

**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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SUBJECT: Electronic Court Records: Remote Public Access in Extraordinary  
Criminal Cases: Procedure Manual to Implement Rule 2073(e)  
(Action Required)

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Issue Statement

Court Technology Advisory Committee (CTAC) staff, with the assistance of superior court staff, has developed a procedure manual to assist courts to implement a rule of court that allows remote public access to electronic court records in extraordinary criminal cases.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council approve the attached procedure manual, *Electronic Court Records: Remote Public Access in Extraordinary Criminal Cases: Procedure Manual to Implement Rule 2073(e)*, for distribution to the trial courts on the Serranus Web site.

Rationale for Recommendation

*Background*

When the council adopted rule 2073 of the California Rules of Court in 2001, effective July 1, 2002, it sought to balance the public's interest in convenient access to court records with the privacy concerns of victims, witnesses, and parties. Courts were able to make electronic records in civil cases available on a court's Web site. However, due to privacy concerns, for criminal cases courts could only provide remote electronic access to indexes, registers of action, and court calendars. If electronic criminal case records were created, access could be made available to the public at the courthouse, but not remotely. This approach provided electronic records (other than indexes, registers of action, and court

calendars) the same de facto privacy protection traditionally afforded paper records. The U. S. Supreme Court has characterized this traditional protection as a “practical obscurity” that is attributable to the relative difficulty of gathering paper files.

In early 2004, several courts had an urgent need to meet extraordinarily high demands for information on high-profile criminal cases. The Judicial Council adopted interim rule 2073.5, effective immediately on February 27, 2004, to allow courts to provide remote electronic access to limited information for these cases, as an exception to the general rule allowing electronic access to criminal cases only at the courthouse. The interim rule expired January 1, 2005, but the Judicial Council amended rule 2073, effective on that date, to largely incorporate the provisions of the interim rule.

When rule 2073 was amended, the Judicial Council instructed staff to prepare a “how-to” manual to assist courts with setting up Web sites to respond to information requests for extraordinary criminal cases. The manual would incorporate the successful practices of the courts that implemented the interim rule. When the council adopted the amendment to replace the interim rule, it also directed staff to conduct a continuing evaluation of the implementation of the rule.

#### *Court experience in implementing the interim rule*

Staff contacted the Superior courts of Fresno, San Mateo, and Santa Barbara Counties, which concluded cases under the interim rule. All three courts reported that their efforts were successful in relieving the burden on the court of responding to requests for information and in optimizing public access to case records.

None of the courts experienced any technical difficulties or computer security breaches, and no inappropriate or erroneous posting of sensitive personal information occurred. Counter and telephone requests were all but eliminated. While staff and computer resources had to be temporarily redirected to maintain the Web sites, no temporary staff was required in any court.

Superior Court of Fresno County Judge R. L. Putnam, who presided over that court’s extraordinary case, reported that redaction of sensitive information and processing of documents required significant time of the judge and staff. The court also reported that posting information about future court events in the case was particularly helpful to the media.

Staff of the Superior Court of San Mateo County reported that congestion in the courthouse was eliminated by not having the 500 registered users of its Web site converging on the public counter for information. The site received thousands of hits a day while the case proceeded. The information was kept up on the Web site

for six months after the case concluded; it has now been removed but archived. As a side benefit, technology staff of the San Mateo County court has now assisted other superior courts in enhancing their Web sites to offer improved public access to information, not in extraordinary criminal cases but by applying the lessons learned.

The Superior Court of Santa Barbara County created two Web sites—one for the general public and one for the media, which contained additional information on procedural matters such as courtroom seating, credentialing, and media rules and forms. The sites had search engines to facilitate retrieving desired documents. The documents received three levels of review before posting. One law professor commented that the public Web site enabled students to see actual documents to illustrate points in the classroom. The court received a Kleps Award in 2004–2005 for its trendsetting Web sites, and created a video to educate the citizens of Santa Barbara County on the court’s efforts in the extraordinary case.

Because the three courts operating under the interim rule reported success and their experience informed the development of the procedure manual, CTAC supports broad dissemination of the procedure manual so courts facing extraordinary criminal cases in the future have a resource to consult if the need arises.

