

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

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee  
Hon. Ming W. Chin, Chair  
Hon. Terence L. Bruiniers, Chair, Policy Subcommittee  
Ms. Charlene Hammitt, Manager, Information Services Division,  
415-865-7410, charlene.hammitt@jud.ca.gov

DATE: November 22, 2004

SUBJECT: Public Access to Electronic Trial Court Records: Approval of  
Report (Action Required)

Issue Statement

Rules 2070–2076 of the California Rules of Court, were adopted effective July 1, 2002, in response to the requirement of Code of Civil Procedure section 1010.6(b) that the Judicial Council adopt uniform electronic filing rules to include policies on privacy and public access to public court records. When the council adopted the rules, the Court Technology Advisory Committee (CTAC) was directed to prepare a progress report two years after the effective date on the implementation of the rules.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council approve the attached report, *Public Access to Electronic Trial Court Records: A Progress Report on the Implementation of Rules 2070–2077 of the California Rules of Court*, and direct the committee to continue monitoring and reporting on the progress of the courts in implementing the rules, proposing amendments if necessary.

Rationale for Recommendation

As the report demonstrates, public access to electronic trial court records is still very limited in California and other jurisdictions. Reasons for this include:

- The lengthy process to approve rules;
- The paper-based cultural environment of the courts;

- Antiquated case management systems that are not browser accessible;
- The lack of standards for electronic filing; and
- Budget and staff shortages that inhibit innovation.

CTAC conducted a survey of the trial courts during summer 2004, and many responding courts report that they are able to provide calendar and index information electronically but are limited in their ability to provide entire electronic case files. Other findings of the survey include:

- None to moderate cost savings;
- Favorable public response to electronic access;
- Success in public compliance with access policies;
- Satisfaction with vendor-provided access; and
- Budget constraints possibly putting access projects at risk.

In federal and other state courts, several courts are developing rules that allow for access to court-produced documents such as orders, calendars, and opinions, but not full case files. A few courts are allowing access to full case files where technologically feasible, except as prohibited by law or rules. The federal courts have recently allowed expanded access to electronic criminal case files by permitting remote access as well as access at the courthouse.

Support for the California rules has generally been favorable, in the court environment by judges and staff, by justice partners, and by the public. Survey respondents did not indicate support for rule amendments at this time. The only area of concern about the current rules is the exclusion of birthdate information from indexes, as information brokers have difficulty identifying the party they are searching for because of common names.

The rules have been expanded and amended twice since their adoption. Rule 2077 was adopted effective July 1, 2003, to provide a uniform, statewide definition of the contents of the registers of actions, indexes, and calendars. Rule 2073 was amended to provide for remote public access to electronic trial court records in extraordinary criminal cases, effective January 1, 2005.

Two initiatives approved by the Judicial Council and overseen by CTAC are under way to improve the ability of the courts to provide public electronic access. The first is the development of the California Case Management System, which will provide the technological tool the courts require to support an electronic environment. The second is the development of electronic filing standards, which will enable courts to receive and produce electronic documents to create an electronic case file.

Given the modest pace of the trial courts in expanding public access to court electronic documents and the apparent satisfaction of the courts with the current rules, the Court Technology Advisory Committee finds that the incremental, cautious approach provided by the rules has been successful. CTAC does not recommend additional modifications to the rules at this time.

#### Alternative Actions Considered

Because the Judicial Council requested the progress report, no alternative actions were considered.

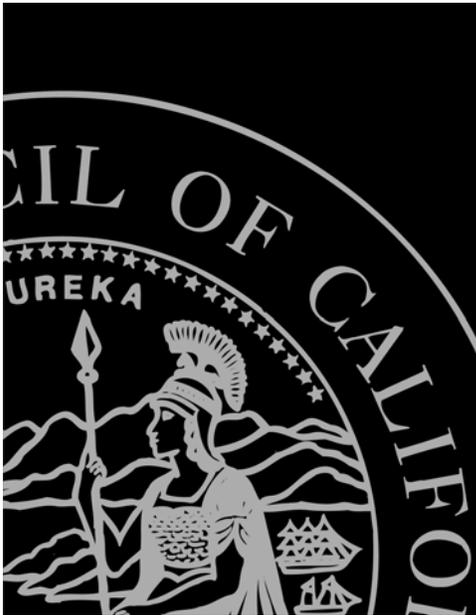
#### Comments From Interested Parties

The survey results were reviewed by the Administrative Office of the Courts (AOC) Office of Court Research, and the AOC Office of the General Counsel reviewed the draft progress report.

#### Implementation Requirements and Costs

No costs are associated with implementing this recommendation other than the one-time cost of conducting the survey.

#### Attachments



# Public Access to Electronic Trial Court Records

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A PROGRESS REPORT ON THE  
IMPLEMENTATION OF RULES 2070-  
2077 OF THE CALIFORNIA RULES OF  
COURT



JUDICIAL COUNCIL  
OF CALIFORNIA

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Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
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## **Introduction**

A bill requiring the adoption of rules permitting electronic filing and service (Senate Bill 367) was introduced in the 1999–2000 session of the California Legislature by Senator Joseph Dunn at the request of the Judicial Council. The council recognized that the age of electronic filing was coming to the courts and with it the need for statewide rules to facilitate electronic filing. The bill passed unanimously, was chaptered and became Code of Civil Procedure section 1010.6. Section 1010.6(b) required the Judicial Council to adopt uniform electronic filing rules to include policies on privacy and access to public court records by January 1, 2003.

