

Invitation to Comment

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| Title | Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District (adopt Cal. Rules of Court, rules 8.70–8.80) |
| Summary | This proposal would establish rules for electronic filing and service of documents in the Court of Appeal, Second Appellate District on a pilot program basis. |
| Source | Court Technology Advisory Committee Hon. Ming W. Chin, Chair |
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| Discussion | <p>The Issue Rules 2.250–2.261 of the California Rules of Court establish procedures for electronic filing and service of documents in the trial courts. Currently, there are no similar rules for electronic filing and service in the appellate courts. The Court of Appeal, Second Appellate District, would like to establish a pilot program to test the use of electronic filing and service in that court. This proposal would establish the rules for such a pilot program.</p> <p>The Proposal The proposed rules are modeled on and generally incorporate the same language used in the trial court rules on electronic filing and service (rules 2.250–2.261).¹ However, the proposed rules have been adjusted to reflect differences between procedures in the trial and appellate courts.</p> <p>For example, rule 8.71(2), which defines “document” for purposes of these rules, clarifies that the proposed rules cover not only documents filed by litigants, as the trial court rules do, but also documents transmitted to the Court of Appeal by the trial court. In addition, the examples of documents given in rule 8.71(2) are documents that would be found in an appellate, rather than a trial court, proceeding. The proposed rules do not include a provision like that found in rule 2.252</p> |

¹ For the trial courts, rules 2.251 will be adopted and rules 2.256 and 2.260 will be amended effective January 1, 2010 (see www.courtinfo.ca.gov/jc/documents/reports/102309itema18.pdf). The proposed appellate e-filing rules in this invitation to comment reflect the amendments to the trial court rules effective January 1, 2010.

regarding the filing of “original documents,” because, unlike in the trial court, original wills, leases, and other documents are not filed in the appellate court. References to statutes and rules that apply only in the trial courts have been deleted or replaced with references to provisions applicable to the appellate courts (see, for example, proposed rule 8.78).

Proposed rule 8.73 would authorize the Court of Appeal, after finding that such an order would not cause undue hardship or significant prejudice to any party, to order the parties in a case to file or serve all documents electronically. This is similar to rule 2.253 for the trial courts which provides that a trial court can order e-filing or e-service after making such a finding in specified types of cases including class actions and complex cases. However, the proposed appellate rule is broader in that it would not be limited to the types of cases specified in the trial court rule. This broader scope will permit the appellate e-filing pilot program to be more encompassing and flexible. Comments are specifically invited on:

- Whether these pilot program rules should authorize the court to order e-filing and e-service as proposed; and
- Whether, unless the appellate court orders otherwise, e-filing and e-service should be required in the appellate court when they were ordered in the trial court.

It is anticipated that, on or before the time a statewide computerized case management system with e-filing capabilities is deployed in the trial courts, this pilot program will be reviewed to determine whether these rules should be modified, made permanent, or recommended for statewide application.

Attachment

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79, and 8.80 of the California Rules of Court would be adopted, effective July 1, 2010, to read:

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

6
7 Article 4. E-filing Pilot Project

8
9 **Rule 8.70. Purpose, application and construction**

10
11 **(a) Purpose**

12
13 The purpose of the rules in this article is to facilitate the implementation and testing
14 of an e-filing project in the Court of Appeal, Second Appellate District.

15
16 **(b) Application**

17
18 Notwithstanding any other rules to the contrary, the rules in this article govern filing
19 and service by electronic means in the Court of Appeal, Second Appellate District.

20
21 **(c) Construction**

22
23 The rules in this article must be construed to authorize and permit filing and service
24 by electronic means to the extent feasible.

25
26
27 **Rule 8.71. Definitions**

28
29 As used in this article, unless the context otherwise requires:

30
31 (1) “Close of business” is the time on a court day at which the court stops accepting
32 documents for filing at its filing counter. The court must provide notice of its close-
33 of-business time electronically. The court may give this notice in any additional
34 manner it deems appropriate.

35
36 (2) A “document” is (A) any filing submitted to the reviewing court, including, but not
37 limited to, a brief, a petition, an appendix, or a motion; (B) any document
38 transmitted by a trial court to the reviewing court, including a notice or a clerk’s or
39 reporter’s transcript; or (C) any writing prepared by the reviewing court, including
40 an opinion, an order, or a notice. A document may be in paper or electronic form.

1 (3) An “electronic filer” is a party filing a document in electronic form directly with the
2 court, by an agent, or through an electronic filing service provider.

