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INVITATION TO COMMENT

W13-05

Title
Mandatory E-Filing: Uniform Rules
To Implement Assembly Bill 2073

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.256, 2.258, and 2.259; adopt forms EFS-007 and EFS-008

Proposed by
Court Technology Advisory Committee,
Hon. Terence L. Bruiniers, Chair

Civil and Small Claims Advisory Committee,
Hon. Dennis M. Perluss, Chair

Action Requested
Review and Submit Comments
by January 25, 2013

Proposed Effective Date
July 1, 2013

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Executive Summary and Origin

The Court Technology and the Civil and Small Claims Advisory Committees[1] propose that the California Rules of Court be amended to provide uniform rules on mandatory electronic filing and service in the trial courts. These rules implement Assembly Bill 2073 (Silva; Stats. 2012, ch. 320), which authorizes a mandatory electronic filing pilot project in the Superior Court of Orange County and requires the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in specified civil actions on or before July 1, 2014. This proposal also includes some suggested amendments to the general rules on electronic filing and service to make them clearer. In some areas, this rules proposal includes one or more alternatives, and comments and recommendations are sought on which of the alternatives is preferable.

[1] In developing this proposal, the committees were assisted by the AB 2073 Mandatory E-Filing Working Group, which is composed of members from the two committees as well as from other committees and organizations that are interested in and will be affected by the introduction of mandatory e-filing in the state trial courts.

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 These proposals are circulated for comment purposes only.

Because of the benefits to courts and the public from having mandatory electronic filing and service, the committees recommend that the Judicial Council adopt amended rules effective July 1, 2013, so that other courts besides the Superior Court of Orange County may soon institute mandatory electronic filing and service for civil cases.

Proposed Rules

The rules on electronic filing and service in the trial courts are located in California Rules of court, rules 2.250–2.261. Because the Code of Civil Procedure previously authorized courts to require electronic filing and service only in class actions, consolidated actions, groups of actions, coordinated actions, or complex cases (collectively "complex civil cases"), no rules on mandatory e-filing and e-service have been adopted applicable to ordinary civil cases. However, the enactment of AB 2073 has changed this: the bill authorizes a mandatory electronic filing on a pilot basis in Orange County and provides that, upon the adoption by the Judicial Council of uniform rules for mandatory electronic filing and service for specified civil actions, any superior court may, by local rule, require mandatory electronic filing and service subject to certain requirements and conditions.

The principal new rule provisions on mandatory e-filing

The main new rule provisions concerning mandatory electronic filing would be in amended rule 2.253. The rule, which currently relates only to electronic filing by court order in complex civil cases, would be expanded and renamed "Permissive electronic filing, mandatory electronic filing, and electronic filing by court order."

A short new subdivision (a) on permissive electronic filing would be added at the beginning of the rule to clarify that a court by local rule may allow parties to voluntarily file documents electronically not only in civil cases but "in any types of cases." The key new provisions concerning mandatory electronic filing for ordinary civil cases would be located in subdivision (b), titled "Mandatory electronic filing."

Authorization for mandatory electronic filing.
The first issue addressed in new subdivision (b) of rule 2.253 is providing an express authorization for trial courts to institute electronic filing. It states: "A court may require parties by local rule to electronically file documents in civil actions . . . subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter," and certain additional conditions stated in rule 2.253.[2]

Scope of mandatory e-filing: Types and categories of civil cases

[2] Under AB 2073, amended Code of Civil Procedure section 1010.6(f) provides that the Judicial Council shall adopt uniform rules that shall include statewide policies on, among other things, unrepresented parties, parties with fee waivers, hardships, and reasonable exceptions to electronic filing. Thus, certain conditions are specified in the statute and others are to be provided by rule (see amended Code Civ. Proc., § 1010.6(g)(2)).

The second issue addressed in subdivision (b) of rule 2.253 is what types and categories of cases are appropriate for mandatory e-filing. The new legislation, AB 2073, gives the Judicial Council broad leeway on this matter. It provides that the council "shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for *specified civil actions* in the trial courts of the state . . . ." (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)] (italics added).) Except for identifying the actions as civil, the statute does not state what the specified actions are.

The committees discussed various alternatives, including the exclusion of certain types of cases such as family law cases. They concluded that the range of types of civil cases in which a court might require parties to file documents electronically should be broad. Thus, the rule enumerates numerous kinds of civil cases that are eligible for mandatory e-filing: it would be left to each court to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) Under this approach, the trial courts will have the flexibility to determine which types or categories of civil cases are subject to mandatory e-filing. The courts will be able to implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public that they serve.

Under the proposed rule amendments, the only types of civil cases that would be excluded at this time are juvenile cases. Rule 2.253(b)(1), which would permit courts to require electronic filing in all civil cases, or in categories or types of civil cases, defines "civil case" as "all civil cases except juvenile . . . cases."

Comments are invited on whether the proposed scope is appropriate, whether the scope should be narrowed to exclude any other types or categories of civil cases, or whether it should be expanded to authorize mandatory e-filing even in juvenile cases.[3]

Scope of mandatory e-filing: Self-represented parties.

Probably the most important issue that needs to be determined is whether self-represented parties should be exempt from mandatory e-filing or be subject to it. Such an exemption is permissible under AB 2073, though not required. The legislation states that the mandatory e-filing rules adopted by the council shall include statewide policies on hardships and "reasonable exceptions to electronic filing." (Assem. Bill 2073; amended Code Civ. Proc., § 1010.6(f).)