The Court Technology Advisory Committee (CTAC) worked throughout 2000 and 2001 to develop rules on privacy and access, building on section 38 of the California Standards of Judicial Administration, Access to Electronic Records (adopted effective January 1, 1999, and repealed effective July 1, 2002). At its meeting in December 2001, after an informed discussion, the Judicial Council adopted rules 2070–2076 of the California Rules of Court, regarding public access to electronic trial court documents, attached as Appendix A.

When the council adopted the rules of court on public access to electronic trial court documents, it requested that CTAC report back on the implementation of the rules. The policy underlying the rules represents a cautious approach to the new initiative in California and other jurisdictions to provide such access while protecting privacy rights; therefore, the council was interested in being informed if this approach is appropriate. CTAC was specifically asked to report about court experience with the rules for the two years following the effective date, July 1, 2002. The council also requested that CTAC report on other topics relating to electronic access such as national trends, developments in the law, and possible amendments to the rules.

As an incremental step in providing access, the council adopted rules on electronic filing effective January 1, 2003 (Cal. Rules of Court, rules 2050–2060), enabling courts to receive or create electronic documents that could then be provided to the public. The public access rules have also been amended twice since their adoption, to define content for registers of actions, indexes, and calendars; and to allow remote public access to electronic trial court documents in extraordinary criminal cases. These amendments also reflect the cautious approach to access policy taken by the Judicial Council for the initial rules.

Since the rules were adopted in 2002, CTAC has tracked progress in individual court projects to provide electronic access by observing system demonstrations and has received oral reports from individual courts. Committee members attended the Courtroom 21 National Conference on Privacy and Public Access to Court Records in 2004. In summer 2004, the committee sent a survey to court executive officers requesting information about experience with the rules. All of these efforts have assisted the committee in preparing this report.

The following report summarizes the survey results, discusses the current environment, and proposes next steps to ensure that California courts will be positioned to take advantage of the benefits of electronic filing while protecting the privacy of parties, witnesses, and victims.

## **California Courts' Experience With Providing Public Access to Electronic Trial Court Records**

### **The Electronic Access Environment in California Courts When the Rules Were Adopted**

At the end of 2001, when the public access rules were adopted, CTAC reported to the Judicial Council that "California courts have had little experience with providing remote access to court records and with evaluating how providing such access might have an impact on litigants and third parties." Section 38 of the California Standards of Judicial Administration, Access to Electronic Records, was adopted effective January 1, 1999, to encourage innovative projects under permissive standards that would inform CTAC as the committee worked to develop permanent, mandatory rules. However, most courts were focusing their technology efforts in 1999 on mitigating potential problems with Y2K, so very few electronic access projects were established under section 38. Section 38 formed the basis for the subsequent rules.

Projects in place included images of actual documents filed by the parties and the court in consolidated complex litigation such as the Los Angeles County diet drug cases and in the San Diego County tobacco cases. Because statewide electronic filing rules were not in place until 2003, the courts were not able to receive documents in digital media, but instead had to rely on scanning and imaging paper documents to provide access to electronic court records in these cases. Calendar and searchable docket information was also available on a limited basis in a few counties, including Alameda, San Francisco, and Riverside.

Court case management systems (CMS) vendors had not developed Web-based systems, and systems in use did not have the ability to segregate or redact confidential information from a specific case file. While all courts had Web sites by 2001, many were static, providing only directory information.

To summarize the environment two years ago, courts were interested in providing public electronic access but lacked the staff and technology resources to do so.

### **The Electronic Access Environment in California Courts Two Years Later**

#### **Survey methodology**

CTAC and Administrative Office of the Courts (AOC) staff from the Information Services Division and the Office of Court Research developed a survey instrument sent to all court executive officers in summer 2004, asking them to report on their experience

with public access to electronic trial court records under the rules of court that had been in effect for two full years. The survey is attached as Appendix B. Thirty-three courts returned the survey, for a response rate of 57 percent. Courts responding ranged from small to large, rural to urban, with a geographical distribution across the state. Responses were anonymous, with identity coded for staff information only. The survey solicited suggestions for rule amendments as well as information on experience with the rules.

### **Survey results**

*Categories of information provided.* The survey results demonstrate that while courts have made some progress in providing electronic access to court records, most of the information available is calendar and register of actions data and not actual case file documents. Technological limitations seem to be the reason for this situation. Even the smallest courts can create calendars independent of their case management systems using standard word-processing applications. A couple of CMS vendors have created applications that allow for public display and searching of the index and register of actions, and the few courts with these systems have installed the applications and provided the information on their Web sites. A small number of courts have invested in imaging technology and are making imaged documents available either remotely or at the courthouse for general civil cases. Seventy-three percent of the respondents not providing access indicate that the inadequacy of technology is of high importance in preventing them from providing access.

*Courts providing access.* To summarize, access is offered remotely by 19 courts, and 23 courts offer access at the courthouse. Twenty percent of the courts offer special access for attorneys and parties to their cases.

