 Except as otherwise provided by these rules, the local rules of the reviewing court,
4 or court order, all parties are required to file all documents electronically in the
5 reviewing court.

6
7 **(b) Self-represented parties**

8
9 (1) Self-represented parties are exempt from the requirement to file documents
10 electronically.

11
12 (2) A self-represented party may agree to file documents electronically. A self-
13 represented party agrees to file documents electronically by filing a notice
14 with the court and serving it on the other parties.

15
16 (3) In cases involving both represented and self-represented parties, represented
17 parties are required to file documents electronically; however, in these cases,
18 each self-represented party is to file documents by nonelectronic means
19 unless the self-represented party affirmatively agrees otherwise.

20
21 **(c) Trial courts**

22
23 Trial courts are exempt from the requirement to file documents electronically, but
24 are permitted to file documents electronically.

25
26 **(d) Excuse for undue hardship or significant prejudice**

27
28 A party must be excused from the requirement to file documents electronically if
29 the party shows undue hardship or significant prejudice. A court must have a
30 process for parties, including represented parties, to apply for relief and a procedure
31 for parties excused from filing documents electronically to file them by
32 conventional means.

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1 **(e) Applications for fee waivers**

2
3 The court may permit electronic filing of an application for waiver of court fees
4 and costs in any proceeding in which the court accepts electronic filings.

5
6 **(f) Effect of document filed electronically**

7
8 (1) A document that the court, a party, or a trial court files electronically under the
9 rules in this article has the same legal effect as a document in paper form.

10
11 (2) Filing a document electronically does not alter any filing deadline.

12
13 **(g) Paper documents**

14
15 When it is not feasible for a party to convert a document to electronic form by
16 scanning, imaging, or another means, the court may allow that party to file the
17 document in paper form.

18
19 **Rule 8.72. Documents that may be filed electronically**

20
21 **(a) In general**

22
23 ~~The court may permit electronic filing of a document by a party or trial court in any~~
24 ~~appeal or original proceeding unless the rules in this article or other legal authority~~
25 ~~expressly prohibit electronic filing.~~

26
27 **(b) Application for waiver of court fees and costs**

28
29 ~~The court may permit electronic filing of an application for waiver of court fees and~~
30 ~~costs in any proceeding in which the court accepts electronic filings.~~

31
32 **(c) Orders, opinions, and notices**

33
34 ~~The court may electronically file any notice, order, opinion, or other document~~
35 ~~prepared by the court.~~

36
37 **(d) Effect of document filed electronically**

38
39 (1) ~~A document that the court, a party, or a trial court files electronically under~~
40 ~~the rules in this article has the same legal effect as a document in paper form.~~

41
42 (2) ~~Filing a document electronically does not alter any filing deadline.~~

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44 *Rule 8.72 adopted effective July 1, 2010.*

1 **Rule 8.73. Court order requiring electronic service or filing**

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3 **(a) Court order**

4
5 (1) ~~The court may, on the motion of any party or on its own motion, provided~~
6 ~~that the order would not cause undue hardship or significant prejudice to any~~
7 ~~party, order all parties to:~~

8
9 (A) ~~Serve all documents electronically, except when personal service is~~
10 ~~required by statute or rule;~~

11
12 (B) ~~File all documents electronically; or~~

13
14 (C) ~~Serve and file all documents electronically, except when personal~~
15 ~~service is required by statute or rule.~~

16
17 (2) ~~The court will not:~~

18
19 (A) ~~Order a self-represented party to electronically serve or file documents;~~

20
21 (B) ~~Order a party to electronically serve or file documents if the party~~
22 ~~would be required to pay a fee to an electronic filing service provider to~~
23 ~~file or serve the documents and the party objects to paying this fee in its~~
24 ~~opposition to the motion under (1); or~~

25
26 (C) ~~Order a trial court to electronically serve or file documents.~~

27
28 (3) ~~If the reviewing court proposes to make an order under (1) on its own motion,~~
29 ~~the court must mail notice to the parties. Any party may serve and file an~~
30 ~~opposition within 10 days after the notice is mailed or as the court specifies.~~

31
32 **(b) Additional provisions of order**

33
34 ~~The court's order may also provide that documents previously filed in paper form~~
35 ~~may be resubmitted in electronic form.~~

36
37 **(c) Filing in paper form**

38
39 ~~When it is not feasible for a party to convert a document to electronic form by~~
40 ~~scanning, imaging, or another means, the court may allow that party to serve, file,~~
41 ~~or serve and file the document in paper form.~~

42
43 **Rule 8.74 8.72. Responsibilities of court**

44
45 **(a) Publication of electronic filing requirements**

1 ~~When the court permits electronic filing it~~ The court will publish, in both electronic
2 and print formats, the court's electronic filing requirements.