3
4 (4) “Electronic filing” is the electronic transmission to a court of a document in
5 electronic form.

6
7 (5) An “electronic filing service provider” is a person or entity that receives an
8 electronic filing from a party for retransmission to the court. In submission of
9 filings, the electronic filing service provider does so on behalf of the electronic filer
10 and not as an agent of the court.

11
12 (6) “Electronic service” is the electronic transmission of a document to a party’s
13 electronic notification address, either directly or through an electronic filing service
14 provider, for the purpose of effecting service.

15
16 (7) “Regular filing hours” are the hours during which a court accepts documents for
17 filing.

18
19 (8) “Electronic notification address” of a party means the electronic address at or
20 through which the party has authorized electronic service.

21
22
23 **Rule 8.72. Documents that may be filed electronically**

24
25 **(a) In general**

26
27 The court may permit electronic filing of a document in any appeal or original
28 proceeding unless the rules in this article or other legal authority expressly prohibit
29 electronic filing.

30
31 **(b) Application for waiver of court fees and costs**

32
33 The court may permit electronic filing of an application for waiver of court fees and
34 costs in any proceeding in which the court accepts electronic filings.

35
36 **(c) Orders, opinions, and notices**

37
38 The court may electronically file any notice, order, opinion, or other document
39 prepared by the court.

40
41

1 **(d) Effect of document filed electronically**

2
3 (1) A document that the court or a party files electronically under the rules in this
4 article has the same legal effect as a document in paper form.

5
6 (2) Filing a document electronically does not alter any filing deadline.
7

8
9 **Rule 8.73. Court order requiring electronic service or filing**

10
11 **(a) Court order**

12
13 The court may, on the motion of any party or on its own motion, after finding that
14 such an order would not cause undue hardship or significant prejudice to any party,
15 order all parties to:

16
17 (1) Serve all documents electronically, except when personal service is required
18 by statute or rule;

19
20 (2) File all documents electronically; or

21
22 (3) Serve and file all documents electronically, except when personal service is
23 required by statute or rule.
24

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

26
27 The court's order may also provide that documents previously filed in paper form
28 may be resubmitted in electronic form.
29

30 **(c) Filing in paper form**

31
32 When it is not feasible for a party to convert a document to electronic form by
33 scanning, imaging, or another means, a court may allow that party to serve, file, or
34 serve and file the document in paper form.
35

36
37 **Rule 8.74. Responsibilities of court**

38
39 **(a) Internet-accessible system**

40
41 (1) Except as provided in (2), a court that orders electronic filing must permit
42 filing over the Internet by means designed to ensure the security and integrity
43 of an Internet transmission.
44

1 (2) The court may decide not to permit service and filing over the Internet if the
2 court determines that doing so would facilitate the management of a particular
3 appeal or proceeding and would not cause undue prejudice to any party.

4
5 **(b) Publication of electronic filing requirements**

6
7 When the court permits electronic filing it will publish, in both electronic and print
8 formats, the court’s electronic filing requirements.

9
10 **(c) Problems with electronic filing**

11
12 If the court is aware of a problem that impedes or precludes electronic filing during
13 the court’s regular filing hours, it must promptly take reasonable steps to provide
14 notice of the problem.

15
16
17 **Rule 8.75. Contracts with electronic filing service providers**

18
19 **(a) Right to contract**

20
21 (1) The court may contract with one or more electronic filing service providers to
22 furnish and maintain an electronic filing system for the court.

23
24 (2) If the court contracts with an electronic filing service provider, the court may
25 require electronic filers to transmit the documents to the provider.

26
27 (3) If there is a single provider or an in-house system, the court must accept filing
28 from other electronic filing service providers to the extent it is compatible with
29 them.

30
31 **(b) Provisions of contract**

32
33 The court’s contract with an electronic filing service provider may allow the
34 provider to charge electronic filers a reasonable fee in addition to the court’s filing
35 fee. The contract may also allow the electronic filing service provider to make other
36 reasonable requirements for use of the electronic filing system.

37
38 **(c) Transmission of filing to court**

39
40 An electronic filing service provider must promptly transmit any electronic filing
41 and the applicable filing fee to the court.

