

**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. Elihu M. Berle, Chair
Uniform Rules Subcommittee, Hon. Brian R. Van Camp, Chair
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DATE: September 28, 2005

SUBJECT: Format of Papers (amend Cal. Rules of Court, rule 201) (Action Required)

Issue Statement

Rule 201 of the California Rules of Court on the format of papers currently makes the provision of a fax number and an e-mail address on papers filed with the court optional. The rule should be amended to require that a fax number and an e-mail address, if available, be provided on the first page of all papers filed.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rule 201 of the California Rules of Court to:

1. Require a fax number and an e-mail address, if available, on the first page of papers filed with the court; and
2. Provide that the clerk must not reject a paper for filing solely on the ground that it does not contain an attorney's or a party's fax number or e-mail address on the first page.

The text of amended rule 201 is attached at page 4.

Rationale for Recommendation

The rules in the California Rules of Court on the format of papers filed with the court were amended in 2000 to provide that, at the option of the person filing, a fax number and e-mail address may be included on the first page of papers. Since that time, fax and e-mail transmission have become more generally available. They provide speedy,

economical means of communication. It is desirable that a fax number and an e-mail address be included on the first page of papers filed with the court if the person filing the papers is capable of receiving fax and e-mail transmissions.

Thus, to increase the useful information provided on the caption page, rule 201(f) should be amended to require that the caption page include the fax number and e-mail address of the person filing, provided that those transmission methods are available to the person. In rule 201(f)(1), in the first sentence, the phrase “fax number and e-mail address (if provided)” would be changed to “fax number and e-mail address (if available).”

The last sentence of rule 201(f)(1) currently states: “Inclusion of a fax number or e-mail address on any document is optional, and its inclusion does not constitute consent to service by fax or e-mail unless otherwise provided by law.” This should be changed to: “The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.” As a result, the reference to inclusion of this information as optional would be eliminated, but the statement that inclusion does not constitute consent to service would be retained.

To be consistent with these amendments, the phrase “but the name, office address, telephone number, and State Bar membership number of the attorney printed on the page is sufficient” should also be eliminated from rule 201(f)(1).

Finally, the committee was concerned that, if a party did not include a fax number or e-mail address on the first page of papers, the clerk’s office might not know whether to file the papers. A fax number or e-mail address might be omitted because the party or attorney did not have a fax machine or e-mail available or for some other unspecified reason. Although the information required about a fax number and an e-mail address is useful to the courts, the committee did not believe a pleading should be rejected for filing solely because this information is missing. Hence, to clarify this filing issue, the committee recommends amending rule 201(j) to include a new provision stating that “[t]he clerk must not reject a paper solely on the ground that it does not contain an attorney’s or a party’s fax number or e-mail address on the first page.”

Alternative Actions Considered

The committee considered requiring only fax numbers to be provided, but leaving e-mail addresses optional. However, it thought that the benefits of requiring both outweigh the burdens that may result from providing this information.

Comments From Interested Parties

This rules proposal was circulated in the spring of 2005. Eight comments were received on the proposed rule amendment. The commentators included an attorney, court administrators, and the Committee on Administration of Justice of the State Bar of

California. A chart summarizing the comments and the committee's responses is attached at pages 5–10.

Several commentators were concerned about the proposed changes to rule 201, particularly the requirement that e-mail addresses be provided on the caption page of papers filed with the court. They were concerned that the provision of e-mail addresses might impose burdens on sole or small firm practitioners. Also, some were concerned that such a requirement might interfere with the privacy of self-represented litigants.

The committee considered these matters, but concluded that on balance the benefits of requiring fax numbers and e-mail addresses on papers filed with the courts outweigh the burdens. Most papers prepared for filing will be handled by attorneys. Although some attorneys might prefer not to provide their fax numbers or e-mail addresses, this information is commonly provided in the legal profession and is publicly available. No great burden will be imposed on attorneys by requiring them to provide the courts with this information.

Self-represented litigants will not be significantly impacted by the amendments to rule 201 because they frequently use standard Judicial Council forms that currently indicate that providing numbers and e-mail addresses is optional. If this rules proposal is adopted, there should be a review of Judicial Council forms to determine which of those should be changed to require that persons filing the forms provide fax numbers and e-mail addresses and which should not.