This issue of whether self-represented person should be exempt from mandatory e-filing has been discussed extensively. Basically, the question is whether the uniform rules should (1)

[3] If the mandatory e-filing rules that are adopted exempt self-represented parties, then mandatory e-filing would not be permissible in small claims cases because all parties are self-represented; on the other hand, the rules might be written to allow a court to require electronic filing even in small claims cases. Comments are invited on this question. In the end, for the sake of clarity, it might be best if the rules clarify whether or not small claims cases are subject to mandatory e-filing.

exempt self-represented parties from any requirements to file and serve documents electronically but should give them the opportunity and encourage them to "opt in," or (2) provide that they may be required by local rule to file and serve documents electronically, with the option to "opt out." If the latter approach is adopted, additional questions arise about what procedures and criteria should be used for determining how and under what circumstances a self-represented party may opt out of mandatory electronic filing and service.

In the discussions about the mandatory rules, providing an exemption for self-represented litigants was generally favored; however, arguments may be made both for and against providing such an exemption. On the one hand, there are good reasons for exempting self-represented parties and limiting mandatory e-filing to cases involving attorneys, especially in the early stages of mandatory e-filing. Limiting mandatory e-filing to attorneys appears to make sense practically and in terms of fairness. Attorneys are much more familiar than the members of the public with the practice of law, and in particular with the process of filing of documents with the courts. Even though some attorneys may be challenged by the technology of e-filing, attorneys generally have more resources and are in a better position to learn about and implement e-filing than are self-represented persons. Thus, by starting with attorneys, mandatory e-filing programs should achieve effective results with few adverse impacts. By comparison, for many self-represented litigants, e-filing would be challenging. Many of them may not have access to computers. Even if they do, the process of filing documents electronically may be difficult. Requiring them to file papers electronically may create significant barriers to access to the courts. Accordingly, it may be argued that mandatory e-filing, at least initially, should only apply to cases where parties are represented by an attorney.[4]

On the other hand, an argument can be made that self-represented parties should be subject to courts' mandatory e-filing requirements. The public is becoming increasingly savvy about technology and indeed is coming to expect that technology will be used for most business purposes. If the technology available for e-filing is sufficiently user-friendly, self-represented litigants should be able to take advantage of it. In other areas of the law, local communities are already being given the authority to mandate e-filing in certain situations.[5] For those self-represented persons who truly cannot file documents electronically, courts can provide "opt out" procedures, which could be made fairly simple.

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[4] The federal e-filing system (CM/ECF) is designed to be used almost exclusively by attorneys, who are required to register with the courts' electronic case file program. In the U.S District Court in Northern California, self-represented litigants are allowed to e-file, but they must satisfy certain conditions and ask permission from a judge.

[5] For instance, legislation was enacted this year that authorizes local governments in California to require candidates, committees, and others who are required to file campaign statements and reports to file these documents electronically. (See Assem. Bill 2452 [Ammiano] available online at: www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2451-2500/ab_2452_bill_20120224_introduced.pdf .) The bill provides that local government agencies that will require electronic filings of campaign statements and reports must enable filers to submit their filings free of charge. Also, to ensure that the e-filing of campaign statements and reports is accessible for all, local governments are providing training for e-filers and direct assistance, if they need it.

It is desirable for self-represented litigants as well as attorneys to participate in e-filing programs as much as possible. In the long-run, e-filing and e-service should be for everyone. The question, however, is whether the courts and the public are ready and able to take this step at this time. As e-filing for self-represented litigants is phased in around the state, self-represented parties will need user-friendly systems and support services to assist them with filing and serving documents. Some courts and communities may have sufficient resources and commitment; therefore, it may be feasible for them to provide such systems and services to the public. However, at this time when court resources are so scarce, many courts may not have the ability to assist self-represented litigants to file and serve document electronically; therefore, it may be more realistic, for the present, to exclude self-represented litigants from the requirements of mandatory e-filing.

The issue of whether self-represented parties should be excluded is one that commentators are specifically asked to address. For the purpose of discussion and comment, two different sets of alternatives are presented.

Option 1: Exemption from mandatory e-filing requirements for self-represented persons

The first option is to exempt self-represented persons altogether from electronic filing and service requirements. If this approach is adopted, the following draft language might be included in subdivision (b)(2) of amended rule 2.253:

> Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

To reflect Judicial Council policy and the committees' strong support for encouraging voluntary e-filing by self-represented persons, the language in rule 2.253(b)(2) might be expanded to state:

> Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. However, self-represented parties are encouraged to participate voluntarily in electronic filing and service. Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.

A third alternative might be to move the last two or three sentences in the preceding text from the rule into an Advisory Committee Comment to rule 2.253. The comment might also refer to the principles recently adopted by the Judicial Council, which supports these policy statements. See *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012).

Option 2: Mandating e-filing with a procedure for self-represented persons and others to "opt out"

The second option would be to make mandatory e-filing applicable to self-represented persons as well as those represented by attorneys. If so, no exemption such as provided in rule 2.253(b)(2) described above would be included in the rules.

But if the rules that are adopted permit courts to include self-represented parties in their mandatory e-filing programs, the courts will need to make accommodations for these parties. AB 2073 provides that any court that elects to adopt mandatory electronic filing "shall have a procedure for the filing of non-electronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties." (Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2)].) To implement these statutory provisions, proposed amended rule 2.253 includes a provision relating to requests for a hardship exception.[6] The proposed provision on this subject in amended rule 2.253(b)(4) states:

> A party that is required to file documents electronically must be excused from the requirements if the party can show hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

Several additional observations and questions relating to this provision should be noted.

First, this new provision required by AB 2073 would apply not only to self-represented persons but also to others who are able to demonstrate that they are eligible for relief. Even if self-represented persons are ultimately exempted from mandatory e-filing, the e-filing statute requires that a hardship exception "not limited to . . .unrepresented parties" be included in the rules. Thus, rule 2.253(b)(4) or something like it must be in the uniform rules regardless of whether or not self-represented parties are exempt from mandatory e-filing.

