

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15-03

Title	Action Requested
Appellate Procedure: Access to Electronic Appellate Court Records	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 8.80–8.85	January 1, 2016
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Executive Summary and Origin

Based on a suggestion received from a justice of a Court of Appeal, the Appellate Advisory Committee and the Court Technology Advisory Committee are proposing new rules addressing public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records.

The Proposal

California Rules of Court, rules 2.500–2.507 address public access to electronic trial court records. These rules are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests. The rules address, among other things, what electronic trial court records may be made available remotely, what records may be made available only at the courthouse, what records can be made available in bulk, and what records may only be accessed on a case-by-case basis.

As more documents are electronically filed in the Courts of Appeal and Supreme Court and stored in electronic form, it is anticipated that questions will arise about public access to these electronic records. This proposal would establish a set of rules to addresses public access to electronic records of the Courts of Appeal and Supreme Court. The proposed appellate rules are based on the trial court rules, but have some substantive differences based primarily on differences in the nature of the records maintained by trial and appellate courts and in existing public access to these records. The proposed rules:

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

- Define “court records” to reflect the types of records maintained by the Courts of Appeal and Supreme Court and the fact that the Government Code section cited in the definition of trial court records does not apply to appellate courts (proposed rule 8.82);
- Reflect the fact that certain types of Court of Appeal and Supreme Court records, such as opinions, are already made available to the public on the California courts website. The proposed rules would provide for continued remote public access to those electronic appellate court records now made available to the public on this website (proposed rule 8.83(b));
- Would permit an appellate court to provide remote access to additional records not only in extraordinary criminal cases, but in other extraordinary cases as well (proposed rule 8.83(d));
- Reflect the fact that the public can search for Court of Appeal cases based on some criteria that are not available for searches of trial court records (proposed rule 8.83(e));
- Reflect the fact that electronic appellate court records will generally be made available through a centralized mechanism, such as the California courts website, rather than by each individual appellate court; and
- Do not set out requirements for the items that must be included in appellate court calendars and registers of actions or for items that must be excluded from these records. The committees considered such requirements unnecessary because the appellate court electronic calendars and registers of actions currently made available on the California courts website already generally comply with those aspects of the trial court rule that would be applicable to appellate court records.

There are additional, minor substantive differences between the proposed appellate rules and the existing trial court rules, such as replacing references to presiding judges with references to presiding justices and replacing references to statutes regarding trial court fees with statutes regarding appellate court fees. In addition, there are some differences in the structure of the proposed rules—such as in the placement of definitions and other provisions—and in wording that are not intended to be substantive.

Alternatives Considered

In developing these rules, the committees considered a variety of alternatives with respect to the scope and proposed language of individual rules. For example, the committees considered whether the rules should provide for remote access only to those types of electronic records that are remotely accessible under the trial court rules, but ultimately decided that the proposed rules should reflect and maintain the current remote access to additional appellate court records.

The committees also considered not proposing these rule amendments at all. However, the committee concluded that it would be helpful to both the public and the courts to clarify the scope of public access to electronic appellate court records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because it mandates access to those electronic appellate court records that are already currently being made available electronically and, like the trial court rules, provides for further access only to the extent feasible. The proposed rules should provide guidance with respect to electronic access to appellate court records, which may reduce questions about such access for litigants and thus costs associated with inquiries about this access for both litigants and the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.80–8.85, at pages 4–10

Rules 8.80–8.85 of the California Rules of Court would be adopted, effective January 1, 2016, to read:

1 **Article 6. Public Access to Electronic Appellate Court Records**
2

3 **Rule 8.80. Statement of purpose**

4 **Rule 8.81. Application and scope**

5 **Rule 8.82. Definitions**

6 **Rule 8.83. Public access**

7 **Rule 8.84. Limitations and conditions**

8 **Rule 8.85. Fees for electronic access**
9

10
11 **Rule 8.80. Statement of purpose**
12

13 **(a) Intent**
14

15 The rules in this article are intended to provide the public with reasonable access to
16 appellate court records that are maintained in electronic form, while protecting privacy
17 interests.
18