Of the courts providing access, information about civil unlimited and limited cases is more prevalent than information about small claims cases. This parallels the perceived demand, with about half of the courts reporting high demand for these case types, while fewer report high demand for small claims. All report at least moderate demand for these case types. At least 70 percent of the courts providing case information access are also able to offer access to their index, calendar, and register of actions.

*Savings.* When the concept of providing electronic access to court records was first developed, many commentators anticipated that courts would realize significant savings in time and costs. Such savings have not materialized, and the experience of California courts responding to the survey bears this out. More than two-thirds of the courts report that providing access has resulted in moderate to no cost savings, and a slightly lower percentage report moderate or little staff time saved. The biggest beneficiary has been the public, the benefit to which of course cannot be quantified.

*User response.* Most courts offering electronic access have not conducted formal assessments of their projects. A few courts have taken advantage of their interactive Web sites to provide an area for public comment. Whether formal or informal, feedback from the public has been very favorable. Almost three-quarters of responding courts report public support for electronic access.

*Availability of records.* No clear trend emerges from the survey to indicate that courts are finding it difficult or easy to provide electronic access. Seven courts report high success in providing records maintained electronically to the public, while six report that they are unsuccessful. The spread from moderately difficult to moderately successful was evenly distributed across the range. Two-thirds of the courts report that lack of access to technology is moderately to highly related to their difficulty in providing access, while one-third reports that technology has little or no bearing.

*Security and privacy restrictions.* One area in which the courts agree is that they are mostly successful in managing restrictions on access provided for in the rules to confidential information or to particular case types such as mental health and juvenile. However, no clear trend emerges to explain whether technological limitations present challenges in protecting information. Thirty percent of the courts report that access to appropriate technology is highly related while an equivalent 30 percent report that technology is not related to the challenges of protecting privacy rights. More than 92 percent of the courts do report success in the area of public compliance with access policies. The most significant compliance breach is of the “one case at a time” rule. No court reports any attempt at identity theft.

*Vendors.* The rules permit a court to provide electronic access to court records through a vendor. Twelve courts report that vendors provide services necessary for the public to gain access, and all of these courts report moderate to high satisfaction with the quality of these services. The rules require that a court’s contract with a vendor must specify vendor responsibility for protection of confidentiality of electronic records, but of the courts with vendor services, 10 do not report including such an agreement.

*Costs.* No responding court reports imposing fees to provide electronic access. One court that did not respond does collect fees, as allowed by the rules. Budget constraints put some electronic records access projects at risk, with 61 percent of the respondents reporting moderate to high risk.

*Possible changes to the rules.* The rules list specific data elements that must be either included or excluded from electronic information in the registers of actions, indexes, and calendars. No court reports that any of the included data elements have proved so problematic that they should be removed from the requirements. Three courts report that being required to exclude the date of birth is problematic for the public in trying to identify individuals with the same name. Eighty-three percent of the respondents do not recommend that the rules be amended. Of the four respondents that propose changes, most want the date of birth restriction eliminated. General comments include a request for a better definition of what is public or confidential and for elimination of the difference between what is available at the courthouse and what is available remotely.

*Web site summary.* Because the survey response was not complete for all courts, AOC Information Services Division staff reviewed all 58 court Web sites for additional information about access to electronic trial court records. Thirty-eight courts provide calendars, 17 courts provide indexes, and 11 courts provide registers of actions. These

numbers represent a significant improvement over the situation when the rules were adopted at the end of 2001. Access to full case records is much more limited, with only a few courts offering civil case information. Limits on the case records include selected documents, selected cases, or no backfiles. Most courts that offer electronic access provide a search tool, particularly for their register of actions.

## **Experience in Other Jurisdictions**

### **Federal Courts**

The approach taken by California when the rules were adopted was similar to that taken by the Judicial Conference of the United States, which approved recommendations in 2001 that provided remote and courthouse access to civil case files, courthouse access only to criminal case files for a two-year period, and no requirement for mandatory electronic access.

When the Judicial Conference approved the restriction on remote electronic access to criminal case files, it directed its Court Administration and Management Committee to study the implications of allowing remote public access. The Federal Judicial Center conducted a pilot project in 10 district courts (including the California Southern District Court) and one circuit court to allow remote access to criminal case documents. These documents included indictments, motions, orders, warrants, sentencing memoranda, plea agreements, and transcripts. Redaction of certain elements was required, including social security numbers, financial account numbers, names of minor children, birthdates, and home addresses. Redaction was the responsibility of the filing parties. Remote public access to other document types was prohibited, including pretrial and presentence investigations, statements of reasons, and sealed documents.

At the conclusion of the study, the Federal Judicial Center reported that the advantages of offering remote public access outweighed the disadvantages. No court reported a significant increase in sealing requests. No verifiable instances of harm (including identity theft or threat to a cooperating person) were reported. Savings of time and money, remote access by judges, and highlighting the open and public nature of the court were other advantages. Few disadvantages were reported, such as the new role of the court as a gatekeeper in deciding what to make available and the added work of scanning documents. Since access to the documents is on the fee-based PACER system, budget impacts were minimal.

After receiving the report on the successful pilot project, the Judicial Conference recommended in March 2004 that criminal case files be as accessible from a remote location as at the courthouse. “Simply stated, if a document can be accessed from a criminal case file by a member of the public at the courthouse, it should be available to that same member of the public through the court’s electronic access system,” the policy statement says. As a practical matter, rollout will take some time, as the judiciary’s software will have to be modified and courts will have to convert to the Case Management/Electronic Case Filing system to allow electronic filing.