Second, the proposed version of the rule provides only minimal guidance to the courts on what the procedures for requesting a hardship exemption must be. Comments are invited on the following questions:

- Should the rule contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be

[6] Compare the procedures already in current rule 2.253(a) for complex cases and rule 8.73 for appellate cases.

decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?

- Should the rule specify to whom a request for exemption shall be made (e.g., the presiding judge or the presiding judges' designee) or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?

- Should a party be able to request exemption from electronic service and other relief, as well as exemption from e-filing requirements?

A third, related issue is whether the rule should provide for any simplified or expedited procedures for self-represented litigants to request an exemption from any mandatory e-filing requirements:

- Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?

- Should the clerk's office be able to grant such requests with no appearance or hearing required unless the request is denied?

Finally, there are questions about what standardized Judicial Council form or forms should be developed and made available for use by persons requesting an exemption. For public consideration and discussion, two new optional Judicial Council forms have been prepared:

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)

- *Order on Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

These proposed Judicial Council forms are based on a local application and order form developed by the mandatory e-filing pilot court, the Superior Court of Orange County. The forms assume certain procedures and standards for granting or denying exemptions. Based on the public comments and any revisions to the proposed rules, the proposed forms might be modified, expanded, or supplemented by other forms specially designed for use by self-represented persons. Also, the forms as proposed are optional, but might be made mandatory.

Comments are specifically invited on the questions above about these forms and about what other Judicial Council form or forms should be adopted to implement the new mandatory e-filing legislation and rules.

Issue of mixed cases if self-represented parties are excluded

If rules are adopted that ultimately provide that self-represented litigants are excluded from mandatory e-filing requirements, a related issue arises regarding whether to authorize mandatory e-filing in mixed cases in which both attorneys and self-represented litigants are involved.

Limiting mandatory e-filing to only those cases in which *all* parties were represented by attorneys would have some important consequences. It would significantly limit the impact of mandatory e-filing—excluding the possibility of requiring e-filing from most collections cases and unlawful detainer cases. Rather than leaving this issue unresolved, the rules on mandatory e-filing should address it directly. One way to do so would be to authorize mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but specify that the electronic filing and service requirements apply only to the represented parties in these cases; self-represented parties in mixed cases would file and serve documents and be served by conventional means unless they agree otherwise.

The following possible language to address this issue is included in amended rule 2.253(b)(3):

> In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these mixed cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party agrees otherwise.

Fees and fee waivers.

In addition to hardship exceptions, AB 2073 enumerates certain other conditions and specifies various matters that are to be included in the uniform rules to be adopted on mandatory electronic filing and service. These include statewide policies on parties with fee waivers. (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)].)

To implement the new statutory provisions, the following paragraphs would be included in rule 2.253(b):

> (5) Any fees charged by the court shall be for no more than the actual cost of [*or:* for no more than the cost actually incurred by the court in providing for][7] the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.
>
> (6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court,

[7] In the proposed rules text, sometimes alternatives—especially an alternative word or phrase— are shown in brackets.

> including providing a waiver of the fees for any party that has received a fee waiver.

Because provisions similar to these are already included in the statute, their inclusion in the rules may not be strictly necessary. However, AB 2073 seems to contemplate that there will be rules relating to fees and fee waivers in the new rules on mandatory electronic filing and service. There are also some advantages to including these provisions in the rules.

First, these key provisions would be in the rules along with the other significant provisions relating to mandatory electronic filing. All the principal conditions and requirements relating to such filings would be together in one place in the rules.

Second, the general rules on electronic filing and service already contain other provisions regarding fees and fee waivers. (See Cal. Rules of Court, rules 2.252(c), 2.255(B) and 2.258(a)–(b).) For the sake of comparison and clarity, including specific provisions on fees and fee waivers in the rule on mandatory electronic filing would be useful.

Third, the provisions on fees and fee waivers in the proposed rules are very basic. They may benefit from further explanation and clarification. Comments are invited from the public and the courts about whether any other provisions should be added to the rules concerning fees or fee waivers in cases involving mandatory e-filing.

Effective date of electronic filing: to be determined by "close of business" or midnight on filing day.

Another important issue that the rules need to address is what should be the effective date of electronically filed documents. This issue is complicated and—regardless what future approach is ultimately recommended—poses some challenges for implementation.

There are two inconsistent provisions on this matter in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under the Orange County's mandatory electronic filing pilot project.

Code of Civil Procedure section 1010.6(b)(3), applicable to electronic filing generally, provides:

> Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day.[8] "Close of business" as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's counter, whichever is earlier.

[8] The current rules of court contain a similar, though not identical, provision. (See rule 2.259(c):"A document that is received electronically by the court after the close of business is deemed to have been received on the next court day".) Unlike the statute that focuses on the electronic filing of a document, the rule focuses on the receipt of the document.

On the other hand, section 1010.6(d)(1)(D), applicable to the mandatory e-filing pilot project in Orange County, provides:

> A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court day that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county. Documents filed on or after 12 a.m., or filed on a noncourt day, will be deemed filed on the soonest court day following the filing.

AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the "close of business"—for cases where e-filing is by consent or by court order.

In the longterm, it would appear best to have a single standard for all types of electronic filing, whether voluntary or mandatory. But at this time, the question that needs to be resolved is, What standard should be recommended for mandatory electronic filing: (1) the current "close of business" standard, (2) a new standard that would allow electronic filings before midnight to be counted on the day they are filed rather than the next court day, or (3) a new standard that would make an electronic filing effective upon transmission unless the transmission is on a non-court day? If one of the last two approaches is adopted, there is a question of how and when the change should be implemented for different types of electronic filings.