1 **(d) Confirmation of receipt and filing of document**

- 2
- 3 (1) An electronic filing service provider must promptly send to an electronic filer
4 confirmation of the receipt of any document that the filer has transmitted to the
5 provider for filing with the court.
- 6
- 7 (2) The electronic filing service provider must send its confirmation to the filer's
8 electronic notification address and must indicate the date and time of receipt,
9 in accordance with rule 8.79(a).
- 10
- 11 (3) After reviewing the documents, the court must promptly transmit to the
12 electronic filing service provider and the electronic filer the court's
13 confirmation of filing or notice of rejection of filing, in accordance with rule
14 8.79.

15

16 **(e) Ownership of information**

17

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

21

22

23 **Rule 8.76. Responsibilities of electronic filer**

24

25 **(a) Conditions of filing**

26

27 Each electronic filer agrees to, and must:

- 28
- 29 (1) Comply with any court requirements designed to ensure the integrity of
30 electronic filing and to protect sensitive personal information;
- 31
- 32 (2) Furnish information that the court requires for case processing;
- 33
- 34 (3) Take all reasonable steps to ensure that the filing does not contain computer
35 code, including viruses, that might be harmful to the court's electronic filing
36 system and to other users of that system;
- 37
- 38 (4) Furnish one or more electronic notification addresses, in the manner specified
39 by the court, at which the electronic filer agrees to accept service; and
- 40
- 41 (5) Immediately provide the court and all parties with any change to the electronic
42 filer's electronic notification address.
- 43
- 44

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

2
3 A document that is filed electronically with the court must be in a format specified
4 by the court unless it cannot be created in that format. The format adopted by a court
5 must meet the following requirements:

- 6
7 (1) The software for creating and reading documents must be in the public domain
8 or generally available at a reasonable cost.
9
10 (2) The printing of documents must not result in the loss of document text, format,
11 or appearance.
12

13 If a document is filed electronically under the rules in this article and cannot be
14 formatted to be consistent with a formatting rule elsewhere in the California Rules
15 of Court, the rules in this article prevail.
16

17
18 **Rule 8.77. Requirements for signatures on documents**

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

21
22 When a document to be filed electronically provides for a signature under penalty of
23 perjury, the following applies:
24

- 25 (1) The document is deemed signed by the declarant if, before filing, the declarant
26 has signed a printed form of the document.
27
28 (2) By electronically filing the document, the electronic filer certifies that (1) has
29 been complied with and that the original, signed document is available for
30 inspection and copying at the request of the court or any other party.
31
32 (3) At any time after the document is filed, any other party may serve a demand
33 for production of the original signed document. The demand must be served
34 on all other parties but need not be filed with the court.
35
36 (4) Within five days of service of the demand under (3), the party on whom the
37 demand is made must make the original signed document available for
38 inspection and copying by all other parties.
39
40 (5) At any time after the document is filed, the court may order the filing party to
41 produce the original signed document in court for inspection and copying by
42 the court. The order must specify the date, time, and place for the production
43 and must be served on all parties.
44
45

1 **(b) Documents not signed under penalty of perjury**

2
3 If a document does not require a signature under penalty of perjury, the document is
4 deemed signed by the party if the document is filed electronically.
5

6 **(c) Documents requiring signatures of opposing parties**

7
8 When a document to be filed electronically, such as a stipulation, requires the
9 signatures of opposing parties, the following procedure applies:

- 10
11 (1) The party filing the document must obtain the signatures of all parties on a
12 printed form of the document.
13
14 (2) The party filing the document must maintain the original, signed document and
15 must make it available for inspection and copying as provided in (a)(2). The
16 court and any other party may demand production of the original signed
17 document in the manner provided in (a)(3)–(5).
18
19 (3) By electronically filing the document, the electronic filer indicates that all
20 parties have signed the document and that the filer has the signed original in
21 his or her possession.
22

23 **(d) Digital signature**

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

27 **(e) Judicial signatures**

28
29 If a document requires a signature by a court or a judicial officer, the document may
30 be electronically signed in any manner permitted by law.
31
32

33 **Rule 8.78. Payment of filing fees**

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

36
37 The court may permit the use of credit cards, debit cards, electronic fund transfers,
38 or debit accounts for the payment of filing fees associated with electronic filing, as
39 provided in Government Code section 6159 and other applicable law. The court may
40 also authorize other methods of payment.
41

42 **(b) Fee waivers**

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

1
2
3 **Rule 8.79. Actions by court on receipt of electronic filing**
4

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

7 (1) Confirmation of receipt
8

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

14 (2) Confirmation of filing
15

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

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

24 (B) The titles of the documents as filed by the court; and
25

26 (C) The fees assessed for the filing.
27

28 (3) Transmission of confirmations
29

30 The court must send receipt and filing confirmation to the electronic filer at
31 the electronic notification address that the filer furnished to the court under
32 rule 8.76(a)(4). The court must maintain a record of all receipt and filing
33 confirmations.
34

35 (4) Filer responsible for verification
36

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

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

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

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

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

5
6 A document that is filed electronically with the court after the close of business is
7 deemed to have been filed on the next court day.