3
4 **(b) Problems with electronic filing**

5
6 If the court is aware of a problem that impedes or precludes electronic filing, it
7 must promptly take reasonable steps to provide notice of the problem.

8
9 **Rule 8.75 8.73. Contracts with electronic filing service providers**

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11 **(a) Right to contract**

12
13 (1) The court may contract with one or more electronic filing service providers to
14 furnish and maintain an electronic filing system for the court.

15
16 (2) If the court contracts with an electronic filing service provider, the court may
17 require electronic filers to transmit the documents to the provider.

18
19 (3) If the court contracts with an electronic service provider or the court has an
20 in-house system, the provider or system must accept filing from other
21 electronic filing service providers to the extent the provider or system is
22 compatible with them.

23
24 **(b) Provisions of contract**

25
26 The court's contract with an electronic filing service provider may allow the
27 provider to charge electronic filers a reasonable fee in addition to the court's filing
28 fee. The contract may require that the electronic filing service provider agree to
29 waive a fee that normally would be charged to a party when the court orders that
30 the fee be waived for that party. The contract may also allow the electronic filing
31 service provider to make other reasonable requirements for use of the electronic
32 filing system.

33
34 **(c) Transmission of filing to court**

35
36 An electronic filing service provider must promptly transmit any electronic filing
37 and any applicable filing fee to the court.

38
39 **(d) Confirmation of receipt and filing of document**

40
41 (1) An electronic filing service provider must promptly send to an electronic filer
42 its confirmation of the receipt of any document that the filer has transmitted
43 to the provider for filing with the court.

1 (2) The electronic filing service provider must send its confirmation to the filer's
2 electronic service address and must indicate the date and time of receipt, in
3 accordance with rule 8.77 ~~9(a)~~.

4
5 (3) After reviewing the documents, the court must promptly transmit to the
6 electronic filing service provider and the electronic filer the court's
7 confirmation of filing or notice of rejection of filing, in accordance with rule
8 8.77 ~~9~~.

9

10 **(e) Ownership of information**

11

12 All contracts between the court and electronic filing service providers must
13 acknowledge that the court is the owner of the contents of the filing system and has
14 the exclusive right to control the system's use.

15

16 **Rule 8.76 8.74. Responsibilities of electronic filer**

17

18 **(a) Conditions of filing**

19

20 Each electronic filer must:

21

22 (1) Comply with any court requirements designed to ensure the integrity of
23 electronic filing and to protect sensitive personal information;

24

25 (2) Furnish information that the court requires for case processing;

26

27 (3) Take all reasonable steps to ensure that the filing does not contain computer
28 code, including viruses, that might be harmful to the court's electronic filing
29 system and to other users of that system;

30

31 (4) Furnish one or more electronic service addresses, in the manner specified by
32 the court, at which the electronic filer agrees to accept service; and

33

34 (5) Immediately provide the court and all parties with any change to the
35 electronic filer's electronic service address.

36

37 **(b) Format of documents to be filed electronically**

38

39 (1) A document that is filed electronically with the court must be in a format
40 specified by the court unless it cannot be created in that format.

41

42 (2) The format adopted by a court must meet the following minimum
43 requirements:

44

45 (A) The format must be text-searchable while maintaining original document
46 formatting.

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

5
6 (2) (C) The printing of documents must not result in the loss of document
7 text, format, or appearance.

8
9 (3) The page numbering of a document filed electronically must begin with the
10 first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,
11 3). The page number need not appear on the cover page.

12
13 (4) If a document is filed electronically under the rules in this article and cannot
14 be formatted to be consistent with a formatting rule elsewhere in the
15 California Rules of Court, the rules in this article prevail.