<u>Option 1: Retain current "close of business" standard" for all electronically filed cases</u>
Retaining the current "close of business" standard has some weigh. It provides that everyone who files, by whatever means, before the close of business is deemed to have filed on that day and everyone who files afterwards is deemed to have filed on the next court day. This standard creates a level playing field for attorneys and self-represented litigants, and for those with access to electronic filing and those without. The standard also means that courts and attorneys will receive documents before the close of business, which may be helpful in preparing for upcoming hearings and proceedings.

<u>Option 2: Allow filing until midnight in mandatory e-filing cases</u>
The option to file until midnight also has arguments in its favor. In contemporary practice, treating electronic filings and service as though based on paper filing and service seems like an anachronism. The applicable statute and rule already add two days for electronic service (see Code Civ. Proc., § (a)(4) and rule 2.251(f)(2)). So permitting documents filed electronically by midnight to be effective on the day of filing will generally not prejudice attorneys or others

served with them. Also, most documents filed or served electronically are processed quickly, and will be processed even more quickly in the future. So courts will not need to receive documents before the close of business. Finally, in the present fiscal environment, "close of business" varies widely among the courts and is becoming earlier. This inconsistency creates uncertainty for litigants and shortens the time available to prepare papers for filing. Establishing a single effective time throughout the state——for example, that any electronic filing before midnight is effective that day—— would be clearer and beneficial for everyone.

Option 3: Make filing effective at the time of transmission

A third option would be to make electronic filings effective at the time of transmission unless the transmission is on a non-court day, in which case the filing would be effective on the next court day. This would basically have the same effect as option 2.

An issue in connection with the "time of transmission" standard and, more generally, with the use of the expression "time of transmission" in the rules and statute, is that the expression is not defined. If an electronic filing service provider (EFSP) is used, is the "time of transmission" the time of transmission by the EFSP to the court or the time of transmission by the filer to the EFSP? This expression should probably be interpreted to mean the time of transmission by the EFSP to the court—not the time of the transmission by the filer to the EFSP, though this is not expressly stated anywhere in the rules or statute. Comments are invited on whether this issue needs to be addressed in the rules, and, if so, how.[9]

Next steps: Selection and implementation of standard

For the purposes of discussion and public comment, the attached draft rules provide for all three options described above—the "close of business," the "file until midnight," and the "time of transmission" approaches. The drafts also provide for the option that, if either the "file until midnight" or the "time of transmission" approach is recommended, its adoption might be postponed until conforming legislation can be enacted.

If the current "close of business" approach contained in Code of Civil Procedure section 1010.6(b)(3) and rule 2.259(c) is retained and made applicable by rule to all types of electronic filings, it will be simple to provide in the uniform rules on mandatory electronic filing that this "close of business" standard applies to all electronically filed cases.

But if an alternative standard is preferred, the process for implementing that approach will be more complicated. The "file until midnight" standard could be made applicable by rule to all

[9] It should also be noted that there is some inconsistency in the language of the statute and rules about whether the effective date of an electronic filing should be measured from the time of the transmission of the electronic filing or the time of the court's receipt of the filing. The issue of measuring the effective time from transmission v. time of receipt is a matter that may benefit from more consistent treatment in the rules and statutes. This issue has a practical aspect: filers will better know when they transmitted a document whereas courts will better know when the document was received

mandatory electronic filing, but to make the "file until midnight" or the "time of transmission" standard applicable to cases involving voluntary e-filing appears to require further legislation.

Specific comments are invited on the following issues:

- Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?
- Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?
- If the "file until midnight" standard is to be adopted, should it be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making this standard applicable to both voluntary and mandatory e-filing?

Other electronic filing issues

The same paragraph in AB 2073 that has new language about the time for electronically filing documents contains a statement about ex parte applications: "Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county." (See Code Civ. Proc., § 1010.6(d)(1)(D).) Is it necessary to include such a statement in the rules?

On the one hand, it could be argued that this clarification about the handling of ex parte applications is helpful. If so, it could be included in the general rules on electronic filing applicable to both mandatory and voluntary electronic filing. On the other, it could be argued that a special provision regarding ex parte applications is simply unnecessary. The same deadlines that apply to conventionally filed documents should also apply to electronically filed documents. (See current Cal. Rules of Court, rule 2.252(f) ("Filing a document electronically does not alter any filing deadline.")[10] Because ex parte applications must follow this general rule, there appears to be no reason to single out ex parte applications for attention in the statute or rule. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper.

To the extent that there is some ambiguity about the basic rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue may be addressed in the rules by relocating the provision in rule 2.252(f) to be more prominent.[11] Also, with respect to the electronic filing statute, an express statement that "filing a document electronically does not alter any filing deadline" could eventually be added to the list of conditions that apply to all electronic filings. This approach to clarifying the law may be

[10] The federal courts follow the same general rule. See U.S. District Court, Northern District of California, Order No. 45, VI.D ("Filing documents does not alter any filing deadlines").

[11] See draft amended rules, rule 2.252(c)(2).

preferable to having a particular rule or statutory provision applicable only to ex parte applications or other individual documents that are filed.

New rule provisions on mandatory electronic service

AB 2073 requires the Judicial Council to "adopt uniform rules to permit the mandatory filing *and service* of documents for specified civil actions in the trial courts of the state." (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Accordingly, this proposal includes certain rule changes relating to the electronic service as well as the electronic filing of documents. Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who may serve documents electronically.

