

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**
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Report

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee
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Rules Subcommittee
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DATE: September 15, 2009

SUBJECT: Electronic Filing and Service: Changes to the Rules (adopt Cal. Rules of Court, rule 2.251; and amend rules 2.256 and 2.260) (Action Required)

Issue Statement

The Court Technology Advisory Committee recommends that the rules on electronic filing and service be amended to make certain provisions more practical and effective. In addition, the committee recommends the adoption of a new general rule on the construction of the rules on electronic filing and service to provide guidance on the interpretation of those rules.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2010:

1. Adopt rule 2.251, which provides guidance on construing the rules on electronic filing and service to permit filing and service by electronic means to the extent feasible; and
2. Amend rules 2.256 and 2.260 to be more practical and workable.

The text of the proposed new and amended rules is attached at pages 7–8.

Rationale for Recommendation

The California Rules of Court on electronic filing and service would be made clearer and more effective by the adoption of the changes described below.

Rule 2.251. Construction of rules

New rule 2.251 would provide general direction regarding how the rules in the chapter on electronic service and filing (rules 2.250–2.261) are to be construed. Specifically, rule 2.251 would state: “The rules in this chapter must be construed to authorize and permit filing and service by electronic means to the extent feasible.” This rule of construction will advance the policy that favors the use of electronic filing and service as they become more widely available. The rule also will give courts applying the rules on electronic service and filing guidance on interpreting those rules.

Rule 2.256. Responsibilities of electronic filer

This rule contains a provision that, by January 1, 2010, any format adopted by the court for electronically filed documents must allow for full text searching. (See rule 2.256(b)(2).) The proposed rule amendment would eliminate this provision for the present time. The Court Technology Advisory Committee is currently looking into issues relating to the preservation of privacy in electronic court records. While it is undertaking this review, the committee thinks that it is premature to mandate that courts require formats for filed documents that permit full text searching.

Rule 2.260. Electronic Service

The proposed amendments to rule 2.260 are intended to clarify, update, and improve the effectiveness of this rule on electronic service. The rationale for the specific proposed amendments to rule 2.260 are explained below.

1. Rule 2.260(b)

This subdivision starts with the words “By January 1, 2009.” Because this time has passed and the new provision is in effect, the prefatory language should be deleted.

2. Rule 2.260(f)(1)(D)

This provision currently states that proofs of electronic service must state that “the transmission was reported as complete and without error.” This language was derived from the fax filing rules, but it does not apply accurately to electronic filing. In e-filing and service, the filer does not receive an error report. The language could be eliminated entirely or changed to state that “no message was received that the transmission was undeliverable” to reflect the realities of e-filing and service. The committee recommends eliminating the statement entirely.

Proofs of service by mail do not require any declaration that the serving party did not receive notice that the mail was undeliverable. This same approach should be used for

electronic service. Electronic service should not impose additional requirements on parties that would make it more burdensome or complicated to use than service by mail.

Alternative Actions Considered

In addition to the rule changes proposed above, the committee considered several other changes to the rules on electronic filing and service; these were also circulated for comment. For instance, because the rules on electronic service do not prescribe the length of time that a party must retain an original signed document when a copy has been filed or served electronically, the committee considered a proposal that would have amended rules 2.257 and 2.260(f)(4) to specify how long a party who has electronically filed a document containing a signature must retain the original signed document. For the reasons described in the comments section, the committee has decided not to recommend any particular retention period at this time but, instead, to look further into this issue.

In the rules circulated for comment, the committee also considered amending rule 2.260(a), which provides that a party agrees to accept electronic service by electronically filing any document with the court, to allow small claims litigants to affirmatively opt out of electronic service by indicating that they do not consent to electronic service at the time they file their claims. Based on the comments and other considerations described in the comments section, the committee decided to take no action on this proposal. Instead, the issues of which types of litigants should be allowed to opt out of electronic service or be exempted from it, and the procedures for this, will continue to be studied.

Comments From Interested Parties

Ten comments were submitted on this set of rules proposals. The commentators included court administrators and staff, a local bar association, a county counsel's office, the Committee on Administration of Justice of the State Bar of California (CAJ), and private electronic filing and service providers.¹ The main comments are discussed below, organized by rule.

1. Rule 2.251. Construction of rules

The only specific comment on this new rule of construction was from the CAJ, which supported it. The committee notes the support and strongly recommends the adoption of the rule.