### **The Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA), Public Access to Court Records: Guidelines for Policy Development by State Courts**

This joint project, endorsed in 2002 by CCJ and COSCA, provides a framework for states to use as they develop policies on public access. The guidelines presume open public access to court records, while recognizing that unrestricted access to certain information in court records could result in an unwarranted invasion of personal privacy. Since the guidelines were endorsed, Alaska, Georgia, Indiana, Minnesota, Nebraska, North Dakota, Pennsylvania, and South Dakota have used them to assist committees to generate rules or policies in their respective states.

#### **State Courts**

Since late 2001, when the California rules on access were adopted, several states have adopted rules or established committees to develop policies. States have taken two positions on providing access. The first is a conservative approach, providing access to indexes, calendars, registers, orders, and opinions, but not full case records. In some cases the technology in the courts does not support a more comprehensive approach; in others, the state is interested in an incremental process to release additional information as the local culture adjusts. The second is a broad approach, providing case file documents as well as information about the case and court-generated documents.

Approaches various state courts have followed include:

- Indiana, Minnesota, and Massachusetts have taken a conservative approach;
- Maryland and New York have taken a broad approach; and
- Ohio and Florida initially provided full access to case documents but have now restricted access due to public concerns about compromised privacy.

Even in courts that offer access to full case documents, rules are in place that restrict access to personal identifying information or to case types that are confidential, such as adoption or mental health.

In both federal and state courts, the development and implementation of rules and policies on public access to electronic court records is an ongoing process, with all jurisdictions struggling to balance the opportunities presented by the movement toward paperless courts made possible by advances in technology with the need to respect the privacy rights of individuals with matters before the court.

#### **Developments in the Law Relating to Access to Records**

Two new laws became effective in 2004 that have an impact on court records and the information available in them. Neither law addresses electronic records specifically, but if courts maintain the records affected by these new laws in an electronically retrievable medium the laws will apply. Neither category of case is available remotely under rule 2073(c), but cases may be available electronically at the courthouse under the same rule.

The first law, regarding confidential information in police reports (Sen. Bill 58, chaptered as an urgency law effective September 14, 2004), adds Penal Code section 964, which requires the district attorney and court in each county to establish a procedure for protecting personal information about witnesses or victims contained in police arrest or investigative reports sometimes submitted in support of a criminal complaint, indictment, search warrant, or arrest warrant. Since a recent AOC Office of the General Counsel opinion stated that these documents are public records subject to public inspection, they may be part of criminal case files that would be available to the public at the courthouse. If a court either receives these reports electronically from justice partners or creates scanned images of the reports, personal identifying information such as birthdate, address, telephone number, and social security number would have to be redacted before the electronic documents would be available for the public to view.

The second law, regarding family court records, (Assem. Bill 782, chaptered as an urgency law effective June 7, 2004), adds Family Code section 2024.5, which authorizes parties to redact social security numbers from documents filed with the court. As in the case of criminal case files discussed above, if a court provides electronic documents at the public counter in the courthouse, the court would post only redacted documents in these family case files.

### **Reaction of Interested Groups to the Rules**

The survey asked the courts whether insufficient judicial support was a reason for not providing electronic access at this time. It would appear from the responses that judges do support access; all courts report that insufficient judicial support is of no or almost no importance in accounting for limitations on access. Insufficient public demand for access also is not a significant factor in understanding why some courts do not provide access.

The survey asked the courts to estimate to what extent justice system partners have expressed concern that the privacy rights of the public may be compromised by electronic access. More than three-quarters of respondents indicate that their partners are not concerned or are only moderately concerned about privacy compromise. Only one respondent reported that its justice system partners are highly concerned.

Survey respondents also report that information brokers are concerned about birthdate exclusions from indexes because of difficulty in identifying people with common names. Information about California's rules is posted on several court public records Web sites, such as the National Center for State Courts (<http://ctl.ncsc.dni.us/publicaccess/states/>) or the Reporters Committee for Freedom of the Press (<http://www.rcfp.org/courtaccess>) with contact information for AOC staff. Staff report that information vendors that conduct preemployment investigations have contacted the AOC through these Web site links and have commented negatively on the absence of birthdates, because without a unique identifier it is difficult to determine if the information retrieved is for the correct person. It is worth noting that rules and policies in other states uniformly call for

redaction of birthdates in court records, although some allow birth years to be displayed and used as a searchable field.

Finally, organizations interested in privacy rights and access to public information have presented testimony and comments on other state efforts to draft access rules. Among the comments:

- The Privacy Rights Clearinghouse expresses concern about the misuse of bulk data information to create consumer marketing lists.
- The Reporters Committee for Freedom of the Press is concerned that categorical exemptions for case types such as family or criminal undermine the ability of the public to monitor the work of the courts and prefers that sealing rules be used to protect personal or confidential information.

### **Statewide Standards on Information in the Register of Actions**

When CTAC was discussing the draft rules, court executive officer members of the committee noted that while Government Code section 69845 requires that courts maintain a register of actions, no uniform, statewide definition of “register of actions” existed. Courts across the state were interpreting the term loosely, as well as differently from each other. Shortly after the rules were adopted, the Court Executives Advisory Committee (CEAC) appointed the Public Access to Electronic Court Records Administrative Working Group to recommend standard data elements for court calendars, indexes, and registers of actions. These elements would then be incorporated into a statewide case management system and would allow courts to provide remote and courthouse access to records for all case types to the extent feasible as required by rule 2073(b)(1).