16
17 **Rule ~~8.77~~ 8.75. Requirements for signatures on documents**

18
19 **(a) Documents signed under penalty of perjury**

20
21 If a document to be filed electronically must be signed under penalty of perjury, the
22 following procedure applies:

- 23
24 (1) The document is deemed signed by the declarant if, before filing, the
25 declarant has signed a printed form of the document.
- 26
27 (2) By electronically filing the document, the electronic filer certifies that (1) has
28 been complied with and that the original signed document is available for
29 inspection and copying at the request of the court or any other party.
- 30
31 (3) At any time after the document is filed, any other party may serve a demand
32 for production of the original signed document. The demand must be served
33 on all other parties but need not be filed with the court.
- 34
35 (4) Within five days of service of the demand under (3), the party on whom the
36 demand is made must make the original signed document available for
37 inspection and copying by all other parties.
- 38
39 (5) At any time after the document is filed, the court may order the filing party to
40 produce the original signed document in court for inspection and copying by
41 the court. The order must specify the date, time, and place for the production
42 and must be served on all parties.

43
44 **(b) Documents not signed under penalty of perjury**

1 If a document does not require a signature under penalty of perjury, the document
2 is deemed signed by the party if the document is filed electronically.

3
4 **(c) Documents requiring signatures of multiple parties**

5
6 When a document to be filed electronically, such as a stipulation, requires the
7 signatures of multiple parties, the following procedure applies:

- 8
9 (1) The party filing the document must obtain the signatures of all parties either
10 in the form of an original signature on a printed form of the document or in
11 the form of a copy of the signed signature page of the document. By
12 electronically filing the document, the electronic filer indicates that all parties
13 have signed the document and that the filer has the signatures of all parties in
14 a form permitted by this rule in his or her possession.
15
16 (2) The party filing the document must maintain the original signed document
17 and any copies of signed signature pages and must make them available for
18 inspection and copying as provided in (a)(2). The court and any other party
19 may demand production of the original signed document and any copies of
20 signed signature pages in the manner provided in (a)(3)–(5).
21

22 **(d) Digital signature**

23
24 A party is not required to use a digital signature on an electronically filed
25 document.
26

27 **(e) Judicial signatures**

28
29 If a document requires a signature by a court or a judicial officer, the document
30 may be electronically signed in any manner permitted by law.
31

32 **Rule ~~8.78~~ 8.76. Payment of filing fees**

33
34 **(a) Use of credit cards and other methods**

35
36 The court may permit the use of credit cards, debit cards, electronic fund transfers,
37 or debit accounts for the payment of filing fees associated with electronic filing, as
38 provided in Government Code section 6159 and other applicable law. The court
39 may also authorize other methods of payment.
40

41 **(b) Fee waivers**

42
43 Eligible persons may seek a waiver of court fees and costs, as provided in
44 Government Code section 68634.5 and rule 8.26.
45

46 **Advisory Committee Comment**
47

1 **Subdivision (b).** A fee charged by an electronic filing service provider under rule ~~8.75(b)~~ 8.73(b)
2 is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26.
3

4 **Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing**

5
6 **(a) Confirmation of receipt and filing of document**

7
8 (1) *Confirmation of receipt*
9

10 When the court receives an electronically submitted document, the court must
11 promptly send the electronic filer confirmation of the court's receipt of the
12 document, indicating the date and time of receipt. A document is considered
13 received at the date and time the confirmation of receipt is created.
14

15 (2) *Confirmation of filing*
16

17 If the document received by the court under (1) complies with filing
18 requirements, the court must promptly send the electronic filer confirmation
19 that the document has been filed. The filing confirmation must indicate the
20 date and time of filing and is proof that the document was filed on the date
21 and at the time specified. The filing confirmation must also specify:
22

23 (A) Any transaction number associated with the filing;

24 (B) The titles of the documents as filed by the court; and

25 (C) The fees assessed for the filing.
26

27
28
29 (3) *Transmission of confirmations*
30

31 The court must send receipt and filing confirmation to the electronic filer at
32 the electronic service address that the filer furnished to the court under rule
33 ~~8.764~~(a)(4). The court must maintain a record of all receipt and filing
34 confirmations.
35

36 (4) *Filer responsible for verification*
37

38 In the absence of the court's confirmation of receipt and filing, there is no
39 presumption that the court received and filed the document. The electronic
40 filer is responsible for verifying that the court received and filed any
41 document that the electronic filer submitted to the court electronically.
42

43 **(b) Notice of rejection of document for filing**
44

45 If the clerk does not file a document because it does not comply with applicable
46 filing requirements, the court must promptly send notice of the rejection of the

1 document for filing to the electronic filer. The notice must state the reasons that the
2 document was rejected for filing.

3
4 **(c) Document received after close of business**

5
6 A document that is received electronically by the court after 11:59 p.m. is deemed
7 to have been received on the next court day.