Several specific changes to rule 2.251—on electronic service—are included in the proposed rules. Many of these changes are technical: they are designed to eliminate ambiguities on how electronic service will operate in a court that mandates electronic filing under the new uniform rules. However, some of the proposed changes are substantive.

First, a new subdivision (c), entitled "Electronic service required by local rule or court order," would be added to rule 2.251. To clarify the impact of AB 2073, it would state that a court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in the chapter on electronic service and filing. (See amended Cal. Rules of Court, rule 2.251(c)(1).)

In addition, a new provision would establish a default service procedure for cases involving mandatory electronic filing. It would provide that, except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless: (1) the court orders otherwise, or (2) the action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by nonelectronic methods unless they consent to electronic service. (See amended Cal. Rules of Court, rule 2.251(c)(2).)

A new provision would be added in subdivision (c) that would provide that each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes. (See amended Cal. Rules of Court, rule 2.251(c)(3).)

An additional electronic service question relates to the issue discussed previously about when an electronic filing is effective. Currently, the rules on electronic service provide that "[s]ervice that occurs after the close of business is deemed to have occurred on the next court day." (See current rule 2.251(f)(4).) If the rule on the effective date of electronic filing is to be changed to provide for the "file until midnight" standard, one possibility is also to amend the service rule to read:

"Service that occurs before midnight on a [court] day is deemed to have occurred on that day." (See amended rule 2.251(h)(4).)[12]

Another possibility is to eliminate entirely subpart (f)(4) of rule 2.251 on when service is effective. That rule elsewhere already provides that "[e]lectronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent." (See rule 2.251(f)(1).)[13] Arguably, the provision in current (f)(4) that makes effectiveness depend on the time of day is inconsistent with the provision in (f)(1) and the statute. Instead of changing the effective time in (f)(4), it may be simplest and clearest to omit (f)(4), and leave the time of transmission or notification, as provided in the rule and statute, as the sole dispositive factor. This approach would be consistent with adopting a "time of transmission" standard for determining the effective date of an electronic filing.

Incidentally, one feature to be noted about the "time of transmission" standard is that the term is not defined. If an electronic filing service provider is used, is the "time of transmission" the time of transmission by the EFSP to the court or the time of transmission by the filer to the EFSP? Presumably, it is the former. Does this issue need to be clarified in the rules?

A final, separate issue on electronic service comes from a suggestion from a California attorney that all *represented* parties should be required to serve each other electronically *regardless of whether or not they are required to file documents electronically.* This question is beyond the scope of the current effort to develop uniform rules to implement AB 2073. But because this idea might be pursued in the future, comments are invited on this suggestion.

Other rule changes

In addition to the rule changes described above, some other changes are proposed that may be useful to promote the electronic filing and service of documents and to clarify the processes of electronic filing and service.

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[12] If this change is going to be made, it would probably be best to wait and make it at the same time as any statutory and rule provisions on electronic filing are changed to provide that a document filed electronically before midnight on a court day is treated as filed on that day. (See rules 2.253(b)(7) and 2.259(c) for possible related changes regarding electronic filing.)

[13] This rule provision is based directly on the electronic service provisions in Code of Civil Procedure section 1010.6(a)(4) and is consistent with the other statutes on service of documents. The provision is similar to those for service by mail (see Code Civ. Proc., § 1013(a) (service by mail is complete at the time of deposit), for service by Express Mail (see Code Civ. Proc., § 1013(c) (service by Express Mail is complete at the time of deposit), and for service by facsimile (see Code Civ. Proc., § 1013(e)(service by facsimile is complete at the time of transmission)). None of these other provisions take into account the time of day when the service occurred in determining when service is complete.

Filing through EFSPs or directly.
The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court provides that capacity.[14] Thus, it would be useful to clarify in the rules that e-filing is permissible by *both* means—and, in connection with the present task, that a court can mandate electronic filing by either means in appropriate cases.

This clarification is especially important because some trial courts may soon want to institute mandatory direct e-filing under the new uniform rules. To effectuate this purpose, in the draft rules, rule 2.252 would be renamed "General rules on electronic filing of documents," and a new subdivision (b), "Direct and indirect electronic filing," would be added to the rule. The new subdivision would state that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly through the court, through one or more approved electronic service providers, or through a combination of direct and indirect means.

The main rule on mandatory electronic filing, rule 2.253, would also be amended to state in new subdivision (b) that "[a] court may require parties by local rule to electronically file documents in civil actions directly through the court, or directly through the court and through one or more approved electronic service providers, or through more than one approved electronic service provider. . . ." [15]

Notification of EFSPs
A problem has been identified that parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem was identified as arising particularly with self-represented litigants who use an EFSP for filing electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them.

There is currently no rule that expressly addresses this issue. To fill this gap, rule 2.256, on the responsibilities of the electronic filer, would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

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[14] AB 2073 contains language concerning the pilot project that assumes that direct e-filing is an option. One of the conditions specified in the statutory amendments for having a mandatory e-filing program is: "The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, *or to electronic filing access directly through the court*." (Assem. Bill 2070; amended Code Civ. Proc. 1010.6(d)(1)(B)(italics added).)

[15] In the case of mandatory e-filing, the option for a court to provide for e-filing exclusively through a single electronic service provider appears to be precluded by AB 2073, which requires that parties have access to more than one provider capable of electronically filing documents with the court. (See amended Code Civ. Proc., § 1010.6(d)(1)(B)). To change this requirement for cases involving mandatory e-filing may require additional legislation.

> If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

Because this provision would apply to all electronic filers, it is placed in rule 2.256 on the duties of electronic filers rather than in a separate rule for self-represented parties. To the extent the failure to provide contact information is a special problem for self-represented parties, the duty to provide updated information may be highlighted in instructions and information provided to self-represented parties by courts, self-help-centers, EFSPs, and others.