#### Alternative Actions Considered

Because the Judicial Council requested that a procedure manual be developed to assist courts in implementing rule 2073(e) of the California Rules of Court, no alternative action was considered.

#### Comments From Interested Parties

The draft procedure manual was reviewed and approved by the Criminal Law Advisory Committee, Court Technology Advisory Committee, and Trial Court Presiding Judges and Court Executives Advisory Committee’s Joint Rules Subcommittee, which recommended distributing the manual to information technology staff. As the manual will be posted on the Serranus Web site, information technology staff will have access to it electronically.

The draft manual was also circulated to staff and judges in the three courts that implemented the interim rule for their final review and comment.

#### Implementation Requirements and Costs

The procedure manual will be posted on the court technology section of the Serranus Web site, requiring minimal staff effort.

Attachment



# Electronic Court Records: Remote Public Access in Extraordinary Criminal Cases

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PROCEDURE MANUAL TO  
IMPLEMENT RULE 2073(e)



ADMINISTRATIVE OFFICE  
OF THE COURTS

## I. Introduction

Effective January 1, 2005, the Judicial Council adopted rule 2073(e) of the California Rules of Court, which allows remote electronic access to public trial court records in extraordinary criminal cases. The council directed Administrative Office of the Courts staff to prepare a manual to assist courts with implementing the provisions of the rule. This manual discusses the background and provisions of the rule, and provides technical, administrative, and policy information to courts that are considering allowing remote electronic access to documents in extraordinary criminal cases.<sup>1</sup>

## II. Background

In 2002 when the council adopted rules 2070 to 2077, allowing public access to electronic trial court documents, it balanced the public's interest in convenient access to court records against the privacy concerns of victims, witnesses, and parties. Criminal case documents in electronic form are not available remotely, but may be accessed at the courthouse. (Rule 2073(b) and (c)). The council adopted the rules recognizing that the "practical obscurity" of most documents in criminal cases provides individuals with some protection against the broad dissemination of private information that may be contained in public court records.

By limiting to the courthouse all electronic access to criminal case records, the council addressed several areas of concern about broad dissemination of information as a result of posting documents on the Web.

- Sensitive personal information that might have no bearing on the merits of the case could be made easily available.
- Future criminal investigations could be jeopardized, with safety risks for victims, witnesses, and their families.
- Individual criminal histories could be compiled, contrary to public policy as established by statute.

Thereafter, it became apparent that remote electronic access also could be used to alleviate some of the significant burdens presented to courts in high-publicity criminal cases. Because of the significant public interest in these cases, it is common for courts to receive scores, if not hundreds, of requests for certain documents, such as the complaint or motions. Recognizing that courts could meet extraordinary demands for information on these cases by posting documents on the Web, in February 2004 the Judicial Council adopted an interim rule (rule 2073.5) allowing remote electronic access to documents in certain criminal cases.

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<sup>1</sup> Courts that had experience under a similar interim rule assisted in developing this manual by contributing information about procedures they had established.

In adopting the interim rule, the Judicial Council recognized that court records in those cases are subject to intense public discussion and media reporting. Thus, the information available in the court file no longer enjoys the practical obscurity of most files in the courthouse; rather, court documents in these extraordinary cases are disseminated in the public arena of print and broadcast media and the Web.

After reviewing the effectiveness of the interim rule, in October 2004 the council amended the electronic access rules to allow an exception to the general rule limiting remote electronic access in criminal cases. That rule, 2073(e), became effective January 1, 2005, and the interim rule was repealed, effective the same date.

### III. Rule 2073(e) Provisions

The purpose of rule 2073(e) is to ease the court's burden of providing public access to court records, but easing that burden must be weighed against the privacy interests of the parties, victims, and witnesses.<sup>2</sup> To that end, the presiding judge or his or her designee is to consider certain factors in determining whether a case qualifies under the rule. Those factors include the privacy interests involved, the court's ability to redact sensitive personal information, the benefits and burdens on the parties of allowing remote electronic access, and the burden on the court in responding to requests for documents.