The working group met several times in 2002 and developed minimum requirements for the contents of a register of actions to be included in a rule. The working group decided that

- Courts may include more information, so long as the register of actions remains a summary of events, as required by Government Code section 69845.
- The rule should set forth information that must be excluded — mostly personal identifying information not legally required to be in the court calendar, index, or register of actions.
- There was substantial discussion regarding whether to exclude a party’s date of birth. Some committee members noted that failure to provide this information would increase the number of persons coming to the court counter, as date of birth may be used to narrow searches. However, the committee concluded that while date of birth is not confidential in court records, it should not be included in the register of actions. It is not a traditional entry in the register, as the register is essentially a chronicle of a court’s official acts in a case.

The working group’s recommendations were proposed as rule 2077, and the rule was adopted by the Judicial Council effective July 1, 2003.

## **Recommended Amendments to the Rules**

The survey of court executive officers asked them to comment on aspects of the rules that need to be amended or eliminated, based on their experience. Eighty-three percent of respondents do not think that any changes are necessary. Only four respondents request changes. Two want to delete the date of birth exclusion in the data element list for the register of actions, index, and calendar. As this suggestion was considered when the rule was proposed, an amendment is not being proposed. The other two suggestions are general in nature: eliminate the difference between courthouse and remote access and better define what is public or confidential.

At this time, the committee is not recommending amendments or additions to the rules. The survey results indicate that, for the most part, the rules are working satisfactorily for the courts. CTAC's Outreach Subcommittee, which includes representatives to other Judicial Council advisory committees, has not received amendment requests from other advisory committees. CTAC and the Judicial Council will monitor court experience with the most recent amendment to rule 2073, effective January 1, 2005, to allow remote public access to electronic trial court documents in extraordinary criminal cases, to ensure that it provides a workable solution for courts with such cases.

## **Implementing Full Public Electronic Access**

As experience in California courts and other jurisdictions demonstrates, electronic access to court records is just beginning. Some of the reasons for the slow pace in providing access include the lengthy process to approve rules, the paper-based cultural environment of the courts, antiquated case management systems that are not browser accessible, the lack of standards for electronic filing; and budget and staff shortages that inhibit innovation.

For California courts in particular, the difficult budget environment means they do not have funds to devote to new projects to scan and image documents and so are unable to provide case file information. Many courts are using case management systems that are not able to provide interactive registers and indexes, nor can the systems provide links between a docket entry and the document associated with it.

Despite this challenging funding environment, the Judicial Council is supporting initiatives overseen by CTAC and administered by the AOC Information Services Division to move courts up to the advanced technology environment required to support full electronic access. Such access would support Judicial Council strategic goals I, Access, Fairness, and Diversity; III, Modernization of Management and Administration; and VI, Technology.

The first initiative, and the foundation for providing full access, is development of the California Case Management System. The new system will be browser-based, enabling

full Internet access to case information. The system is being developed on a phased schedule based on case type. The first case type, criminal and traffic, is in user testing.

The second initiative, essential to move courts from a paper to an electronic document environment, is development of statewide electronic filing standards. The AOC initiated its California Electronic Filing Technical Standards (CEFTS) program to facilitate deployment of electronic filing (e-filing) services. The Second Generation Electronic Filing Specification (2GEFS) project is working to create a new, coherent set of XML (eXtensible Markup Language) schema and related specifications for court electronic filing and case management systems to allow any California court to receive and respond to electronic filings from any provider of e-filing services.

## **Conclusion**

The survey results demonstrate that courts have, to the extent feasible, begun to provide public access to electronic trial court documents. Uniform statewide rules have eliminated confusion as to which documents may be made available. The cautious, incremental approach taken by California is also the approach taken by most other jurisdictions.

Because survey respondents do not suggest changes to the rules, the Court Technology Advisory Committee is not recommending any amendments to the rules at this time. As the California Case Management System is developed and implemented and electronic filing becomes more widespread, CTAC will continue to monitor court experience with the rules and report back to the Judicial Council if any changes are necessary in light of these new technological advances.

## APPENDIX A

### California Rules of Court, rules 2070–2077, Public Access to Electronic Trial Court Records

#### **Rule 2070. Statement of purpose**

(a) **[Intent]** The rules in this chapter are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests.

(b) **[Benefits of electronic access]** Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to trial court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to trial court records may also foster in the public a more comprehensive understanding of the trial court system.

(c) **[No creation of rights]** These rules are not intended to give the public a right of access to any record that they are not otherwise entitled to access.

*Rule 2070 adopted effective July 1, 2002.*

#### **Advisory Committee Comment**

The rules acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the trial courts. It is contemplated that the rules may be modified to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

#### **Drafter's Notes**

**2002-**These new rules establish (1) statewide policies on public access to trial courts' electronic records that provide reasonable electronic access while protecting privacy and other legitimate interests and (2) statewide policies regarding courts' contracts with vendors to provide public access to electronic court records.