Filing in paper form.

Another issue is whether there are circumstances under which it would be appropriate for an electronic filer to file certain documents in paper form rather than electronically. Current rule 2.253(d) provides: "When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form . . . ." Because of its present location, this subdivision appears to apply only to documents filed by court order in complex civil cases. This provision should in fact apply to all electronic filings; so, in the proposed rules, it has been relocated to rule 2.252, "General rules on electronic filing of documents," as subdivision (d), "Filing in paper form."

In addition to providing for paper filing of documents for which electronic filing is "not feasible," there is a question of whether for certain documents, though they could be filed electronically, it may be preferable to require them to be filed by nonelectronic means for other reasons. For example, some have suggested that sealed records should be filed by non-electronic means to avoid the risk of inadvertent disclosure. Others have disagreed with this suggestion on the grounds that courts are fully capable of electronically filing confidential and sealed records without risk of disclosure.

Comments are invited on whether rule 2.252(d) should be modified to require paper filing not only of documents for which paper filing is not feasible, but also of other specified documents such as records under seal or conditionally under seal.

Definition of "electronic filing."

A final issue that warrants some clarification is the definition of "electronic filing" in rule 2.250(b)(7). It is currently defined as "the electronic transmission to the court of a document in electronic form." To distinguish this definition from other meanings of "filing," it may be useful to add: "For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed." Similar clarifications have been added to rules 2.253(b)(7) and 2.259(c).

These clarifications should make clearer the meaning of the term "electronic filing" when it is used throughout the chapter. For example, when it is used to specify the effective date of a filing, it is the time of transmission, not of processing or the completion of processing, that is determinative. The clarification is also useful in distinguishing the act of filing from the process required in order for a document to become an official record, which is significant for other purposes.

Alternatives Considered

The adoption of rules is required by statute: AB 2073 provides that the Judicial Council shall adopt rules on mandatory electronic filing and service of documents in specified civil cases. The legislation is flexible as to timing; it requires the rules to be adopted on *or before* July 1, 2014. To realize the efficiencies and savings from mandatory e-filing, the committees recommend prompt action so that the rules become effective on July 2013. Although the amended statute contains certain conditions and limitations applicable to mandatory e-filing, the legislation gives the council broad leeway with respect to the content of the rules. As the preceding discussion makes clear, there are many different ways in which the rules on mandatory e-filing might be written and applied. This invitation to comment presents the main alternatives being considered and asks the public and the courts to provide comments on these.

Implementation Requirements, Costs, and Operational Impacts

The approach to mandatory e-filing in AB 2073 and the rules developed to implement it are permissive for the courts, though they will be mandatory for filers subject to the law. The basic purpose of AB 2073 is to authorize trial courts that have the capability to offer e-filing to require parties in appropriate medium or smaller civil cases to file electronically. Although this mandatory e-filing is initially being done as a pilot project in one court, it is intended to be expanded by the adoption of uniform rules to other courts that have the capacity for e-filing. Whether to institute mandatory e-filing and, if so, in what types and categories of civil cases, will be left to the discretion of each court. The authorization for courts to mandate e-filing in civil actions should result in a significant increase in the number of cases statewide being e-filed. As a result, the courts should realize many increased benefits from e-filing, including greater efficiency and lower costs for filing and processing court records.

Attachments

1. Amended California Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.256, 2.258, and 2.259

2. *Request for Exemption from Mandatory Electronic Filing and Service* (form (EFS-007)

3. *Order of Exemption from Mandatory Electronic Filing and Service* (form (EFS-008)

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following specific questions:

General

- Does the proposal appropriately address the stated purpose?

On the rules on mandatory e-filing: scope

- Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?

On the rules on mandatory e-filing: exemptions

- Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?

- Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?

- Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?

- Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?

- Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?

- Should the clerk's office be able to grant such requests and no appearance or hearing be

required unless the request is denied?

On the proposed forms

- Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?

    - *Request for Exemption from Mandatory Electronic Filing and Service* (form EFS-007)

    - *Order on Request for Exemption from Mandatory Electronic Filing and Service* (form EFS-008).

- Should these forms be made mandatory rather than optional?

- Are any other forms needed to implement the rules on mandatory e-filing?

On fees and fee waivers

- Are any more specific rules needed on fee or fee waivers than are currently provided?

On the effective time of electronic filing and service

- How should the effective time of electronic filing and service be determined?

- Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?

- Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?

- If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?

Other proposed rule changes

- Should any of the other rule changes in this proposal be modified? If so, how?

The advisory committees also seek 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 system, or modifying case management system.
- Is the proposed effective date of July 1, 2013 for the rules appropriate?
- How well would this proposal work in courts of different sizes?

Rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.256, 2.258, and 2.259 of the California Rules of Court would be amended, effective July 1, 2013, to read:

Rule 2.250. Construction and definitions[16]

(a) * * *

(b) Definitions

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

(1)–(6) * * *

(7) "Electronic filing" is the electronic transmission to a court of a document in electronic form. For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document, and its entry into the court records, which are necessary for a document to be officially filed.

(8)–(10) * * *

Rule 2.251. Electronic service

(a) ~~Consent to~~ Authorization for electronic service

~~(1)~~ When a document may be served by mail, express mail, overnight delivery, or fax transmission, ~~electronic service of~~ the document may be served electronically under ~~is permitted when authorized by~~ Code of Civil Procedure section 1010.6 and the~~se~~ rules in this chapter.

