

**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
Hon. Ming W. Chin, Chair
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DATE: August 5, 2005

SUBJECT: Electronic Filing and Service (amend Cal. Rules of Court, rules 2050 and 2056) (Action Required)

Issue Statement

Parties choosing to electronically file or serve documents do not currently have the option of using a third-party service provider. Parties filing by fax do have the option of using a fax filing service rather than faxing directly to the court. The ability to use a commercial vendor to perform filing or service acting as an intermediary between the court and party or between parties would provide an incentive for courts and parties to increase their use of electronic documents, reducing their reliance on paper.

Additionally, rule 2056(b)(2) requires that by 2007 parties filing electronic documents submit their documents in full-text searchable format. This deadline needs to be extended to 2010, because the 2007 deadline conflicts with the full development and rollout schedule of the California Case Management System (CCMS), slated for 2010. The CCMS will be capable of incorporating full-text searching functionality, which is not currently possible with existing vendor-supplied case management systems.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2006:

1. Amend rule 2050 to define an electronic filing service provider and allow for filing through a service provider;
2. Amend rule 2056 to extend the date for mandatory full-text searchable documents to 2010; and

3. Amend rule 2056 to clarify a technical printing requirement.

The text of the proposed amendment is attached at pages 5–6.

Rationale for Recommendation

Electronic filing service providers—rule 2050

When the Judicial Council adopted the new rules on electronic filing and service in 2002, no provision was made for filing through a third-party provider. On the other hand, the rules on fax filing and service offer the option of using an intermediary (rules 2005(a) and 2009(a)), and this option has been successfully employed since the fax rules were adopted. Commercial vendors have indicated an interest in offering a similar filing and service product to electronic filers.

Courts may use an electronic filing service provider to maintain the court's electronic filing system (rule 2055(a)(1) of the California Rules of Court), but there is currently no parallel provision allowing filers to transmit filings to the court through an electronic filing service provider. The service provider would file the documents on behalf of the filer, and not as an agent of the court. The filer would still be responsible for meeting applicable deadlines.

Full-text searchability—rule 2056(b)

When the electronic filing rules were originally adopted effective January 1, 2003, courts were using vendor-supplied case management systems. One of the goals of electronic filing was, as more court documents were electronically filed, to make them fully searchable, rather than only by indexed field such as name of party or case number. Therefore, the rule provided that documents be fully searchable by 2007, giving vendors four years to comply with the requirement.

Subsequently, the Judicial Council supported an initiative to develop the statewide California Case Management System (CCMS), to be rolled out to all courts by 2010. Maintaining the 2007 effective date for full-text searchability conflicts with the development and implementation schedule for CCMS because all superior courts will not have the capability to offer a search tool until they replace their vendor systems with CCMS. Extending the date to coincide with the planned full development of CCMS by 2010 will enable a search tool to be incorporated into the implementation of the system in all courts.

In addition, some courts are now starting electronic filing projects using their existing systems that cannot easily accommodate full text searching. Courts that are scanning and imaging paper documents for posting on their Web sites would have to complete an additional step to convert the scanned document back to searchable text by optical

character recognition, a burdensome requirement that would discourage making paper-filed documents available electronically.

Printing requirement—rule 2053(b)(3)

Printing of electronically filed documents under the current rule must reproduce the document exactly and not allow for any change in the text. When a document is printed, the metadata, which is information about the document, not the substance of the document itself, changes to reflect each printing. Therefore the rule needs to be amended to reflect that the requirement that provides that printing not result in the loss of document text does not apply to non-textual formatting data.

Alternative Actions Considered

The committee considered the option of not allowing the use of an electronic filing service provider. But, experience with electronic filing in other jurisdictions¹ has demonstrated that vendor-provided services are reliable and relieve the court of the administrative and technological requirements of functioning as its own service provider.

For rule 2056(b), the committee considered eliminating the requirement for full text searching. Committee members recognized that filed documents are more useful if they are fully searchable. Establishing a date other than 2010 would conflict with the development schedule of the CCMS.