#### **Rule 2071. Authority and applicability**

(a) **[Authority]** The rules in this chapter are adopted under the authority granted to the Judicial Council by article VI, section 6 of the California Constitution and Code of Civil Procedure section 1010.6.

## APPENDIX A

**(b) [Applicability]** The rules in this chapter apply only to trial court records.

**(c) [Access by parties and attorneys]** The rules in this chapter apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or California Rules of Court.

*Rule 2071 adopted effective July 1, 2002.*

### **Rule 2072. Definitions**

**(a) [Court record]** As used in this chapter, "court record" is any document, paper, or exhibit filed by the parties to an action or proceeding; any order or judgment of the court; and any item listed in subdivision (a) of Government Code section 68151, excluding any reporter's transcript for which the reporter is entitled to receive a fee for any copy. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel.

**(b) [Electronic record]** As used in this chapter, "electronic record" is a computerized court record, regardless of the manner in which it has been computerized. The term includes both a document that has been filed electronically and an electronic copy or version of a record that was filed in paper form. The term does not include a court record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.

**(c) [The public]** As used in this chapter, "the public" is an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.

**(d) [Electronic access]** "Electronic access" means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise specified in these rules.

*Rule 2072 adopted effective July 1, 2002.*

### **Rule 2073. Public access**

**(a) [General right of access]** All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except those that are sealed by court order or are made confidential by law.

**(b) [Electronic access required to extent feasible]** A court that maintains the following records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so.

## APPENDIX A

(1) Register of actions (as defined in Gov. Code, § 69845), calendars, and indexes in all cases; and

(2) All records in civil cases, except those listed in (c)(1)-(6).

*(Subd (b) amended effective July 1, 2004.)*

**(c) [Courthouse electronic access only]** A court that maintains the following records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may provide remote electronic access only to the records governed by (b):

(1) Any record in a proceeding under the Family Code, including, but not limited to, proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; and child custody proceedings;

(2) Any record in a juvenile court proceeding;

(3) Any record in a guardianship or conservatorship proceeding;

(4) Any record in a mental health proceeding;

(5) Any record in a criminal proceeding; and

(6) Any record in a civil harassment proceeding under Code of

Civil Procedure section 527.6.

*(Subd (c) amended effective July 1, 2004.)*

**(d) ["Feasible" defined]** The requirement that a court provide electronic access to its electronic records "to the extent it is feasible to do so" means that a court is required to provide electronic access to the extent it determines it has the resources and technical capacity to do so.

**(e) [Access only on case-by-case basis]** A court may only grant electronic access to an electronic record when the record is identified by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis. This case-by-case limitation does not apply to a calendar, register of actions, or index.

**(f) [Bulk distribution]** A court may provide bulk distribution of only its electronic calendar, register of actions, and index. "Bulk distribution" means distribution of all, or a significant subset, of the court's electronic records.

**(g) [Records that become inaccessible]** If an electronic record to which the court has provided electronic access is made inaccessible to the public by court order or by

## APPENDIX A

operation of law, the court is not required to take action with respect to any copy of the record that was made by the public before the record became inaccessible.

**(h) [Off-site access]** Courts should encourage availability of electronic access to court records at public off-site locations.

*Rule 2073 amended effective July 1, 2004; adopted effective July 1, 2002.*

### **Advisory Committee Comment**

The rule allows a level of access to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c) excludes certain records (those other than the register, calendar, and indexes) in specified types of cases from remote electronic access. The committee recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet.

Subdivisions (e) and (f) limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals

### **Rule 2073.5 Remote electronic access allowed in individual criminal cases**

**(a) Exception for extraordinary cases.** Notwithstanding rule 2073(b)(2), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (b), to permit remote electronic access to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high, and (2) responding to those requests would significantly burden the operations of the court.

**(b) Relevant factors.** In exercising discretion under (a), the judge should consider relevant factors, such as:

(1) The impact on the privacy of parties, victims, and witnesses;

(2) The benefits to and burdens on the parties in allowing remote electronic access, including possible impacts on jury selection; and

## APPENDIX A

(3) The benefits to and burdens on the court and court staff.

**(c) Redaction of private information.** The court should, to the extent feasible, redact the following information from records to which it allows remote access under (a): 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 and 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.

**(d) Notice and comments.** 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 Web site. Any person may file comments with the court for consideration, but no hearing is required.

**(e) Order.** 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.

**(f) Sunset date.** This rule is effective until January 1, 2005.

*Rule 2073.5 adopted effective February 27, 2004.*

### **Rule 2074. Limitations and conditions**

**(a) [Means of access]** A court must provide electronic access by means of a network or software that is based on industry standards or is in the public domain.

**(b) [Official record]** Unless electronically certified by the court, a trial court record available by electronic access does not constitute the official record of the court.

**(c) [Conditions of use by persons accessing records]** A court may condition electronic access to its records on (1) the user's consent to access the records only as instructed by the court and (2) the user's consent to the court's monitoring of access to its records. A court must give notice of these conditions, in any manner it deems appropriate. The court may deny access to a member of the public for failure to comply with any of these conditions of use.

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**(d) [Notices to persons accessing records]** A court must give notice of the following information to members of the public accessing its electronic records, in any manner it deems appropriate:

(1) The court staff member to contact about the requirements for accessing the court's records electronically.