2. Rule 2.256. Responsibilities of electronic filer

The proposed amendment to this rule would delete the requirement in subdivision (b)(2) that the format adopted by courts for electronic filing must allow for full text searching. Deleting this requirement will give the Court Technology Advisory Committee more time to look into issues relating to the preservation of privacy in electronic court records before those records become searchable. Only one comment was received on this

¹ A chart summarizing the comments and the committee's responses is attached at pages 9– 24.

proposed amendment. The CAJ did not oppose the proposal, but commented that while it understands the significant privacy issues raised by electronic searchability, it hopes that the rules will “move quickly toward a searchability requirement for future filings.” (See comment 3.) The committee is cognizant of the CAJ’s concern.

3. Rule 2.257 and rule 2.260(f)(4) on retention of original signed documents

The proposed amendments to rules 2.257(e) and 2.260(f)(4) relating to the retention of original, signed documents generated a number of responses. None of the commentators supported the proposal as circulated; most of the comments suggested alternative approaches.

The CAJ members disagreed with the proposals for various reasons. (See comment 3.) Some thought that the rule should not contain any time frame for retaining signed documents. They believe that a time frame specific to e-filed documents is unnecessary and could conflict with attorneys’ existing obligations. Other members of CAJ thought that a time frame should be specified without reference to Government Code section 66152. They believe that requiring attorneys to retain documents as provided under the code would be unworkable practically. They cite some federal practices and recommend amendments to subdivision (e) along similar lines.

In the same vein, an electronic filing and service provider recommended that instead of the proposed retention provisions, the committee consider the approach followed by some federal courts. (See comment 7.) The commentator pointed out the procedure followed in the United States District Court for the Southern District of California, under which the filing party must retain the original document for a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater, and must provide the original paper document to the court on request. (Section (f) (2), *Electronic Case Filing Administrative Procedures Manual* of the USDC Southern District, California.) The commentator noted that this federal court clarifies that the electronically filed version of the document constitutes the “official version of the record” and provides for a uniform retention period for paper versions of signed documents that would not vary based on document type.

Another electronic service provider also had concerns about the rules on retention. He commented that current rule 2.257, which is silent on the length of retention “in our opinion is a far less evil than what is being proposed.” He provided a number of reasons for reaching this conclusion. (See comment 10.) He also observed that the proposed new provisions relating to retention of signed proofs of service are inconsistent with recent developments regarding electronic signatures and recommended against the amendment to rule 2.260(f)(4). He commented: “When viewed objectively, it is our hope these issues can be resolved over time, but specifically creating a new initiative requiring law firms to maintain paper records of most of their documents being filed (each document being filed

usually has a proof of service) for 10–30 years seems a big step back and not in synch with the global effort to reduce our strain on natural resources.”

Based on the comments, the committee decided to take no action at this time on the proposed rules on the length of time that parties and attorneys must maintain original, signed documents. Instead the matter should be studied further. At the same time, the question may be studied of whether any procedures should be established for depositing signed documents with the court.

4. Rule 2.260.(a). Consent to electronic service

Several comments were received on the proposal to add to rule 2.260 a new subpart (a)(3), which would require small claims litigants who file electronically to opt out of the presumed acceptance of electronic service that results from electronic filing.

The Small Claims and Limited Cases Subcommittee of the Civil and Small Claims Advisory Committee agreed with the Court Technology Advisory Committee that consent to receive e-service by any party who e-files documents with the court raises special concerns about small claims litigants. However, instead of the proposed amendment to rule 2.260(a), the subcommittee recommended that rule 2.260(a) be amended to exclude small claims litigants from subparagraph (2)(B), which provides that a party that electronically files any document with the court thereby agrees to accept electronic service rather than to provide that small claims litigants may opt out of subparagraph (2)(B). The subcommittee, however, also believes that small claims litigants should be allowed to affirmatively opt in to accepting electronic service, as provided in rule (2)(A). (See comment 9.)