19 **(b) Benefits of electronic access**
20

21 Improved technologies provide courts with many alternatives to the historical paper-based
22 record receipt and retention process, including the creation and use of court records
23 maintained in electronic form. Providing public access to appellate court records that are
24 maintained in electronic form may save the courts and the public time, money, and effort
25 and encourage courts to be more efficient in their operations. Improved access to appellate
26 court records may also foster in the public a more comprehensive understanding of the
27 appellate court system.
28

29 **(c) No creation of rights**
30

31 The rules in this article are not intended to give the public a right of access to any record
32 that they are not otherwise entitled to access. The rules do not create any right of access to
33 sealed or confidential records.
34

35 **Advisory Committee Comment**
36

37 The rules in this article acknowledge the benefits that electronic court records provide but attempt to limit
38 the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur
39 as a result of remote access to electronic court records. The proposed rules take into account the limited
40 resources currently available in the appellate courts. It is contemplated that the rules may be modified to
41 provide greater electronic access as the courts' technical capabilities improve and with the knowledge
42 gained from the experience of the courts in providing electronic access under these rules.
43

44 **Subdivision (c).** Rules 8.45–8.47 govern sealed and confidential records in the appellate courts.

1 **Rule 8.81. Application and scope**

2
3 **(a) Application**

4
5 The rules in this article apply only to records of the Supreme Court and Courts of Appeal.

6
7 **(b) Access by parties and attorneys**

8
9 The rules in this article apply only to access to court records by the public. They do not
10 limit access to court records by a party to an action or proceeding, by the attorney of a
11 party, or by other persons or entities that are entitled to access by statute or rule.

12
13
14 **Rule 8.82. Definitions**

15
16 As used in this article, the following definitions apply:

- 17
18 (1) “Court record” is any document, paper, exhibit, transcript, or other thing filed in an action
19 or proceeding; any order, judgment, or opinion of the court; and any court minutes, index,
20 register of actions, or docket. The term does not include the personal notes or preliminary
21 memoranda of justices, judges, or other judicial branch personnel.
- 22
23 (2) “Electronic record” is a court record that requires the use of an electronic device to access.
24 The term includes both a record that has been filed electronically and an electronic copy or
25 version of a record that was filed in paper form.
- 26
27 (3) “The public” means an individual, a group, or an entity, including print or electronic
28 media, or the representative of an individual, a group, or an entity.
- 29
30 (4) “Electronic access” means computer access to court records available to the public through
31 both public terminals at the courthouse and remotely, unless otherwise specified in the
32 rules in this article.
- 33
34 (5) Providing electronic access to electronic records “to the extent it is feasible to do so”
35 means that electronic access must be provided to the extent the court determines it has the
36 resources and technical capacity to do so.
- 37
38 (6) “Bulk distribution” means distribution of multiple electronic records that is not done on a
39 case-by-case basis.
- 40
41
42

1 **Rule 8.83. Public access**

2
3 **(a) General right of access**

4
5 All electronic records must be made reasonably available to the public in some form,
6 whether in electronic or in paper form, except sealed or confidential records.

7
8 **(b) Electronic access required to extent feasible**

9
10 (1) Electronic access, both remote and at the courthouse, will be provided to the
11 following court records, except sealed or confidential records, to the extent it is
12 feasible to do so:

13
14 (A) Dockets or registers of actions;

15
16 (B) Calendars;

17
18 (C) Opinions; and

19
20 (D) The following Supreme Court records:

21
22 i. Results from the most recent Supreme Court weekly conference;

23
24 ii. Party briefs in cases argued in the Supreme Court for at least the
25 preceding 3 years;

26
27 iii. Supreme Court minutes from at least the preceding 3 years.

28
29 (2) If a court maintains records in civil cases in addition to those listed in (1) in
30 electronic form, electronic access to these records, except those listed in (c), must be
31 provided both remotely and at the courthouse, to the extent it is feasible to do so.