Before a court makes that determination, the rule requires the court to give five days' notice to the parties and the public, and also allows for public comment. If the court decides to allow remote electronic access, it must do so by a written order that specifies both the documents or record types that will be available by remote electronic access and any redaction requirements. A copy must be sent to the Secretariat of the Judicial Council as well as posted on the court's Web site.<sup>3</sup>

The rule also lists categories of information that should be redacted in the electronic records that are available for remote public access. Redaction is to be done of personal identifying and financial information; medical information; information about victims, witnesses, jurors, and court personnel; and crime information numbers. The court may do the redacting or may order the parties to provide the court with redacted copies of documents.

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<sup>2</sup> A copy of the rule is attached at the end of the manual.

<sup>3</sup> The copy of the order should be addressed to:

Secretariat  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
Attn: Rule 2073(e) Compliance

#### IV. Administrative Considerations

##### **Staff Roles**

Establishing and coordinating a Web site for an extraordinary criminal case requires support from court staff in several departments. The executive officer should assemble a team consisting of the IT director, Webmaster, media liaison, judicial assistant and courtroom clerk for the judge assigned to the case, and judicial research attorneys. One person should be assigned to be the overall coordinator. There is no single best coordinator, but in experienced courts, this person has often been the IT director, the CEO, or the media liaison. Choice of a coordinator should depend on workload, skills, and input from the presiding judge and case judge.

##### **Costs**

Experienced courts report that the cost of establishing a Web site in an extraordinary criminal case has been low. In all cases, existing technology and deputy clerk staff has been used, with no temporary help required. Costs associated with developing the Web site may include fees for domain name registration and purchase of a dedicated scanner, as well as contracting expenses for Web site design. The clerk's office has typically recognized significant savings in staff time by providing information to the public electronically rather than by paper at the courthouse.

##### **Management Reports and Statistics**

The Judicial Council has directed AOC staff to prepare an annual report on the experience of courts providing remote electronic access under rule 2073(e). To assist AOC staff in preparing the report, courts should maintain management statistics on visitors to the Web site and on listserv participation where appropriate. Although there is no specific requirement for what information is to be in the management reports, the following is a sample.

<b>TOTAL PAGE VIEWS</b>	
<b>MONTH</b>	<b>MONTHLY TOTAL</b>
November	222
December	17738
January	25878
<b>TOTAL</b>	<b>43838</b>

Figure 1 Visitor Statistics Report

#### V. Web Site Development

Once the court decides to establish a Web site, the site should be set up as soon as practicably possible after the court determines that a case qualifies for remote electronic access. The Web site may be hosted in-house or be outsourced, with normal security requirements in place. The server must be able to handle a number of visitors greatly exceeding the usual traffic on the court's regular Web site.

### **Public and News Media Access**

The Web site must be accessible both to the public and news media representatives. Rule 2073(e) specifically applies to “public” access and thus access may not be limited only to the news media. However, the court may have a separate news media Web site that contains additional information unique to media concerns, such as compliance with rule 980 (regarding photographing, recording, and broadcasting in the court), staging areas for equipment or reporters, and courtroom access. If separate Web sites are set up for the public and the news media, one experienced court has suggested that separate URLs also be used, so that visitors can go directly to relevant information without accessing the regular court site.

While the site must be publicly accessible, courts may have a registration requirement or make the site password accessible. If a court does so, a listserv may be used to send e-mail alerts to subscribers when new information is posted.

A court may set up a password-accessible Web site under rule 2074(c), and may charge fees for access under rule 2076. Rule 2075 allows courts to provide access through a vendor.

### **Publicizing Availability**

When the court determines that a criminal case will be treated as extraordinary under rule 2073(e), the order must be posted on the court’s Web site. Experienced courts recommend issuing a press release at the time the order is effective.

Some courts—as a convenience to the general public—use a prominent link from their home page to the Web site for the case. Others believe it is best *not* to have a link, so that visitors, especially jurors or potential jurors, do not casually view details of the case.

## **VI. Web Site Content**

### **General**

Documents on the Web site may include materials generated by the court, such as orders and minutes, as well as materials generated by the parties, such as motions, memoranda, and declarations. A list of documents should indicate the date filed and the date posted, if different. Materials may be electronic originals, scanned paper images, or PDF documents. The Web site does not serve an archival purpose, so content may be deleted after the case has concluded.

### **Documents to be Posted**

The court has the discretion to post any “documents” in an extraordinary high-publicity case. This would include filed papers and could extend to paper exhibits, if the court is so inclined. Additionally, some courts have posted photographs of exhibits and even provided audio streaming to the media pool via the Internet.