The CAJ also commented in this proposal. (See comment 3.) It agreed with amending rule 2.260(a) but recommended for clarity referencing section (2)(B), the section that makes consent to electronic service automatic upon electronic filing, so that the rule would read as follows: “(3) A party in a small claims case may elect to not accept service electronically under (2)(B) by indicating....” This would preserve the ability of the party to consent to electronic service under (2)(A). More broadly, CAJ members expressed concern about the lack of an opt-out mechanism in rule 2.260(a) for litigants in general, i.e., other than litigants in small claims cases. They noted, for example, that under the current rules, a litigant who electronically files a document on one occasion from a self-help kiosk agrees to accept electronic service thereafter, without the possibility of opting out.

After reviewing these and other comments, the committee concluded that this rule proposal warrants additional study and consideration. Instead of proceeding with the proposal to amend rule 2.260(a) at this time, other advisory committees might be invited to provide comments and suggestions to the Court Advisory Committee regarding the

development of rules on electronic service, taking into account the differences among types of cases and litigants including self-represented litigants.

5. Rule 2.260(f)(1)(D). Proof of service

The proposed amendment to subdivision (f)(1)(D) would eliminate the requirement in the current rule that proofs of electronic service must state that “the transmission was reported as complete and without error.” There was one comment on this proposal from the CAJ, which supported the change and agreed with the reasoning for excluding any transmission report requirement from the rules. (See comment 3.) The committee strongly supports going forward with this amendment.

Implementation Requirements and Costs

The new rule of construction and the amendments to the other rules should not require implementation or impose costs. Rather, the amendments to rules 2.256 and 2.260 should make it easier for courts and litigants to comply with the rules by eliminating the requirement that electronically filed documents must be in a searchable format and that proofs of electronic service must state that the transmission was completed and without error.

Attachments

Rules 2.251 of the California Rules of Court are adopted, and rules 2.256 and 2.260 are amended, effective January 1, 2010, to read:

1 **Rule 2.251. Construction of rules**
2

3 The rules in this chapter must be construed to authorize and permit filing and service by
4 electronic means to the extent feasible.
5

6
7 **Rule 2.256. Responsibilities of electronic filer**
8

9 (a) * * *

10
11 (b) **Format of documents to be filed electronically**
12

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

- 16
- 17 (1) The software for creating and reading documents must be in the public
18 domain or generally available at a reasonable cost.
19
 - 20 (2) ~~By January 1, 2010, any format adopted by the court must allow for full text~~
21 ~~searching. Documents not available in a format that permits full text searching~~
22 ~~must be scanned or imaged as required by the court, unless the court orders~~
23 ~~that scanning or imaging would be unduly burdensome. By January 1, 2010,~~
24 ~~such scanning or imaging must allow for full text searching to the extent~~
25 ~~feasible.~~
26
 - 27 (3)~~(2)~~ The printing of documents must not result in the loss of document text,
28 format, or appearance.
29

30 If a document is filed electronically under the rules in this chapter and cannot be
31 formatted to be consistent with a formatting rule elsewhere in the California Rules
32 of Court, the rules in this chapter prevail.
33

34
35 **Rule 2.260. Electronic service**
36

37 (a) * * *

38
39 (b) **Maintenance of electronic service lists**
40

1 ~~By January 1, 2009, or before if possible,~~ A court that permits electronic filing in a
2 case must maintain and make available electronically to the parties an electronic
3 service list that contains the parties' current electronic notification addresses, as
4 provided by the parties that have filed electronically in the case.
5

6 **(c)–(e) * * ***

7
8 **(f) Proof of service**
9

10 (1) Proof of electronic service may be by any of the methods provided in Code of
11 Civil Procedure section 1013a, except that the proof of service must state:
12

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

15
16 (B) The date and time of the electronic service, instead of the date and place
17 of deposit in the mail;

18
19 (C) The name and electronic notification address of the person served, in
20 place of that person's name and address as shown on the envelope; and
21

22 (D) That the document was served electronically ~~and that the transmission~~
23 ~~was reported as complete and without error~~, in place of the statement that
24 the envelope was sealed and deposited in the mail with postage fully
25 prepaid.
26

27 (2) Proof of electronic service may be in electronic form and may be filed
28 electronically with the court.
29

30 (3) Under rule 3.1300(c), proof of service of the moving papers must be filed at
31 least five calendar days before the hearing.
32

33 (4) The party filing the proof of electronic service must maintain the printed form
34 of the document bearing the declarant's original signature and must make the
35 document available for inspection and copying on the request of the court or
36 any party to the action or proceeding in which it is filed, in the manner
37 provided in rule 2.257(a).
38