Implementation Requirements and Costs

There should be no significant implementation requirements or costs to the courts as a direct result of this amendment to rule 201. If the captions on Judicial Council forms are changed in the future to require the provision of this same fax and e-mail information by form users, this may require revising a significant number of forms.

Attachments

Rule 201 of the California Rules of Court is amended, effective January 1, 2006, to read:

1 **Rule 201. Form of papers presented for filing**

2

3 (a)–(e) ***

4

5 (f) **[Format of first page]** The first page of each paper must be in the following
6 form:

7

8 (1) In the space commencing 1 inch from the top of the page with line 1, to
9 the left of the center of the page, the name, office address or, if none,
10 residence address, telephone number, fax number and e-mail address (if
11 ~~provided available~~), and State Bar membership number of the attorney
12 for the party in whose behalf the paper is presented, or of the party if he
13 or she is appearing in person; ~~but the name, office address, telephone~~
14 ~~number, and State Bar membership number of the attorney printed on~~
15 ~~the page is sufficient.~~ The inclusion of a fax number or e-mail address
16 on any document is optional, and its inclusion does not constitute
17 consent to service by fax or e-mail unless otherwise provided by law.

18

19 (2)–(11) * * *

20

21 (g)–(i) * * *

22

23 (j) **[Acceptance for filing]** The clerk of the court must not accept for filing or
24 file any papers that do not comply with this rule, except:

25

26 (1) The clerk must not reject a paper for filing solely on the ground that it is
27 handwritten or handprinted or that the handwriting or handprinting is in
28 a color other than blue-black or black;

29

30 (2) The clerk must not reject a paper for filing solely on the ground that it
31 does not contain an attorney's or a party's fax number or e-mail address
32 on the first page; and

33

34 ~~(2)~~(3) For good cause shown, the court may permit the filing of papers that do
35 not comply with this rule.

36

37 (k) * * *

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Superior Court of California, County of Los Angeles	A	Y	No specific comment.	No response required.
2.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	N	Y	<p>The following comments were received from our court’s executives, managers, supervisors, and staff attorneys from the Family Law Facilitator’s office:</p> <p>1. We disagree with e-mail and fax information being included, if available, unless the language in the rules specifies: “if represented by an attorney.” As a private party, a litigant may not want his or her private e-mail and fax number included on a public document even if the litigant has them. This could result in harassment by the party whom the litigant is suing.</p> <p>2. Adding a requirement that fax and e-mail addresses be included if available on the captions to all pleadings seems silly and an invitation for spam, viruses, and junk mail. No harm to the court but people, especially attorneys, should be able to keep that information confidential, as disgruntled former clients and opposing pro pers could litter their system with troubles and viruses.</p>	<p>1. The committee believes the benefits of providing the fax numbers and e-mail addresses of both attorneys and parties outweigh the burdens from having fax numbers and e-mail addresses appear in papers filed with the courts.</p> <p>2. The committee disagreed.</p>
3.	Ms. Pam Moraida Court Program Manager Superior Court of California,	A	N	No specific comment.	No response required.

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	County of Solano				
4.	Ms. Amy Silva Director Family Law/Probation Operations Superior Court of California, County of Orange	AM	N	If fax numbers and e-mail addresses become part of a court record, there should be a requirement to notify the court and parties of any changes. Can California Rules of Court rule 385 (“Service and filing of notice of change of address”) be expanded to include these other forms of contact, both the rule and the form?	The optional <i>Notice of Change of Address</i> (form MC-040) is being revised to include this information. The committee will consider whether rule 385 should be amended to clarify that “address” includes this information.
5.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	No specific comment.	No response required.
6.	Committee on Administration of Justice The State Bar of California San Francisco	AM	Y	This proposal would require that a fax number and an e-mail address be listed on the first page of papers filed with the court, so long as the person filing the papers is capable of receiving fax and e-mail transmissions. The rule would also state that inclusion of a fax number or an e-mail address “does not constitute consent to service by fax or e-mail unless otherwise provided by law.” The Committee on Administration of Justice (CAJ) recognizes the benefits of this change. Both fax and e-mail provide fast and inexpensive means of communication, particularly as mailing rates continue to rise. In addition, fax and e-mail records provide	The committee considered these benefits to be important.