(b) Electronic service by consent of the parties

~~(2)~~(1) Electronic service may be established by consent of the parties in an action. 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

[16] The footnotes in these proposed rules represent drafter's notes to inform the comment process and will not be included in the final version of the rules.

service address the party has furnished to the court under rule 2.256(a)(4).

~~(3)~~(2) A party that has consented to electronic service under ~~(2)~~(1) 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.

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

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

(2) Except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless:

(A) The court orders otherwise, or

(B) The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by non-electronic methods unless they consent to electronic service.

(3) Each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes under (f).

~~(b)~~(d) Maintenance of electronic service lists

A court that ~~orders or~~ permits or requires electronic filing in a case must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

~~(c)~~(e) Service by the parties

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

(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

~~(d)~~(f) Change of electronic service address

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

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

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

~~(e)~~(g) Reliability and integrity of documents served by electronic notification

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

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

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

(3) Maintain the hyperlink until either:

(A) All parties in the case have settled or the case has ended and the time for appeals has expired; or

(B) If the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days

to download any documents, and 60 days have passed after the notice was given.

~~(f)~~(h) When service is complete

(1) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.

(2) If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of the document, is extended by two court days, unless otherwise provided by a statute or a rule.

(3) The extension under (2) does not extend the time for filing:

(A) A notice of intent to move for a new trial;

(B) A notice of intent to move to vacate the judgment under Code of Civil Procedure section 663a; or

(C) A notice of appeal.

(4) Service that occurs after the close of business is deemed to have occurred on the next court day.

[Alternative versions of (4)]:

~~(4) Service that occurs after the close of business is deemed to have occurred on the next court day.~~

—or—

(4) Service that occurs before midnight on a [court][17] day is deemed to have occurred on that day. Service that occurs after midnight is deemed to have occurred on the next court day.

~~(g)~~(i) Proof of service

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

[17] Bracketed language represents an addition or alternative to the language in the rules that might be considered. Comments are invited on the bracketed terms.

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

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

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

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

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

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

(4) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a).

~~(h)~~(j) Electronic service by court

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

Rule 2.252. ~~Documents that may be filed electronically~~ General rules on electronic filing of documents

(a) In general

A court may ~~permit~~ provide for electronic filing of ~~a~~ documents in ~~any~~ actions ~~or~~ and proceedings as provided under Code of Civil Procedure section 1010.6 and the rules in this chapter ~~unless the rules in this chapter or other legal authority expressly prohibit electronic filing~~.

(b) Direct and indirect electronic filing

Except as otherwise provided by law, a court may provide for the electronic filing of documents directly through the court, through one or more approved electronic service providers, or through a combination of direct and indirect means.

(c) Effect of document filed electronically

(1) A document that the court or a party files electronically under the rules in this chapter has the same legal effect as a document in paper form.

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

(d) Filing in paper form

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

~~(b)~~(e) Original documents

In a proceeding that requires the filing of an original document, an electronic filer may file an electronic copy of a document if the original document is then filed with the court within 10 calendar days.

~~(e)~~(f) Application for waiver of court fees and costs

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

~~(d)~~(g) Orders and judgments

The court may electronically file any notice, order, minute order, judgment, or other document prepared by the court.

~~(e)~~(h) Proposed orders

Proposed orders may be filed and submitted electronically as provided in rule 3.1312.

~~(f) Effect of document filed electronically~~

~~(1) A document that the court or a party files electronically under the rules in this chapter has the same legal effect as a document in paper form.~~

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

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order ~~requiring electronic service or filing~~

(a) Permissive electronic filing

A court may permit parties by local rule to file documents electronically in any types of cases, directly or through approved electronic service providers, subject to the conditions in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(b) Mandatory electronic filing

A court may require parties by local rule to electronically file documents in civil actions directly through the court, or directly through the court and through one or more approved electronic service providers, or through more than one approved electronic service provider, subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and the following conditions:

(1) The court must specify the types or categories of civil actions in which parties are required to file and serve documents electronically. The court may designate any of the following as eligible for mandatory electronic filing and service:

(A) All civil cases;

(B) All civil cases of a specific category, such as unlimited or limited civil cases;

(C) All civil cases of a specific case type, including but not limited to, contract, collections, personal injury, or employment;

(D) All civil cases assigned to a judge for all purposes;

(E) All civil cases assigned to a specific department, courtroom or courthouse;

(F) Any class actions, consolidated actions, or group of actions, coordinated actions, or actions that are complex under rule 3.403; or

(G) Any combination of the cases described in subparagraphs (A) to (F), inclusive.

For the purposes of this subpart, a "civil case" means all civil cases except juvenile [and small claims] cases.

(2) Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. [However, self-represented parties are encouraged to participate voluntarily in electronic filing and service. Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.]

(3) In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these cases, each self-represented party is to file, serve, and be served with documents by nonelectronic means unless the self-represented party agrees otherwise.

(4) A party that is required to file documents electronically must be excused from the requirements if the party shows hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

(5) Any fees charged by the court shall be for no more than the actual cost of [*or:* for no more than the cost actually incurred by the court in providing for] the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.

(6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.

[Three versions of (7) are presented for consideration]:

(7) Any document that is electronically filed with the court after the close of business on any day is deemed to have been filed on the next court day.[18] This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

– or –

(7) Any document required to be electronically filed with the court under this subdivision that is filed before midnight on a court day is deemed to have been filed on that court day, and any document filed electronically after midnight is deemed filed on the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

– or –

(7) Any document required to be electronically filed with the court under this subdivision is deemed filed when the document is transmitted to the court for filing unless the filing occurs on a noncourt day, in which case the filing is effective on the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

~~(a)~~(c) Electronic filing and service required by court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403 to:

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[18] This is similar to the existing provisions concerning non-mandatory filings. (See Code Civ. Proc., § 1010.6(b)(3) ["Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day"] and rule 2.259(c)["A document that is received electronically by the court after the close of business is deemed to have been received on the next court day"]. These current provisions are different from the alternative version of (7) and the special statutory standard applicable to mandatory e-filing in Orange County as authorized by AB 2073 (see Code Civ. Proc., § 1010.6(d)(1)(D)), which will be superseded when these rule amendments become effective.