39 **(g) * * ***

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Superior Court, County of Orange By Meri Fischer, Family Law Analyst	AM	<p><u>Rule 2.257, Cal. Rules of Court, Requirements for signatures on documents; retention of original signed documents.</u></p> <p>The discussion reflects a proposal to establish a procedure for parties or their attorneys to submit signed documents to the court in the event of retirement of an attorney-of-record or dissolution of a law firm or for other similar situations. Propose that documents submitted to the court be limited to contested or evidentiary hearings for pending matters before the court. If the court were to accept documents it would impact workload and storage costs for records.</p> <p><u>Rule 2.260(a)(3), Cal. Rules of Court, Electronic Service.</u></p> <p>The ability for a party filing electronically that does not consent to electronic service in the case should be within the form (claim).</p>	<p><u>Rule 2.257, Cal. Rules of Court, Requirements for signatures on documents; retention of original signed documents.</u></p> <p>The proposed amendment of rule 2.257 was included in the original set of rule proposals circulated for comment. The committee has decided to take no action at this time on the proposal to amend this rule to provide a time period for the retention of electronically filed documents containing signatures. It will consider this comment in connection with any future discussions on this topic.</p> <p><u>Rule 2.260(a)(3), Cal. Rules of Court, Electronic Service.</u></p> <p>The committee has decided not to pursue the amendment of section (a)(3) at this time. This comments will be considered in future discussions about the means by which a small claims litigant can agree to e-service.</p>
2.	Orange County Bar Association By Michael G. Yoder, President	AM	No specific comment	No specific response required.
3.	Committee on Administration of Justice, State Bar of California By Saul Bercovitch San Francisco	A/AM	<p><u>Rule 2.251. Construction of rules</u></p> <p>CAJ supports.</p> <p><u>Rule 2.256. Responsibilities of electronic filer</u></p>	<p><u>Rule 2.251. Construction of rules</u></p> <p>CAJ's support is noted.</p> <p><u>Rule 2.256. Responsibilities of electronic filer</u></p>

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	Commentator	Position	Comment	Committee Response
			<p>CAJ recognizes the significant privacy issues raised by the electronic searchability of public records, and the need to address those issues before mandating a text searchable format for e-filed documents. However, CAJ hopes that California's e-filing rules will move quickly toward a searchability requirement for future filings. The rules relating to searchability should recognize (1) that some documents may not be easily convertible to a text searchable format, and (2) the filer's duty to protect confidential information.</p> <p>CAJ suggests that consideration be given to including the following or similar language in the rules:</p> <p><u>(b) Format of documents to be filed electronically</u></p> <p><u>(2) Any format adopted by the court must require full text searching of documents, except documents not available in, or readily convertible to, a format that permits full text searching. Documents not available in, or readily convertible to, a format that permits full text searching, such as exhibits for which the electronic original is not available to the filer, must be scanned or otherwise imaged, and electronically filed, unless scanning or imaging would be unduly burdensome or too large for electronic transmission.</u></p> <p><u>(3) All electronically filed documents, including those filed in a searchable format, must comply with Rule 1.20(b) of the</u></p>	<p>When the committee looks at this issue, it will consider the CAJ's proposed rule language.</p>

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			<p><u>California Rules of Court regarding the protection of privacy. Where exclusion or redaction of confidential information is required, the filer must ensure that appropriate, effective steps are taken to remove, rather than obscure, data, so that the excluded or redacted confidential information is not electronically retrievable from the filed document.</u></p> <p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>CAJ disagrees with proposed subdivision (e), but its members are split in their reasons for disagreement. One group believes that the rules should not include a timeframe for retaining signed documents. According to this group, existing guidelines for retention of attorney files sufficiently regulate the duty to retain the signed “originals” of e-filed documents. As to most records comprising a civil litigation file, the guiding principle for retention is the exercise of sound judgment in determining when a former client will no longer reasonably need the documents (although certain documents must be retained pursuant to various statutes, such as certain sections of the Probate Code). (See State Bar Committee on Professional Responsibility and Conduct, Ethics Opinion No. 2001-157 at http://www.calbar.ca.gov/calbar/html_unclassified/ca2001-157.html.) This group believes that a timeframe specific to e-filed documents is unnecessary, and could conflict with an attorney’s existing obligations.</p>	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>The committee has decided to take no action at this time on the proposal to amend rule 2.257 to provide a time period for the retention of electronically filed documents containing signatures. It will consider this comment as part of any future discussions on this topic.</p>

