

**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
Hon. Lee Smalley Edmon, Chair
Case Management Subcommittee
Hon. Frank Roesch, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933
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DATE: August 8, 2008

SUBJECT: Trial Courts: Release of Court Records (amend Cal. Rules of Court,
rule 2.400) (Action Required)

Issue Statement

Rule 2.400(a) of the California Rules of Court currently provides that papers filed in a court may be released only to a “court officer or authorized court personnel for use in a court facility.” The term “court officer” is ambiguous; it is unclear whether it applies to attorneys or court administrative officers or both. This proposal amends the rule to provide that filed papers may be released to attorneys of record and authorized court personnel only.

Recommendation

The Civil and Small Claims Advisory Committee recommends that rule 2.400 be amended to clarify that filed papers may be released to an attorney of record within the court facility.

The text of the amended rule is attached at page 3.

Discussion

Rule 2.400 governs court records. The amendment to rule 2.400 clarifies what is meant by “court officer.” Because courts often want to release files to attorneys of record for use within a court facility (for example, so that an attorney may take a file to a trial department), the rule should allow courts to do this. Accordingly, the rule should be amended to expressly provide that records may be released to an “attorney of record.” The revised rule also clarifies that this section is permissive; it allows, but does not require, the release of court files to attorneys.

If this amendment is made to rule 2.400(a), the inclusion of the term “court officers” in the rule is unnecessary. The amended rule would clearly indicate to whom filed papers may be released — that is, only to “authorized court personnel”¹ or an “attorney of record.” That description should be sufficient and accurate. Thus, the reference to “court officers” is eliminated.

Alternative Actions Considered

In the invitation for public comment, the committee sought comments as to any other categories of individuals to whom courts regularly want to release records, and who should be identified in this rule. No other categories of individuals were proposed.

The committee also considered amending the rule to preclude the release of the records to anyone other than court personnel. The committee concluded that the rule assists courts by allowing attorneys in a particular case to take the files in that case to an assigned courtroom. This can facilitate movement of the files and ease the burden on court personnel. The rule is permissive, so a court does not want to release records, it need not do so.

Comments From Interested Parties

The proposed amendment was circulated for public comment in the spring 2008 cycle. Eleven individuals or organizations provided comments, including six courts.² The comments were generally in favor of the revisions. One commentator, the Superior Court of Ventura County opposed the amendment on the ground that only court personnel should be allowed to move files (comment 1). The committee disagreed for the reasons set forth above.

The Superior Court of Los Angeles (in comment 4) and the Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee (in comment 11) both agreed with the provision in general, but sought modification to assure that self-represented litigants would not be considered “attorneys of record” and so within the category of individuals to whom records could be released. The committee notes that “attorneys of record” is a defined term within the rules of court, and refers only to members of the State Bar of California. (Cal. Rules of Court; rule 1.6(16).)

Implementation and Costs

The revised rule would have no implementation costs.

Attachments

¹ This new term was substituted by amendment last year for court “attaché.” The term “authorized court personnel” is sufficiently broad as to include court administrative officers and other court staff (such as clerks and research attorneys) authorized to handle court files.

² A summary of the comments and the committee’s responses is presented in the chart at pages 4 to 6.

Rule 2.400 of the California Rules of Court is amended, effective January 1, 2009, to read as follows:

1 **Rule 2.400. Court records**

2

3 **(a) Removal of papers**

4

5 Only the clerk may remove and replace papers in the court's files. Unless
6 otherwise ordered by the court, filed papers may only be inspected by the public in
7 the office of the clerk and released to ~~a court officer or~~ authorized court personnel
8 or an attorney of record for use in a court facility. No original papers filed with the
9 clerk may be used in any location other than a court facility, unless so ordered by
10 the presiding judge

11

12 **(b)-(c) * * ***

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SPR08-17**Trial Courts: Release of Court Records** (amend Cal. Rules of Court, rule 2.400)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County Ventura	N	My feeling is that once a document is filed, the original should remain with court personnel, only. Attorneys may view the files, or be provided with copies.	The committee disagrees. The release of records to attorneys in a case so that they can, for example, take case files from a calendar assignment courtroom to a trial courtroom, can be of assistance to a court.
2.	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
3.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	A	CAJ supports this proposal.	Commentator's agreement is noted.
4.	Superior Court of Los Angeles County Los Angeles	AM	The phrase "attorney of record" may not be clear. If a party is self-represented, and there is no "attorney of record" in the case, one might conclude that the court documents could be released to the self-represented party. To make it clear, add the words "who is a member of the bar" after the words "attorney of record" on line 9.	The term "attorney" is already a defined term in Cal. Rules of Court, rule 1.6(16), meaning a member of the State Bar of California.
5.	Superior Court of Orange County By Erin Rigby, Staff Analyst Rules & Forms Committee Santa Ana	AM	1. Question [from Invitation to Comment]: Are there any other categories of individuals to whom courts regularly want to release records, and who should therefore be identified in this rule? Answer: No. 2. Comments: Use of the term "records" is ambiguous and could	1. Commentator's response is noted. 2. Although the word "records" appears in the title of the rule, the text of the rule specifically

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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			refer to “hard copy paper” files or electronic release of records.	refers to “papers in the court’s file,” “filed papers,” and “original papers filed with the court.”
6.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst Riverside	A	1. Rule 2.400(a) is currently ambiguous regarding the release of court records. It is unclear whether the term “court officer” applies to attorneys, court employees, or both. The proposed amendment would clarify that filed papers may be released to attorneys of record and authorized court personnel only. This amendment would help to avoid confusion on the part of court staff. 2. The court is not aware of other categories of individuals that records should be released to and identified in the rule.	1. Commentator’s support for the proposal noted. 2. Commentator’s response to the query in the Invitation to Comment is noted.
7.	Superior Court of Sacramento County By Ed Pollard Chief Deputy Court Executive Officer Sacramento	A	We agree with this proposal as written.	Commentator’s agreement is noted.
8.	Superior Court of San Bernardino County By Debra Meyers Director of Staff Counsel Services and Self-Help Division San Bernardino	A	No specific comments.	Commentator’s agreement is noted.

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	Commentator	Position	Comment	Committee Response
9.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer San Diego	A	No specific comments.	Commentator's agreement is noted.
10.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator's agreement is noted.
11.	TCPJAC/CEAC Joint Rules Working Group By Patrick Danna, Court Service Analyst and Lead AOC Staff San Francisco	AM	<p>The Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group comment is how the proposed amended rule could impact self-represented litigants and their ability to obtain their respective court filed papers.</p> <p>The TCPJAC/CEAC Joint Rules Working Group recommends broadening the term "court officer" in order to make it neutral so it would pertain to attorneys of record, because they are considered officers of the court.</p>	Self-represented litigants may review their court-filed papers, but, under this rule, would not be permitted to transport those records within the courthouse. The proposed rule limits that activity to attorneys of record, limited by definition to members of the bar (rule 1.6 (16)), and court personnel.

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