32
33 **(c) Courthouse electronic access only**

34
35 If a court maintains the following records in electronic form, electronic access to these
36 records must be provided at the courthouse, to the extent it is feasible to do so, but remote
37 electronic access may not be provided to these records:

38
39 (1) Any reporter's transcript for which the reporter is entitled to receive a fee; and

40
41 (2) Records other than those listed in (b)(1) in the following proceedings:

42
43 (A) Proceedings under the Family Code, including proceedings for dissolution,
44 legal separation, and nullity of marriage; child and spousal support
45 proceedings; child custody proceedings; and domestic violence prevention
46 proceedings;

- 1
- 2 (B) Juvenile court proceedings;
- 3
- 4 (C) Guardianship or conservatorship proceedings;
- 5
- 6 (D) Mental health proceedings;
- 7
- 8 (E) Criminal proceedings;
- 9
- 10 (F) Civil harassment proceedings under Code of Civil Procedure section 527.6;
- 11
- 12 (G) Workplace violence prevention proceedings under Code of Civil Procedure
- 13 section 527.8;
- 14
- 15 (H) Private postsecondary school violence prevention proceedings under Code of
- 16 Civil Procedure section 527.85;
- 17
- 18 (I) Elder or dependent adult abuse prevention proceedings under Welfare and
- 19 Institutions Code section 15657.03; and
- 20
- 21 (J) Proceedings to compromise the claims of a minor or a person with a disability.
- 22

23 **(d) Remote electronic access allowed in extraordinary cases**

24

25 Notwithstanding (c)(2)(E), the presiding justice of the court, or a justice assigned by the

26 presiding justice, may exercise discretion, subject to (e)(1), to permit remote electronic

27 access by the public to all or a portion of the public court records in an individual criminal

28 case if (1) the number of requests for access to documents in the case is extraordinarily

29 high and (2) responding to those requests would significantly burden the operations of the

30 court. An individualized determination must be made in each case in which such remote

31 electronic access is provided.

32

33 (1) In exercising discretion under (d), the justice should consider the relevant factors,

34 such as:

35

36 (A) The privacy interests of parties, victims, witnesses, and court personnel, and

37 the ability of the court to redact sensitive personal information;

38

39 (B) The benefits to and burdens on the parties in allowing remote electronic

40 access; and

41

42 (C) The burdens on the court in responding to an extraordinarily high number of

43 requests for access to documents.

44

45 (2) The following information must be redacted from records to which the court allows

46 remote access under (d): driver's license numbers; dates of birth; social security

1 numbers; Criminal Identification and Information and National Crime Information
2 numbers; addresses and phone numbers of parties, victims, witnesses, and court
3 personnel; medical or psychiatric information; financial information; account
4 numbers; and other personal identifying information. The court may order any party
5 who files a document containing such information to provide the court with both an
6 original unredacted version of the document for filing in the court file and a redacted
7 version of the document for remote electronic access. No juror names or other juror
8 identifying information may be provided by remote electronic access. Subdivision
9 (d)(2) does not apply to any document in the original court file; it applies only to
10 documents that are made available by remote electronic access.

11
12 (3) Five days' notice must be provided to the parties and the public before the court
13 makes a determination to provide remote electronic access under this rule. Notice to
14 the public may be accomplished by posting notice on the court's website. Any
15 person may file comments with the court for consideration, but no hearing is
16 required.

17
18 (4) The court's order permitting remote electronic access must specify which court
19 records will be available by remote electronic access and what categories of
20 information are to be redacted. The court is not required to make findings of fact.
21 The court's order must be posted on the court's website and a copy sent to the
22 Judicial Council.

23
24 **(e) Access only on a case-by-case basis**

25
26 With the exception of the records covered by (b)(1), electronic access to an electronic
27 record may be granted only when the record is identified by the number of the case, the
28 caption of the case, the name of a party, the name of the attorney, or the date of oral
29 argument, and only on a case-by-case basis.

30
31 **(f) Bulk distribution**

32
33 Bulk distribution may be provided only of the records covered by (b)(1).

34
35 **(g) Records that become inaccessible**

36
37 If an electronic record to which electronic access has been provided is made inaccessible to
38 the public by court order or by operation of law, the court is not required to take action
39 with respect to any copy of the record that was made by a member of the public before the
40 record became inaccessible.