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			<p>The second group believes that a timeframe should be specified without reference to Government Code Section 68152. This group makes the following observations with respect to the current proposal:</p> <ol style="list-style-type: none"> 1. The group agrees with the concern regarding the potential conflict between the proposed rule and the current document retention guidelines for attorneys (but suggests addressing that concern in the rule, as proposed below). 2. Proposed rule 2.257 would impose on individuals (parties and practitioners) the same document retention timeframe that currently exists for institutions (trial courts). Government Code Section 68152 requires courts to retain files in most civil cases from ten years to perpetuity (“permanently”), depending on the type of case. The proposal may make sense theoretically because original signed documents that were once retained in court files will now be retained in closed attorney files. However, it would probably prove unworkable practically. Additionally, the retention issue arises in the specific context of the need to make documents available for litigation-related inspection. (Code Civ. Proc. § 1010.6(a)(1)(B)). An adopted timeframe should bear some relationship to that purpose. 3. The proposed new rule establishes an unnecessarily complicated method for determining retention duty. Rather than 	

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			<p>simply applying a timeframe to originals of electronically filed documents, the rule would require different retention periods for different types of documents. Parties would have to ascertain the “type” of document by reviewing the various types of cases listed in Government Code Section 68152. The retention duty could be simplified with a provision requiring retention of originals for a specific period.</p> <p>Most e-filing rules in the federal district courts cover the retention issue in this manner. For example the U. S. District Courts in California require retention of original signed documents as follows: CDCA—one year after final resolution; EDCA—one year after exhaustion of all appeals; NDCA—one year after final resolution (the filer may attach a scanned image of the signature page(s) in lieu of maintaining the paper record); SDCA—a period no less than the maximum allowable time to complete the appellate process.</p> <p>4. The proposed new rule does not distinguish between documents signed by filing attorneys and documents signed by witnesses or non-filers. Code of Civil Procedure Section 1010.6(a)(2)(B) requires retention only of documents that have been signed under penalty of perjury. Rules 2.257(a) and (c) of the California Rules of Court require retention of documents signed under penalty of perjury and documents signed by opposing parties. The Judicial Council may want to consider distinguishing between different categories of documents.</p>	

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	Commentator	Position	Comment	Committee Response
			<p>Based on the above observations, CAJ members who believe that the rules should include a timeframe suggest that consideration be given to amending the proposed new rule in a manner along the following lines:</p> <p>(e) A party that electronically files a copy of a signed document <u>under (a) or (c)</u> must maintain the document bearing the original signature(s) for the length of time prescribed for the court to retain that type of document under Government Code section 68152. <u>a period of one year after final resolution of the case (including exhaustion of all appellate remedies), unless the Court orders a different period, or a longer period is required by law, or an attorney’s professional responsibilities based on the circumstances requires a longer period.</u></p> <p><u>Rule 2.260. Electronic Service</u></p> <p><i>1. Rule 2.260(a)</i></p> <p>CAJ agrees with this proposal, but recommends for clarity referencing section (2)(B), the section that makes consent to electronic service automatic upon electronic filing, so that the rule reads as follows: “(3) A party in a small claims case may elect to not accept service electronically under (2)(B) by indicating...”</p> <p>With respect to the current rule 2.260(a), CAJ members expressed concern about the lack of</p>	<p><u>Rule 2.260. Electronic Service</u></p> <p><i>1. Rule 2.260(a)</i></p> <p>The committee has decided not to pursue the amendment of subdivision (a) at this time. Instead, it will consider the comments and look further into the issues relating to consent to electronic service.</p>