8
9 **(d) Delayed delivery**

10
11 ~~If a technical problem with a court's electronic filing system prevents the court~~
12 ~~from accepting an electronic filing on a particular court day, and the electronic filer~~
13 ~~demonstrates that he or she attempted to electronically file the document on that~~
14 ~~day, the court must deem the document as filed on that day.~~

15
16 If a filer fails to meet a filing deadline imposed by court order, rule, or statute
17 because of a failure at any point in the electronic transmission and receipt of a
18 document, the filer may file the document on paper or electronically as soon
19 thereafter as practicable and accompany the filing with a motion to accept the
20 document as timely filed. For good cause shown, the court may enter an order
21 permitting the document to be filed nunc pro tunc to the date the filer originally
22 sought to transmit the document electronically.

23
24 **(e) Endorsement**

- 25
26 (1) The court's endorsement of a document electronically filed must contain the
27 following: "Electronically filed by [Name of Court], on _____ (date)," followed by the name of the court clerk.
28
29 (2) The endorsement required under (1) has the same force and effect as a
30 manually affixed endorsement stamp with the signature and initials of the
31 court clerk.
32
33 (3) A record on appeal, brief, or petition in an appeal or original proceeding that
34 is filed and endorsed electronically may be printed and served on the
35 appellant or respondent in the same manner as if it had been filed in paper
36 form.
37
38

39 **Rule ~~8.71~~ 8.78. Electronic service**

40
41 **(a) Authorization for electronic service; exceptions**

- 42
43 (1) A document may be electronically served under these rules:
44
45 (A) If electronic service is provided for by law or court order; or
46

1 (B) If the recipient agrees to accept electronic services as provided by these
2 rules and the document is otherwise authorized to be served by mail,
3 express mail, overnight delivery, or fax transmission.
4

5 (2) A party indicates that the party agrees to accept electronic service by:
6

7 ~~(A) — S~~ erving a notice on all parties that the party accepts electronic service
8 and filing the notice with the court. The notice must include the
9 electronic service address at which the party agrees to accept service;
10 or,
11

12 ~~(B) — Electronically filing any document with the court. The act of electronic~~
13 ~~filing is evidence that the party agrees to accept service at the electronic~~
14 ~~service address that the party has furnished to the court under rule~~
15 ~~8.76(a)(4).~~
16

17 ~~(3) — A party that has consented to electronic service under (2) and has used an~~
18 ~~electronic filing service provider to serve and file documents in a case~~
19 ~~consents to service on that electronic filing service provider as the designated~~
20 ~~agent for service for the party in the case, until such time as the party~~
21 ~~designates a different agent for service.~~
22

23 ~~(4) (3)~~ A document may be electronically served on a nonparty if the nonparty
24 consents to electronic service or electronic service is otherwise provided for
25 by law or court order. For purposes of this rule, the word “party” includes a
26 nonparty who has agreed to or is otherwise required by law or court order to
27 accept electronic service or to electronically serve documents.
28

29 **(b) Maintenance of electronic service lists**
30

31 When the court orders or permits electronic filing service in a case, it must
32 maintain and make available electronically to the parties an electronic service list
33 that contains the parties’ current electronic service addresses as provided by the
34 parties that have filed electronically been ordered to or have consented to electronic
35 service in the case.
36

37
38 **(c) Service by the parties**
39

40 Notwithstanding (b), parties are responsible for electronic service on all other
41 parties in the case. A party may serve documents electronically directly, by an
42 agent, or through a designated electronic filing service provider.
43

44 **(d) Change of electronic service address**
45

1 (1) A party whose electronic service address changes while the appeal or original
2 proceeding is pending must promptly file a notice of change of address
3 electronically with the court and must serve this notice electronically on all
4 other parties.

5
6 (2) A party's election to contract with an electronic filing service provider to
7 electronically file and serve documents or to receive electronic service of
8 documents on the party's behalf does not relieve the party of its duties under
9 (1).

10
11 ~~(3) An electronic service address is presumed valid for a party if the party files~~
12 ~~electronic documents with the court from that address and has not filed and~~
13 ~~served notice that the address is no longer valid.~~

14
15 **(e) Reliability and integrity of documents served by electronic notification**

16 A party that serves a document by means of electronic notification must:

17
18
19 (1) Ensure that the documents served can be viewed and downloaded using the
20 hyperlink provided;

21
22 (2) Preserve the document served without any change, alteration, or modification
23 from the time the document is posted until the time the hyperlink is
24 terminated; and

25
26 (3) Maintain the hyperlink until the case is final.