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				<p>documentation that a communication was sent (thought not necessarily received). CAJ is opposed, however, to a <i>requirement</i> that an e-mail address be included on the first page of a court filing.</p> <p>Members of CAJ often provide e-mail addresses to opposing counsel voluntarily as a means of facilitating communication. CAJ also realizes that the e-mail address of an attorney may be publicly available on his or her law firm’s Web Site, or on the State Bar’s Web Site. Some attorneys, however—particularly solo and small firm practitioners—report that they intentionally do not include an e-mail address on their business card or a firm Web Site, because they prefer to communicate by e-mail only when they make a choice to do so. E-mail is viewed as being more susceptible to abuse, because of the ease of this mode of communication. Moreover, attorneys do not always have access to e-mail, and an e-mail transmission may simply sit in an attorney’s in-box if the attorney is away from his or her computer. In contrast, a letter or fax, in the case of an attorney’s absence from the office, is more likely to make its way to an attorney’s assistant, who could in turn contact the attorney or respond, as appropriate. Even though the rule states that it would not constitute consent to “service” by e-mail, CAJ was particularly concerned that opposing counsel would provide</p>	<p>The committee disagreed with this comment.</p> <p>As the CAJ’s comment acknowledges, e-mail addresses are commonly used today to facilitate communication. The committee considered the benefits of requiring the provision of e-mail addresses to outweigh the burdens from providing this information in papers filed with the courts.</p>

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				<p>“notice” of ex parte applications for temporary restraining or other orders by way of e-mail, which may be less likely to reach the attorney than notice by fax or even a phone message.</p> <p>CAJ has an additional concern over privacy, resulting from disclosure of an e-mail address on a public document filed with the court. Those documents are increasingly available through the electronic systems of courts on the Internet. Thus, an attorney’s e-mail address could be accessed easily by anyone throughout the world. Due to the free nature of e-mail transmission, public disclosure of a person’s e-mail address could readily lead to increased spam and other abuse, including by disgruntled litigants, and the related problem of transmission of viruses by e-mail.</p> <p>For all of these reasons, CAJ supports this proposal only if modified to provide that inclusion of an e-mail address on papers filed with the court is <i>optional</i>.</p>	
7.	Mr. Craig Wilford Attorney Law Offices of Craig Wilford Whittier	N	N	<p>In particular, I would like to comment negatively upon the suggestion that fax and e-mail addresses be mandatorily included on the first page (or any page) of pleadings.</p> <p>Spam is a serious problem associated with e-mail. The more my e-mail addresses get published in a form that is public record, the</p>	The committee disagreed. It believed that the benefits of requiring this information outweigh the burdens.

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				<p>more likely I will be inundated by e-mails that are unwanted.</p> <p>I perceive that not only is it possible to be inundated by e-mails from irate former clients or irate opponents but even to have an irate opponent submit my e-mail address to spammers for a fee (or for free) as a way to harass the attorney they perceive as the cause of all their troubles.</p> <p>It costs almost nothing to send an e-mail as opposed to sending regular mail through the United States Post Office. As a consequence, substantial harassment can occur if the e-mail address becomes commonly known, especially to persons who potentially have an axe to grind.</p> <p>In a like manner associated with faxes, the cost of sending a fax is relatively inexpensive, especially by fax modem and fax software in a computer without resorting to paper of any kind or scanning. However at the receiving end, it ties up a phone line for a substantial length of time and wastes fax paper. Again, potentially a disgruntled former client or an irate opponent could harass the law firm by sending junk faxes or by selling the fax number to firms that specialize in cold sales efforts by fax.</p> <p>I strongly oppose a court rule that would require the disclosure of my fax number and e-mail</p>	

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				address upon pleadings with the court. Do you think that the court would be excited about making public its fax number and e-mail addresses?	
8.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	No specific comment.	No response required.