8
9 **(d) Delayed delivery**

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

16
17 **(e) Endorsement**

18
19 (1) The court’s endorsement of a document electronically filed must contain the
20 following: “Electronically filed by California Court of Appeal, Second
21 Appellate District, on _____ (date),” followed by the name of the court clerk.

22
23 (2) The endorsement required under (1) has the same force and effect as a
24 manually affixed endorsement stamp with the signature and initials of the
25 court clerk.

26
27 (3) A record on appeal, brief, or petition in an appeal or original proceeding that is
28 filed and endorsed electronically may be printed and served on the appellant or
29 respondent in the same manner as if it had been filed in paper form.

30
31
32 **Rule 8.80. Electronic service**

33
34 **(a) Consent to electronic service**

35
36 (1) When a notice may be served by mail, express mail, overnight delivery, or fax
37 transmission, electronic service of the notice is permitted when authorized by
38 these rules.

39
40 (2) A party indicates that the party agrees to accept electronic service by:

41
42 (A) Filing and serving a notice that the party accepts electronic service. The
43 notice must include the electronic notification address at which the party
44 agrees to accept service; or

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

5
6 (3) A party that has consented to electronic service under (2) and has used an
7 electronic filing service provider to file and serve documents in a case
8 consents to service on that electronic filing service provider as the designated
9 agent for service for the party in the case, until such time as the party
10 designates a different agent for service.

11
12 **(b) Maintenance of electronic service lists**

13
14 When the court permits electronic filing in a case, it must maintain and make
15 available electronically to the parties an electronic service list that contains the
16 parties' current electronic notification addresses, as provided by the parties that have
17 filed electronically in the case.

18
19 **(c) Service by the parties**

20
21 Notwithstanding (b), parties are responsible for electronic service on all other
22 parties in the case. A party may serve documents electronically directly, by an agent,
23 or through a designated electronic filing service provider.

24
25 **(d) Change of electronic notification address**

26
27 (1) A party whose electronic notification address changes while the appeal or
28 original proceeding is pending must promptly file a notice of change of
29 address electronically with the court and must serve this notice electronically
30 on all other parties.

31
32 (2) A party's election to contract with an electronic filing service provider to
33 electronically file and serve documents or to receive electronic service of
34 documents on the party's behalf does not relieve the party of its duties under
35 (1).

36
37 (3) An electronic notification address is presumed valid for a party if the party
38 files electronic documents with the court from that address and has not filed
39 and served notice that the address is no longer valid.

40
41 **(e) When service is complete**

42
43 (1) Electronic service is complete at the time of transmission.
44

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

3
4 **(f) Proof of service**

5
6 (1) Proof of electronic service may be by any of the methods provided in Code of
7 Civil Procedure section 1013a, except that the proof of service must state:

8
9 (A) The electronic notification address of the person making the service, in
10 addition to that person's residence or business address;

11
12 (B) The date and time of the electronic service, instead of the date and place
13 of deposit in the mail;

14
15 (C) The name and electronic notification address of the person served, in
16 place of that person's name and address as shown on the envelope; and

17
18 (D) That the document was served electronically, in place of the statement
19 that the envelope was sealed and deposited in the mail with postage fully
20 prepaid.

21
22 (2) Proof of electronic service may be in electronic form and may be filed
23 electronically with the court.

24
25 (3) The party filing the proof of electronic service must maintain the printed form
26 of the document bearing the declarant's original signature and must make the
27 document available for inspection and copying on the request of the court or
28 any party to the action or proceeding in which it is filed, in the manner
29 provided in rule 8.77(a).

30
31 **(g) Electronic service by court**

32
33 The court may electronically serve any notice, order, opinion, or other document
34 issued by the court in the same manner that parties may serve documents by
35 electronic service.

Item W10-04 Response Form

Title: Appellate Procedure: Electronic Filing Pilot Program in the Court of Appeal,
Second Appellate District (adopt Cal. Rules of Court, rules 8.70–8.80)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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| DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 22, 2010 |
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.