(2) That copyright and other proprietary rights may apply to information in a case file absent an express grant of additional rights by the holder of the copyright or other proprietary right. The notice should indicate that (A) use of such information is permissible only to the extent permitted by law or court order and (B) any use inconsistent with proprietary rights is prohibited.

(3) Whether electronic records constitute the official records of the court. The notice should indicate the procedure and any fee required for obtaining a certified copy of an official record of the court.

(4) Any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

**(e) [Access policy]** A court must post a privacy policy on its public-access Web site to inform members of the public accessing its electronic records of the information it collects regarding access transactions and the uses that the court may make of the collected information.

*Rule 2074 adopted effective July 1, 2002.*

### **Rule 2075. Contracts with vendors**

A court's contract with a vendor to provide public access to its electronic records must be consistent with these rules and must require the vendor to provide public access to court records and to protect the confidentiality of court records as required by law or by court order. Any contract between a court and a vendor to provide public access to the court's records maintained in electronic form must specify that the court is the owner of these records and has the exclusive right to control their use.

*Rule 2075 adopted effective July 1, 2002.*

### **Rule 2076. Fees for electronic access**

A court may impose fees for the costs of providing public access to its electronic records, as provided by Government Code section 68150(h). On request, a court must provide the public with a statement of the costs on which these fees are based. To the extent that public access to a court's electronic records is provided exclusively through a vendor, the court must ensure that any fees the vendor imposes for the costs of providing access are reasonable.

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*Rule 2076 adopted effective July 1, 2002.*

### **Rule 2077. Electronic access to court calendars, indexes, and registers of actions**

**(a) [Intent]** The intent of this rule is to specify information to be included in and excluded from the court calendars, indexes, and registers of actions to which public access is available by electronic means under rule 2073 (b). To the extent it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means in accordance with this rule.

#### **(b) [Minimum contents for electronically accessible court calendars, indexes, and register of actions]**

(1) The electronic court calendar must include:

- (A) Date of court calendar;
- (B) Time of calendared event;
- (C) Court department number;
- (D) Case number; and
- (E) Case title (unless made confidential by law.)

(2) The electronic index must include:

- (A) Case title (unless made confidential by law);
- (B) Party names (unless made confidential by law);
- (C) Party type;
- (D) Date on which the case was filed; and
- (E) Case number.

(3) The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include:

- (A) Date case commenced;
- (B) Case number;
- (C) Case type;

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(D) Case title (unless made confidential by law);

(E) Party names (unless made confidential by law);

(F) Party type;

(G) Date of each activity; and

(H) Description of each activity.

**(c) [Information that must be excluded from court calendars, indexes, and registers of action]** The following information must be excluded from a court's electronic calendar, index, and register of actions:

(1) Social security number;

(2) Any financial information;

(3) Arrest warrant information;

(4) Search warrant information;

(5) Victim information;

(6) Witness information;

(7) Ethnicity;

(8) Age;

(9) Gender;

(10) Government-issued identification card numbers (i.e., military);

(11) Driver's license number; and

(12) Date of birth.

*Rule 2077 adopted effective July 1, 2003.*

**APPENDIX B**  
**PUBLIC ACCESS TO ELECTRONIC TRIAL COURT RECORDS**  
**Court Technology Advisory Committee of the Judicial Council**

1. Does your court provide remote electronic access to court records?	<input type="checkbox"/> No	14	<input type="checkbox"/> Yes	19
2. Does your court provide access to court records through electronic means at courthouses?	<input type="checkbox"/> No	10	<input type="checkbox"/> Yes	23
3. Does your court provide access to court records through electronic means at public <b>non-court</b> locations?	<input type="checkbox"/> No	17	<input type="checkbox"/> Yes	16
4. If your court provides electronic access please indicate for which case types or information:				
• Civil Unlimited	<input type="checkbox"/> No	5	<input type="checkbox"/> Yes	24
• Civil Limited	<input type="checkbox"/> No	5	<input type="checkbox"/> Yes	24
• Small Claims	<input type="checkbox"/> No	7	<input type="checkbox"/> Yes	22
• Registers of Actions	<input type="checkbox"/> No	7	<input type="checkbox"/> Yes	21
• Calendars	<input type="checkbox"/> No	9	<input type="checkbox"/> Yes	21
• Indexes	<input type="checkbox"/> No	8	<input type="checkbox"/> Yes	21
5. If your court is currently providing electronic access to court records please rate the demand for each case type which your court provides such access.	No Demand		Moderate Demand	High Demand
• Civil Unlimited	1 2	5 3	5 4	9 5
• Civil Limited	1 2	4 3	5 4	10 5
• Small Claims	1 2	4 3	7 4	4 5
6. Does your court provide special electronic access for attorneys and parties to their cases?	<input type="checkbox"/> No	25	<input type="checkbox"/> Yes	6
7. If your court does not provide electronic access to court records at this time how important are the following factors in accounting for this:	No Importance		Moderate Importance	High Importance
• Court technology is currently inadequate.	1 2 2	1 3	1 4	11 5
• Financial / budget constraints.	1 1 1 2	2 3	3 4	7 5
• Judicial support is insufficient.	1 10 4 2	3	4	5
• Little or no demand for electronic access by public at this time.	1 6 3 2	2 3	2 4	1 5
• Staffing shortages or staff training.	1 3 1 2	4 3	3 4	3 5
8. To what extent has your court achieved <b>cost savings</b> by providing electronic access to court records?	No Savings		Moderate Savings	Significant Savings
	1 4 5 2	5 3	5 4	2 5