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	Commentator	Position	Comment	Committee Response
			<p>an opt-out mechanism for litigants in general. They noted, for example, that a litigant who electronically files a document on one occasion from a self-help kiosk agrees to accept electronic service thereafter, without the possibility of opting out.</p> <p><i>2. Rule 2.260(b)</i></p> <p>CAJ supports.</p> <p><i>3. Rule 2.260(f)(1)(D)</i></p> <p>CAJ supports this proposal and agrees with the reasoning for excluding any transmission report requirement from the rules.</p> <p><i>4. Rule 2.260 (f)(4).</i></p> <p>CAJ members are divided on this proposal for the reasons stated in the comments above on the proposed amendment to rule 2.257. However, those CAJ members who believe the rules should include a retention timeframe agree with the Advisory Committee that rule 2.260(f)(4) should include the same timeframe adopted for rule 2.257(e).</p> <p><u>Miscellaneous comment:</u> There is a minor typographical error in current rule 2.260(f)(1), which refers to Code of Civil Procedure Section 1013(a), but should refer to section 1013a. Section (f)(1) reads, "Proof of</p>	<p><i>2. Rule 2.260(b)</i></p> <p>CAJ's support for the proposed amendment is noted.</p> <p><i>3. Rule 2.260(f)(1)(D)</i></p> <p>CAJ's support for the proposed amendment is noted.</p> <p><i>4. Rule 2.260-(f)(4).</i></p> <p>The committee has decide not to pursue the amendment of rule 2.260(f)(4) at this time.</p> <p><u>Miscellaneous comment:</u> This typographic error has been corrccted by a technical amendment to the California Rules of Court, effective July 1, 2009.</p>

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	Commentator	Position	Comment	Committee Response
			electronic service may be by any of the methods provided in Code of Civil Procedure section 1013(a), except that the proof must state:..." Section 1013(a) covers the procedure for serving documents by mail and does not relate to methods for proving service. Those methods are covered in section 1013a. Although an amendment effective July 1, 2009 deletes "(a)" from the reference to 1013(a) in 2.260(f)(1), CAJ believes that the referenced code section should be 1013a, not 1013.	
4.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	A	No specific comment	No specific response required.
5.	Los Angeles County – Office of the County Counsel By James M. Owens, Assistant County Counsel	AM	<u>Comment:</u> Rule 2.260(b) (as proposed by amendments) reads: A court that permits electronic filing in a case must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic notification addresses, as provided by the electronic notification to the address used for electronic filing by another party and maintained by the court is an appropriate electronic address for service. <u>Recommendation:</u> Amend rule 2.260(b) by adding: It is presumed that notice sent to the address listed on the electronic service list maintained by the court is received by the party to whom notice is sent.	<u>Comment/Recommendation:</u> This comment and the related proposal are beyond the scope of the proposed amendments to rule 2.260 that were circulated for comment. The committee will construe these as a proposal for a rule change and will consider the proposal at a future time.

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	Commentator	Position	Comment	Committee Response
			<p>The presumption may be rebutted by evidence that the addressee has notified the court, in writing, that the address on the electronic server is no longer a valid address for electronic service.</p>	
6.	<p>Orange County Bar Association By Michael G. Yoder, President</p>	AM	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>Presently the [proposed] rule reads that a party that electronically files a copy of a signed document must maintain the copy bearing the original signature for the length of time prescribed for that document under Govt. Code section 68152. The committee notes that it “may be subsequently desirable” to establish by rule, a procedure for parties or their attorneys to submit signed documents to the court. It is suggested that this be incorporated into the rule now. Requiring a party to maintain a paper copy of every signed document electronically submitted to the court for, in most cases, between 10 and 30 years under the Govt. Code, does not advance the policy favoring electronic filing and, in fact, creates a much larger paper record – potentially volumes of additional, unnecessary paperwork. This is unrealistic, and will likely create numerous problems where, as the committee acknowledges, an attorney retires, a law firm dissolves, etc.</p> <p>It is believed that a better approach would be to establish a rule that by submitting a document for electronic filing to the court, the</p>	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>The committee has decided not to pursue the proposed amendment to add subdivision (e) at this time. Instead, it will consider the comments in connection with any future discussion about the issues regarding retention of signed documents.</p>

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	Commentator	Position	Comment	Committee Response
			copy submitted to the court shall be deemed the original document for all intents and purposes (especially since the rules contemplate that the printing of any document submitted electronically must not result in the loss of document text, format or appearance under proposed Rule 2.256(b)(2).) The same analysis would apply to proposed Rule 2.260 (f)(4) pertaining to maintaining the original proof of service in filing an electronic proof of service.	
7.	CT Corporation and One Legal (ABA unofficially) By Pia Angelikis San Francisco	AM	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>Regarding proposed changes to rule 2.257, the proposed amendment is intended to clarify how long a party who has electronically filed a document containing a signature must retain the “original” signed document. The proposed amendment directs the electronic filer to retain an “original” for the length of time that courts are required by law to retain the type of document under Government Code section 68152. The above use of the term “original” could be construed to mean that the electronically filed version is not the official record. In addition, the proposed change creates subcategories of electronically filed documents with potentially different time periods for retention of paper versions of ink signatures.</p> <p>Rather than having different retention periods based on the separate set of rules for document</p>	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents</u></p> <p>The committee has decided to take no action at this time on the proposal to amend rule 2.257 to provide a time period for the retention of electronically filed documents containing signatures. It will consider this comment in connection with any future discussions on this topic.</p>