No alternative was considered for the amendment to rule 2056(b)(3), as this is a technical change that merely clarifies a technological event that occurs when a document is printed.

Comments From Interested Parties

The rules were circulated during the spring cycle, and 11 comments were received from court staff, the bar, and legal support businesses. Ten agreed with the proposal and one agreed if modified. Three of the commentators who agreed offered suggestions for modification or clarification.

One commentator discussed that the law of agency could be construed to impose on the filer liability for any acts by the service provider, including introducing a virus into the court's computer system. The committee revised the proposal to state that the service provider is acting on behalf of the filer, rather than using the technical term "agent".

A chart summarizing the comments and the committee's response is attached at pages 7–11.

Implementation Requirements and Costs

¹ Colorado, Florida, Texas, and Utah.

Implementing the proposed amendments should not result in new requirements or costs for the courts that are set up to receive electronic filings and may result in reduced costs because a court would not have to implement an interim case management system to accommodate full text searching before a scheduled migration to the CCMS. A filer using an electronic filing service provider will incur expenses payable to the third-party service provider, in addition to court filing fees.

Attachments

Rules 2050 and 2056 of the California Rules of Court would be amended, effective January 1, 2006, to read:

1 **Rule 2050. Definitions**

2
3 As used in this chapter, unless the context requires otherwise:

4
5 (a) ***

6
7 (b) **[Document]** A “document” is a pleading, a paper, a declaration, an exhibit, or
8 another filing submitted by a party or by an agent of a party on the party’s
9 behalf. A document may be in paper or electronic form.

10
11 (c) **[Electronic filer]** An “electronic filer” is a party filing a document in
12 electronic form with the court.

13
14 (d) **[Electronic filing]** “Electronic filing” is the electronic transmission to a court
15 of a document in electronic form.

16
17 (e) **[Electronic filing service provider]** An “electronic filing service provider” is
18 a person or entity that receives an electronic filing from a party for
19 re-transmission to the court. In submission of filings the electronic filing
20 service provider does so on behalf of the electronic filer and not as an agent of
21 the court.

22
23 (e)(f) **[Electronic service]** “Electronic service” is the electronic transmission of
24 a document to a party’s electronic notification address, either directly or
25 through an electronic filing service provider, for the purpose of effecting
26 service.

27
28 (f)(g) **[Party]** A “party” is a person appearing in any action or proceeding in pro
29 per or an attorney of record for a party in any action or proceeding.

30
31 (g)(h) **[Regular filing hours]** “Regular filing hours” are the hours during which a
32 court accepts documents for filing.

33
34 (h)(i) **[These rules]** “These rules” are the rules in this chapter.

35
36 **Rule 2056. Responsibilities of electronic filer**

37
38 (a) ***

1 **(b) [Format of documents to be filed electronically]** A document that is filed
2 electronically with the court must be in a format specified by the court unless it
3 cannot be created in that format. The format adopted by a court must meet the
4 following requirements:

5
6 (1) ***

7
8 (2) By January 1, ~~2007~~2010, any format adopted by the court must allow for
9 full text searching. Documents not available in a format that permits full
10 text searching must be scanned or imaged as required by the court, unless
11 the court orders that scanning or imaging would be unduly burdensome.
12 By January 1, ~~2007~~2010, such scanning or imaging must allow for full
13 text searching to the extent feasible.

14
15 (3) The printing of documents must not result in the loss of document ~~content~~
16 text, format, or appearance.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mike Belote CA Advocates, Inc. Sacramento	A	Y	No comment.	No response required.
2.	Saul Bercovitch State Bar of California Committee on Administration of Justice San Francisco	A	Y	No comment.	No response required.
3.	Mary Carnahan Manager Superior Court of Solano County	A	N	No comment.	No response required.
4.	Linda Gorham Court Manager Superior Court of San Francisco County San Francisco	A	N	No comment.	No response required.
5.	Lee Kaster State Bar of California San Francisco	AM	N	While the Rules and Legislation Committee (the Committee) is in favor of allowing parties to electronically file documents through a third party service provider, it believes the language in proposed rule 2050 that “[i]n submission of filings the electronic filing service provider acts as the agent of the electronic filer and not as an agent of the court” is too broad. Presumably this language is intended to signify that in using an electronic filing service provider, the filing party remains	The rule has been modified to indicate that the electronic filing service provider submits filings “on behalf” of the electronic filer.