Under the rule changes in this proposal, the rules could continue to provide for the "close of business" standard for all kinds of e-filing. Alternatively, both the statute and the rules could eventually be amended to provide that all documents filed before midnight on a court day would be deemed filed on that day rather than on the next court day. (See alternative versions of (7).) However, if the latter course is selected, it may be desirable for a period of time in the amended rules to retain the existing standard for all types of electronic filings—until Code of Civil Procedure section 1010.6(b)(3) and rule 2.259(c) can be amended to provide for new standard along the lines described in one of the alternative versions of paragraph (7).

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

(B) File all documents electronically; or

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

(2) If the court proposes to make any order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after notice is mailed or such later time as the court may specify.

(3) If the court has previously ordered parties in a case to electronically serve or file documents and a new party is added that the court determines should also be ordered to do so under (1), the court may follow the notice procedures under (2) or may order the party to electronically serve or file documents and in its order state that the new party may object within 10 days after service of the order or by such later time as the court may specify.

~~**(b) Additional provisions of order**~~

The court's order may also provide that:

~~(1)~~(4) Documents previously filed in paper form may be resubmitted in electronic form; and

~~(2)~~(5) When the court sends confirmation of filing to all parties, receipt of the confirmation constitutes service of the filing if the filed document is available electronically.

~~**(c) Filing in paper form**~~[19]

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

Rules 2.254. Responsibilities of court

[19] This subdivision has been relocated to rule 2.252(d) because it applies not just to filings in complex cases, but to any type of filings.

(a) Publication of electronic filing requirements

Each court that permits or mandates electronic filing must publish, in both electronic and print formats, the court's electronic filing requirements.

(b) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing during the court's regular filing hours, it must promptly take reasonable steps to provide notice of the problem.

(c) Public access to electronically filed documents

Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed document is a public document at the time it is filed unless it is sealed under rule 2.551(b) or made confidential by law.

Rule 2.255. * * *

Rule 2.256. Responsibilities of electronic filer

(a) Conditions of filing

Each electronic filer must:

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

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

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

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

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

(6) If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer

is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

(b) Format of documents to be filed electronically

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

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

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

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

Rule 2.257. * * *

Rule 2.258. Payment of filing fees

(a) Use of credit cards and other methods

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

(b) Fee waivers

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code sections 68630–68641, rule 2.252~~(c)~~(f), and division 2 of title 3 of these rules.

Rule 2.259. Actions by court on receipt of electronic filing

(a)–(b) * * *

(c) Document received after close of business

A document that is ~~received~~ filed electronically ~~by~~ with the court after the close of business is deemed to have been ~~received~~ filed on the next court day[, except that, with respect to documents filed under the mandatory electronic filing provisions in rule 2.253(b)(5), documents filed before midnight on a court day are deemed to have been filed on that court day, and documents electronically filed after midnight are deemed filed on the next court day].[20] This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

(d)–(f) * * *

[20] The underlined language is added to indicate how this subdivision would need to be changed if a decision is made to include in the amended rules two different effective times for mandatory e-filing and consensual e-filing.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
REQUEST FOR EXEMPTION FROM ELECTRONIC FILING AND SERVICE	CASE ASSIGNED TO: DEPARTMENT: JUDICIAL OFFICER: DATE COMPLAINT FILED:

1. I, *(name of applicant):* _____, request to be exempt from the requirements for electronic
   ☐ filing ☐ service ☐ receipt of service in this case for the following reasons:
   a. ☐ I do not readily have access to a computer with Internet access.
   b. ☐ It would cause undue hardship or significant prejudice because _____
   c. ☐ Other *(please specify):* _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

PROOF OF SERVICE BY MAIL

I am at least 18 years of age and not a party to this legal action. I deposited this *Request for Exemption From Electronic Filing and Service* in a sealed envelope with postage fully prepaid, addressed as listed below. I am a resident of or employed in the county where the mailing occurred. My residence or business address is: _____

Date of mailing: _____ Place of mailing *(city and state):* _____

☐ List of names and addresses continued in attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
EFS-007 [New July 1, 2013]

REQUEST FOR EXEMPTION FROM ELECTRONIC FILING AND SERVICE

www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
ORDER OF EXEMPTION FROM ELECTRONIC FILING AND SERVICE	CASE ASSIGNED TO: DEPARTMENT: JUDICIAL OFFICER: DATE COMPLAINT FILED:

ORDER

The court has reviewed this application and makes the following orders:

1. ☐ The court **grants** the application for exemption from electronic filing and service. The applicant may:
   ☐ file ☐ serve ☐ receive service of all documents in this case in paper form.
2. ☐ The court **denies** the application for exemption because of the following reason(s): _____
   _____
   _____
3. ☐ The court needs more information to decide whether to grant the application. The applicant must appear in court on the date below:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____
_____

Date: _____

_____
JUDICIAL OFFICER

Clerk's Certificate of Service

I certify that I am not a party to this action and *(check one)*:

☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the applicant listed above, at the court, on the date below.

☐ This order was mailed first class, postage paid, to the applicant at the address listed above, from *(city)*: , California on the date below.

Date: _____

By: _____
DEPUTY CLERK

Form Approved for Optional Use
Judicial Council of California
EFS-008 [New July 1, 2013]