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			<p>retention codified in Government Code section 68152, the Judicial Council may want to consider the federal approach to this issue. For example, the United States District Court (“USDC”) for the Southern District of California sets forth the following requirement for non-registered signatories:</p> <p>“If the original document requires the signature of a non-registered signatory, the filing party must scan and electronically file the original document. The electronically filed document maintained on the court’s servers will constitute the official version of the record. The filing party must retain the original document for a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater, and must provide the original paper document to the Court upon request.”</p> <p>(Section (f) (2), Electronic Case Filing Administrative Procedures Manual of the USDC Southern District, California.)</p> <p>Under this USDC rule, it is made clear that the electronically filed version of the document constitutes the “official version of the record” and the retention period for the paper version would not vary based on document type.</p> <p><u>Rule 2.260(f). Proofs of Service</u></p> <p>In addition, the Judicial Council may want to consider granting certain non-attorneys limited</p>	<p><u>Rule 2.260(f). Proofs of Service</u></p> <p>This suggestion is beyond the scope of the current proposal and will be considered</p>

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			<p>access to e-filing systems for the purpose of filing affidavits of service. Specifically, this might be for affidavits of service signed by process servers employed by authorized eFiling providers. One of the goals of e-filing is to reduce paper retention. Thus, the judicial council may want to consider the pros and cons of allowing authorized eFiling vendors limited access as a registered signatory in order to file their affidavits of service, obviating the need for the retention of potentially thousands of paper signed affidavits of service.</p> <p>Accountability and trustworthiness on the part of electronic filers must remain paramount. Thus, any proposed rule permitting limited non-attorney access to the court electronic filing system would need to have viable safeguards to preserve the integrity of the court record. It may be useful to have a discussion among attorneys, court personnel and eFiling vendors on this issue. I intend to seek feedback from the ABA eFiling committee on this issue as well and will share this with the Judicial Council at a later date.</p>	separately at a future time.
8.	Kern County Superior Court (FL) By Christina Rodriguez Assistant Court Supervisor	NI	<p><u>Rules 2.257 and 2.260(f)(4)</u></p> <p>If original instrument is submitted to the court upon closing of agency or attorney's office, what is the clerk's office to do with it? Replace the electronic copy on file with the original or attach it to the electronic copy on file? Enter it as if just received? Specific instructions would be appreciated.</p>	<p><u>Rules 2.257 and 2.260(f)(4)</u></p> <p>This comment will be discussed in connection with any future proposals for rules on submitting signed documents to the courts.</p>

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9.	Small Claims and Limited Cases Subcommittee of the Civil and Small Claims Advisory Committee By L. Thomas Surh, Chair Fremont, CA	AM	<p><u>Rule 2.260(a). Electronic Service</u></p> <p>The Small Claims and Limited Cases Subcommittee of the Civil and Small Claims Advisory Committee agrees with the Court Technology Advisory Committee (CTAC) that consent to receive e-service by any party who e-files documents with the court raises special concerns about small claims litigants. However, the Small Claims and Limited Cases Subcommittee respectfully recommends that rule 2.260(a) be amended to exclude small claims litigants from subparagraph (2)(B), which provides that a party that electronically files any document with the court thereby agrees to accept electronic service, rather than to provide that small claims litigants may opt out of subparagraph (2)(B), as the proposal circulated for comment provided. Small claims litigants should and would, however, be allowed to affirmatively opt in to accepting electronic service, as provided in rule (2)(A). Small claims litigants are not represented by an attorney, are generally not sophisticated users of court services, and may not have e-mail accounts or regular Internet access. They may, however, be assisted at self-help and legal services centers that would find it very useful to provide for e-filing or they might e-file from a law library, self help kiosk or other public facility. It is likely that many litigants would be unaware of what e-service is, that they would be consenting to accepting electronic service of documents, and that they would need to opt out if they do not have regular access to an email account. On the other hand,</p>	<p><u>Rule 2.260(a). Electronic Service</u></p> <p>The committee has decided to take no action at this time on the proposal to amend rule 2.260(a). It will consider this comment in connection with any future discussions on this topic.</p>