41
42 **Advisory Committee Comment**

43
44 The rule allows a level of access by the public to all electronic records that is at least equivalent to the
45 access that is available for paper records and, for some types of records, is much greater. At the same
46 time, it seeks to protect legitimate privacy concerns.

1 **Subdivision (b).** Courts should encourage availability of electronic access to court records at public off-
2 site locations.

3
4 **Subdivision (c).** This subdivision excludes certain records (those other than the register, calendar,
5 opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and
6 family court matters) from remote electronic access. The committees recognized that while these case
7 records are public records and should remain available at the courthouse, either in paper or electronic
8 form, they often contain sensitive personal information. The court should not publish that information
9 over the Internet. However, the committees also recognized that the use of the Internet may be appropriate
10 in certain criminal cases of extraordinary public interest where information regarding a case will be
11 widely disseminated through the media. In such cases, posting of selected nonconfidential court records,
12 redacted where necessary to protect the privacy of the participants, may provide more timely and accurate
13 information regarding the court proceedings, and may relieve substantial burdens on court staff in
14 responding to individual requests for documents and information. Thus, under subdivision (e), if the
15 presiding justice makes individualized determinations in a specific case, certain records in criminal cases
16 may be made available over the Internet.

17
18 **Subdivisions (e) and (f).** These subdivisions limit electronic access to records (other than the register,
19 calendars, opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk
20 distribution of those records. These limitations are based on the qualitative difference between obtaining
21 information from a specific case file and obtaining bulk information that may be manipulated to compile
22 personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of
23 aggregate information may be exploited for commercial or other purposes unrelated to the operations of
24 the courts, at the expense of privacy rights of individuals.

25
26 Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases
27 to: Judicial Council Support, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA
28 94102-3688.

29
30
31 **Rule 8.84. Limitations and conditions**

32
33 **(a) Means of access**

34
35 Electronic access to records required under this article must be provided by means of a
36 network or software that is based on industry standards or is in the public domain.

37
38 **(b) Official record**

39
40 Unless electronically certified by the court, a court record available by electronic access is
41 not the official record of the court.

42
43 **(c) Conditions of use by persons accessing records**

44
45 Electronic access to court records may be conditioned on:

46
47 (1) The user's consent to access the records only as instructed; and

48
49 (2) The user's consent to monitoring of access to its records.

1
2 The court must give notice of these conditions, in any manner it deems appropriate. Access
3 may be denied to a member of the public for failure to comply with either of these
4 conditions of use.

5
6 **(d) Notices to persons accessing records**

7
8 The court must give notice of the following information to members of the public
9 accessing its records electronically, in any manner it deems appropriate:

- 10
11 (1) The identity of the court staff member to be contacted about the requirements for
12 accessing the court's records electronically.
13
14 (2) That copyright and other proprietary rights may apply to information in a case file,
15 absent an express grant of additional rights by the holder of the copyright or other
16 proprietary right. This notice must advise the public that:
17
18 (A) Use of such information in a case file is permissible only to the extent
19 permitted by law or court order; and
20
21 (B) Any use inconsistent with proprietary rights is prohibited.
22
23 (3) Whether electronic records are the official records of the court. The notice must
24 describe the procedure and any fee required for obtaining a certified copy of an
25 official record of the court.
26
27 (4) That any person who willfully destroys or alters any court record maintained in
28 electronic form is subject to the penalties imposed by Government Code section
29 6201.

30
31 **(e) Access policy**

32
33 A privacy policy must be posted on the California Courts public-access website to inform
34 members of the public accessing its electronic records of the information collected
35 regarding access transactions and the uses that may be made of the collected information.
36

37
38 **Rule 8.85. Fees for electronic access**

39
40 **(a) Court may impose fees for copies**

41
42 The court may impose fees for the costs of providing copies of its electronic records, under
43 Government Code section 68928.
44
45

1 **(b) Fees of vendor must be reasonable**

2

3 To the extent that public access to a court's electronic records is provided exclusively
4 through a vendor, the contract with the vendor must ensure that any fees the vendor
5 imposes for the costs of providing access are reasonable.

6