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				<p>responsible for meeting applicable filing deadlines.</p> <p>But the proposed language is not so limited. Under the law of agency, the proposed language could be construed to impose upon an attorney or self-represented party liability for <i>any</i> acts of the electronic filing service provider carried out within the course and scope of its agency, not just liability arising as a result of a late filing. See 5 Witkin, <i>Summary of California Law</i>, § 115, p. 109 (9th ed 1987) (principal is liable for torts of the agent committed while acting within the scope of the agency). For example, under the proposed rule, a party utilizing an electronic filing service provider could conceivably be liable for damage to the court’s computer system caused by an employee of the service provider who infects (either intentionally or negligently) the system with a virus. Given how broadly California courts have interpreted the “course and scope” requirement in determining whether a principal is liable for the acts of its agent, it is impossible to foresee all potential scenarios under which an attorney or self-</p>	

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				<p>represented party might incur liability for the acts of its service provider under the proposed rule. The foregoing example merely illustrates the problematic nature of the proposed language.</p> <p>Given the uncertainty the proposed language discussed above presents, the Committee recommends re-wording the second sentence of the proposed definition of “electronic filing service provider” as follows: “in submission of filings electronically through an electronic filing service provider, the electronic filer remains responsible for meeting all applicable filing deadlines. The electronic filing service provider does not act as the agent of the court with respect to electronic filings. This subdivision is not intended to change existing law relating to the ability of a party to seek relief from a late filing.”</p> <p>The Committee believes this language fully apprises parties that using a third party intermediary to electronically file and/or serve a document does not relieve them of the need to comply with court deadlines, while at the same time avoids the potential</p>	

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				pitfalls discussed above.	
6.	Tony Klein Attorney Service of San Francisco San Francisco	A	N	No comment.	No response required.
7.	Superior Court of Los Angeles County Los Angeles	A	Y	<p>The amended CRC 2050 meets the needs of Los Angeles Superior Court by allowing the use of a third-party provider for processing e-filed documents. Without such a provision, Los Angeles would have to pay the significant overhead costs associated with such filings. The added agency provision is important, because it shifts liability for provider negligence to the e-filer and away from the court.</p> <p>The amended CRC 2050(b)(2) is necessary for Los Angeles, since it will not be possible for us to comply with CRC 2056(b) until the new civil case management system (V3) is in place. Because implementation will not begin until 2007, Los Angeles Superior court would be unable to meet the current deadline.</p>	<p>Agree.</p> <p>Agree. Other courts are waiting for the development and implementation of the California Case Management System, with statewide rollout expected by 2010.</p>
8.	Stephen Love Executive Officer Superior Court of San Diego County San Diego	A	Y	The fax filing agencies deliver hard-copy documents to the court. Is the proposed amendment seeking to allow e-File service providers to download and deliver the e-filed documents to the court in hard copy?	The rule does not prohibit an electronic filing service provider from subsequently filing a hard copy of an electronic document previously sent electronically to

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>If this is the case, we agree with the proposed changes to rule 2050.</p> <p>However, if the proposed amendment speaks to having an electronic service of process by a third party vendor, this would require the court to become its own electronic filing and service provider (EFSP) in order for third party vendors to effect service of issued documents.</p>	the electronic filing service provider. Some courts may not be capable of receiving an electronic document that a party may wish to file electronically.
9.	Mark Schwartz Northern California Regional Manager Ronsin Legal Hayward	A	N	No comment.	No response required.
10.	Patti Widdows Court Program Manager Superior Court of Ventura County Ventura	A	N	No comment.	No response required.
11.	Dean Zipser President Orange County Bar Association Irvine	A	Y	No comment.	No response required.