

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-04

Title	Action Requested
Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.77	January 1, 2021
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Eric Long, Attorney 415-865-7691 eric.long@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, rule 8.77 of the California Rules of Court currently addresses the receipt date of submissions received after the close of business but is silent as to when a received document is deemed filed. The committee proposes amending rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court. This proposal is based on a suggestion from the California Lawyers Association, Committee on Appellate Courts, Litigation Section.

Background

Electronic filing allows for submission of documents at any time, even after a clerk's office is closed. Regardless of the date and time a document is submitted and received, however, the clerk's office needs time to confirm that the document complies with filing requirements. Such review by the clerk's office must be prompt, but it is not instantaneous for an electronically submitted document. Moreover, when a document is submitted after court business hours, the document will not be reviewed by the clerk's office before the next business day.

Under rule 8.77(a)(1), an electronically submitted document is initially "received" by the court, and a confirmation of receipt is generated. Rule 8.77(c) instructs that if a document is received

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after 11:59 p.m., it is considered received on the next court day.¹ Once a court clerk confirms that the document complies with filing requirements, a confirmation of “filing” indicating the date and time of filing is generated under rule 8.77(a)(2). However, rule 8.77 does not specify when the document is deemed filed.²

It has been reported that appellate courts are determining the date and time of filing in different ways. Some courts deem compliant documents filed on the day they were received, but other courts deem them filed on the day the clerk approves the document for filing.

A practitioner reported electronically submitting a writ petition for filing in an appellate district on Day 1 at 5:30 p.m. A court clerk reviewed the materials on Day 2 and determined that the filing requirements had been satisfied. The clerk filed the document on Day 2 even though it was received by the court on Day 1. If the litigant’s writ petition had been due on Day 1, it would have been untimely.

The Proposal

This proposal would clarify that the date and time of filing is the date and time a compliant document is received by the court.

The committee also proposes revising the title of rule 8.77 to reflect electronic submission and to encompass date and time of filing.

The proposal would alleviate concerns of litigants and practitioners that their timely, compliant submissions may be deemed untimely. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ). A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents and would be consistent with California Rules of Court, rule 1.20, which states: “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.”

Alternatives Considered

The committee considered no action but determined that the experience of litigants and practitioners warrants action.

¹ “A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.” (Cal. Rules of Court, rule 8.77(c).)

² Some California appellate courts also address this topic by local rule. The local rules for the Courts of Appeal, First and Fifth Appellate Districts, state: “Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight.” (Ct. App., First Dist. and Fifth Dist., Local Rules, rules 12(f) and 8(g), respectively, Electronic Filing.) Additionally, the Third Appellate District provides: “Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day.” (Ct. App., Third Dist., Local Rules, rule 5(j), Electronic Filing.) The local rules for the Second, Fourth, and Sixth Districts do not address the topic.

A submission from an electronic filer reaches the court through an electronic filing service provider (EFSP). Although the court generally receives a submission almost instantaneously, the committee recognizes the possibility that transmission delays can occur. For example, an electronic filer might submit a document before midnight, but the court might not receive the document until after midnight because of a transmission delay between the EFSP and the court. Given such a possibility, the committee considered two alternatives to using the date and time of receipt as the date and time of filing: (1) using the date and time of submission to the EFSP as the date and time of filing, or (2) imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight. The committee seeks comments on these alternatives.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The proposed rule uses the court's receipt date and time as the date and time of filing because transmission from the electronic filing service provider to the court is generally instantaneous. Would it be more appropriate, however, to use the date and time of submission to the EFSP as the date and time of filing? Or would another alternative prove more workable? If an alternative is appropriate, describe the alternative and explain why it would be preferable to the instant proposal.
- Can you document one or more transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court? If so, would an after-hours submission deadline adequately address such a transmission delay, and if so, what should the deadline be?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.77, at p. 5

Rule 8.77 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted**
2 **document; date and time of filing**

3
4 **(a) Confirmation of receipt and filing of document**

5
6 (1) *Confirmation of receipt*

7
8 When the court receives an electronically submitted document, the court must
9 arrange to promptly send the electronic filer confirmation of the court's receipt of the
10 document, indicating the date and time of receipt by the court. ~~A document is~~
11 ~~considered received at the date and time the confirmation of receipt is created.~~

12
13 (2) *Filing*

14
15 If the electronically submitted document received by the court complies with filing
16 requirements, the document is deemed filed on the date and time it was received by
17 the court as stated in the confirmation of receipt.

18
19 ~~(2)~~ (3) *Confirmation of filing*

20
21 ~~If the document received by the court under (1) complies with filing requirements,~~
22 When the court files an electronically submitted document, the court must arrange to
23 promptly send the electronic filer confirmation that the document has been filed. The
24 filing confirmation must indicate the date and time of filing as specified in the
25 confirmation of receipt, and ~~is proof that the document was filed on the date and at~~
26 ~~the time specified. The filing confirmation~~ must also specify:

27
28 (A) Any transaction number associated with the filing; and

29
30 (B) The titles of the documents as filed by the court.

31
32 ~~(3)~~ ~~(4)~~ ~~(4)~~ (5) * * *

33
34 **(b)–(e) * * ***