27
28 **(f) Proof of service**

29
30 (1) Proof of electronic service may be by any of the methods provided in Code of
31 Civil Procedure section 1013a, ~~except that the proof of service must state~~
32 with the following exceptions:

33
34 (A) The proof of electronic service does not need to state that the person
35 making the service is not a party to the case.

36
37 (B) The proof of electronic service must state:

38
39 (i) The electronic service address of the person making the service, in
40 addition to that person's residence or business address;

41
42 ~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and
43 place of deposit in the mail;

44
45 ~~(C)~~ (iii) The name and electronic service address of the person served, in
46 place of that person's name and address as shown on the envelope; and

1
2 (D) (iv) That the document was served electronically, in place of the
3 statement that the envelope was sealed and deposited in the mail with
4 postage fully prepaid.
5

6 (2) Proof of electronic service may be in electronic form and may be filed
7 electronically with the court.
8

9 (3) The party filing the proof of electronic service must maintain the printed
10 form of the document bearing the declarant's original signature and must
11 make the document available for inspection and copying on the request of the
12 court or any party to the action or proceeding in which it is filed, in the
13 manner provided in rule 8.77(e)75.
14

15 (g) **Electronic service by or on court**
16

17 (1) The court may electronically serve any notice, order, opinion, or other
18 document issued by the court in the same manner that parties may serve
19 documents by electronic service.
20

21 (2) A document may be electronically served on a court if the court consents to
22 electronic service or electronic service is otherwise provided for by law or
23 court order. A court indicates that it agrees to accept electronic service by:
24

25 (A) Serving a notice on all parties that the court accepts electronic service.
26 The notice must include the electronic service address at which the
27 court agrees to accept service; or
28

29 (B) Adopting a local rule stating that the court accepts electronic service.
30 The rule must indicate where to obtain the electronic service address at
31 which the court agrees to accept service.
32

33 **Rule 8.739. Court order requiring electronic service or filing**
34

35 (a) **Court order**
36

37 (1) The court may, on the motion of any party or on its own motion, provided
38 that the order would not cause undue hardship or significant prejudice to any
39 party, order some or all parties to:
40

41 (A) Serve all documents electronically, except when personal service is
42 required by statute or rule; or
43

44 (B) ~~File all~~ Accept electronic service of documents, ~~electronically; or~~
45

- 1 (2) Any conventional font may be used. The font may be either proportionally
2 spaced or monospaced.
3
- 4 (3) The font style must be roman; but for emphasis, italics or boldface may be
5 used or the text may be underscored. Case names must be italicized or
6 underscored. Headings may be in uppercase letters.
7
- 8 (4) Except as provided in (11), the font size, including footnotes, must not be
9 smaller than 13-point, and both sides of the paper may be used.
10
- 11 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced.
12 Headings and footnotes may be single-spaced. Quotations may be block-
13 indented and single-spaced. Single-spaced means six lines to a vertical inch.
14
- 15 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
16 top and bottom.
17
- 18 (7) The pages must be consecutively numbered. ~~The tables and the body of the~~
19 ~~brief may have different numbering systems.~~ The page numbering must begin
20 with the cover page as page 1 and use only Arabic numerals (e.g. 1, 2, 3). The
21 page number need not appear on the cover page.
22
- 23 (8) If filed in paper form, the brief must be bound on the left margin. If the brief
24 is stapled, the bound edge and staples must be covered with tape.
25
- 26 (9) The brief need not be signed.
27
- 28 (10) If filed in paper form, the cover must be in the color prescribed by rule
29 8.40(b). In addition to providing the cover information required by rule
30 8.40(c), the cover must state:
31
- 32 (A) The title of the brief;
33
- 34 (B) The title, trial court number, and Court of Appeal number of the case;
35
- 36 (C) The names of the trial court and each participating trial judge;
37
- 38 (D) The name of the party that each attorney on the brief represents.
39
- 40 (11) If the brief is produced on a typewriter:
41
- 42 (A) A typewritten original and carbon copies may be filed only with the
43 presiding justice's permission, which will ordinarily be given only to
44 unrepresented parties proceeding in forma pauperis. All other
45 typewritten briefs must be filed as photocopies.
46

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(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(c)–(e) * * *

Advisory Committee Comment

* * *