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			<p>it would be helpful to preserve the ability of a small claims litigant to opt in because there are some who are sophisticated users who would find e-service to be convenient.</p> <p>Please do not hesitate to contact me if CTAC has any questions about the Small Claims and Limited Cases Subcommittee's position regarding this proposal.</p>	
10	<p>One Legal LLC By Robert T. DeFilippis, President Novato</p>	N	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents.</u></p> <p>To be frank, it's not entirely clear as to why this provision is being proposed other than to assume someone had raised the question as to retention length. The current rule is silent on retention which in our opinion is a far lesser evil than what is being proposed for a number of reasons:</p> <p>1. Historically, the issue of original signatures relating to court documents has always proved challenging, especially when fax filing became a reality. However, we believe the record will show that the concern as to the authenticity and retention of original signatures has really been moot for most of the 18 year history of fax filing, both for the courts and the filing parties. We also believe the same can be said for documents filed electronically during the last 5 years.</p> <p>2. As technology advanced and electronic filing came about, the baby was split on original signatures in that some documents</p>	<p><u>Rule 2.257. Requirements for signatures on documents; retention of original signed documents.</u></p> <p>The committee has decided to take no action at this time on the proposal to amend rule 2.257 to provide a time period for the retention of electronically filed documents containing signatures. It will consider this comment in connection with any future discussions on this topic.</p>

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			<p>require them and others don't. Even so, the court accepts documents for filing that contain no signatures at all since there is a presumption that the filing party has complied with the rule. The onus lies solely on the filing party to manage and maintain appropriate workflow and document retention practices.</p> <p>3. The concept of the official court record can become muddled when a rule explicitly states that certain original documents are not maintained by the court.</p> <p>4. The court record should be the only record and if for any reason a document gets called into question as to signature validity, there is already a rule provision for how to deal with that. See 2.257(a)(3)-(5).</p> <p><u>Rule 2.260(f)(4). Retaining proof of electronic service records</u></p> <p>In addition to the comments above for rule 2.257, there is an aspect to electronic service that may not be readily apparent and that has to do when electronic filing service provider (see 2.250(5), (6) and 2.260(c)). In these cases, electronic filing service is being requested by the filing party (this can include the court as well) but actual service and notification is being done by the service provider. This is perhaps the most common method of electronic service and technically speaking, is a machine to machine transaction. Service providers automatically generate a proof of service for the requesting party and depending</p>	<p><u>Rule 2.260(f)(4). Retaining proof of electronic service records</u></p> <p>The committee has decided to take no action at this time on the proposal to amend rule 2.260(f)(4). It will consider this comment in connection with any future discussions on this topic.</p>

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			<p>on several factors; this proof of service may or may not get filed with the court. In these instances, the proofs of service act as the original even though they are electronic in nature, i.e., the form is never put into physical format (2.260(f)(2)).</p> <p>We understand that the concepts of originals and signatures in the electronic world quickly come at odds when viewed through the physical world. In today’s modern law firm and courthouse, paper is being imaged and stored electronically. In many cases, the paper is recycled after a certain retention period and the electronic version then acts as the original. A common practice today in both courts and law firms is that documents destined for filing are being signed electronically in the first instance and never achieve status as having a wet-ink signature. When viewed objectively, it is our hope these issues can be resolved over time but specifically creating a new initiative requiring law firms to maintain paper records of most of their documents being filed (each document being filed usually has a proof of service) for 10-30 years seems a big step back and not in synch with the global effort to reduce our strain on natural resources.</p> <p><u>Rule 2.260(a)(4) Electronic Service (actual rule text)</u></p> <p>Shouldn’t the language read, “A party that has consented to electronic service under (2)...” vs (3)?</p>	<p><u>Rule 2.260(a)(4) Electronic Service (actual rule text)</u></p> <p>Agreed. If the rule is amended, the reference to (3) should be changed to (2). However, the committee recommends not amending 2.260(a) at all; hence, the correction is not necessary.</p>