

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-16

Title

Rules: Electronic Filing and Service in Criminal Cases

Action Requested

Review and submit comments by May 27, 2021

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

Proposed Effective Date

January 1, 2022

Proposed by

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Contact

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Executive Summary and Origin

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court. The purpose of the proposal is to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts.

Background

In 2017, the Judicial Council sponsored legislation to add section 690.5 to the Penal Code to provide express authority for "the permissive filing and service of documents" in criminal proceedings. Penal Code section 690.5 became law effective January 1, 2018.

The Proposal

The proposal would add references to Penal Code section 690.5 to the electronic filing and electronic service rules of the California Rules of Court to bring criminal cases within the scope of those rules. The proposal is needed to comply with Penal Code section 690.5's requirement that the Judicial Council make rules for the electronic filing and electronic service of documents in criminal cases.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

Penal Code section 690.5 states:

Subdivisions (a) and (b) of Section 1010.6 of the Code of Civil Procedure, pertaining to the permissive filing and service of documents, are applicable to criminal actions, except as otherwise provided in Section 959.1 or any other provision of this code.

This language was intended to ensure electronic filing and electronic service would not be *required* in criminal matters. As the Judicial Council report recommending the council sponsor Penal Code section 690.5 explains:

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties *consent* to electronic filing and service.

(Judicial Council of Cal., Advisory Com. Rep., Judicial Council–Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Code of Civ. Proc., § 1010.6(a) and (b) to Criminal Actions (Oct. 28, 2016), p. 3, <https://jcc.legistar.com/View.ashx?M=F&ID=4815159&GUID=80D76D4B-5A18-4048-8B97-346AEBCF1DA5>, italics added.)

The following amendments are included in the proposal:

- **Rule 2.251(a):** This provision generally authorizes electronic service and states that service may be made electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5 and specifies that electronic service in criminal cases requires consent.
- **Rule 2.251(c)(1)–(2):** These provisions govern electronic service required by local rule or court order. The amendments specify that courts may only require electronic service in civil actions because mandatory electronic filing and electronic service are not applicable in criminal actions under Penal Code section 690.5.
- **Rule 2.251(k):** This provision authorizes a court to serve documents electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.
- **Rule 2.252(a):** This provision generally authorizes electronic filing as provided under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.253(a):** This provision specifically authorizes courts to permit electronic filing by local rule subject to the conditions in Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.
- **Rule 2.255(h):** This is a new provision that prohibits electronic filing service providers (EFSPs) and electronic filing managers (EFMs) from charging service fees when an electronic filer is a prosecutor, an indigent defendant, or counsel for an indigent defendant. These service fees are charged by the service provider and are not filing fees.
- **Rule 2.258:** This rule governs the payment of filing fees. The amendment specifies the rule applies to civil actions as criminal cases do not have filing fees.
- **Rule 2.259(e):** This rule provides for issuance of an electronic summons. The amendment adds new provisions authorizing the court to issue an electronic summons pursuant to Penal Code sections 813, 816a, 1390, and 1391. Service of the summons would need to be made as prescribed elsewhere by law.

Alternatives Considered

Because Penal Code section 690.5 requires the Judicial Council to make rules, no alternative to rulemaking was considered. With respect to the particular rules, the Information Technology Advisory Committee (ITAC) considered input from the Criminal Law Advisory Committee (CLAC) on fees charged by service providers for electronic filing services. CLAC raised concerns that fees would likely bar most public defender and district attorney offices from opting into electronic filing, and would be a hardship for indigent defendants. CLAC recommended no service charges be permitted for filings in criminal actions for prosecutors and all defendants and their counsel. ITAC considered this, but limited the proposal to a prohibition of service fees for prosecutors, indigent defendants, and counsel for indigent defendants. While ITAC agreed with the concerns CLAC raised about prosecutors, public defenders, and indigent defendants, it did not agree that EFSPs and EFMs should not be able to charge non-indigent defendants for services. ITAC seeks specific comments on this issue.

Fiscal and Operational Impacts

Because the proposal only applies to permissive electronic filing and electronic service by consent, which is already authorized by statute, the proposal does not impose new costs on the courts or electronic filers.

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 amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant.
 - Is this exemption from service charges appropriate?
 - For *EFSPs and EFMs*: would you be willing to offer electronic filing in criminal cases with this limitation?
 - For *prosecutors, defense attorneys representing indigent defendants, and those representing the interests of indigent, pro per defendants*: would a service provider's fee prevent the use of electronic filing?
 - For *defense attorneys representing non-indigent defendants*, would a service provider's fee prevent the use of electronic filing?
 - Should there be no service charges for the electronic filing in criminal cases?

