

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

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
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DATE: September 15, 2009

SUBJECT: Access to Electronic Records: Limitation on Remote Access to
Records in Proceedings to Compromise the Claims of Minors or
Persons with a Disability (amend Cal. Rules of Court, rule 2.503)
(Action Required)

Issue Statement

Rule 2.503(c) of the California Rules of Court contains a list of the types of records in electronic form that must be available at the courthouse, but not available via remote electronic access. This list should be expanded to include records in proceedings to compromise the claims of a minor or person with a disability because of the sensitive personal nature of the information that is often included in these records.

Recommendation

The Civil and Small Claims Advisory Committee and the Probate and Mental Health Advisory Committee¹ recommend that that the Judicial Council, effective January 1, 2010, amend rule 2.503(c) to add proceedings to compromise the claims of a minor or person with a disability to the list of the proceedings for which the electronic court records are not remotely accessible.

¹ This proposal was developed for the committees by the Minor's Compromises Working Group, which is composed of members of both advisory committees and co-chaired by Judge Peter J. Polos and Judge F. Clark Sueyres, Jr.

The text of amended rule 2.503 is attached at pages 4–5.

Rationale for Recommendation

The California Office of Privacy Protection has characterized the balancing of the competing values of public access to government records with individual privacy rights “as one of the most significant public policy issues Americans face today.” This issue is addressed in the current California Rules of Court on access to electronic trial court records. These rules “are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests.” (Cal. Rules of Court, rule 2.500(a).)

To provide reasonable public access and yet protect privacy, the rules on electronic access currently provide for access to many records by remote electronic means, but limit access to records in certain types of proceedings to the courthouse only. The records available only at the courthouse under rule 2.503(c) include records in family, juvenile, criminal, civil harassment, workplace violence, and elder abuse proceedings.

The records that are listed in rule 2.503(c) often contain personal and financial information about family members, juveniles, victims of crime, and victims of harassment and abuse. Because of the sensitive nature of the information in these records, it is appropriate to limit the availability of these types of records over the Internet.

This proposal would add to the list in rule 2.503(c) records in court proceedings to compromise the claims of a minor or a person with a disability because the documents filed in these proceedings often contain sensitive financial, medical, and other personal information about minors and persons with a disability that are of the same or similar types as records already included on the list in (c). Hence, it is appropriate that these records not be made too readily accessible over the Internet.²

Alternative Actions Considered

The rules on remote access to electronic records could be left unchanged. But as this would unduly submit minors and persons with a disability seeking settlement of legal claims to exposure of sensitive personal information on the Internet, the committees recommend that rule 2.503(c) be amended as proposed to provide

² This proposal would not change or modify the rules relating to the records on compromises of claims that are available at the courthouse. The committees plan to consider in the future whether portions of the courthouse records may also warrant confidential treatment.

additional privacy protection for minors and persons with a disability who generally must provide a greater amount of sensitive person information to obtain a settlement than do other litigants.

Comments From Interested Parties

The proposal received two public comments from superior courts. Both were favorable. The committees do not recommend any changes in the proposal as circulated.³

Implementation Requirements and Costs

Courts that currently provide remote access to civil records will need to identify records relating to the compromise of claims of minors and persons with a disability and make sure that these are not posted online. Tracking these records will require some effort, but there will also be some savings for the court from not needing to post the materials.

Attachments

³ As indicated above, the committees plan to consider whether there are some records in cases involving the compromise of claims of minors and or persons with a disability that that may warrant confidential treatment at the courthouse. The invitation to comment on this rules proposal solicited comments on that additional question. In response, the Superior Court of Los Angeles County submitted a comment recommending that public access to paper files at the courthouse should be restricted for all the proceedings listed in rule 2.503(c). This comment is beyond the scope of the present proposal and would likely require legislation; the committees will further look into this matter in the future.

Rule 2.503 is amended, effective January 1, 2010, to read as follows:

1 **Rule 2.503. Public access**

2
3 (a) * * *

4
5 (b) **Electronic access required to extent feasible**

6
7 A court that maintains the following records in electronic form must provide
8 electronic access to them, both remotely and at the courthouse, to the extent it is
9 feasible to do so:

- 10
11 (1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and indexes
12 in all cases; and
13
14 (2) All records in civil cases, except those listed in (c)(1)–~~(8)~~(9).

15
16 (c) **Courthouse electronic access only**

17
18 A court that maintains the following records in electronic form must provide
19 electronic access to them at the courthouse, to the extent it is feasible to do so, but
20 may provide remote electronic access only to the records governed by (b):

- 21
22 (1) Records in a proceeding under the Family Code, including proceedings for
23 dissolution, legal separation, and nullity of marriage; child and spousal support
24 proceedings; child custody proceedings; and domestic violence prevention
25 proceedings;
26
27 (2) Records in a juvenile court proceeding;
28
29 (3) Records in a guardianship or conservatorship proceeding;
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31 (4) Records in a mental health proceeding;
32
33 (5) Records in a criminal proceeding;
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35 (6) Records in a civil harassment proceeding under Code of Civil Procedure section
36 527.6;
37
38 (7) Records in a workplace violence prevention proceeding under Code of Civil
39 Procedure section 527.8; ~~and~~
40
41 (8) Records in an elder or dependent adult abuse prevention proceeding under
42 Welfare and Institutions Code section 15657.03; and
43

1 (9) Records in proceedings to compromise the claims of a minor or a person with a
2 disability.

3 **(d)-(i) * * ***

SPR09-42**Access to Electronic Records: Records in Proceedings to Compromise the Claims of Minors or Persons with a Disability** (amend Cal. Rules of Court, rule 2.503)

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

	Commentator	Position	Comment	Committees' Responses
1.	Superior Court of Los Angeles County	A	<p>The proposed addition is appropriate for the reason stated: "The court should limit the availability of claims of a minor or a person with a disability over the Internet. The court has a responsibility to protect their privacy. The reason for adding these additional types of records to the list is straightforward: the documents filed in these proceedings often contain sensitive financial, medical and other personal information of the same or similar types as are already included on the list in (c). Hence, it is appropriate that these records not be made too readily accessible through the Internet." [SPR09-42, at page 2.]</p> <p>In addition, consideration should be given to adding the above limitation, as well as the currently restricted proceedings in rule 2.503(c), to the California Rules of Court pertaining to access to paper records. Mental health and conservatorship proceedings involve the same sensitive information, including medical and psychiatric reports and information, and such information in court files should be made confidential under California confidentiality statutes as well.</p>	<p>The committees agree.</p> <p>This recommendation, to restrict courthouse access to paper records of the matters listed in rule 2.503(c), as it would be amended by this proposal, is beyond the scope of this rule proposal and would likely require legislation. (See, e.g., Fam. Code, §1818; Gov. Code, §§ 68150–68153; Prob. Code, §§ 1513(d), 1826(n), 1851(e); Welf. & Inst. Code, § 390; Cal. Rules of Court, rules 2.550, 2.551.) The committees plan to look further into this matter.</p>

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	Commentator	Position	Comment	Committees' Responses
2.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	A	No additional comments.	No response required.