Courts should keep in mind that, as noted earlier, the purpose of rule 2073(e) is to ease the court’s burden of providing public access to court records, but easing that burden is to

be weighed against the privacy interests of the parties, victims, and witnesses. Thus, the rule does not require the posting of any documents or information on the Web. Rather, the court may do so only if it concludes that the benefit of easing the burden outweighs protecting any privacy interests.

The rule provides that the presiding judge, or a designated judge, is to determine which documents are to be posted on the Web. If the court is making individual decisions about which documents to post, the trial judge should make those decisions, as he or she is making the legal determinations and will already be familiar with the documents.

### **Redaction and Workflow**

Workflow procedures will vary according to who is responsible for redacting confidential or sensitive personal information from the documents to be posted. In some courts, court staff, usually judicial research attorneys, perform the initial redaction, with review by the case judge and other court staff. In other courts, the attorneys for the parties are responsible for redaction.

Regardless of who is responsible for the redaction, the court should ensure that certain information is redacted from documents before they are posted. Rule 2073(e)(2) provides that all “personal identifying information” should be redacted. That section lists “driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information.” (Rule 2073(e)(2).) Those listed items should be redacted, as well as any other information the court finds to be “personal identifying information.”

A timetable for posting should be established, allowing time for review of redactions before the document is made available to the public. Experienced courts report a delay of only a day or two between receipt or creation of a document and posting it on the Web site.

Storing the electronic documents in shared computer system folders has been satisfactory for experienced courts. Access rights to folders can be controlled to ensure confidentiality within the court staff. For example, if a court is redacting the documents, the research attorneys and judge can have access to one folder. When the redaction is complete, the document can be moved to another folder from which the judicial secretary can scan or convert the document to a PDF file as required. The document can then be moved to yet another folder where the Web staff can pick it up for posting. If a court is relying on the party attorneys to redact, it can set up a special electronic mail address to which the documents can be sent as an attachment. Court staff can then retrieve the documents from the mailbox and route them internally in folders, as above.

### **Evidence**

Experienced courts recommend varying approaches to posting evidence. Posting evidence adds to staff workload because physical items must be digitally photographed.

Other evidence must be scanned, and some evidence, such as video- or audiotapes, may not be usable in native format.

In addition, because of the graphic nature of some evidence in a criminal case, a court may be concerned about privacy protection for the victim.

### **Links and Other Information**

A court may provide links to its case management system if feasible or desirable, or to a source for reporter transcripts. Another possible link is to the California Courts Web site, rules section, for information about rule 2073(e). If the site is maintained on a separate URL, a link to the court's main Web site is appropriate.

Information about courthouse parking, hours, and seating availability for the case may be helpful to viewers. A searchable index may also be useful. A list of future court dates is particularly helpful to news media personnel.

## VII. Conclusion

Most criminal cases do not rise to the level of requiring extraordinary information access under rule 2073(e). However, courts that have experienced a high-profile case have found that the ability to provide remote electronic public access to information in such cases has relieved them of a portion of the extra workload required to process the case. Development of a dedicated Web site has proven to be well worth the effort and the resulting site has been readily accepted by the public.

## **Rule 2073. Public access**

- (e) **[Remote electronic access allowed in extraordinary criminal cases]**  
Notwithstanding (b)(2), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (e)(1), to permit electronic access by the public to all or a portion of the public court records in an individual criminal case if the number of requests for access to documents in the case is extraordinarily high and responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.
- (1) In exercising discretion under (e), the judge should consider the relevant factors, such as the following:
- (A) The privacy interests of parties, victims, witnesses, and court personnel and the ability of the court to redact sensitive personal information;
  - (B) The benefits to and burdens on the parties in allowing remote electronic access, including possible impacts on jury selection; and
  - (C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.
- (2) The court should, to the extent feasible, redact the following information from records to which it allows remote access under (e): driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. This subdivision does not apply to any document in the original court file; it applies only to documents that are available by remote electronic access.

- (3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's Web site. Any person may file comments with the court for consideration, but no hearing is required.
- (4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's Web site and a copy sent to the Judicial Council.

(Subd (e) adopted effective January 1, 2005.)