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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259, at pages 6–9
2. Link A: Penal Code section 690.5,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5.&lawCode=PEN

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 **Rule 2.251. Electronic service**

2
3 **(a) Authorization for electronic service**

4
5 When a document may be served by mail, express mail, overnight delivery, or fax
6 transmission, the document may be served electronically under Code of Civil
7 Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.
8 For purposes of electronic service made pursuant to Penal Code section 690.5,
9 express consent to electronic service is required.

10
11 **(b) * * ***

12
13 **(c) Electronic service required by local rule or court order**

14
15 (1) A court may require parties to serve documents electronically in specified
16 civil actions by local rule or court order, as provided in Code of Civil
17 Procedure section 1010.6 and the rules in this chapter.

18
19 (2) A court may require other persons to serve documents electronically in
20 specified civil actions by local rule, as provided in Code of Civil Procedure
21 section 1010.6 and the rules in this chapter.

22
23 (3)–(4) * * *

24
25 **(d)–(j) * * ***

26
27 **(k) Electronic service by or on court**

28
29 (1) The court may electronically serve documents as provided in Code of Civil
30 Procedure section 1010.6, Penal Code section 690.5, and the rules in this
31 chapter.

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

36
37 (A) Serving a notice on all parties and other persons in the case that the
38 court accepts electronic service. The notice must include the electronic
39 service address at which the court agrees to accept service; or

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

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1
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3 **Advisory Committee Comment**
4

5 **Subdivision (b)(1)(B).** The rule does not prescribe specific language for a provision of a term of
6 service when the filer consents to electronic service, but does require that any such provision be
7 clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-
8 CV) provides an example of language for consenting to electronic service.
9

10 **Subdivision (c).** The subdivision is applicable only to civil actions as defined in rule 1.6. Penal
11 Code section 690.5 excludes mandatory electronic service in criminal cases.
12

13 **Subdivisions (c)–(d).** Court-ordered electronic service is not subject to the provisions in Code of
14 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are
15 established by local rule, the court and the parties must have access to more than one electronic
16 filing service provider.
17

18 **Rule 2.252. General rules on electronic filing of documents**
19

20 **(a) In general**
21

22 A court may provide for electronic filing of documents in actions and proceedings
23 as provided under Code of Civil Procedure section 1010.6, Penal Code section
24 690.5, and the rules in this chapter.
25

26 **(b)–(h) * * ***
27

28 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**
29 **filing by court order**
30

31 **(a) Permissive electronic filing by local rule**
32

33 A court may permit parties by local rule to file documents electronically in any
34 types of cases, subject to the conditions in Code of Civil Procedure section 1010.6,
35 Penal Code section 690.5, and the rules in this chapter.
36

37 **(b)–(c) * * ***
38

39 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**
40 **managers**
41

42 **(a)–(g) * * ***
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Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 **(h) Fees for electronic filing services not chargeable in some criminal actions**

2
3 (1) Electronic filing service providers and electronic filing managers may not
4 charge a service fee when an electronic filer files a document in a criminal
5 action when the electronic filer is a prosecutor, an indigent defendant, or
6 counsel for an indigent defendant.

7
8 (2) For purposes of this subdivision, “indigent defendant” means a defendant who
9 the court has determined is not financially able to employ counsel pursuant to
10 Penal Code section 987. Pending the court’s determination, “indigent
11 defendant” also means a defendant the public defender is representing pursuant
12 to Government Code section 27707.

13
14 **Rule 2.258. Payment of filing fees in civil actions**

15
16 **(a) Use of credit cards and other methods**

17
18 A court may permit the use of credit cards, debit cards, electronic fund transfers, or
19 debit accounts for the payment of civil filing fees associated with electronic filing,
20 as provided in Government Code section 6159, rule 10.820, and other applicable
21 law. A court may also authorize other methods of payment.

22
23 **(b) * * ***

24
25 **Rule 2.259. Actions by court on receipt of electronic filing**

26
27 **~~(a)–(d)~~ * * ***

28
29 **(e) Issuance of electronic summons**

30
31 (1) Court authorized to issue electronic summons

32
33 **(A)** On the electronic filing of a complaint, a petition, or another document
34 that must be served with a summons in a civil action, the court may
35 transmit a summons electronically to the electronic filer in accordance
36 with this subdivision and Code of Civil Procedure section 1010.6.

37
38 **(B)** On the electronic filing of an accusatory pleading against a corporation,
39 the court may transmit a summons electronically to the prosecutor in
40 accordance with this subdivision and Penal Code sections 690.5, 1390
41 and 1391.

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

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(C) When a summons is issued in lieu of an arrest warrant, the court may transmit the summons electronically to the prosecutor or person authorized to serve the summons in accordance with this subdivision and Penal Code sections 690.5, 813 and 816a.

- (2) The electronically transmitted summons must contain an image of the court’s seal and the assigned case number.
- (3) Personal service of the printed form of a summons transmitted electronically to the electronic filer has the same legal effect as personal service of a copy of an original summons.

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