9. To what extent has your court saved <b>staff time</b> by providing electronic access to court records?	No Savings	Moderate Savings	Significant Savings
	1 4 3 2	9 3 7 4	3 5
10. To what extent has your court been able to shift resources to other areas of court operations as needed by providing electronic access to court records?	No Shift Possible	Moderate Shift Possible	Large Shift Possible
	1 11 10 2	5 3 1 4	1 5
11. In your estimation has the public saved time and document retrieval costs that are clearly linked to the provision of electronic access to your court's records?	<input type="checkbox"/> No 4	<input type="checkbox"/> Yes 23	
12. Has your court assessed the public's response to electronic access to your court's records through some formal mechanism (e.g., survey, focus groups, etc)?	<input type="checkbox"/> No 26	<input type="checkbox"/> Yes 3	
13. If your court has undertaken such an assessment what kind of feedback did you get?	Not Favorable	Moderately Favorable	Highly Favorable
	1 2 1 3 1 4 2 5		
14. If the comments that you have received from the public regarding electronic access have been more informal in nature how would you characterize these comments?	Not Favorable	Moderately Favorable	Highly Favorable
	1 1 2 5 3 11 4 4 5		
15. How <i>successful</i> has your court been in providing all records maintained in electronic form to the public through an easily accessible electronic format?	Not Successful	Moderately Successful	Highly Successful
	1 6 5 2 5 3 5 4 7 5		
16. How much <i>difficulty</i> has your staff encountered making all appropriate court records available to the public in electronic form?	Not Difficult	Moderately Difficult	Highly Difficult
	1 3 5 2 7 3 5 4 8 5		
17. To what extent have your justice system partners expressed concern that the privacy rights of the public may be compromised by electronic access?	Not Concerned	Moderately Concerned	Highly Concerned
	1 13 8 2 5 3 1 4 1 5		
18. To what <i>extent is the difficulty</i> your court has had in making records available electronically related to a lack of access to scanning technology or e-filing capability?	Not Related	Moderately Related	Highly Related
	1 7 2 2 7 3 4 4 8 5		
19. How <i>successful</i> has your court been in restricting access to sensitive or confidential data elements associated with court records that you are now providing electronically (e.g., SSN, gender, age, names of witnesses, etc.)?	Not Successful	Moderately Successful	Highly Successful
	1 2 2 4 3 8 4 12 5		

20. To what extent has your court been <i>successful in limiting</i> electronic access to all relevant records in restricted case types including family, juvenile, guardianship, mental health, and criminal?	Not Successful	Moderately Successful	Highly Successful
	1 2 2	3 3	7 4 15 5
21. How <i>challenging</i> has it been for your court to develop the technical capacity to restrict public electronic access to potentially sensitive or confidential information?	Not Challenging	Moderately Challenging	Highly Challenging
	1 7 2	11 3	4 4 5 5
22. To what extent are the challenges of protecting privacy rights in this area related to your court's lack of access to appropriate technology or other resources?	Not Related	Moderately Related	Highly Related
	1 8 4 2	6 3	1 4 8 5
23. To what extent have members of the public complied with the policies that your court has developed for accessing and using electronic records?	Not Compliant	Moderately Compliant	Highly Compliant
	1 1 2	1 3	10 4 13 5
24. If compliance problems have occurred what form have they taken? (Please check all that apply.)			
• Attempted identity theft.	<input type="checkbox"/> No 15	<input type="checkbox"/> Yes	
• Attempted access to restricted case types.	<input type="checkbox"/> No 11	<input type="checkbox"/> Yes 3	
• Breach of "one case at a time" rule.	<input type="checkbox"/> No 8	<input type="checkbox"/> Yes 6	
• Court security breach.	<input type="checkbox"/> No 11	<input type="checkbox"/> Yes 3	
• Subsequent misuse of retrieved records.	<input type="checkbox"/> No 12	<input type="checkbox"/> Yes 2	
25. How successful has your court been in monitoring the access by the public to electronic records?	Not Successful	Moderately Successful	Highly Successful
	1 2 6 2	4 3	7 4 2 5
26. Do outside vendors provide your court with the services necessary for the public to gain access to the court's electronic records?	<input type="checkbox"/> No 16	<input type="checkbox"/> Yes 12	
27. If yes, does your court have a contractual agreement specifying your vendor's responsibilities for the protection of the confidentiality of electronic records?	<input type="checkbox"/> No 10	<input type="checkbox"/> Yes 7	
28. How satisfied are you with the quality of the services vendors have provided to your court in this area?	Not Satisfied	Moderately Satisfied	Highly Satisfied
	1 2	4 3	3 4 4 5
29. Does your court impose fees for the costs of providing public electronic access to court records?	<input type="checkbox"/> No 28	<input type="checkbox"/> Yes	



Too limiting: need to restrict confidential information but allow remote access from law offices, etc.

The rules are too restrictive. Because there is insufficient information now available for criminal cases, there is virtually no way to identify the true identity of a defendant. In some situations, this causes more problems and questions than if we provided no access at all.

Clearly define what courts should/should not remotely provide.